



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gebrüder Kittelberger GmbH & Co.

File: B-278759

Date: December 8, 1997

DECISION

Gebrüder Kittelberger GmbH & Co. protests the award of a contract to All Star Maintenance Inc. under Department of the Army invitation for bids No. DAJA02-98-B-0002 for the maintenance of both government housing units and leased housing units in Germany. Kittelberger argues that All Star should have been found nonresponsible.

We dismiss the protest.

The procurement was conducted pursuant to the two-step sealed bidding process described in Federal Acquisition Regulation (FAR) § 14.501. Step one of the process consists of the submission of technical proposals, and step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in the first step. In this case, the Army issued separate step one solicitations (request for technical proposals No. DAJA02-97-R-7017 and No. DAJA02-97-R-7018), and then combined all requirements in a single step two invitation.

Each step one solicitation required a site visit, at a prescribed date and time, by all interested vendors. Kittelberger argues that the site visits thus were preconditions to any responsibility finding, and maintains that since All Star did not attend either one the firm must be found nonresponsible. Kittelberger further argues that even if the site visit requirement properly was waived, the agency's decision that All Star was responsible was unreasonable because All Star would not have been aware of the performance-related information related to the vendors that did attend, and because All Star lacks relevant experience in Germany. Finally, Kittelberger speculates that at the time it submitted its offer All Star may not have had all necessary German licenses, and may not have been in compliance with other German regulations.

Responsibility relates to the prospective contractor's ability to perform. 3DAV Dev., Inc.; San Sebastian Shopping Ctr., S.E., B-274933.2 et al., Jan. 16, 1997, 97-1 CPD ¶ 24 at 2. A determination that an offeror is capable of performing a contract is based, in large measure, on subjective judgments that generally are not susceptible to reasoned review. Our Office therefore will not review an agency's affirmative

determination of a contractor's responsibility absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may not have been met. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (1997).

We have held that while a vendor's failure to make a mandatory site inspection may be considered in judging the firm's responsibility, such failure should not, in itself, be used as a basis to disqualify the firm from the competition. Rowe Contracting Serv., Inc., B-200594, Jan. 22, 1981, 81-1 CPD ¶ 40 at 3; Edw. Kocharian & Co., Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD ¶ 20, aff'd, Edw. Kocharian & Co., Inc.—request for modification, B-193045, May 10, 1979, 79-1 CPD ¶ 326. Here, the Army evidently decided that All Star's failure to attend the site visits did not warrant finding the firm incapable of performing the contract. The agency similarly determined that All Star's experience was adequate in that regard. Since neither possible agency bad faith nor a definitive responsibility criterion¹ is involved here, we dismiss Kittelberger's protest regarding the site visits and All Star's experience.

We also dismiss the protest that All Star may not be in compliance with German licensing and related requirements. According to Kittelberger, the solicitation generally required that the contractor comply with German laws and regulations. Normally, a general solicitation provision mandating that the contractor obtain all necessary licenses or comply with such requirements does not mean that a bidder or offeror must demonstrate compliance prior to award. Rather, the provision imposes upon successful bidders and offerors the obligation to resolve the question of what licenses are needed and to obtain those that are required. Mercury Business Servs., Inc., B-237220, Nov. 7, 1989, 89-2 CPD ¶ 443. Moreover, while in some circumstances the question of a contractor's possession of appropriate licenses may concern the firm's responsibility, id., our role in reviewing affirmative determinations in that regard is limited, as discussed above, and neither exception to our rule is involved here.

The protest is dismissed.

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¹A definitive criterion is an objective standard imposed by a solicitation that must be satisfied as a prerequisite to determining the vendor responsible. 3DAV Dev., Inc.; San Sebastian Shopping Ctr., S.E., supra, at 3.