

***Office of Dispute Resolution for Acquisition***  
**Federal Aviation Administration**  
**Washington, D.C.**

**FINDINGS AND RECOMMENDATIONS**

**Matter:           Protest of International Services, Inc.**  
**Under Solicitation No. DTFA08-02-R-00091**

**Docket No.:   02-ODRA-00224**

*Appearances:*

For the Protester, International Services, Inc.: Bunce Pierce, Vice President

For the FAA Western Pacific Regional Office: Bradford A. Talamon, Esq.

**I.       Introduction**

International Services Inc. (“ISI”) filed its Protest with the FAA Office of Dispute Resolution for Acquisition (“ODRA”) on May 15, 2002. The Protest challenges an award made by the FAA Western Pacific Region (“Region”) pursuant to Solicitation DTFA08-02-R-00091 for armed guard services at the Los Angeles International Airport Air Traffic Control Tower (“Solicitation”). The Protest alleged that the awardee, Diamond Detective Agency, Inc. (“Diamond”): (1) was not licensed to perform the services required by the Solicitation and was not a licensed corporation authorized to do business in the State of California; and (2) was not the lowest-price, qualified bidder.

The Region moved to dismiss the Protest alleging lack of standing to protest (“Motion”). The Motion was based on the Region’s assertion that ISI’s proposal had been rejected for alleged failure to include certain information on a form supplied with the Solicitation. On March 23, 2002, ISI submitted an Amended Protest, in which it made additional

allegations concerning the status of Diamond and challenged the Region's rejection of ISI's proposal. By Order dated June 27, 2002, the ODRA denied the Motion, finding material issues of fact relating to the question of standing. The Region submitted its Agency Response on July 8, 2002. ISI's Comments were filed and served on July 22, 2002, and thereafter the record was closed.

For the reasons discussed herein, the ODRA finds that ISI's proposal failed to include a certification of information and that the Contracting Officer did not abuse his discretion in rejecting ISI's proposal. The ODRA further finds that inasmuch as ISI properly was excluded from the competition, it lacks the requisite direct economic interest to pursue its Protest. The ODRA recommends that the Protest be dismissed for lack of standing.<sup>1</sup>

## **II. Findings of Fact**

1. The Solicitation was issued by the Agency on February 12, 2002. The Solicitation requested offers for personnel, materials, equipment, training, transportation and supervision required to perform armed security guard services at the Los Angeles International Airport Air Traffic Control Tower. *See* Agency Response ("AR"), Solicitation, Section C. The Solicitation contemplated a base contract period of six months with four one-year options.
2. The Solicitation included a copy of a form entitled "Financial Survey and Business Declaration" ("Declaration Form"). *See* Exhibit 2 to Motion to Dismiss.

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<sup>1</sup> The ODRA does not reach the substantive issue raised in the Protest concerning the qualifications of the awardee. The ODRA notes, however, that the questions presented in this protest concerning licensing and corporate status involve an affirmative determination of bidder responsibility, a matter ordinarily not reviewed by the ODRA in the context of a bid protest. *See Washington Consulting Group, Inc.*, 97-ODRA-00059, ODRA Decision on Motion to Dismiss, Note 2. Moreover, consistent with its contract administration function, the Region's Product Team bears the continuing responsibility to ensure that the contractor fulfills all legal requirements of the contract and applicable statutes, regulations, and ordinances. Matters of post-award contract administration similarly are generally outside the realm of ODRA bid protests. *Id.*

3. The Declaration Form required several categories of information including: names of owners, and authorized signatories on behalf of the company; bank references and credit references. The “Declaration” portion of the Declaration Form also required specific information concerning ownership of controlling interests and responsibility for management and policy decision making within the company; years that the company has been in business and number of employees; type of ownership; gross receipts for the last three years; and identification of the firm as a small business. The Declaration Form concluded with a requirement that the offeror execute the following certification:

I DECLARE THAT THE FOREGOING STATEMENTS CONCERNING \_\_\_\_\_ (Name of Business) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF. I AM AWARE THAT I AM SUBJECT TO CRIMINAL PROSECUTION UNDER THE PROVISIONS OF 18 U.S.C. 1001.

