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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-191248

DATE: June 19, 1978

MATTER OF: Bara Photographic, Inc.

DIGEST:

1. RFP for photographic services required that offeror's place of performance be "regularly operating still photographic laboratory with experience in performing services" covered in RFP. Protest that preaward survey indicates that awardee did not meet requirement is denied, since survey clearly indicates to contrary.
2. Compliance with contract requirements is matter of contract administration, which is function of procuring agency.

Request for proposals (RFP) No. F04702-78-R-0001 was issued on November 8, 1977, by the United States Air Force for photographic laboratory services. Section "D" of the RFP, "Evaluation Factors for Award," provided in pertinent part as follows:

"2. TECHNICAL EVALUATION

"a. If a proposal submitted in response to this request for proposal is favorably considered, a survey team may contact your facility to determine your ability to perform. Current financial statements and other pertinent data should be available at that time if not already on file with the Air Force. The team may evaluate your system for determining the financial and technical ability of your proposed sub-contract or procurement source to perform.

"b. Your firm must be an established and regularly operating still photographic laboratory with experience in performing services covered by this requirement. Your company must have available personnel

with a thorough knowledge of technical operations normally performed by a professional still photo laboratory. Your firm must possess satisfactory financial and professional, creative, and technical ability to insure the satisfactory completion of any resulting contract. Your firm must have established a satisfactory record in the past for completion of contracts of similar character and extent.

"c. Technical, management, and cost data will be given equal weight in award of any contract.

"3. PLACE OF PERFORMANCE

"To meet short deadline dates imposed on 1361 AVS by customers, the contractor's place of performance must be within a 20 mile radius of 1221 South Fern Street, Arlington, VA 22202. This is necessary to minimize loss of time in traveling to and from the contractor's facility. Proposals received from offerors whose place of performance is greater than twenty (20) mile radius will be rejected."

The contract for the required services was awarded to General Electric Company (GE) on January 25, 1978. Bara Photographic, Inc. (Bara), which submitted an offer substantially higher in price than GE's, has filed a protest in our Office against such award. The basis for the protest is stated as follows:

"GE in its proposal indicated that its place of performance would be 503 Herzel Place, Beltsville, Maryland, which * * * was not at the relevant time a facility regularly operating as a still photographic laboratory with experience in performing the

various and diverse types of photographic services required by the RFP since it lacked the necessary equipment and organization to comply with the Air Force needs as of the date specified for commencement of performance * * *."

Bara characterizes the section "D" factors referenced as "mandatory technical evaluation criteria," as distinct from responsibility criteria, which they clearly reflect, and contends that GE's alleged failure to meet them at what Bara considers the "relevant time"--when GE's proposal was submitted--should have resulted in rejection of the proposal.

The evidence presented by Bara in support of its position consists essentially of its interpretation of information contained in portions of a preaward survey of GE's Maryland facility, secured by Bara under the Freedom of Information Act, 5 U.S.C. § 552 (Supp. IV, 1974). Bara contends that the survey indicates that GE's Maryland facility's photographic service experience involved services different than those required by the RFP; the facility lacks certain necessary equipment, which Bara apparently possesses but which GE could not secure until after the contract award; and the survey team in fact seriously questioned the adequacy of the location's facilities and GE's ability to meet the RFP's delivery schedule. In addition, Bara alleges that GE's performance under the contract in question has been unsatisfactory, which Bara believes is further evidence that the Maryland plant was not an operating still photographic laboratory "with experience commensurate with the performance obligations of the contract."

Notwithstanding how the requirements in section "D" of the RFP are characterized, we agree that the Air Force clearly intended that in order to receive the award under the RFP an offeror's place of performance must have the stated facilities and capabilities. Compare Translation Consultants, Ltd., B-188994, September 14, 1977, 77-2 CPD 189. In this connection, and notwithstanding that the concept of "responsiveness"

is not applicable in negotiated procurements, TM Systems, Inc., B-187367, January 26, 1977, 77-1 CPD 61, material requirements set out in an RFP must be met for a proposal to be acceptable for award. See Computer Machinery Corporation, 55 Comp. Gen. 1151 (1976), 76-1 CPD 358.

Contrary to Bara's assertions, the survey indicates that the GE facility in fact met the requirements of section "D" of the RFP. The survey found that the plant was a still photographic laboratory with the experience necessary under the RFP. In addition, it was determined that although the plant lacked certain equipment which would make contract performance easier and more economical for the contractor, based on the equipment at the Maryland site GE was capable of providing the required services. In this connection, although the report does reflect some concern with GE's ability to meet delivery deadlines, it was ultimately judged that GE could satisfactorily comply with the delivery schedule.

Concerning GE's actual contract performance, this is a matter of contract administration, which is the responsibility of the procuring agency. See Key Security, Inc., B-190253, November 22, 1977, 77-2 CPD 200. It is not for consideration under our Bid Protest Procedures, 4 C.F.R. part 20 (1977), which are reserved for reviewing whether the award or proposed award of a contract complies with statutory, regulatory, and other legal requirements. See Fechheimer Brothers Company, B-188651, September 21, 1977, 77-2 CPD 210. In any event, the Air Force states that GE's performance has been satisfactory.

The protest is denied.


Acting Comptroller General
of the United States