

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Intelligent Investments, Inc.

File: B-406347; B-406347.2

Date: April 27, 2012

Raul Gonzales for the protester.

Audrey H. Liebross, Esq., and Michael McCabe, Esq., Department of Homeland Security, for the agency.

Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's challenge to awardee's compliance with locality set-aside provision of solicitation is denied where contracting officer had substantial information that awardee complied with provision.
 2. Agency properly found that awardee was a sole proprietorship eligible to receive award.
 3. Protester's challenge to agency's evaluation of its proposal is denied where agency's evaluation was reasonable and consistent with the solicitation.
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DECISION

Intelligent Investments, Inc. (I²), of Joplin, Missouri, protests the Department of Homeland Security, Federal Emergency Management Agency's (FEMA) award of a contract to Riley's Mobile Homes (RMH), of Neosho, Missouri, under request for proposals (RFP) No. HSFE07-12-R-0001, for long-term maintenance and deactivation of temporary housing units (including mobile homes and other types of prefabricated housing). I² asserts that RMH does not meet requirements in the RFP that offerors reside or primarily do business in a set-aside area. I² also challenges the evaluation of its technical proposal.

We deny the protest.

BACKGROUND

Under the RFP, award was to be made to the offeror whose proposal was determined to be “most advantageous” considering four evaluation factors: technical approach, including subfactors for phase-in plan and quality control plan; past performance; company experience; and price. Sixteen proposals were received in response to the RFP, two of which were found to be untimely and not further considered. The contracting officer (CO) found four offerors to be noncompliant with Federal Acquisition Regulation (FAR) Clause 52.226-3, “Disaster or Emergency Area Representation,” incorporated in the RFP. Agency exh. F, Pre-Evaluation Compliance Checklist; CO Supp. Statement at 2; see RFP at 38. FAR Clause 52.226-3 implements locality set-aside provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (2006). See Executive Protective Security Serv., Inc., B-299954.3, Oct. 22, 2007, 2007 CPD ¶ 190 at 4-6; FAR Subpart 26.2. The clause requires an offeror to certify whether it does or does not “reside or primarily do business in the set-aside area.” FAR Clause 52.226-3(b). Here, the set-aside area consisted of a number of counties in Missouri. RFP at 38.

RMH indicated in its proposal that it does “reside or primarily do business in the set-aside area.” Agency exh. G-1, RMH Proposal, at 38. The CO conducted a compliance check with regard to RMH’s proposal and found it compliant with the locality requirement. Agency exh. F, Pre-Evaluation Compliance Checklist; see CO Statement at 1-2. The CO determined that RMH complied with FAR Clause 52.226-3 on the basis of a Central Contract Registry (CCR) search, which indicated both a mailing and physical address for RMH within the set-aside area. CO Supp. Statement at 1.

RMH’s proposal received an overall rating for the non-price factors of good, the highest rating given any offeror, while its price was the lowest overall. I² received an overall rating for non-price factors of acceptable, while its price was the second lowest overall, but significantly higher than RMH’s price. Based on its superior technical rating and lowest price, RMH’s proposal was evaluated as offering the “best value” and RMH was selected for award. Agency exh. C, Source Selection Authority Decision Document, at 7. A pre-award notice was sent to offerors on November 22.

On November 23, the CO received an e-mail from an offeror, asserting that RMH did not exist as a bona fide local small business. On November 28, the CO requested RMH to furnish supporting documentation indicating that it resided or primarily did business in the set-aside area. CO Supp. Statement at 3-4; Agency exh. J. On November 29, I² filed an agency-level protest, challenging RMH’s compliance with FAR Clause 52.226-3 and RMH’s ability to perform the contract.

On November 30, RMH responded to the CO's November 28 request with documentation regarding its place of business, including, among other items: a notarized statement from a firm operating at an address in Neosho, Missouri, stating that RMH had rented office space at their location since January 2010; a letter from a mobile home business in Sarcoxie, Missouri, stating that it had done business with RMH since 1999, that RMH had operated a business in Newton County, Missouri, since 1999, and that its owner had resided in Newton County "for a long time"; and a November 28, 2011 letter from a bank in Neosho, Missouri, indicating that RMH's owner had a checking account at that bank since 2009 and that the current mailing address for that account was Neosho, Missouri. Agency exh. K, E-mail from RMH, with attachments. All of the above locations are within the set-aside area. Based on this information, the CO concluded that there was no reason to question RMH's compliance with FAR Clause 52.226-3. CO Supp. Statement at 5. Accordingly, I²'s agency-level protest was denied on January 10.

