



Comptroller General
of the United States

1216207

Washington, D.C. 20548

Decision

Matter of: D.H. Kim Enterprises, Inc.--Reconsideration
File: B-255124.2
Date: July 20, 1994

DECISION

D.H. Kim Enterprises, Inc. requests that we reconsider our decision, D.H. Kim Enters., Inc., B-255124, Feb. 8, 1994, 94-1 CPD ¶ 86, denying its protest against the award of a contract to Capitol Contracting, Inc. under invitation for bids (IFB) No. F49642-93-B-0051, issued by the Department of the Air Force for the renovation of visiting officer's quarters at Andrews Air Force Base. Kim, the third-low bidder, argued that neither Capitol, the low bidder, nor MAS Construction, Inc., the second-low bidder, met the experience definitive responsibility requirements in the solicitation.

We deny the request for reconsideration.

The solicitation, issued on August 19, 1993, included the following provision:

"the contractor and/or subcontractors performing each element of construction shall be experienced craftsmen in the specific trades required for that element. Types of experience required include, but are not limited to, [10] years of general contracting experience in multi-family residential and commercial projects of similar size and nature. The contractor or subcontractors shall be capable of showing successful completion of a minimum of two contracts of the same or similar scope within the past [2] years, on systems of a similar size, quantity and type as required by this contract."

The contracting officer, after reviewing pertinent material submitted by Capitol, determined that that firm met the solicitation experience requirements and was otherwise responsible, and proposed that Capitol be awarded the contract.

Kim protested that neither Capitol nor MAS had been in business long enough to satisfy the 10 years of general

contracting experience required by the solicitation, nor had Capitol successfully completed two contracts of similar scope within the past 2 years. We found that the agency had a reasonable basis to find that Capitol satisfied the definitive responsibility criteria, notwithstanding that the 10-year experience requirement could only be satisfied by reference to principals of the firm and even though Capitol had served only as a subcontractor for the two projects identified. We found that the principals' experience could be used to satisfy the definitive responsibility criterion and the fact that Capitol was a subcontractor, rather than the prime contractor, on the two projects was irrelevant because the RFP did not require prime contractor experience, but only the successful completion of two projects of similar size and type within the previous 2 years.

In its request for reconsideration, Kim again asserts, based on information and belief, that the size listed for the two projects represents the total project size and that the agency did not recognize that the awardee's work as a subcontractor was a smaller part. Consequently, Kim contends that the agency could not properly rely on their subcontract experience because Capitol's portion of those projects may not be of the same scope as this RFP. Kim also contends that our Office should have investigated Capitol's claims, required the awardee to produce the actual subcontracts, and made its own determination whether Capitol met the solicitation's experience criteria.

Where an allegation is made that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has been submitted, from which the contracting officer reasonably could conclude that the criterion has been met.

T. Warehouse Corp., B-248951, Oct. 9, 1992, 92-2 CPD ¶ 235. Our Office does not conduct independent investigations as part of our bid protest function; our decisions are based on our review of the written record, which consists of the submissions of the parties. TSI Microelectronics Corp.-- Recon., B-243889.2, Nov. 4, 1991, 91-2 CPD ¶ 423. In this case, the record showed that the contracting officer, in determining that Capitol satisfied this requirement, expressly verified that Capitol's experience on those projects was sufficient to satisfy the RFP requirements, and the record developed during the initial protest contained no basis for concluding that Capitol's subcontracts did not meet the solicitation experience criteria.

Under our Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1994), a party requesting reconsideration must show that our prior decision may contain errors of fact or law or present information not previously considered, which warrants reversal or modification of our decision. Kim's

disagreement with our conclusion that the contracting officer properly considered the subcontractor experience in determining Capitol's responsibility does not meet this standard.

The request for reconsideration is denied.

James A. Spangenberg
for Robert P. Murphy
Acting General Counsel