*See Motion, Exhibit 2.*

4. The Solicitation also included the following Clause L-5, entitled “SUBMISSION OF OFFERS”:

Submit your offer by returning one complete set of the solicitation, including complete Section A, B, K, Financial Survey and Business Declaration, and offeror’s Narrative. Before mailing your offer, **please take note of the following reminders, because omission of these items may cause rejection of your offer.**

- a. Have you acknowledged all amendments, if any?
- b. Have you completed and included all the representations and certifications (Section K)?
- c. **Have you completed and included the Financial Survey and Business Declaration (Attachment No. 2)?**
- d. Have you included the Narrative (see Section L, item L-3 above)?
- e. Have you reviewed your offer for possible errors in calculations or work left out? If you erased anything, please be sure to initial each change.

AR, Solicitation, Section L, Clause L-5 (Emphasis added).

5. It is undisputed that, when it submitted its proposal, ISI failed to submit the completed and certified Financial Survey and Business Declaration Form to the Region.

6. Although ISI's proposal included some of the information required by the Declaration Form, the proposal did not include the certification of all the information listed on the Form.

7. The Contracting Officer, while conducting the evaluation of the offers, realized that another offeror and ISI had failed to supply the Declaration Form with their respective offers. The Contracting Officer rejected both offers on that basis. *See* Motion, Exhibit 3.

8. After being informed of the award to Diamond, ISI requested and received a debriefing from the Contracting Officer. ISI Amended Protest at 1. During the debriefing, ISI was told that, prior to the award decision, it was determined that ISI's offer was non-responsive because it had failed to include the Business Declaration. AR at 1; Amended Protest at 1. Thereafter, ISI filed the instant Protest.

### **III. Discussion**

The Initial question concerns whether ISI's proposal properly was excluded from consideration; or whether the exclusion constituted an abuse of discretion by the evaluating official. The record reflects that ISI failed to certify key information concerning its business operations despite: (1) being provided with a Declaration Form for that purpose with the Solicitation; and (2) being expressly warned in the Solicitation that failure to complete the Declaration Form might result in disqualification. ISI has failed to provide any factual or legal support for its assertion that:

This document [the Declaration Form] did not affect our qualifications and in view of the "best value" scenario should

not be disqualifying. We contended it was an excusable oversight.

Amended Protest at 1. In the ODRA's view, ISI ultimately bears the risk of, and is responsible for, its failure to provide critical information and to certify the information as accurate. The record provides no basis to support a conclusion that the Region abused its discretion, or otherwise acted irrationally, arbitrarily or capriciously in disqualifying ISI.

The second issue to be addressed concerns whether, ISI, as a properly disqualified offeror, may challenge the award to Diamond. It is well established under the ODRA Procedural Rules that only offerors or prospective offerors "whose direct economic interest has been or would be affected by award or failure to award an FAA contract" may file a protest. See 14 C.F.R. Section 17.3(k); 14 C.F.R. Section 17.13(c). As was recently stated, in the *Protest of Edward B. Block Consulting*, 02-ODRA-00225:

In a post-award context . . . only an offeror may timely file a protest. The ODRA Procedural Rules are consistent with the long-standing rule at the General Accounting Office, that only actual or perspective bidders or offerors may file bid protests.

The protester in *Block* lacked standing because it had failed to submit an offer in connection with any of the solicitations or contracts that it sought to protest. See *Block*, Findings and Recommendations at 4. By contrast, in this case, ISI did in fact submit an offer. As noted above, however, prior to the award of the Contract, the Region properly eliminated ISI from consideration on the basis that ISI had failed to provide the required Declaration Form.

The issue of whether a properly disqualified offeror lacks standing to protest the award of a contract is one of first impression at the ODRA. The Comptroller General, however, specifically has addressed the issue in an analogous case.<sup>2</sup> In the *Protest of Bootz Distribution*, Comp. Gen. Dec. B-251155, 93-1 CPD ¶123 (February 10, 1993), the protest was dismissed where the protester had failed to execute a required certification.

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<sup>2</sup>While the FAA is not bound by the decisions of the Comptroller General, the ODRA has held that decisions in GAO bid protests may be viewed as persuasive authority insofar as the principles and rules announced in such cases are consistent with the AMS.