On November 30, the CO received an e-mail from another offeror, challenging both RMH's compliance with FAR Clause 52.226-3 and RMH's small business size status. CO Supp. Statement at 4. The CO forwarded the size status protest to the Small Business Administration (SBA) for a determination. On January 4, 2012, the SBA issued a size determination finding RMH to be a small business. Agency exh. D, SBA Size Determination. The SBA also found that claims that RMH lacked an office or valid physical address were "belied by RMH's receipt of the protest materials" sent to the address listed in its proposal. Id. at 2 n.2. In addition, the SBA noted that RMH's presence within the set-aside area was shown by documents furnished by RMH, including a letter from its lender and other notarized letters (including one from its landlord). Id.

Award was made to RMH on January 10, 2012. FedBizOpps Notice, Jan. 11, 2012. The listed awardee was "Riley's Mobile Homes, Inc." Id.

FAR CLAUSE 52.226-3 COMPLIANCE

I² challenges the CO's determination that RMH's proposal was compliant with the requirement under FAR Clause 52.226-3 that the offeror "reside or primarily do business in the set-aside area." The FAR Clause 52.226-3 locality requirement is satisfied where:

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months--

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror's gross revenues and employed at least half of the offeror's permanent employees.

FAR Clause 52.226-3(c).

There is no basis in the record to question FEMA's determination that RMH's main operating office and principal business was in the set-aside area. As detailed above, the agency investigated this matter and found substantial information that showed that RMH resided and primarily did business in the set-aside area. None of the documents furnished by the protester demonstrates that RMH does not "reside or primarily do business in the set-aside area" as that requirement is defined above.

The protester, however, no longer asserts that the awardee is physically located outside the set-aside area, but rather asserts that the awardee does not exist as a Missouri corporation eligible to do business in the state and to receive award of the contract. Protest at 3; Comments at 1. The documents proffered by I² include a "Business Entity Search" at the Missouri Secretary of State website that indicates that, although Riley's Mobile Homes, Inc. was in existence at least as early as 1997, it was dissolved in 2000. Protest at 2. I² asserts, accordingly, "Riley's Mobile Homes, Inc. does not exist" as it appears in pertinent documents, and is not eligible for award. Comments at 2.

We also find no merit to this argument. RMH clearly exists as a business entity; for example, RMH submitted a proposal and was registered as a fictitious name in Missouri on October 3, 2011 (as well as in 1996 and 2006). See Agency exhs. N, R. It is true, as noted by the protester, that "Riley's Mobile Homes, Inc.," the awardee indicated on the FedBizOpps award notice, and the business name listed in the CCR entry, no longer exists as an incorporated entity registered with the Missouri Secretary of State. In this regard, available state documents indicate that Riley's Mobile Home's, Inc. was dissolved in 2000. However, the agency correctly notes that RMH submitted its proposal as a sole proprietorship. Supp. AR at 3. In fact, RMH's proposal, which does not reference "Riley's Mobile Homes, Inc.," is signed by "William Riley" for "Riley's Mobil Homes." RMH Proposal, Business Proposal, at 4. Likewise, while the relevant CCR entry lists "Riley's Mobile Homes, Inc." as the entity's business name, it describes the entity as a "Sole Proprietorship" rather than as a "Corporate Entity," and lists the "Mailing Name" as "William Riley." Agency exh. N. Similarly, "RILEY'S MOBILE HOMES INC" is listed as a "sole proprietorship," with the indication "William Riley, Owner," and not as a "Corporate entity," in its Online Representations and Certifications Application (ORCA).

In sum, notwithstanding the reference in the award notice to "Riley's Mobile Homes, Inc.," we accept the agency's explanation that it treated "Riley's Mobile Homes, Inc." as a fictitious business name for the sole proprietorship to which it made award. Supp. AR, Apr. 24, 2012, at 3. In any case, we have held that the name of an offeror need not be exactly the same in all of the offer documents when information

readily available to the agency reasonably establishes that the differently-identified entities are in fact the same concern. Trandes Corp., B-271662, Aug. 2, 1996, 96-2 CPD ¶ 57 at 2. Here, there is no reasonable concern that the Riley's Mobile Homes that submitted a proposal is an entity different from the Riley's Mobile Homes, Inc. listed in the award notice.¹

TECHNICAL EVALUATION

I²'s proposal was rated unacceptable with regard to technical approach subfactor 1.A, Phase in Plan, and was rated only acceptable with regard to Technical Approach Subfactor 1.B, Quality Control Plan. I² challenges both subfactor ratings and asserts that its proposal should have received at least a good rating overall.

