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Decision

Matter of: AlliedBarton Security Services LLC

File: B-299978; B-299978.3; B-299978.4

Date: October 9, 2007

Daniel B. Abrahams, Esq., and Michael D. Maloney, Esq., Epstein, Becker & Green, P.C.; and W. Jay DeVecchio, Esq., David A. Churchill, Esq., Kevin C. Dwyer, Esq., and Daniel E. Chudd, Esq., Jenner & Block LLP, for the protester.

Wendy S. Tien, Esq., Shapiro Sher Guinot & Sandler, for Knight Protective Services, Inc., an intervenor.

Audrey H. Liebross, Esq., Federal Emergency Management Agency, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's eligibility determination under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5150, is denied where the agency reasonably concluded that the protester was not a firm residing or doing business primarily in the designated set-aside location.

2. Protester is not an interested party for purposes of challenging the successful vendor's eligibility for receipt of a task order where the record shows that, even if the protest were sustained on this ground, an intervening vendor would be next in line for selection.

DECISION

AlliedBarton Security Services LLC protests the issuance of a task order to Knight Protective Services, Inc. pursuant to request for quotations (RFQ) No. HSFEHQ-07-Q-0053, issued by the Federal Emergency Management Agency (FEMA), Department of Homeland Security, for armed guard services for FEMA housing sites in the Baton Rouge, Louisiana area. AlliedBarton argues that the agency's determination, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. § 5121 et seq. (2000) (the Stafford Act), that it was not a firm residing or primarily doing business in the state of Louisiana, and therefore was ineligible for receipt of a task order under the RFQ, was unreasonable. The protester also claims that FEMA's Stafford Act determination regarding Knight was improper.

We deny the protest.

BACKGROUND

The RFQ, issued on April 12, 2007, to holders of General Services Administration (GSA) Federal Supply Schedule (FSS) contracts for guard services, contemplated the issuance of a time-and-materials type task order with fixed unit prices and quantities specified by the agency for a base period of 2 months together with ten 6-month options. The solicitation included a statement of work (SOW), instructions to vendors on the submission of quotations, and evaluation factors for award. The RFQ established four technical evaluation factors, in descending order of importance—technical approach, management plan, personnel, and past performance—as well as price. The technical factors, when combined, were significantly more important than price. The agency would select the vendor whose quotation represented the overall best value to the agency, all factors considered. RFQ amend. 3, Instructions to Vendors, at 11-13. Additionally, under the authority of the Stafford Act, the RFQ set aside the procurement for firms residing or doing business primarily in the state of Louisiana. Id. at 1-2.

Eight vendors, including AlliedBarton and Knight, submitted quotations by the May 17 closing date. The agency then conducted technical, price, and Stafford Act eligibility evaluations of vendors' quotations. The agency's final evaluation ratings of the quotations submitted by AlliedBarton and Knight were as follows:

Factor	AlliedBarton	Knight
Technical Approach	Exceptional	Satisfactory
Management Plan	Exceptional	Very Good
Personnel	Very Good	Very Good
Past Performance	Very Good	Very Good
Overall	Exceptional	Very Good
Stafford Act Eligible	No	Yes
Price	\$156,430,339	\$156,657,383

Agency Report (AR), Tab 9, Consensus Report, at 10-11; Tab 10, Consensus Technical Report, at 4-29. The agency subsequently determined that Knight's quotation, which was lowest-priced among the most highly technically-rated, eligible vendors, represented the best value to the agency.¹ Id., Tab 11, Source Selection Decision, at 1. These protests followed.

¹ The agency determined that, in addition to Knight, five other vendors had also submitted technically acceptable quotations and were Stafford Act eligible. AR, Tab 9, Consensus Report, at 11.

