



GAO

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Decision

Matter of: Aardvark Keith Moving, Inc.

File: B-290565

Date: August 8, 2002

Theodore M. Bailey, Esq., and Johnathan M. Bailey, Esq., for the protester.
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GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that the protester was ineligible for award where information included as part of the protester's proposal indicated that the protester was affiliated with a firm proposed for debarment.

DECISION

Aardvark Keith Moving, Inc. (AKMI) protests the decision of the General Services Administration (GSA) to reject the firm as ineligible for award under solicitation No. 3FNC-B3-003001-1 for comprehensive furniture management services. AKMI argues that the agency improperly determined that it was ineligible for award based on AKMI's affiliation with a firm proposed for debarment.

We deny the protest.

AKMI, which was formed on May 21, 2001,¹ is a small disadvantaged business owned by Ms. Robin Keith. In March 2002, AKMI submitted a proposal in response to the referenced solicitation. As relevant here, AKMI's proposal included a Dun and Bradstreet (D&B) report.² The D&B report, dated March 19, 2002, listed two names

¹ The corporate record from the Office of the Secretary of the State of Texas, which AKMI attached to its protest, shows that the firm was incorporated on this date.

² D&B is an independent reporting service that makes its reports available to the public for evaluating the financial positions of companies. The solicitation required that each offeror, prior to the submission of its proposal, request that D&B complete
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for AKMI--the primary name was "Keith Moving, Inc." and the alternate name was "Aardvark Keith Moving." These two entities had the same D&B reference number.³ In addition, AKMI submitted as part of its proposal nine favorable past performance references; however, none of these references was for AKMI or Ms. Keith. Rather, six of the references (one for 1989 and five for 1992) were for "Keith Moving Company"; one reference (for 1995) was addressed to "[Mr.] Chris Keith" (Ms. Keith's brother); and two of the references (one for 1992 and one for 2000) were for "Aardvark Keith Moving Company," a firm owned by Ms. Keith's father. On the cover sheet to the AKMI references, AKMI represented that it had been in business "since 1960."

During the evaluation, GSA discovered that "Keith Moving, Inc." and "Keith Moving Company" were listed in a government database as firms excluded from federal programs. GSA made further inquiries and found that the Air Force had proposed these two firms for debarment on October 27, 1997, and that these firms remain proposed for debarment.⁴ While the Air Force advised GSA that AKMI was not listed as a firm proposed for debarment and that Ms. Keith was not proposed for debarment in her individual capacity (until 1994, Ms. Keith was a vice-president of Keith Moving, Inc.), GSA nevertheless concluded that since AKMI was listed in the D&B report as an alternate name for Keith Moving, Inc. and since Keith Moving, Inc. was still proposed for debarment, then AKMI's proposal should be rejected under this solicitation based on AKMI's affiliation with Keith Moving, Inc.

AKMI maintains that it is not, and it has never been, affiliated with Keith Moving, Inc. In this regard, AKMI argues that GSA unreasonably determined, based upon incomplete or erroneous information reported by D&B, that AKMI was affiliated with Keith Moving, Inc. and, therefore, was ineligible for award. Protester's Comments, June 27, 2002, at 2.

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a past performance evaluation report for the firm. (The past performance assessment for AKMI contained in the D&B report is not at issue in this protest.) The D&B report completed for AKMI was sent directly to GSA to be included as part of AKMI's proposal.

³ The D&B report showed that Keith Moving, Inc. came into existence in 1962; the protester states that Keith Moving, Inc. was formed in June 1989 and became inactive in February 1998.

⁴ The Air Force reported that Mr. Chris Keith was debarred in his individual capacity for one year from January 23, 1998 to January 22, 1999.

Federal Acquisition Regulation (FAR) § 9.405(a) provides that contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts. The term “contractors” is defined, for debarment purposes, to include firms that submit proposals through affiliates. FAR § 9.403. Concerning the term “affiliates,” for debarment purposes, FAR § 9.403 states that “[b]usiness concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both.” FAR § 9.403 further states that “[i]ndicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, . . . or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.” We review an agency’s determination of affiliation for reasonableness. Detek, Inc., B-261678, Oct. 16, 1995, 95-2 CPD ¶ 177 at 3.

Here, even if we assume, arguendo, that AKMI is not, and has never been, affiliated with Keith Moving, Inc., AKMI provided no information in its proposal to suggest that the D&B report, which reflected that AKMI was an alternate name for Keith Moving, Inc., was inaccurate or otherwise unreliable. On the contrary, at the time of the contemporaneous evaluation of proposals, there was sufficient information in AKMI’s proposal, particularly when read in conjunction with information in the D&B report, for GSA to reasonably conclude that AKMI was affiliated with Keith Moving, Inc., a firm that had been proposed for debarment, thereby making AKMI ineligible for award.

For example, AKMI, which had been in existence for approximately 10 months at the time it submitted its proposal, and which apparently had no meaningful past performance history of its own, submitted in its proposal nine past performance references, each of which pre-dated AKMI’s formation and corresponded to a business entity or individual other than AKMI or Ms. Keith. AKMI also represented on the cover sheet to its references that it had been in business for over 40 years when, in fact, it had only been incorporated for less than one year. Since AKMI did not explain in its proposal the context for including this information, we believe that GSA reasonably understood that the proposal information confirmed the information reported by D&B, that is, that AKMI was affiliated with a company and that it was relying on this affiliation to establish a record of past performance.

In its comments on the agency’s administrative report, AKMI explains for the first time that it included in its proposal the above-noted past performance references because they “referred to projects on which Ms. Keith had personally worked [during her association with the firms commented upon by the references] to demonstrate the breadth of experience which she brought to AKMI when she formed th[is]

company.” Protester’s Comments, June 27, 2002, at 4.⁵ In addition, Ms. Keith explains that she “represented that AKMI had been in business since 1960 because Aardvark-Keith Moving Company, which was owned and operated by [her] father, was established in 1960 and while it [was] a separate and distinct entity from AKMI, AKMI [did] have the benefit of [her] father’s years of experience.” Affidavit of Ms. Keith, June 27, 2002. However, AKMI failed to provide in its proposal such information, which in hindsight might be characterized as countervailing to what was reported by D&B. As a result, AKMI must suffer the consequences of its failure to do so, that being GSA’s decision, based on information reported by D&B and information in AKMI’s proposal, to reject the firm as ineligible for award based on an affiliation with a firm proposed for debarment. See, e.g., Chek F. Tan & Co., B-277163, Sept. 8, 1997, 97-2 CPD ¶ 66 at 5.⁶

On this record, we have no basis to question the reasonableness of the agency’s contemporaneous determination that AKMI was ineligible for award.⁷

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ Throughout its various submissions filed in this protest, AKMI inconsistently uses the names of the firms with which Ms. Keith had been associated prior to her forming AKMI in 2001.

⁶ To the extent AKMI contends that the agency could have taken steps to confirm its corporate status, for example, by asking AKMI directly about any possible affiliations or by checking Texas corporate registration records, it was incumbent upon AKMI to provide this information in its proposal; it was not the responsibility of GSA to independently investigate and verify AKMI’s corporate status.

⁷ When a small business, like AKMI, is determined ineligible for award based upon its affiliation with a firm proposed for debarment, this matter does not require referral to the Small Business Administration for a determination of the firm’s responsibility under the certificate of competency program. FAR § 19.602-1(a)(2)(ii); Detek, Inc., supra, at 2-3.