In reviewing protests challenging the evaluation of proposals, we will not conduct a new evaluation or substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria and applicable procurement statutes and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the agency's evaluation judgment is not sufficient to establish that the agency acted unreasonably. Realty Executives, B-237537, Feb. 16, 1990, 90-1 CPD ¶ 288 at 3. Here, we find I²'s challenge to the technical evaluation of its proposal to be without merit.²

Subfactor 1.A, Phase-In Plan, required that offerors provide a draft phase-in plan that addressed how they planned to prepare to assume the maintenance and deactivation requirements from the current contractor. RFP at 9. The phase-in plan

¹ I² further asserts that, while the fictitious business name of Riley's Mobile Homes was registered in Missouri on October 3, 2011, that action did not create an entity that is authorized to do business in the state of Missouri. However, while a contracting officer may determine that the absence of an appropriate business license renders an offeror nonresponsible, compliance with state or local requirements is generally a matter between the contractor and the issuing authority, and will not be a bar to contract award unless the solicitation so provides. See Network Sec. Techs., Inc., B-290741.2, Nov. 13, 2002, 2002 CPD ¶ 193 at 11. I² points to no such requirement here.

² Since I² proceeded with its protest pro se, and therefore no protective order was issued in this protest, protected information cannot be included in this decision. Accordingly, our discussion of some aspects of the evaluation is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including non-public information.

was to include a timeline with dates and key tasks to be accomplished and what steps would be taken during that time to achieve phase-in goals. Id.

The Source Selection Evaluation Board (SSEB) found that I²'s proposed phase-in plan lacked specificity and did not sufficiently identify the timing of specific key tasks. Agency exh. I, Consensus Technical Evaluation Report, at 14. This led the SSEB to conclude that I²'s proposal did not provide an acceptable level of confidence that I² understood the requirements of a phase-in plan. Id. I² thus received an unacceptable rating for this technical subfactor. Id.

I² asserts that its phase-in plan was consistent with the RFP in that it "provided a timeline with dates and key tasks to be accomplished and the steps that will be taken during that time to achieve phase-in and assume regular maintenance and deactivation requirements." Comments at 3. However, the protester does not attempt to rebut the evaluators' specific criticisms of its proposed phase-in plan, but rather makes only conclusory statements regarding its compliance with the RFP's requirements. Id.

Our review of I²'s phase-in plan confirms that FEMA reasonably concluded that I²'s proposal did not adequately address specific tasks called for in the RFP in sufficient detail. See Agency exh. Z, I² Proposal, at 2. For example, the RFP required that offerors explain how they will obtain

information/documentation on the occupants who are currently living in the housing units such as their address and contact information, what work has been performed to date, as well as any work that needs to be completed before they are transferred to the new contractor.

RFP at 9. As noted by the agency, I²'s proposal, unlike RMH's, included little detail, and provided only a limited period in which to visit, inspect and take over temporary housing units from the incumbent contractor. I² Proposal at 2. Based on our review, we find that the agency reasonably determined that I²'s phase-in plan was unacceptable.

I² nevertheless asserts that its major subcontractor, which had received outstanding past performance ratings, assisted in the preparation of a phase-in plan "that has always met or exceeded FEMA's requirements." Comments at 3; Supp. Comments at 2. However, each procurement stands alone, and an evaluation and selection decision made under another procurement does not govern the selection under a different procurement. Renic Corp., Gov't Sys. Div., B-248100, July 29, 1992, 92-2 CPD ¶ 60 at 5.

Subfactor 1.B, Quality Control Plan, required offerors to address their proposed quality control plan, and specifically to address whether their plan was ISO 9000

accredited or had received some other type of quality control accreditation. RFP at 9. The SSEB found that I²'s proposal did not adequately address this specific requirement, although the proposal was still considered acceptable under this subfactor. Consensus Technical Evaluation Report at 15.

I² challenges its rating of acceptable for Subfactor 1.B. The protester asserts that the requirement in the RFP to address "accreditation" was "informational only," and ISO 9000 accreditation was not required by the RFP or even identified as an advantage to the government. Comments at 4.

The agency's evaluation here was reasonable. The RFP specifically required offerors to "address if their quality control plan is [ISO 9000] accredited or has received some other type of quality control accreditation." RFP at 9. This provision clearly put offerors on notice that ISO 9000 or other accreditation would be considered by the evaluators. See, e.g., MINACT, Inc., B-400951, Mar. 27, 2009, 2009 CPD ¶ 76 at 4 (where RFP specifically provided that total compensation plan would be evaluated, offerors were on notice that evaluation would include consideration of whether proposed salary structure and compensation were well designed). Here, I²'s proposal indicated that its quality control plan was not ISO 9000 compliant and did not advise if it had received some other type of quality control accreditation, and the agency reasonably took these facts into account in evaluating I²'s quality control plan as acceptable.

In sum, the agency reasonably evaluated I²'s proposal.

The protest is denied.

Lynn H. Gibson
General Counsel