



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delaney, Siegel, Zorn & Associates, Inc.

File: B-224578

Date: December 23, 1986

DIGEST

1. Protest that agency improperly awarded contract to a firm that "falsely" certified itself as a corporation is dismissed because certification pertains to matters of bidder's responsibility which GAO will not consider. Any error in the certification by the awardee in identifying the type of business concern may be corrected by the firm and confirmed by the agency after the closing date for offers.
2. Protest that awardee did not meet requirement that offeror have at least 1 year's experience in work solicited is denied where record shows agency reasonably determined awardee had requisite experience based on performance on previous similar government contracts.
3. GAO has no authority to determine what information must be disclosed by another agency in response to a Freedom of Information Act request.

DECISION

Delaney, Siegel, Zorn & Associates, Inc. (DSZ) protests the award of a contract for the conduct of discrimination investigations to A & L Associates (A&L) by the Department of the Navy, under request for proposals (RFP) No. N00189-85-R-0525, a total small business set-aside.^{1/} Specifically DSZ argues that award to A&L was improper because A&L's offer did not comply with solicitation requirements for corporate experience.

^{1/} This decision responds to Delaney, Siegel, Zorn & Associates, Inc.'s initial protest filed prior to the Navy's debriefing of the firm. We are considering issues raised by the debriefing under B-224578.2.

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We deny the protest.

The RFP provided that the contract would be awarded to that responsible offeror whose offer, conforming to the solicitation is determined most advantageous to the government, cost and other factors considered. Price was assigned a maximum weight of 20 percent of the total score; technical factors accounted for the other 80 percent. Offerors were required to submit a technical proposal addressing four evaluation criteria: corporate experience; demonstrated understanding of the problem; personnel qualifications; and project management. Corporate experience was assigned a weight of 8 percent. Under corporate experience, offerors were required to provide "narrative information showing their relevant technical experience as an organization, company, corporation, or entity performing in-depth discrimination complaint investigations." The original provision also provided that, "one year of corporate experience is required as a minimum;" however, by amendment, this requirement was clarified to state that, "under the proposed contract the successful offeror shall have performed discrimination investigations as an organization, company, corporation or entity for a minimum of one year."

DSZ protests that the Navy "knowingly awarded" the contract to an "unqualified and ineligible bidder." The protester alleges that A & L was not eligible to receive the award inasmuch as it lacks the minimum one year corporate experience required by the solicitation. The protester alleges that the information it received from the contracting officer regarding the awardee was that the firm "is not a corporation (though their name clearly indicates that they hold themselves out as a corporation) and that they have only been registered to do business since April 1985." DSZ further argues that A & L lacks integrity and therefore is nonresponsible because it falsely certified in its proposal that it was a corporation under the laws of Virginia.

In reply, the Navy points out that the solicitation, as amended, sought offers from any "organization, company, corporation or entity" that has "performed discrimination investigations . . . for a minimum of one year." According to the Navy, A & L completed paragraph K5 of Standard Form 36 entitled "Type of Business Organization" which, as completed,

indicated that the firm "operates as a corporation incorporated under the laws of the State of Virginia as a partnership." The agency reports that A & L's technical proposal states that the firm has performed discrimination complaint investigations "as a partnership" since September 1984 and is licensed to do business since April 1985 in the city of Chesapeake. Thus, the Navy argues that A & L satisfied the experience evaluation factor since it has performed these type services as a partnership from September 1984 and the Naval Supply Center in Norfolk is familiar with the quality of A & L's work "having issued numerous purchase orders over a two-year period."

In its comments on the protest, A & L denies that the firm misrepresented its business organization. A & L states that it is a "general partnership" doing business since September 1984 as A & L Associates and it "has never held itself out to be a corporation." The firm alleges that the Navy erroneously inserted "Inc." after the firm's name on "the notice of award" sent to other offerors which arguably gave rise to the mistaken belief that the firm is a "chartered corporation." With respect to DSZ's allegation that the firm lacks the minimum investigative experience required by the solicitation, A & L refers to the various purchase order contracts which it received from the Navy as evidence that it has a high level of performance and experience in this particular field.

With regard to the required certification as to type of business organization contained in the RFP, see Federal Acquisition Regulation § 52.215-6 (1985), term K5 in the RFP, the provision was reproduced incorrectly, omitting a box which could be checked to indicate the offeror is a corporation. A&L certified as follows:

"The offeror or quoter, by checking the applicable box, represents that it operates as a corporation incorporated under the laws of the State of Virginia . . . , an individual, X a partnership, a nonprofit organization, or a joint venture."

