



Bid Protest Weekly

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Introduction

General Counsel, P.C.'s Government Contracts Practice Group is pleased to provide you with the *Bid Protest Weekly*. Researched, written and distributed by the attorneys of General Counsel, P.C., the *Bid Protest Weekly* allows the Government Contract community to stay on top of the latest developments involving bid protests by providing weekly summaries of recent bid protest decisions, highlighting key areas of law, agencies, and analyses of the protest process in general.

General Counsel, P.C.'s Government Contracts Group has over fifty years of combined government contract law experience (both as in-house and outside legal counsel), helping clients solve their government contract problems relating to the award or performance of a federal government contract, including bid protests, contract claims, small business concerns, and teaming and subcontractor relations.

If you have any questions or comments regarding the discussed content, or questions about bid protests, please feel free to contact the attorneys at General Counsel, P.C. at (703) 556-0411 or visit us at www.generalcounselaw.com.

1. Combined Effort Inc., B-402573, June 4, 2010

Link: [GAO Opinion](#)

Agency: Department of Veterans Affairs

Disposition: Protest denied.

Keywords: SDVO; SBA Status protest

General Counsel P.C. Highlight: Because the agency's decision not to consider a previously disqualified SDVOSBC eligible for award was consistent with prior SBA policy, the VA's exclusion of the contractor from award was upheld and the protest was denied.

Combined Effort, Inc. (CEI) protests the rejections of its proposal under a request for proposals (RFP) issued by the Department of Veterans Affairs (VA) for general construction and other services.

The VA issued the RFP as a set-aside for service-disabled veteran-owned small business concerns (SDVOSBC). CEI submitted its bid for the current RFP as well as on another unrelated VA procurement. On both bids, CEI self-certified that it was an SDVOSBC. However, two other bidders challenged CEI's status as an SDVOSBC on the unrelated procurement through a protest to the Small Business Administration (SBA).

The SBA determined that CEI did not meet the requirements of an SDVOSBC. CEI reviewed the SBA's determination and realized that it had made an error and failed to provide SBA with proper documentation that would affect the SBA's decision. CEI notified the VA, on the current RFP, regarding its situation with the SBA. CEI was eventually disqualified from the award. CEI submitted a recertification request to SBA, asking the agency to certify that CEI was in compliance with SDVOSBC status requirements, which it did.

CEI filed this protest asserting that the VA had acted improperly by making a determination regarding CEI's SDVOSBC status without referring the matter to the SBA. GAO examined a prior case involving a similar fact pattern, where the SBA stated that, once disqualified by an SBA SDVOSBC protest decision, an offeror cannot be considered on a subsequent SDVOSBC procurement until the SBA's determination is overturned either by appeal or prospective recertification.

GAO solicited the views of the SBA in the present case. The SBA, contrary to the prior case, stated that the VA should have considered CEI's offer and if CEI were the successful offeror, referred the matter to the SBA for determination of CEI's SDVOSBC status. The SBA argued that a standing SBA decision regarding an offeror in connection with a prior procurement is not conclusive in a subsequent procurement, but merely raises a question concerning the offeror's status that the contracting officer must refer to the SBA for conclusive resolution.

GAO held that because the agency's decision not to consider a disqualified SDVOSBC was consistent with prior SBA policy, the VA's position was upheld and the protest was denied.

2. ATR Logistic Company LLC, B-402606, June 15, 2010

Link: [GAO Opinion](#)

Agency: Department of Army

Disposition: Protest denied.

Keywords: IFB; Bid compliance

General Counsel P.C. Highlight: A bid must comply in all material respects with the IFB and should be filled out, executed, and submitted in accordance with the instructions.

The Department of the Army (Army) issued an invitation for bids (IFB) for mail and messenger services for a base year and four option years. The attached performance work statement (PWS) detailed the specifications for performing the services. Bidders were required to provide unit prices for each contract line item number on the bid schedule and were required to make deliveries and pickups at certain times.

The Army issued an amendment to the original IFB requiring mail service at a third location in addition to the two already included. The amendment included a new pricing schedule and to abide by a new timing schedule for the third location. The IFB cautioned that "accuracy and timeliness are of primary importance."

ATR Logistic Company LLC (ATR) submitted its bid with a cover letter acknowledging the Army's amendment and accepting the terms of the amendment. But ATR's bid utilized the initial pricing schedule and thus failed to provide pricing information for the third location. The contracting officer rejected the bid as non-compliant.

GAO stated that a bid must comply in all material respects with the IFB and should be filled out, executed, and submitted in accordance with the instructions. Although a bidder may bind itself to the contents of an amendment by acknowledging its receipt, a bidder cannot leave any doubt as to its commitment to perform pursuant to the amendment or its bid must be rejected. Where the record, as here, shows that the bid did not conform to the IFB in two areas, it failed to indicate that it would comply with all of the terms and conditions of the amended IFB especially when the IFB specifically called for accuracy and timeliness. Therefore, the Army acted appropriately in rejecting ATR's bid. The protest is denied.

