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DECISION



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

FILE:

B-204074

DATE: January 29, 1982

MATTER OF:

L*A Water Treatment Division

DIGEST:

1. Complaint that Agency for International Development (AID) grantee made award to an ineligible supplier -- a Californian corporation wholly owned by a French firm -- lacks merit where award was permitted to American but not French sources and the request for proposals permitted an award to a corporation organized under the laws of the United States.
2. Validity of complaint that grantee misplaced material in offer which then was not evaluated is not established where complainant does not provide any detailed information in support of allegation and record contains no other evidence which supports allegation.
3. In a negotiated procurement, awards are not required to be made solely on the basis of price, and an agency's failure to award to the lowest priced offeror is not a basis for objection absent a showing that the award did not conform with the evaluation scheme set forth in the solicitation.
4. Agency's failure to prevent a grantee's contract award prior to resolution of a complaint, and its refusal to provide complainant with information requested pursuant to Freedom of Information Act do not affect the validity of the contract award.

L*A Water Treatment Division of Chromolloy (L*A) has filed a complaint with this Office against the Cape Verde government's proposed award of a contract to Polymetrics, Inc. pursuant to the Agency for International Development's (AID) grant No. 655-0005. After the complaint was filed,

a contract award was made to Polymetrics. The subject contract was for desalination equipment and related services in connection with a project partially funded by AID to build a desalination and power plant for Sal Island, Cape Verde. As required by the grant's terms, the Cape Verde government conducted a competitive procurement of the equipment. L*A principally complains that the contract was improperly awarded to a foreign-owned firm in violation of the terms of the request for proposals (RFP), and that portions of its own offer were misplaced and not evaluated. We deny the complaint in part and dismiss it in part.

The project grant agreement specified that grant funds:

"will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in countries included in Code 941 of the AID Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services * * *."

Code 941 basically includes the United States and all independent countries of the free world except the grantee and selected countries against which the United States has imposed economic assistance sanctions. The RFP, which was approved by AID, implemented this requirement with the following clause:

"Eligibility of Suppliers: * * * The Supplier must be:

(a) An individual who is a citizen of, or who has established legal residence in a country included in the authorized geographic code; or

(b) A corporation organized under the laws of a country included in the authorized geographic code; or

(c) A controlled foreign corporation; i.e., any foreign corporation a majority of whose total voting stock is owned by United States shareholders; or

(d) A partnership or joint venture consisting of individuals who are citizens of or who have established legal residence in countries included in the authorized geographic code, and/or corporations or partnerships organized under the law of countries included in the authorized geographic code. * * *

While Polymetrics was and is a corporation organized under the laws of California (satisfying paragraph (b) above), at the time of the contract award it was wholly owned by a French firm. France was excluded from the list of eligible supply sources in Code 941. L*A contends this fact should disqualify Polymetrics for an award despite its status as a California corporation.

We disagree. The RFP plainly states a corporation is an eligible supply source if organized under the laws of a country included in the authorized geographic code -- in this case Code 941, which includes the place of Polymetrics' organization, the United States. Therefore, the fact of foreign ownership would not, under the RFP provisions, preclude Polymetrics' eligibility.

We can find no merit to L*A's complaint that portions of its offer were misplaced and consequently were not evaluated nor reviewed by AID. We requested L*A to submit a detailed statement of this complaint ground, but L*A's response did not elaborate on what, if any, material had been misplaced and not evaluated. The burden of establishing evaluation deficiencies falls on the protester or, in this case, complainant. See HSA/Multichem, B-202421, August 11, 1981, 81-2 CPD 118. L*A's complaint has not even made a prima facie showing of the alleged evaluation deficiency and there is nothing else of record which supports the allegation. Therefore, there is no basis on the record for us to sustain this complaint ground.

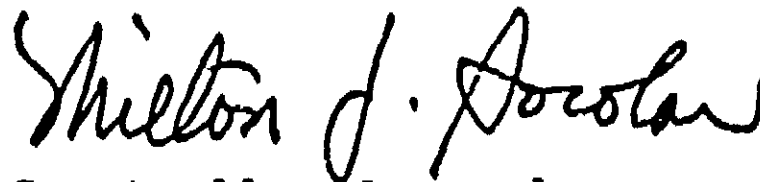
L*A also raises several other issues, but these clearly lack merit or fail to provide a basis for our review. For example, L*A alleges that the award was not made to the lowest priced offeror. However, price -- while the most

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important evaluation criterion -- was only one of seven evaluation criteria. It is well established that in negotiated procurements, as here, awards are not required to be made solely on the basis of lowest price, and absent a showing that the evaluation was not conducted in conformance with the evaluation scheme set forth in the RFP, an award is not improper simply because it was not made to the lowest priced offeror. See Sheldon G. Kall, B-199120, September 25, 1980, 80-2 CPD 221.

The other matters concern AID's failure to prevent an award prior to resolution of the complaint and its refusal to provide L*A with information requested pursuant to the Freedom of Information Act (FOIA). We have consistently held that these issues do not affect the validity of an award. See McQuiston Associates, B-199013, September 1, 1981, 81-2 CPD 192 (regarding an award pending resolution of a bid protest); Sheldon G. Kall, supra (regarding an agency's refusal to provide information under FOIA).

The complaint is denied in part and dismissed in part.



Acting Comptroller General
of the United States