DISCUSSION

AlliedBarton's protest raises numerous issues regarding the agency's evaluation of both its and Knight's quotations. Of foremost importance, AlliedBarton protests that FEMA improperly determined that, for purposes of the Stafford Act, it was not a business residing in the state of Louisiana. The protester also challenges the agency's determination that Knight was a firm residing or doing business primarily in Louisiana, and argues that FEMA's evaluation of vendors's eligibility reflects unequal treatment. Lastly, AlliedBarton argues that FEMA engaged in improper discussions by permitting Knight to submit additional evidence to establish that it was a firm residing in Louisiana after the deadline for submission of quotations. For the reasons set forth below, we find no basis upon which to sustain the protest.²

AlliedBarton's Stafford Act Eligibility

AlliedBarton first protests that the agency improperly determined that it was not eligible for selection here under the Stafford Act. The protester argues that FEMA's determination that it was not a firm residing or doing business primarily in the State of Louisiana was unreasonable, disparate, and lacked adequate documentation. While AlliedBarton does not contend that it primarily does business in Louisiana, the protester contends that it is a firm residing in Louisiana for purposes of the Stafford Act.

Pursuant to the authority of section 307 of the Stafford Act, 42 U.S.C. § 5150, amended by the Post Katrina Emergency Management Reform Act, Pub. L. No. 109-295, § 694, 120 Stat. 1355 (2006), and the SAFE Port Act, Pub. L. No. 109-347, § 611, 120 Stat. 1943 (2006), agencies may provide a preference to or set aside disaster relief recovery contracts to individuals or firms either residing or doing business primarily in the designated location. In its entirety, the Stafford Act provision at issue here states:

² After development of the record in these protests, the GAO attorney conducted an outcome prediction alternative dispute resolution (ADR) conference (for a description of GAO's outcome prediction ADR process, see Alaska Structures, Inc.—Costs, B-298575.4, Jan. 22, 2007, 2007 CPD ¶ 15 at 4 n.4). He advised the parties that AlliedBarton's protest appeared to be without merit insofar as the record showed that FEMA's evaluation of the protester's Stafford Act eligibility was reasonable and consistent with the stated evaluation criteria, the record did not establish that the agency had engaged in improper discussions with Knight, and that AlliedBarton was not an interested party to pursue its remaining basis of protest. The protester subsequently informed our Office that it did not intend to withdraw its protest based on this ADR session, but would rather have a written decision on the merits of its case.

Use of Local Firms and Individuals

(a) Contracts or Agreements With Private Entities-

(1) In General – In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preferences shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency.

* * * * *

(3) Specific Geographic Area – In carrying out this section, a contract or agreement may be set aside for award based on a specific geographic area.³

42 U.S.C. § 5150.

Accordingly, the RFQ here was limited to firms residing or primarily doing business in Louisiana, and incorporated Federal Acquisition Regulation (FAR) clause 52.226-3, “Disaster or Emergency Area Representation.” RFQ amend. 3, at 63. Further, the solicitation provided vendors with additional “guidance on what constitutes a firm residing or primarily doing business in the State of Louisiana.”⁴ *Id.*, Instructions to Vendors, at 1-2. The RFQ also stated that “[i]f these factors establish by a preponderance of the evidence that the firm in question resides or primarily does business in the State of Louisiana, then said firm shall be categorized as such.” *Id.* at 2.

AlliedBarton’s quotation included the required volume addressing its Stafford Act eligibility. The protester’s quotation set forth in detail its ties to Louisiana, in a format consistent with the RFQ’s quotation preparation guidance factors, and

³ For a description of the process by which the federal government provides federal assistance generally under the Stafford Act, see AshBritt Inc., B-297889, B-297889.2, Mar. 20, 2006, 2006 CPD ¶ 48 at 3-4.

⁴ The RFQ’s guidance on what constitutes a firm residing or primarily doing business in the state of Louisiana consisted of a non-exclusive list of factors to be considered by the agency that essentially restated the criteria set forth in FAR clause 52.226-3. For example, the list included location of the firm’s permanent office, existing state licenses, and record of past work in the designated area.

included copies of its certificate of incorporation and various Louisiana state licenses.⁵ AR, Tab 6, AlliedBarton's Quotation, vol. III, Stafford Act Evidence.

