



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DOD Contracts, Inc.

File: B-240590.3

Date: October 22, 1991

Daniel A. Bellman, Esq., Porter, Wright, Morris & Arthur,
for the protester,

Kathleen D. Martin, Esq., Department of State, for the
agency,

Susan K. McAuliffe, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. Protest of improper evaluation of proposal, claiming that agency gave insufficient weight to incumbent's experience, is dismissed where, even giving protester maximum points in the technical areas which protester challenges, the protester would not be entitled to award since the awardee still would have had the highest total score based on technical and price proposal evaluations.

2. Where license is a contract performance requirement, because it is not required as a condition for award under the solicitation, failure to furnish license with proposal provides no basis for rejection of proposal. Awardee in its proposal reasonably showed efforts and capability to obtain license.

DECISION

DOD Contracts, Inc. protests the evaluation of its proposal submitted in response to request for proposals (RFP) No. S-132-FA-151, issued by the Department of State for guard services at the American Embassy in Panama. DOD Contracts basically contends that the evaluators gave insufficient weight to the firm's experience as the incumbent contractor for these services. The protester also states that one evaluator's comments on her worksheets show a lack of objectivity. DOD Contracts further contends that the award of a contract under the solicitation to Ogden Allied was improper because Ogden Allied failed to obtain the requisite local firearms permits and licenses prior to award.

We dismiss the protest.

The solicitation, issued on June 15, 1990, contemplated the award of a contract for guard services for 1 base year and 4 option years. Section M of the RFP set forth the following technical evaluation factors for award (worth a total of 70 points), listed in descending order of importance: technical approach (including management plan, and knowledge and familiarity in performing these services); technical personnel; and experience and past performance. Price proposals were to be evaluated separately, with the lowest cost proposal ranked highest, at a score of 30 points. Each offeror's price proposal score was to be added to the firm's technical proposal score to determine the proposal's total evaluation score. Award was to be made to the responsible offeror that submitted the proposal determined to be the best value to the government (that is, the proposal which received the highest total score).

A 5-member evaluation panel reviewed and evaluated the 11 initial proposals submitted in response to the RFP. Five of the initial proposals were rejected as technically unacceptable. Written negotiations were conducted with the six offerors determined to be in the competitive range. Best and final offers (BAFOs) were requested from those offerors in the competitive range, including DOD Contracts and Ogden Allied. Ogden Allied's BAFO, which received the highest technical evaluation score and third highest price evaluation score, received the highest total score. Award was made to the firm on July 16. The protester's BAFO, which received the lowest technical evaluation score of the six BAFOs submitted, and offered the second lowest price, received the lowest total score of all offerors.

DOD Contracts filed its protest with our Office on July 29, challenging the award to Ogden Allied. The protester essentially contends that it should have received a higher technical evaluation score than the awardee since it has direct experience as the incumbent contractor for these services and the awardee lacks similar overseas embassy guard experience. Although the protester does not challenge any specific technical findings of the evaluators (other than the awardee's and its own experience scores), DOD Contracts generally asserts that the technical evaluations must have been in error. The protester also questions the objectivity of one of the agency's technical evaluators.

The agency responds that the evaluation of proposals was proper and that DOD Contracts, which is the incumbent contractor, failed to submit a sufficiently detailed proposal demonstrating its claimed experience and setting forth its offered services. Several evaluators commented that although the protester relies on its experience as the incumbent, the firm's prior contract (its only embassy guard experience) had been substantially subcontracted to another

firm and that the protester's proposal failed to adequately explain the specific management plan, use of personnel, and the services the firm proposed to provide under the present contract to meet the agency's requirements. The evaluators also determined that although Ogden Allied lacks foreign embassy guard experience, the firm has experience in providing guard services to government agencies in the United States and its proposal presented detailed information regarding relevant experience, as well as its proposed management plan and personnel. The awardee's proposal was ranked highest technically and it offered the third lowest price.

We will examine an agency's evaluation to ensure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP, Research Analysis and Maintenance, Inc., B-239223, Aug. 10, 1990, 90-2 CPD ¶ 129. Here, the RFP did not require an offeror to have foreign embassy guard service experience. Experience and past performance could be established based on contracts for the same or similar work. Thus, we cannot find, as the protester suggests, that the evaluation of Ogden Allied's proposal was inconsistent with the stated evaluation criteria since Ogden Allied had substantial experience in providing guard services to government and private entities.

To the extent DOD Contracts contends that it should have received a higher evaluation score than the awardee due to its experience as the incumbent, and because of an alleged lack of objectivity of one evaluator, the record shows that even if the protester's proposal had received a perfect evaluation score in all technical evaluation categories from the challenged evaluator (which we do not suggest is warranted here), and also received perfect scores from all of the evaluators under the RFP's experience evaluation factor, and even if the awardee's proposal had received no points at all in the experience evaluation category, the protester still would not have displaced Ogden Allied. See Naho Constr., Inc., B-244226, Sept. 12, 1991, 91-2 CPD ¶ _____. Since Ogden Allied still would have had the highest total score based on technical and price proposal evaluations, and the protester would not be in line for award even if its allegations regarding the evaluations of experience were correct, the protester provides no grounds for us to disturb the award.

DOD Contracts also protests the award to Ogden Allied on the ground that the awardee failed to obtain necessary permits and licenses (i.e., regarding the possession and use of firearms) from the Panamanian government required by the RFP prior to award. To the extent DOD Contracts argues that the permit requirement was a definitive responsibility criteria which required compliance prior to award, the RFP stated

only that the contractor's failure to provide evidence of appropriate progress towards receipt of the permits by the date scheduled for the commencement of performance may be grounds for rejecting the proposal or withdrawing an award.

Although RFP requirements for permits or licenses may be, in some instances, definitive responsibility criteria that must be satisfied prior to award (see e.g., United Pacific Corp., B-221839, Apr. 9, 1986, 86-1 CPD ¶ 353), this was not the case under the present RFP. The permit and licence requirements here are contract performance requirements--not definitive responsibility criteria--since there was no RFP provision that required offerors to show prior to award that they had the permits or licenses. See Cumberland Sound Pilots Ass'n-- Recon., B-229642.2, June 14, 1988, 88-1 CPD ¶ 567; Chemical Compounding Corp., B-227333, June 15, 1987, ¶ 87-1 CPD ¶ 596. Here, Ogden Allied stated in its BAFO that "before and concurrent with proposal preparation," that it is establishing a local subsidiary and arranging through local legal counsel to obtain the required permits. Based upon the contracting officer's experience that the permits could be obtained within a few days of application, and in fact could not be obtained until award and furnishing of the serial numbers of the embassy-provided firearms, the contracting officer made a good faith determination within her discretion that the awardee's proposal contained sufficient information to show that the permits would be obtained prior to performance. Since the permits were not a condition for award under the RFP, there is no reason for us to question the propriety of the award to Ogden Allied.

The protest is dismissed.

Michael R. Golden

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Assistant General Counsel