



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Doyon-American Mechanical, JV; NAJV, LLC

File: B-310003; B-310003.2

Date: November 15, 2007

Antonio R. Franco, Esq., Jonathan T. Williams, Esq., Isaias Alba IV, Esq., and Gunjan R. Talati, Esq., PilieroMazza PLLC, for Doyon-American Mechanical, JV; and Traeger Machetanz, Esq., Oles Morrison Rinker & Baker, LLP, for NAJV, LLC, the protesters.

William A. Roberts III, Esq., Richard B. O’Keeffe, Jr., Esq., William J. Grimaldi, Esq., and John R. Prairie, Esq., Wiley Rein LLP, for Chugach Government Services, Inc.; and William K. Walker, Esq., Walker Reausaw, for Alutiiq International Solutions, LLC, the intervenors.

Phillip E. Santerre, Esq., and Gregory W. Vanagel, Esq., U.S. Army Corps of Engineers, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provided that evaluation of an offeror’s experience would be based on the offeror’s submission of previously performed projects, and specifically provided that only projects for which the offeror or a primary teaming partner was the prime contractor should be submitted, the awardees’ submission of projects that were performed by the awardees’ parent/affiliate corporations, and the agency’s reliance on such projects in evaluating the awardees’ experience, was improper.

DECISION

Doyon-American Mechanical, JV and NAJV, LLC protest the U.S. Army Corps of Engineers’ award of contracts to Alutiiq International Solutions (AIS), Bristol Design Build Services, LLC (BDBS) and Chugach Government Services (CGS), pursuant to request for proposals (RFP) No. W911KB-07-R-0006 to provide construction services in Alaska. Among other things, the protesters maintain that the agency violated specific solicitation provisions regarding the agency’s evaluation of offerors’ experience.

We sustain the protests.

BACKGROUND

The solicitation was issued in February 2007 and contemplated multiple awards of contracts to perform various construction-related services throughout Alaska on a task-order basis.¹ The solicitation contemplated award of up to six contracts, with a maximum of three contracts awarded pursuant to full and open competition, and three contracts awarded as set-aside contracts under section 8(a) of the Small Business Act. The awards challenged by Doyon and NAJV are the 8(a) set-aside contracts.

Offerors were advised that award would be made on the basis of “best overall value,” and that the source selection decisions would reflect the agency’s evaluation of two factors—offerors’ qualifications and proposed prices; the solicitation established that offerors’ qualifications would be “significantly more important” than price. RFP at 1886. Within the qualifications factor, the solicitation established the following subfactors, listed in descending order of importance: construction experience, past performance, design experience, and execution plan.

With regard to the most important evaluation subfactor, construction experience, the solicitation provided that proposals would be evaluated “based on projects . . . similar in nature, scope, and complexity to the project types identified in this solicitation,” and provided that the agency’s evaluation would be based on the offerors’ submission of no more than three past projects for each type of experience required.² RFP at 20, 1888. The solicitation further directed as follows:

Only those projects for which the Offeror or a primary teaming partner was the Prime Contractor should be submitted. The projects selected should clearly demonstrate the construction capabilities of the Offeror

¹ More specifically, the solicitation provided that the construction services to be acquired will include design-build or fully designed new construction, upgrades, and additions to, or alteration of, existing buildings, and advised offerors that the government intends to subsequently compete task orders among the various awardees for various Alaska District construction projects. RFP at 11.

² The solicitation provided that experience would be evaluated in three areas: design-build construction experience, military construction experience, and experience constructing projects similar to those listed in an attachment to the solicitation. RFP at 19.

on projects that are similar in scope and magnitude to the work required in this RFP.

RFP at 19.³

On or before the April 13, 2007 closing date, proposals were submitted by six firms qualified to compete for the 8(a) set-aside contracts, including AIS, BDBS, CGS, Doyon, and NAJV. Thereafter, the proposals were evaluated by the agency.

There is no dispute that, in responding to the solicitation requirement to submit prior projects reflecting the required experience, the awardees submitted projects that had been performed by the parent corporations and/or other subsidiaries of the parent corporations, and that the agency relied on performance of those projects in performing its evaluation. See Agency Report, Sept. 11, 2007, at 2-6.⁴ Based on the agency's evaluation, including its consideration of the prior projects performed by the parent/affiliate corporations, each of the awardees' proposals was rated [deleted] with regard to qualifications; in contrast, each of the protester's proposals was rated [deleted]. Contracting Officer's Statement, Sept. 11, 2007, at 6. Each of the

³ The solicitation contained virtually identical provisions regarding the evaluation subfactor, design experience, stating:

Only those projects for which the Offeror or a primary teaming partner performed the actual design effort should be submitted. The projects selected should clearly demonstrate the design capabilities of the Offeror on projects that are similar in scope and magnitude to the work required in this RFP.