The agency subsequently determined that AlliedBarton was neither residing nor primarily doing business in Louisiana. AR, Tab 9, Consensus Report, at 11. As expressed in a statement filed with FEMA's report to our Office, the contracting officer considered relevant that AlliedBarton was incorporated in Delaware, had its corporate headquarters in Pennsylvania, and identified Arlington, Virginia as the location of its primary point of contact for government business. Contracting Officer's Statement, Aug. 1, 2007, at 1. The contracting officer also stated as follows:

I balanced the factors in Federal Acquisition Regulation 52.226-3 to determine whether the company resides in or primarily does business in Louisiana. Favoring a decision that the company resides in or primarily does business in Louisiana is the fact that it has been working in Louisiana for 20 years and has had a Louisiana office since November 2002, before Hurricane Katrina struck. On the other hand, its teaming agreement with a local company did not provide sufficient assurance that the local company would provide 50% of the cost of the guard workforce. Furthermore, AlliedBarton indicated that its local office employs 200 individuals, but it did not state anywhere that the individuals employed at the local office are themselves local. Finally, AlliedBarton's 2006 Louisiana gross revenues account for only about one percent of its total gross revenues.

Id. at 1-2. The contracting officer concluded that, in her opinion, AlliedBarton had not satisfied the burden of demonstrating that it either resided or did business primarily in Louisiana. Id. at 2.

AlliedBarton does not dispute the contracting officer's finding that only one percent of its total gross revenues comes from Louisiana; rather, AlliedBarton contends that this fact is irrelevant to a determination of whether it resides there. Protest at 2 n.2. The protester also does not dispute the contracting officer's findings that its teaming agreement did not provide assurance that the local company would provide 50 percent of the cost, or that AlliedBarton's quotation failed to indicate that the

⁵ AlliedBarton's quotation represented that the firm, among other things, had both permanent primary and satellite offices located in Louisiana, held a Louisiana state security license and was originally licensed in Louisiana in 1983, had continued to provide security services in Louisiana since 1983, had 200 permanent employees who worked in and mostly resided in Louisiana, had relationships with various vendors supporting its business, and was a member of various organization with local chapters in Louisiana. AR, Tab 6, AlliedBarton's Quotation, vol. III, Stafford Act Evidence, at 2-5.

200 individuals employed by its local office were themselves local. See Comments, Aug. 8, 2007, at 19. Rather, AlliedBarton alleges that these were merely post-hoc rationalizations by the agency to which our Office should not give any weight. The protester also argues that FEMA's Stafford Act eligibility determination was inadequately documented, unreasonable, disparate, and failed to consider much of the specific evidence that the vendor submitted establishing its residency within Louisiana. We disagree.

Where, as here, an agency issues an RFQ to FSS contractors under FAR Subpart 8.4 and conducts a competition (see FAR § 8.405-2), we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. In reviewing an agency's evaluation of quotations, our Office will not reevaluate quotations, but instead will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. Sumaria Sys., Inc., B-299517, B-299517.2, June 8, 2007, 2007 CPD ¶ 122 at 7.

In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions simply fill in previously unrecorded details, and will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. While the record documenting the agency's eligibility determination lacks details, nonetheless, based on the entire record in this case, we conclude that FEMA did undertake a Stafford Act eligibility determination of vendors, including AlliedBarton, prior to its award decision. Moreover, the contracting officer's statement here does not involve after-the-fact, subjective judgments; rather, we view the post-protest documentation here as merely a memorialization of a contemporaneous analysis.⁶

⁶ While we think it is unobjectionable here to consider the post-protest documentation offered by the agency to fill in the previously unrecorded details, the better practice clearly would have been to memorialize the details contemporaneously rather than after a protest was filed.

Further, as explained in detail below, our review of the record indicates that FEMA's evaluation of AlliedBarton's quotation and resulting determination that the vendor was not a firm residing (or doing business primarily) in Louisiana for purposes of the Stafford Act was reasonable and consistent with the stated evaluation criteria. The record reflects that the contracting officer properly considered the information which AlliedBarton submitted as well as other relevant information. Although we do not specifically address all of the protester's arguments about the evaluation of its quotation, we have fully considered all of them and find that they afford no basis to question the agency's Stafford Act eligibility determination.

