

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE:** B-212852**DATE:** May 2, 1984**MATTER OF:** Reliability Sciences, Incorporated**DIGEST:**

1. Protest that awardee does not have the personnel, experience or financial resources to perform a contract raises an issue of the awardee's responsibility which GAO will not review without a showing of fraud on the part of procuring agency or that solicitation contains definitive responsibility criteria which allegedly have been misapplied.
2. Procuring activity's evaluation of awardee's proposal containing resumes of proposed personnel who were obligated by letters of commitment to perform the contract was reasonable where the RFP contemplates the use of such employees to satisfy the personnel requirement.
3. GAO will not conduct investigations under its bid protest function to establish the validity of protester's speculative statements. Assertions which are criminal in nature should be referred by the protester to the Department of Justice.
4. Procuring activity is not required to debrief protester on protest filed in GAO against awardee. Procuring activity's postponement of a debriefing on protester's proposal is a procedural matter which does not affect the validity of an award.

Reliability Sciences, Incorporated (RSI), protests the award of a contract to Reliability Analysis Company (RAC) under request for proposals (RFP) No. N00123-83-12-0409, a small business set-aside, issued by the Naval Regional Contracting Center (Navy) for technical support services for the Fleet Analysis Center, Corona, California.

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The protest is dismissed in part and denied in part.

RSI initially protested to the Navy that RAC is an affiliate of a large business and, therefore, ineligible for award under a small business set-aside. The matter was referred to the Small Business Administration (SBA), which determined that RAC is not an affiliate of a large business and qualifies as a small business concern for this procurement. In the alternative, RSI protested to the Navy and to this Office that RAC is a company in name only, without employees, facilities or assets, whose proposal, therefore, could not comply with the personnel, corporate experience and support equipment criteria in the RFP. RSI maintains that the Navy's decision to enter into this cost reimbursement contract with RAC poses a substantial financial risk for the government.

The Navy determined RAC's proposal to be technically acceptable. With respect to the "personnel" evaluation factor, the RFP permitted offerors to submit resumes of proposed personnel provided that letters of intent to accept employment also were submitted. The Navy determined that the personnel offered by RAC were obligated to perform the contract by letters of commitment and fully satisfied the personnel requirement. Further, since RAC is a new company, the Navy reasonably considered the experience of the firm's personnel in evaluating RAC's proposal under the "corporate experience" evaluation factor. See Hooper Goode, Inc., B-209830, March 30, 1983, 83-1 CPD 329; Data Flow Corporation; Dynamic Keypunch Corporation, Inc.; SAID, Inc., 62 Comp. Gen. 507 (1983), 83-2 CPD 57. The Navy also determined the firm to whom RAC subcontracted the support equipment requirement acceptable.

Based upon the recommendation of the technical evaluators and the favorable results of an audit of RAC conducted by the Defense Audit Contracting Agency, the Navy awarded to RAC.

RSI's protest, therefore, essentially is a challenge to RAC's capability to perform the contract; that is, a challenge to RAC's responsibility. Hooper Goode, Inc., *supra*. The contracting officer determined RAC to be responsible. Because such determinations are largely subjective business judgments, our Office does not review affirmative

determinations of responsibility unless either fraud is shown on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have been misapplied. Hooper Goode, Inc., supra; Gillette Industries, Inc., B-205476.2, January 5, 1982, 82-1 CPD 13. There is no showing of fraud on the part of procuring officials and the RFP contains no definitive responsibility criteria.

RSI also contends that the Navy acted irresponsibly by not referring the matter of RAC's competency to perform the contract to the SBA. In this regard, we point out that the SBA certificate of competency procedures are utilized only when a small business has been found nonresponsible, not, as here, where there has been an affirmative determination. Jenkins Equipment Co., Inc., B-207512, June 2, 1982, 82-1 CPD 531.

Further, while RSI concedes that the RFP allowed offerors to present resumes of future employees, it points out that evaluation criteria in the RFP specified that the resumes of "currently" employed key personnel would be used to determine the successful offeror. Therefore, RSI contends that it was improper for the Navy to rate RAC's prospective key employees as currently employed personnel.

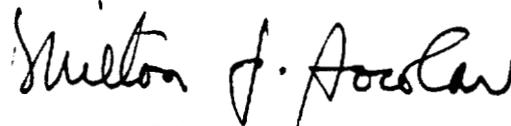
While technical evaluation must be based on the stated evaluation criteria, the interpretation and application of the criteria are subjective in nature. We will not object so long as the application of the criteria is reasonably and logically related to the criteria as stated. Fred S. Gichner Iron Works Incorporated, B-213562, March 22, 1984, 84-1 CPD 341. Here, since the RFP allowed offerors to present resumes of future employees who have committed themselves to accept employment, it appears to have been within the contemplation of the RFP that these committed employees would be considered the same as currently employed. While such employees did not meet the literal "currently" employed requirement, they did fall within the tenor of the RFP. Therefore, we find that the Navy's evaluation of RAC's proposal in this area was reasonable.

RSI requests that this Office or the Department of Justice investigate various assertions made by RSI against unspecified actions by Navy officials which favored RAC in

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this procurement. It is not our practice to conduct investigations under our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Austin Company, Advanced Technology Systems, B-212792, March 1, 1984, 84-1 CPD 257. To the extent that RSI is asserting violations of a criminal nature, they are properly for referral by the protester to the Department of Justice. Keco Industries, Inc., B-204719, July 6, 1982, 82-2 CPD 16.

Finally, RSI complains that the Navy postponed a debriefing after RSI filed its protest here. It is unclear from the information furnished by RSI as to whether the debriefing was requested on its protest or on its proposal. If the former was requested, we are not aware of any provision requiring the Navy to debrief RSI on the protest filed here. Our Bid Protest Procedures, 4 C.F.R. § 21.3(c) (1983), only require the contracting agency to provide the protester with a copy of the report on the protest furnished our Office. In this case, the Navy has provided RSI with a copy of the report. If the debriefing was requested on RSI's proposal under Defense Acquisition Regulation § 3-508.4 (Defense Acquisition Circular No. 76-24, August 28, 1980), the postponement of the debriefing is merely a procedural matter which does not affect the validity of the award. Cf. Creative Electric Incorporated, B-206684, July 15, 1983, 83-2 CPD 95.



Acting Comptroller General
of the United States