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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Southwestern Bell Telephone Company

File: B-292476

Date: October 1, 2003

James J. Regan, Esq., Daniel R. Forman, Esq., and J. Catherine Kunz, Esq., Crowell & Moring, for the protester.

James L. Feldesman, Esq., and Kathy S. Ghiladi, Esq., Feldesman Tucker Leifer Fidell, and Brian T. Fitzgerald, Esq., LeBoeuf, Lamb, Greene & MacRae, for Adelpia Business Solutions, Inc., an intervenor.

Clarence D. Long, III, Esq., and Donald Mosely, Esq., Department of the Air Force, for the agency.

Guy R. Petrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of the protester's and awardee's past performance, which found the two firms had essentially equal past performance, is sustained, where the agency did not consider awardee's record of integrity and business ethics, as required by the solicitation, and the record raises serious concerns that awardee may have problems in this area, and where agency did not document its assessment of protester's past performance, despite the fact that solicitation provided for qualitative assessment of offerors' past performance.

2. Contracting officer's affirmative determination of the awardee's responsibility is not reasonably based where, despite having general awareness of misconduct by some of awardee's principals and parent company, the contracting officer did not obtain sufficient information about or consider the awardee's record of integrity and business ethics in making his responsibility determination.

DECISION

Southwestern Bell Telephone Company protests the award of a contract to Adelpia Business Solutions, Inc. under request for proposals (RFP) No. F34608-03-R-5012, issued by the Department of the Air Force for commercial communication services

at McConnell Air Force Base (AFB), Kansas.¹ Southwestern Bell challenges the agency's past performance evaluation and its affirmative determination of Adelphia's responsibility. In addition, Southwestern Bell asserts that Adelphia is ineligible for award because it falsely certified that none of its principals had been indicted.

We sustain the protest.

The RFP, issued December 12, 2002, provided for the award of a fixed-price contract for local voice and data communication services for McConnell AFB for a period not to exceed 5 years. Detailed proposal preparation instructions were provided, which required, among other things, that offerors submit their proposals in three volumes: (1) technical, (2) past performance, and (3) price and contracting information. With respect to the past performance volume, offerors were required to provide detailed information concerning relevant contracts performed within the last 5 years.

The RFP provided that proposals would be evaluated against the following evaluation criteria: technical, past performance, and price. Offerors were informed that, under the technical evaluation criterion, proposals would be evaluated on a pass/fail basis, that is:

A decision on the technical acceptability of each offeror's technical proposal shall be made. Only those offers determined to be technically acceptable, either initially or as a result of discussions, will be considered for award.

Technically acceptable proposals would then be evaluated under the past performance and price criteria. The RFP stated that the agency would use the "performance-price trade-off" basis for award and that past performance and price were equally weighted. RFP at 20.

¹ According to the pre-award survey, the awardee was Adelphia Business Solutions, Inc., of Wichita, Kansas, which is an affiliate or branch office of Adelphia Business Solutions (doing business as TelCove) of Canonsburg, Pennsylvania. Agency Report, Tab 14, Pre-Award Survey of Adelphia, at 5, 7. Adelphia's proposal, however, was submitted in the name of Adelphia Business Solutions Investments, LLC. Agency Report, Tab 7, Adelphia's Price and Contracting Information, DD Form 428. Adelphia's technical proposal depicted in two charts that the Wichita office was the "local team organization" of the "Adelphia Business Solutions" corporation organization. Agency Report, Tab 7, Adelphia's Technical Proposal, at 7-8. The proposal also identified Adelphia Business Solutions Investments LLC as the offeror and as being both located in Wichita, see, e.g., id., Adelphia's Price & Contracting Information, DD Form 428, and in Canonsburg. See id., Adelphia's Kansas Tariff Filing.

The RFP stated that in evaluating past performance risk the agency would use data from a variety of sources, including the offerors' proposals and other government and commercial sources.² Offerors were also informed that the agency would place strong emphasis on the offeror's record of past performance of jobs of comparable complexity and similar technical requirements, and that the offeror's organization itself would be evaluated with respect to, among other things, "[its] [r]ecord of integrity and business ethics." RFP at 21.

The RFP also included the "Certification Regarding Debarment, Suspension or Ineligibility for Award," as required by Federal Acquisition Regulation (FAR) § 9.409(a). The certification included in the RFP required the offeror to identify in its certification whether "to the best of its knowledge and belief, . . . the offeror and/or any of its principals" had been debarred, suspended, proposed for debarment or declared ineligible for award, or had been within a 3-year period prior to the date of its offer convicted of various crimes or had certain civil judgments against it, or was presently indicted for, or otherwise criminally or civilly charged, with the commission of certain identified offenses. RFP § K at 6.

The Air Force received proposals from Southwestern Bell and Adelphia in response to the RFP. After discussions were conducted, both offerors were determined to be technically acceptable by the agency's technical proposal evaluation team (TPET). Adelphia's evaluated 5-year price was \$318,437.70 and Southwestern Bell's evaluated price was \$[Deleted]. Agency Report, Tab 15m, Price Competition Memorandum, at 1.