RFP at 20.

⁴ Specifically, the agency states that "each of the awardees . . . relied upon the previous experience, as well as past performance, of its parent and other affiliated companies," and that the agency evaluated "the previous experience and past performance of affiliate and parent companies of the awardees." *Id.* at 3, 5, 6. AIS's proposal states that "AIS is a wholly owned subsidiary of Alutiiq, LLC." AIS Proposal, Apr. 13, 2007, Vol I at 9. BDBS's proposal state that "BDBS is a recent corporate offshoot of the Bristol Companies," and that the "Bristol Alliance of Companies . . . are wholly owned subsidiaries of Bristol Bay Native Corporation." BDBS Proposal, Apr. 12, 2007, Vol. I at 1, 2. CGS's proposal states that CGS is "a subsidiary of Chugach Alaska Corporation." CGS Proposal, Apr. 13, 2007, Vol. I at B-1. In responding to the protests, neither the agency nor the intervenors have suggested that any of the awardees' parent/affiliate corporations would qualify to compete in this procurement as 8(a) contractors in their own right.

awardees' proposed prices was higher than each of the protesters' proposed prices.⁵ Id.

On July 27, the agency selected AIS, BDBS, and CGS for award. These protests followed.

DISCUSSION

Doyon and NAJV each protest that, pursuant to the provisions of this solicitation, it was improper for the agency to consider the experience of the awardees' parents/affiliates in making the source selection decision. We agree.

It is well-settled that an agency may consider the experience or past performance of an offeror's parent or affiliated company under certain circumstances. See, e.g., Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4.⁶ However, our Office has consistently recognized that reliance on a third party's experience, even if otherwise permissible, is contingent upon the absence of any solicitation provision precluding such consideration. See, e.g., Hot Shot Express, Inc., B-290482, Aug. 2, 2002, 2002 CPD ¶ 139 at 3; Physician Corp. of Am., B-270698 et al., Apr. 10, 1996, 96-1 CPD ¶ 198 at 13; Tutor-Saliba Corp, Perini Corp., Buckley & Co., Inc. and O & G Indus. Inc., A Joint Venture, B-255756, Mar. 29, 1994, 94-1 CPD ¶ 223 at 5; Fluor Daniel, Inc., B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12.

Here, as noted above, the solicitation provided that the agency's evaluation would be based on the offerors' submission of no more than three projects for each type of experience required; that the projects submitted should demonstrate the capabilities of the offeror; and that only projects for which the offeror or a primary teaming partner was the prime contractor should be submitted. With regard to the identity of the offerors, none of the parent/affiliate corporations on which the agency relied for its assessment of the awardees' experience would appear to qualify as "offerors" for this 8(a) set-aside procurement. Further, while each of the awardees' proposals identified various subcontractors or teaming partners that would perform under the contract, the parent/affiliate corporations were not identified as such. Nonetheless, the record shows that the awardees submitted prior projects performed by parent/affiliate corporations other than the 8(a) offerors themselves, and that the

⁵ The proposed prices of AIS, BDBS, and CGS were [deleted], [deleted] and [deleted], respectively; the proposed prices of Doyon and NAJV were [deleted] and [deleted], respectively. Id.

⁶ One prerequisite for such consideration is a demonstration in the proposal that the resources of the parent or affiliate will affect contract performance. Id.

agency relied on those projects in evaluating the awardee's experience; both actions were inconsistent with the provisions of this solicitation.

The protests are sustained.

RECOMMENDATION

As discussed above, consideration of the experience of the awardees' parent/affiliate corporations was precluded by the provisions of this solicitation. Accordingly, the agency should re-evaluate the proposals considering only the prior experience of the 8(a) offerors. Alternatively, the agency should amend the solicitation to put all offerors on notice that it will consider the experience of parent/affiliate corporations, request revised proposals, and make new source selection decisions based on those revised proposals. We also recommend that the agency reimburse the protesters for the costs of filing and pursuing the protests, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2007). Doyon's and NAJV's certified claims for costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Gary L. Kepplinger
General Counsel