3. PB Ventures, Inc., B-402673, June 17, 2010

Link: [GAO Opinion](#)

Agency: Federal Bureau of Investigation

Disposition: Protest denied.

Keywords: Brand name or equal

General Counsel P.C. Highlight: When a solicitation contains a brand name or equal purchase description, the FAR requires that it include a “general description of those salient physical, functional, or performance characteristics of the brand name item.” These particular items are considered essential or material to the government’s needs and a quotation must demonstrate that the product conforms to the characteristics listed.

The Federal Bureau of Investigation (FBI) issued a request for quotations (RFQ) for scent transfer units, which are used to collect scent evidence at a crime scene. The RFQ specified that the units must be a “brand name or equal” to STU-100 units, which it uses currently. The RFQ also set out six features that a product must have to qualify as an equal to the brand name product, including a requirement that it be capable of being plugged into a 12-volt power outlet.

PB Ventures, Inc. (PBV) makes a competitive product known as the Advanced Scent Transfer Unit (ASTU). Although the ASTU differs from the STU-100, the contracting officer for the FBI stated that he would accept PBV's bid response provided that it included detailed specifications to demonstrate how the ASTU was equal to the STU-100. The FBI eventually rejected the ASTU since it was not electrically-powered and used inert gas instead.

GAO stated that when a solicitation contains a brand name or equal purchase description, the FAR requires that it include a “general description of those salient physical, functional, or performance characteristics of the brand name item.” These particular items are considered essential or material to the government’s needs and a quotation must demonstrate that the product conforms to the characteristics listed.

GAO stated that PBV was required to demonstrate that the ASTU was a scent transfer unit and that it had all the technical features set forth in the brand name description. The fact that the ASTU does not conform to the stated technical requirement that the offered product be capable of being plugged into a 12-volt power outlet, among others, renders PBV’s quotation technically unacceptable. The protest is denied.

4. **Jungang Automotive Company, B-402623.2, June 17, 2010**

Link: [GAO Opinion](#)

Agency: Department of the Army

Disposition: Protest denied.

Keywords: Experience Requirements

General Counsel P.C. Highlight: An offeror that fails to meet the stated experience requirements is not acceptable for award.

Jungang Automotive Company (Jungang) protests the rejection of its proposal under a request for proposals (RFP) issued by the Department of the Army (Army), for maintenance, repair, and warehousing of war reserve material and in-use assets.

The RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity contract to the offeror that submitted the lowest-priced, technically acceptable offer. A rating of unacceptable under any technical subfactor would be rated technically unacceptable overall. Specifically, the RFP required offerors to show at least two years experience in logistical support and maintenance of types of equipment and services, at least five years experience on the resume for a fuel tanks manager, and at least three years experience on the resume for an aerospace ground equipment shop foreman.

Jungang’s proposal was found to be unacceptable since its prior experience only involved vehicle maintenance and did not show experience with other types of required equipment and

services. Additionally, Jungang's proposed fuel tanks manager did not have five years of experience, and its proposed aerospace ground equipment shop foreman did not have three years of experience.

GAO will not conduct a new evaluation or substitute their judgment for that of the agency but will examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP evaluation criteria. GAO finds that the Army reasonably evaluated Jungang's proposal to be unacceptable under the prior experience and personnel qualifications subfactors. Specifically, Jungang's proposal did not address experience in a number of areas as required by the RFP. Concerning the fuel tanks manager's and aerospace ground equipment shop foreman's experience, GAO finds that the Army's evaluation was not unreasonable where there is no basis to question the Army's judgment. The protest is denied.

5. Douglas Colony/Kenny Solar, JV, B-402649, June 17, 2010

Link: [GAO Opinion](#)

Agency: General Services Administration

Disposition: Protest denied.

Keywords: Proposal Requirements

General Counsel P.C. Highlight: An offeror has the obligation to affirmatively demonstrate that its proposal will meet the government's needs, and has a duty to establish that what it is proposing will meet the solicitation requirements where required to do so.

Douglass Colony/Kenny Solar, JV (Douglass) protests the award of a contract, under a request for proposals (RFP), issued by the General Services Administration (GSA), for grid tied, ground mounted carport photovoltaic (PV) systems.

The RFP was issued as a small business set-aside and sought fixed-price proposals to install the PV systems. The statement of work (SOW) required the contractor to provide a turnkey project, including design and installation of a ground mounted PV system. Although Douglass's proposal was the lowest priced, it was found to be "significantly unacceptable" since it did not provide one of the required layout drawings and the dimensions provided were significantly smaller than what was required.

GAO states that in reviewing an agency's technical evaluation, GAO will consider whether it was reasonable and in accord with the evaluation criteria listed in the solicitation. GAO also states that where, as here, a solicitation requires offerors to furnish information necessary to establish compliance with the specifications, an agency may reasonably find a proposal that fails to include such information technically unacceptable.

GAO finds that Douglass's drawings did not meet the material requirements of the solicitation, which required the drawing to meet the design guidelines, including specific dimensions. Since Douglass's dimensions did not meet the design guidelines, the GSA reasonably found that the proposal was unacceptable. The protest is denied.