As a preliminary matter, we note that both the relevant FAR clause and the additional solicitation guidance provided to vendors regarding what constitutes residing or primarily doing business in Louisiana set forth non-exclusive lists of factors to be considered as part of the agency's determination. Thus, it was not improper for the agency to consider information beyond that which the RFQ required vendors to submit. Further, the FAR clause does not express which factors are considered relevant to the "residing" prong, and which are relevant to the "doing business primarily" prong, of a Stafford Act eligibility determination. The FAR clause also does not state how the factors are to be weighed, or preclude giving different weightings to different factors. Accordingly, our review focuses on whether the agency's determination was reasonable and consistent with the stated evaluation criteria, all factors considered.

We find that FEMA's determination regarding AlliedBarton's Stafford Act eligibility was a reasonable one. As set forth above, the contracting officer properly considered where the vendor was incorporated, where it had its corporate headquarters, and the location of the company's government business primary point of contact, all of which were outside Louisiana. The contracting officer also considered information contained within the vendor's quotation favoring a decision that the company resided in Louisiana, as well as information to the contrary.⁷ The contracting officer then balanced the factors set forth in FAR clause 52.226-3 and concluded that AlliedBarton had not satisfied the burden of demonstrating that it either resided or did business primarily in Louisiana. Once an agency has given meaningful consideration to all relevant information, a protest challenging an agency's evaluation of such information will not be sustained unless the agency's judgments were unreasonable or contrary to the stated evaluation criteria. See Kay & Assocs., Inc., B-291269, Dec. 11, 2002, 2003 CPD ¶ 12 at 4; see also Alion Sci. & Tech. Corp., B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 8. We find the protester's challenge to the agency's evaluation here amounts to mere disagreement with the agency's judgment and thus does not establish that the evaluation was

⁷ The protester does not dispute the validity of the information on which the contracting officer relied here supporting the determination that the firm was not residing in the state of Louisiana.

unreasonable. JAVIS Automation & Eng'g, Inc., B-293235.6, Apr. 29, 2004, 2004 CPD ¶ 95 at 5.

AlliedBarton also asserts that the agency's Stafford Act determination was improper because the agency believed that a business concern could not reside in numerous places simultaneously. The protester essentially argues that the contracting officer focused too heavily, if not exclusively, on AlliedBarton's state of incorporation. While the protester does not dispute that it is incorporated in Delaware and headquartered in Pennsylvania, it argues that if, under the Stafford Act, "residing" was to mean only where a company was incorporated or had its principal place of business, then Congress, or the FAR, would have reflected that view. Comments, Aug. 8, 2007, at 10-11. The protester's argument is not supported by the record. The record indicates that FEMA did not interpret the term "residing" to mean only where a firm was incorporated or headquartered; rather, the contracting officer reasonably considered all relevant information, including, but not limited to, where AlliedBarton was incorporated and headquartered as part of her determination.

AlliedBarton also argues that FEMA's Stafford Act eligibility determinations regarding itself and Knight reflect unequal treatment. The protester offers a side-by-side comparison of the Stafford Act evidence regarding itself and Knight under each of the FAR clause 52.226-3 criteria to support its assertion that the agency's treatment of vendors was unequal. AlliedBarton argues that, under many of the factors, the evidence it submitted to demonstrate its Stafford Act eligibility was superior to the evidence regarding Knight's eligibility. Comments, Aug. 8, 2007, at 12-15.

In our view, AlliedBarton's argument here is mistakenly premised upon an improper "apples and oranges" comparison of the vendors' quotations. When performing its Stafford Act evaluation of Knight, the agency determined that the awardee was eligible based on the "doing business primarily" prong. AR, July 29, 2007, at 7; GAO Conference Call with Parties, Sept. 19, 2007. By contrast, the agency's Stafford Act eligibility determination of AlliedBarton turns on the "residing" prong (the protester admits that it does not do business primarily in Louisiana). Accordingly, the protester's side-by-side comparison of which vendor has a greater overall connection to the state of Louisiana is not meaningful or relevant to the agency's determination whether the protester resides in the designated location.

AlliedBarton also argues that there is no documentation in the record establishing that the agency considered much of its Stafford Act evidence, including its list of customers in various Louisiana cities, its local offices, the fact that AlliedBarton had been licensed in Louisiana since 1983, the firm's relationships with local vendors and subcontractors, and other information submitted by AlliedBarton which, the firm asserts, establishes that AlliedBarton resides in Louisiana. AlliedBarton argues that even the contracting officer's post-protest statement fails to indicate that FEMA considered all the evidence presented by AlliedBarton on this matter. AlliedBarton

argues that, in light of the agency's alleged failure to consider all relevant information, the conclusion that the firm did not reside in Louisiana was unreasonable. Comments at 29-32. We disagree.

The record does not support AlliedBarton's assertion that FEMA ignored specific evidence submitted by the vendor and favoring a determination that the firm was residing in Louisiana. Instead, the record reflects that the agency reviewed the evidence submitted by AlliedBarton and balanced the factors set forth in FAR clause 52.226-3 when determining the firm's Stafford Act eligibility. There is simply no requirement that the agency restate each favorable aspect of the vendor's quotation, or the complete list of evaluation criteria set forth in the applicable FAR clause, as part of its determination. See SAMS El Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 18; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 22.

Other Protest Issues

AlliedBarton also protests that the agency improperly permitted Knight to submit additional evidence after the deadline for submission of quotations to establish that it was Stafford Act eligible. Specifically, the protester refers to a June 26 email showing that FEMA asked Knight to provide the agency with a list of locations in Louisiana where Knight was then providing guard services. AlliedBarton argues that the agency's actions here constituted improper discussions since FEMA failed to afford the protester a similar opportunity to provide additional evidence to establish that it also resides in Louisiana.⁸ Protest, Aug. 24, 2007, at 4-7.

After making its award determination on June 19, the contracting officer decided to reassign guard sites in the New Orleans-area to the Baton Rouge-area contractor, Knight.⁹ As part of this action, the contracting officer requested that Knight provide FEMA with a list of parishes in Louisiana in which the firm was currently working. Agency Report, Aug. 31, 2007, at 1-2. There is no simply evidence that FEMA used or intended to use information provided by Knight after the selection decision was made to augment its pre-selection Stafford Act eligibility determination as the

⁸ Although FAR Part 15 procedures do not directly apply to FSS buys, our Office looks to Part 15 as guidance when, as here, an agency treats vendor responses as if it were conducting a negotiated procurement. See TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6 n.3. When an agency conducts discussions with one vendor, it must conduct discussions with all vendors in a manner that is equitable and fair. Id. at 6.

⁹ The agency subsequently decided not to reassign security guard services between the New Orleans area and Baton Rouge area contractors as originally planned. FEMA Email to Parties, Sept. 28, 2007.

protester contends: the agency's eligibility determination regarding Knight does not mention or rely on the information provided by Knight in the email here.¹⁰ See Contracting Officer's Statement, Aug. 1, 2007, at 2-3. In sum, there is no support in the record for the protester's assertion that FEMA's post-selection contact with Knight was for anything other than contract administration purposes. In these circumstances, there is no basis to conclude that the agency improperly conducted discussions with only one vendor.

Lastly, AlliedBarton protests that the agency improperly determined that Knight qualified as a firm residing or doing business primarily in Louisiana. We find that AlliedBarton is not an interested party to raise this issue. In order for a protest to be considered by our Office, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. Bid Protest Regulations, 4 C.F.R. §§ 21.0(a)(1), 21.1(a) (2007); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the evaluation of the awardee's quotation where there is a reasonable possibility that the protester's quotation would be in line for selection if its protest were sustained. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 9; Ridoc Enter., Inc., B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 9. Here, AlliedBarton is ineligible for selection because, as discussed above, the agency reasonably found it not to be a firm residing or doing business primarily in the RFQ's designated set-aside area. Given that there are other eligible vendors that would be in line for selection even if AlliedBarton's challenge to FEMA's evaluation of Knight's Stafford Act eligibility were sustained, we consider AlliedBarton's interest to be too remote to qualify it as an interested party to pursue this issue. See Ridoc Enter., Inc., supra.

The protest is denied.

Gary L. Kepplinger
General Counsel

¹⁰ Moreover, FEMA's Stafford Act eligibility determination of Knight was based on whether the firm was doing business primarily in Louisiana—a determination for which the number of job locations was not relevant.