



Comptroller General
of the United States
Washington, D.C. 20549

~~GAZETA~~ / 1101338

Decision

Matter of: Melvin Cohen & Associates, Inc.

File: B-280034

Date: October 27, 1998

Melvin Cohen for the protester,
Paul G. McDonald for Entek, an intervenor.
Stacey North Willis, Esq., Charlna J. Quarles, Esq., and Phillipa L. Anderson, Esq.,
Department of Veterans Affairs, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee is not located within 300 miles of the place of performance, as required by solicitation, is denied where record shows that awardee has a "strategic partnership" agreement with a concern within the designated area; agreement was adequate to satisfy the requirement, given that solicitation did not define the precise nature of the term "located."

DECISION

Melvin Cohen and Associates, Inc. (MCA) protests the award of a contract to Entek Corporation under Department of Veterans Affairs (VA) solicitation No. 583-37-98, synopsis in the Commerce Business Daily (CBD) of February 5, 1998, for architect/engineer services to expand and retrofit the cooling tower at the VA Medical Center in Indianapolis, Indiana. MCA contends that the awardee is not located within 300 miles of the place of performance, as required by the solicitation.

We deny the protest.

The CBD notice provided: "Area of consideration—firms located within a 300-mile radius of Indianapolis, IN." The solicitation did not define what was meant by "located." The awardee's principal place of business is California, but the firm maintains what it refers to as a branch office in Park Ridge, Illinois, which is within 300 miles of Indianapolis.

MCA maintains that the awardee's branch office in fact is the office of an individual—Mr. Richard Bojanowski, a mechanical engineer—whose association with Entek is not sufficient to permit Entek to use his office to satisfy the location

requirement. MCA asserts that Entek is merely using Mr. Bojanowski's office as a "front" for its operation and that, as a California concern, Entek is not eligible to receive award.

The agency reasonably determined that Entek met the location requirement. The record shows that Mr. Bojanowski was one of the personnel included in the Entek proposal for purposes of this project, and Entek has submitted a letter agreement between it and Mr. Bojanowski, executed in 1994, which references a "strategic partnership" between the two, stating:

For future considerations, you [Mr. Bojanowski] will allow us to use your facilities as an Entek Branch Office to receive our mail and occupy office space as needed for engineering purposes. We will negotiate your compensation, overhead, profit and expenses for each project and scope of work. You will represent Entek as our employee in the capacity of Project Engineer.

Letter from Entek to Richard Bojanowski (Feb. 1, 1994).

MCA argues at length about the precise nature of the relationship between Entek and Mr. Bojanowski. It asserts, for example, that because Entek has not produced documentation such as payroll records, the agency unreasonably accepted Entek's representation that Mr. Bojanowski was an employee of the firm and, therefore, that his office was an Entek branch office. MCA Comments, Sept. 16, 1998, at 1-3. These arguments all are premised on an interpretation that simply is not warranted by the solicitation. Specifically, while MCA would require a certain type of relationship between Entek and Mr. Bojanowski before finding compliance with the location requirement, the solicitation did not set forth criteria to be applied in determining whether a firm met the requirement. It is our view that, in these circumstances, the contracting agency has reasonable discretion in determining compliance. See DOT Sys., Inc., B-193153, Mar. 7, 1979, 79-1 CPD ¶ 160 at 2. While the protester would apply a stricter standard, we find nothing unreasonable in the agency's accepting the "strategic partnership" relationship established in the 1994 agreement as satisfactory for purposes of meeting the requirement.

The protest is denied.

Comptroller General
of the United States.