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## Decision

**Matter of:** Reyna-Capital Joint Venture

**File:** B-408541

**Date:** November 1, 2013

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Theodore M. Bailey, Esq., Bailey & Bailey, PC, for the protester.  
Captain Vera A. Strebels, Department of the Army, for the agency.  
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GAO, participated in the preparation of the decision.

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### DIGEST

Protest of an agency's award of a contract is denied where the agency reasonably found that the awardee complied with the solicitation's licensing requirements.

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### DECISION

Reyna-Capital Joint Venture (RCJV), of San Antonio, Texas, protests the Department of the Army's award of a contract to Seneca Paul, LLC JV1, of Killeen, Texas, under solicitation No. W91151-13-B-0006, which was issued for electrical services at Fort Hood in Texas. RCJV asserts that the award was improper because Seneca Paul did not meet the solicitation's experience and licensing requirements.

We deny the protest.

### BACKGROUND

On April 23, 2013, the Army issued the invitation for bids (IFB) for the electrical services as a competitive 8(a) small business set aside. IFB at 1. The IFB provided for the award of a fixed-price construction contract with a 1-year period of performance and two 1-year option periods. IFB at 3-4, 9.

With regard to license qualifications, and as relevant here, the IFB stipulated, "The prime contractor shall provide documentation to support that it possesses the qualifications to demonstrate master license qualifications of the following: a State of Texas Electrical Contractors license and a State of Texas Electrical Masters license, as well as documented hands-on experience in the trade for a minimum of

ten (10) years.” IFB at 7. The IFB required vendors to submit with their bid “copies of certifications/training” of the qualifications outlined above. Id. Additionally, the IFB stated that “[f]ailure to provide this documentation will render the bid/offer non-responsive. . . .” Id.

The IFB also required vendors to submit with their bids “at least five examples of relevant work experience” in awarded contracts that were similar to the work being solicited here. Id. Specifically, the IFB requested documentation demonstrating “electrical construction contract management as an electrical contractor for a minimum of 10 years performing substation and primary distribution line work, commercial and industrial electrical installation. . . .” Id.

The Army received three bids by the May 23 bid opening. Contracting Officer’s Statement at 1. Seneca Paul’s bid of \$14,833,702.25 was the lowest. Id. RCJV submitted a bid of \$15,017,623.71. Id. The Army determined that Seneca Paul met the IFB’s licensing and experience requirements. Id. at 2. As the lowest bidder, award was made to Seneca Paul, and this protest followed.

## DISCUSSION

In its protest, RCJV asserts that Seneca Paul did not meet the IFB’s experience and licensing requirements. Specifically, the protester argues that award to Seneca Paul was improper because neither the vendor nor its key personnel held the required licenses for 10 years. Protest at 8; Comments at 13.

The Federal Acquisition Regulation (FAR) requires that contracts can only be awarded to responsible contractors. FAR § 9.103(a). In most cases, responsibility is determined on the basis of general standards set forth in FAR § 9.104-1, and involves subjective business judgments that are within the broad discretion of the contracting activities. Pond Security Group Italia, JV, B-400149.3, Dec. 22, 2008, 2008 CPD ¶ 233 at 3. However, in some solicitations an agency will include a special standard of responsibility, referred to by our Office as a definitive responsibility criterion. See FAR § 9.104-2.

Definitive responsibility criteria are specific and objective standards designed to measure a prospective contractor’s ability to perform the contract. Such criteria, which must be met as a precondition to award, limit the class of contractors to those meeting specified qualitative and quantitative qualifications necessary for adequate performance, e.g., unusual expertise or specialized facilities. MEI, Inc., B-277235.2, Nov. 12, 1997, 97-2 CPD ¶ 138 at 2. Here, there is no dispute that the IFB’s licensing requirement--where copies of the certifications were required to be submitted with bids--is a definitive responsibility criterion.

Where a protester alleges that a definitive responsibility criterion has not been satisfied, we will review the record to ascertain whether evidence of compliance has

been submitted from which the contracting officer reasonably could conclude that the criterion has been met; generally, a contracting agency has broad discretion in determining whether bidders meet definitive responsibility criteria. Although the relative quality of the evidence is a matter within the contracting officer's judgment, the contracting officer may only find compliance with the definitive responsibility criterion based on adequate, objective evidence. Charter Environmental, Inc., B-297219, Dec. 5, 2005, 2005 CPD ¶ 213 at 2.

Here, we find nothing objectionable about the agency's determination that Seneca Paul met the IFB's licensing and experience requirements. As explained above, the IFB required vendors to possess and submit with their bid a copy of a Texas electrical contractor's license and a Texas electrical master's license. IFB at 7. The record shows that Seneca Paul met the IFB's licensing requirements. In this regard, the awardee submitted with its bid copies of a Texas electrical contractor license and Texas master electrician licenses for four personnel. Agency Report (AR), Tab 9, Seneca Paul Licenses, at 1-6. The agency explains that it reviewed and verified the submitted licenses and determined the awardee to be a responsive and responsible bidder. Contracting Officer's Statement at 2-3; AR, Tab 13, Determination of Responsibility, at 1.

RCJV has not shown the agency's determination regarding the awardee's licenses to be flawed or otherwise unreasonable. Instead, the protester maintains that the licenses provided fail to meet the IFB's criteria because the licenses were not possessed for 10 years.<sup>1</sup> Protest at 9; Comments at 13. However, the IFB does not require that a vendor or its employees possess a license for 10 years.<sup>2</sup> Instead, the IFB required that vendors document a minimum of 10 years of "electrical

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<sup>1</sup> In a related argument, RCJV also asserts that Seneca Paul's key personnel (project manager, superintendant, and quality control manager) did not meet the IFB's requirement to have a minimum of 10 years of "hands-on experience in the electrical trade." Protest at 9; IFB at 5. However, after reviewing the record provided by the agency, which included résumés of Seneca Paul's key personnel that documented their electrical experience, the protester concedes that these individuals met the IFB's experience requirement. Comments at 14-15; see AR, Tab 10, Seneca Paul Résumés, at 1-8. Accordingly, we do not discuss this issue further.

<sup>2</sup> The protester maintains that Texas law mandates that an electrical contractor either possess an electrical contractor's license for 10 years or employ a person possessing a master electrician's license for 10 years. Protest at 9; Comments at 13. While the protester has provided legal support for the contention that an electrical contractor either be licensed or employ a licensed master electrician, the protester has not shown that either Texas law or the IFB require the contractor or its employee to hold the license for 10 years.

construction contract management as an electrical contractor.” IFB at 7. In response to this experience requirement, Seneca Paul provided the agency with a “job list” of 17 projects involving “interior and exterior electrical work” that the firm has performed since 2001. AR, Tab 11, Seneca Paul Experience, at 1. The Army reviewed the submission and reasonably determined that the awardee met the IFB’s requirement. Contracting Officer’s Statement at 3. On this record, we have no basis to question the agency’s determination that Seneca Paul met both the IFB’s licensing and experience requirements.

The protest is denied.

Susan A. Poling  
General Counsel