



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John Crowe & Associates, Inc.

File: B-227846

Date: August 21, 1987

DIGEST

1. Requirement that 25 percent of the work on a contract be performed by the contractor relates to performance, an issue of contract administration, and is not a precondition of performance. The General Accounting Office does not review matters of contract administration.
2. Where requirements that offerors submit resume detailing previous experience with similar work and provide information regarding experience of key personnel are not sufficiently specific and objective to constitute definitive responsibility criteria, affirmative determination of responsibility will not be questioned.
3. Protester's inference and supposition of bias in favor of awardee, allegedly exemplified by one reviewer scoring awardee higher on technical evaluation than others, does not meet burden necessary to show bias.

DECISION

John Crowe & Associates, Inc., protests an award to Abilene Plumbing & Heating, Inc., under request for proposals (RFP) No. DACA63-87-R-0033, issued by the Department of the Army, for construction of an equipment storage facility at Dyess Air Force Base in Abilene, Texas.

We deny the protest in part and dismiss it in part.

The RFP was issued on December 29, 1986, and three proposals were received. Crowe and Abilene were in the competitive range. Abilene was the low offeror and received the highest technical score as a result of the evaluation of technical proposals. Based on initial proposals, Abilene was awarded a contract on April 8, 1987.

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Crowe raises three objections to the award of this contract to Abilene. First, Crowe alleges that Abilene will not perform at least 25 percent of the work as required by the RFP. Second, Crowe asserts that Abilene lacks the credentials and expertise necessary for contract performance. And, third, Crowe complains that the Army overlooked Abilene's deficiencies because it was biased in favor of Abilene.

Crowe's first contention is that Abilene does not intend to perform 25 percent of the work as required by the RFP. Specifically, Crowe claims that Abilene's president advised Crowe's president that Abilene plans to perform only the mechanical portion of the contract, which Crowe asserts is less than 25 percent of the work. The RFP specifies that "[t]he contractor shall perform on the site, and with his own organization, work equivalent to at least 25 percent (25%) of the total amount of work to be performed under the contract."

The record contains an affidavit from Abilene confirming that it intends to comply with this requirement and there is nothing, other than the contrary assertion of the protester, to suggest otherwise. Further, the agency reports that the plumbing and mechanical work, which is Abilene's specialty, alone comprise 25 to 35 percent of the work. In any event, whether an awardee ultimately meets its contractual obligations to the government is a matter of contract administration which is solely the responsibility of the procuring agency and is not encompassed by our bid protest function. Ridge, Inc., 65 Comp. Gen. 663 (1986), 86-1 CPD ¶ 583. Consequently, we dismiss this aspect of the protest. See Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1987).

Crowe's second objection is based on its contention that Abilene's proposal failed to comply with two other requirements in the RFP. First, Crowe claims that Abilene failed to meet the requirement in the RFP that bidders submit "[a] resume detailing Offerer's recent previous experience with prefabricated metal building construction." Second, Crowe questions Abilene's satisfactory compliance with the requirement in the RFP that proposals include information regarding "the experience of all key personnel, including the developer, the architect-engineer, the project manager, designers, construction superintendents, and the construction firm, in handling similar projects."

Characterizing these requirements as definitive responsibility criteria, Crowe complains that, Abilene did not satisfy these criteria and the contracting officer

determined unreasonably and incorrectly that Abilene was capable of performing the contract.

Generally, whether a firm has the capacity to perform relates to the matter of bidder responsibility. See Great Lakes Dredge & Dock Company, B-221768, May 8, 1986, 86-1 CPD ¶ 444. The Army is required to make an affirmative determination that Abilene was a responsible offeror prior to awarding it the contract. The record shows that the Army did make an affirmative determination of responsibility before awarding to Abilene. The determination of a prospective contractor's responsibility rests within the broad discretion of the contracting officer, who in making that decision must of necessity rely primarily on his or her business judgment. Venusa, Ltd., B-217431 et al., Apr. 22, 1985, 85-1 CPD ¶ 458. As a result, we do not review an affirmative determination of bidder responsibility absent a showing of fraud or bad faith on the part of the contracting agency, or alleged failure by an agency to apply definitive responsibility criteria. 4 C.F.R. § 21.3(f)(5) (1987); ABC Appliance Repair Service, B-221850, Feb. 28, 1986, 86-1 CPD ¶ 215.

To show fraud or bad faith, the protester must offer virtually irrefutable proof. Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 CPD ¶ 203. While we discuss below the particular allegations of bias toward Abilene, the protester has offered no probative evidence of fraud or bad faith.

Therefore, remaining at issue is whether this particular RFP included definitive responsibility criteria.^{1/} Such criteria are specific and objective standards established by an agency in a particular procurement for the measurement of a bidder's ability to perform the contract. Topley Realty Co., Inc., 65 Comp. Gen. 510 (1986), 86-1 CPD ¶ 398. They limit the class of bidders to those meeting specified qualitative and quantitative qualifications necessary for adequate contract performance. Matter of Urban Masonry Corporation, B-213196, Jan. 3, 1984, 84-1 CPD ¶ 48. For example, when definitive responsibility criteria include experience, they typically include a particular type or certain level which can be measured objectively. Zero Manufacturing Company--Request for Reconsideration, B-224923.2, Oct. 28, 1986, 86-2 CPD ¶ 485.

^{1/} We note that the Army initially believed these requirements were definitive responsibility criteria, but in its report to our Office, suggests that its initial position concerning the resume requirement may have been incorrect.

In this regard, the first solicitation requirement did not specify that Abilene's experience with prefabricated metal construction be as the general or prime contractor. It did not specify a minimum number of years of experience with prefabricated metal construction. Likewise, in the second requirement, the experience of the key personnel had to be with similar projects but did not have to be of any certain type or duration. Neither the requisite qualitative or quantitative component is present under either requirement. Therefore, we find that these requirements in the RFP are not definitive responsibility criteria.

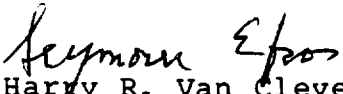
Since these requirements in the RFP do not constitute definitive responsibility criteria, there are no grounds for us to depart from our practice not to question an agency's affirmative determination of responsibility. Consequently, we also reject this basis for the protest.

Finally, we are unable to conclude that the solicitation was flawed by a bias toward Abilene. In this regard, Crowe provides an elaborate discussion of the evaluation performed by the technical team purporting to demonstrate such bias. Principally, Crowe points out that one reviewer gave Abilene a score of 755 while the average on the part of the other reviewers was 527.

Crowe offers no evidence that the reviewer was biased in favor of Abilene, except to infer bias from the fact that he rated Abilene higher than the others. The protester acknowledges that this same reviewer also scored Crowe slightly higher than its colleagues. While Crowe's other allegations, discussed previously, are also offered as evidence of bias or bad faith, we have repeatedly held that bias will not be attributed to procurement officials based on inference and supposition. See, e.g., Martin-Miser Assocs., B-208147, Apr. 8, 1983, 83-1 CPD ¶ 373.

Consequently, we do not believe that the protester has met its burden to show that the solicitation was tainted by bias toward Abilene.

Therefore, we deny in part and dismiss in part Crowe's protest.

for 
Harry R. Van Cleve
General Counsel