The contract clause properly should have read as follows:

"TYPE OF BUSINESS ORGANIZATION (APR
1984)

"The offeror or quoter, by checking the applicable box, represents that it operates as a corporation incorporated under the laws of the State of _____, an individual, a partnership, a nonprofit organization, or a joint venture."

A&L inserted "Virginia" in the blank provided and inserted an "X" in the space indicating that it was a partnership. Because the certification was reproduced incorrectly, A&L's certification is confusing and contradictory but there is no indication A&L intended to misrepresent its business status. The record contains no evidence conclusively indicating that A & L is a corporation. In fact, there is persuasive evidence that A & L held itself out, despite the apparent contradictory language in paragraph K5, as a partnership and not a corporation. For example, Anabel H. Alexander signed Standard Form 33 as a "partner" of A & L Associates; similarly, the "Acceptance of Contract Provisions" paragraph L 123 of Standard Form 36 was signed by Anabel H. Alexander and Sandra A. Lee on behalf of the company, A & L Associates, not on behalf of a corporation. A&L also states in its offer that it was organized as a partnership and describes its partnership arrangement.

In any event, A & L's conflicting representations in the "Type of Business Organization" clause is not, by itself, a proper basis for withholding an award since that information pertains to the offeror's responsibility and does not affect the responsiveness of the offer. See Georgetown Air & Hydro Systems, B-222203, Apr. 4, 1986, 86-1 C.P.D. ¶ 328. Furthermore, DSZ's argument that A & L is nonresponsible because the filing of an allegedly "false" representation as to its corporate status reflects a lack of integrity represents a challenge to the contracting officer's affirmative determination of responsibility which our Office normally does not review absent circumstances not shown to be present in this case. See Patrick A. Bianchi, M.D., B-221539, May 8, 1986, 86-1 C.P.D. ¶ 443 at 4. Furthermore, since A & L is a small business, any determination by a contracting officer that it is nonresponsible would have to be referred to the Small Business Administration for consideration under its Certificate of Competency procedures. See David Boland, Inc., B-221845, May 23, 1986, 86-1 C.P.D. ¶ 484 at 2.

To the extent DSZ is arguing that A&L's offer did not conform to the corporate experience requirement because A&L did not

demonstrate it has been performing discrimination investigations for a minimum of 1 year, we deny the protest.

Our decisions recognize that the procuring agency is responsible for evaluating the data supplied by an offeror and ascertaining if it provided sufficient information to determine the acceptability of the offeror. Rowe Industries, B-215881, Oct. 24, 1984, 84-2 C.P.D. ¶ 464. We will not disturb the technical determination by the agency unless it is shown to be unreasonable. However, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with stated evaluation criteria. See Deuel and Associates, Inc., B-212952, Apr. 25, 1984, 84-1 C.P.D. ¶ 477; GTE Government Systems Corp., B-222587, Sept. 9, 1986, 86-2 C.P.D. ¶ 276. The protester bears the burden of showing that the evaluation is unreasonable, and the fact that it disagrees with the agency does not itself render the evaluation unreasonable. Consolidated Group, B-220050, Jan. 9, 1986, 86-1 C.P.D. ¶ 21.

The revised RFP required that the successful offeror has performed discrimination investigations as "an organization, company, corporation or entity" for at least 1 year. Thus, the RFP did not limit offerors to only corporate experience and A&L, as a partnership, could demonstrate its previous experience on government contracts. A&L indicated in its offer that it was organized in September 1984, and that in 1985, A&L was awarded at least nine Navy contracts to perform Equal Employment Opportunity investigations. Thus, we find that the Navy reasonably concluded that A&L met the experience requirement. See S.C. Jones Services, Inc., B-223155, Aug. 5, 1986, 86-2 C.P.D. ¶ 158.

Finally, as to the protester's allegation that the Navy has not provided an "adequate" response to its Freedom of Information Act request, we point out that we do not have authority to determine what information must be disclosed by another agency in response to a FOIA request. A firm's recourse in this regard is to pursue the disclosure remedies under the procedures provided by the statute. See 5 U.S.C. § 552 (1982); Automated Services, Inc., B-221906, May 19, 1986, 86-1 C.P.D. ¶ 470 at 3.

The protest is denied.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel