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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Firma Hermann Leis

File: B-295956; B-295956.2

Date: May 19, 2005

Paul D. Reinsdorf, Esq., Reinsdorf & Associates, for the protester.
Maj. Gregory R. Bockin, Department of the Army, for the agency.
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee does not meet solicitation's definitive responsibility criterion requiring proof of 5 years of experience for the type of work to be performed is denied where record shows that the contracting officer reasonably determined that the awardee satisfied this criterion.
2. Protest that agency's evaluation and source selection decision were flawed is denied where record shows that the agency's evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation factors.

DECISION

Firma Hermann Leis protests the award of a contract to Dachbau Kurpfalz GmbH under request for proposals (RFP) No. W912PE-04-R-0059, issued by the Department of the Army, for roofing work in support of the 411th Base Support Battalion facilities in Germany. Leis objects to the agency's evaluation of proposals and the source selection decision.

We deny the protest.

BACKGROUND

The solicitation contemplated the award of an indefinite-delivery/indefinite-quantity roofing contract for a 1-year base period with four 1-year option periods. As a threshold requirement, the RFP provided that "[o]fferors who [did] not have five years of [roofing] experience [were] not eligible for award." RFP § M, ¶ A. For those offerors that met the 5-year experience requirement, the RFP stated that award would be made on a "best value" basis, with the past performance and experience

factors being of equal importance and, when combined, the factors would be approximately equal to price. RFP § M, ¶¶ A, B. In this regard, the RFP stated that in evaluating experience, the agency would emphasize the following:

- a. Depth of experience doing work of a similar size and nature, task orders covering multiple service/work orders in accordance with the SOW in the amount of Euro 400,000.00.¹
- b. Experience working with U.S. Government agencies.
- c. Experience in performing multiple projects in different locations at the same time.

RFP § M ¶ C.

Offerors were required to complete and submit either an offeror questionnaire in the format provided in attachment A to the RFP or a separate document containing all the information outlined in attachment A, which included information supporting the firm’s experience and qualifications to perform the requirement. On attachment A, offerors were to specifically provide a description of work which best illustrated past performance and experience relevant to the current contract, including “all task orders issued [for] multiple service work orders” and a description of the work experience that demonstrated the offeror’s ability to perform multiple projects in different locations at the same time. RFP §§ M ¶ C.2.a, L, Additional Information.

As relevant here, both Leis and Dachbau were determined to have met the 5-year minimum experience requirement. The agency then contacted three references for each offeror. AR, Tab 15, Source Selection Decision. The evaluation of the proposals submitted by the Dachbau and Leis was as follows:

Offeror	Past Performance	Experience	Price
Dachbau	Low Risk	Very Good	\$2,655,756.25
Leis	Low Risk	Marginal	\$(DELETED)

Although Dachbau was a new firm, the agency determined that it had the requisite 5-year experience based on its relationship with Braunwart Zappe, the incumbent contractor on the predecessor contract. As explained by Dachbau in its proposal, Dachbau had assumed the management and assets of Braunwart and had completed performance of the incumbent contract. Dachbau’s proposal showed that Braunwart had the requisite experience on roofing contracts dating back to 1991.

¹ The record shows that under this provision, the agency was seeking a contractor with experience with “small repair work without specifications of exact definition.” Agency Report (AR), Tab 15, Source Selection Decision, at 4.

In contrast, while the protester had 5 years of experience, the protester's technical proposal failed to show experience with service order type contracts or experience working several projects simultaneously. Consequently, the agency concluded that, absent the required experience, there was serious doubt that Leis could successfully perform the requirement. Accordingly, the agency rated Leis' proposal marginal under the experience factor. AR, Tab 15, Source Selection Decision, at 4.

In performing a trade-off between the two firms' proposals, the contracting officer determined that Dachbau's slightly higher-priced, but superior technical proposal, as compared to Leis' lower-priced, lower-rated proposal, represented the best value to the government. For this reason, the agency awarded the contract to Dachbau. Subsequent to a debriefing held with the firm, Leis filed this protest.

ISSUES and ANALYSIS

Definitive Responsibility Criterion

The protester contends that the agency improperly waived the 5-year experience requirement for the awardee. The protester argues that the record does not support the agency's conclusion that Dachbau is the successor-in-interest to Braunwart, the incumbent contractor.

As described above, the solicitation required offerors to have a minimum of 5 years of experience in order to be eligible for award. The parties do not dispute, and we agree, that this requirement is a definitive responsibility criterion, which is defined as a specific and objective standard established by an agency for use in a particular procurement designed to measure a prospective contractor's ability to perform the contract. Deployable Hosp. Sys. Inc., B-260778.2, B-260778.3, Feb. 12, 1996, 96-1 CPD ¶ 113 at 4.

Where, as here, a protester alleges 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 official reasonably could conclude that the criterion has been met; generally, a contracting agency has broad discretion in determining whether offerors meet definitive responsibility criteria since the agency must bear the burden of any difficulties experienced in obtaining the required performance. Id. In determining compliance with a definitive responsibility criterion, in the absence of RFP language to the contrary, an agency may consider the experience of the corporation's principal officers, the experience of the firm's employees, and the experience of a predecessor company acquired by the "bidding entity." See D.H. Kim Enters., Inc., B-255124, Feb. 8, 1994, 94-1 CPD ¶ 86 at 3; J.D. Miles & Sons, Inc., B-251533, Apr. 7, 1993, 93-1 CPD ¶ 300 at 3; Unison Transformer Servs., Inc., B-232434, Nov. 10, 1988, 88-2 CPD ¶ 471 at 5.

Here, we conclude that there was sufficient evidence for the agency to conclude that Dachbau met the experience requirement through its relationship with Braunwart, the incumbent contractor. The cover letter to the awardee's proposal explained that the manager of Braunwart established Dachbau to ensure continued performance of all of the current contracts of Braunwart and that Dachbau had "taken over" the "fixtures and furnishings and [Braunwart's] most efficient employees". AR, Tab 13, Cover Letter to Dachbau's Proposal. Moreover, the contracting officer confirmed that Dachbau replaced Braunwart under the predecessor contract and continued to perform satisfactorily. AR, Tab 1, Contracting Officer's Statement, at 4. Here, the contracting officer had both written evidence and personal knowledge that Dachbau had assumed the business operations of Braunwart, and, in our view, reasonably concluded that the awardee satisfied the experience requirement of the RFP.

Evaluation of Protester's Proposal

The protester also challenges the agency's assignment of a "marginal" rating to its proposal under the experience factor. In reviewing an agency's evaluation of proposals and source selection decision, our review is confined to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors. Main Bldg. Maint., Inc., B-260945.4, Sept. 29, 1995, 95-2 CPD ¶ 214 at 4.

As stated above, the RFP specifically stated that the agency would emphasize an offeror's experience in performing task orders covering multiple service work orders and experience in performing multiple projects in different locations at the same time. RFP § M, ¶ C.2.a, L, Additional Information. The record shows that in listing its references, the protester provided none of the crucial information required by the RFP to enable the evaluators to determine specifically whether the protester had the relevant experience performing task order contracts or experience performing multiple projects in different locations at the same time.

The protester argues that there was no requirement for offerors to include a description of service order type work in the reference list. However, as described above, the RFP specifically asked for offerors to list task orders performed covering multiple service work orders and for offerors to describe experience in performing multiple projects simultaneously. It is incumbent on an offeror to submit an adequately written technical proposal for the agency to evaluate. Baker Support Servs., Inc., B-257054.2, Jan. 20, 1995, 95-1 CPD ¶ 29 at 5. Here, the protester simply failed to provide within the four corners of its proposal enough information to enable the evaluators to determine that it possessed the experience required by the RFP. Furthermore, the protester does not argue that it, in fact, has the required experience. We find the contracting officer had a reasonable basis for rating the

protester marginal under the experience factor because the protester failed to demonstrate that it had the required experience.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² The protester also argues that the agency used an unstated geographical limitation factor in evaluating its experience. However, a review of the record demonstrates that the protester received a marginal rating for experience because it failed to demonstrate the required experience and not because of its location.