The agency evaluated the firms' past performance, relying upon the offerors' past performance proposal volumes, survey input from previous customers, and the agency's own knowledge of the contractors' performance on other government contractors. Both offerors were evaluated as "very good" under the past performance criterion. Agency Report, Tab 9, Past Performance Assessment, at 2. Adelphia's rating was based upon the agency's judgment that Adelphia had very good performance under three identified contracts³ and the pre-award survey recommendation of "full award" from the Defense Contract Management Agency (DCMA).⁴ Id. at 1. With respect to Southwestern Bell's past performance rating, the agency stated only:

² With respect to the past performance evaluation, offerors were informed that past performance would be evaluated as either exceptional, very good, satisfactory, neutral, marginal, or unsatisfactory.

³ There is no indication in either Adelphia's proposal or the customers' survey responses as to which Adelphia "entity" performed the three contracts.

⁴ The pre-award survey found that the awardee was a well-organized and viable enterprise with sufficient resources available to perform the contract and an 11-year
(continued...)

[Southwestern Bell] was the only other company that submitted a bid. However, [Southwestern Bell's] proposal was \$[Deleted] higher. [Southwestern Bell] has several dozen contracts with this office, and their past performance is well documented within this office.

Id. at 2.

The contracting officer concluded:

Since both [Adelphia's and Southwestern Bell's] proposals were found to be technically acceptable, and since each Offeror received the same past performance rating ("very good"), the discriminating factor would be, in accordance with the evaluation criteria specified in the acquisition, the lowest evaluated price. Since [Adelphia] had the lowest evaluated price, they were determined to represent the greatest value, and consequently, [Adelphia] was awarded the contract.

Contracting Officer's Statement at 4. This protest followed.

Southwestern Bell challenges the Air Force's evaluation of its and Adelphia's past performance, complaining that the agency's determination that the two firms' past performance ratings were equivalent is not rationally supported in the record.

In reviewing protests of alleged improper evaluations and source selection decisions, our Office examines the record to determine only whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement law. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Generally, the evaluation of an offeror's past performance is a matter within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. However, we will question such conclusions where they are not reasonably based, inconsistent with the solicitation criteria and/or are undocumented. Sonetronics, Inc., B- 289459.2, Mar. 18, 2002, 2002 CPD ¶ 48 at 3.

(...continued)

history of providing advanced communication services. "On the down side, the financial situation is so complex that it is nearly irrelevant for this award" inasmuch as all factors indicated a "high" financial risk, but the pre-award survey concluded that other factors (such as the relatively small size of the contract and Adelphia's apparent improving financial situation) minimized the risk. Agency Report, Tab 14, Pre-Award Survey of Adelphia, at 7-8.

With respect to Adelphia's past performance evaluation, Southwestern Bell states that the agency did not evaluate Adelphia's record of integrity and business ethics, as required by the RFP. Southwestern Bell asserts that this failure is significant because Adelphia's record of integrity and business ethics is unacceptable. In this regard, Southwestern Bell notes that three members of the Rigas family, who are currently majority shareholders of the awardee's former parent corporation, Adelphia Communications Corporation, and that corporation itself have been charged by the Securities and Exchange Commission (SEC) with violating various provisions of federal securities laws. Quoting the SEC's complaint for, among other things, injunctive and monetary relief against awardee's parent company and members of the Rigas family, Southwestern Bell notes that the "principals of the awardee stand accused by the government of committing 'the most extensive financial fraud ever to take place at a public company.'" See <www.sec.gov/litigation/complaints/compl17627.htm>. Subsequently, five individuals (including three Rigas family members) were criminally indicted by a federal grand jury, each on 16 counts of securities fraud, 5 counts of wire fraud, 2 counts of bank fraud, and 1 count of conspiracy. Although Adelphia Business Solutions, of which the awardee is apparently an affiliate, was spun off from Adelphia Communications Corporation in early 2002, the protester states that a majority of the shares of Adelphia Business Solutions stock were transferred to members of the Rigas family and to entities controlled by the Rigas family.⁵

⁵ For their part, the Air Force and the intervenor do not dispute that members of the Rigas family and Adelphia Communication Corporation have been charged with serious financial misconduct, and that the three members of the Rigas family have been indicted. On its behalf, Adelphia disputes the protester's representation of the amount of Adelphia Business Solutions stock transferred to members of the Rigas family and entities controlled by the Rigas family; however, the intervenor admits that the indicted Rigas family members own some a significant amount of Class A (financial interest) and Class B (voting interest) stock, and that Rigas family member and affiliated interests have enough Class B shares (51.6 percent) to constitute voting control. (We note that the intervenor's analysis of the stock ownership of the Rigas family focuses on their ownership of stock in TelCove. As indicated above, the record appears to indicate that Adelphia Business Solutions, Inc., the apparent awardee here, is an affiliate of Adelphia Business Solutions, doing business as TelCove. See Agency Report, Pre-Award Survey of Adelphia, at 5, 7. The record is not clear as to the ownership interest of the Rigas family in the apparent awardee or to what extent TelCove exerts control over the apparent awardee.) The intervenor nevertheless states that notwithstanding this majority interest, the influence of the Rigas family was removed as a result of "Unanimous Written Consents of the Board of Directors of Adelphia Business Solutions, Inc.," whereby the awardee removed the three Rigas family members from positions as officers and employees of the Corporation on July 26, 2002. There is no indication in the record that this was considered by the contracting officer in making his responsibility determination.

The record shows that the Air Force did not evaluate Adelphia's "record of integrity and business ethics" as part of its past performance evaluation, as was specifically required by the RFP. The Air Force does not assert that it performed such an evaluation, but merely argues that its "very good" rating of Adelphia's past performance was justified, given the information provided and reviewed. The record shows that the Air Force assessed Adelphia's past performance as "very good" based only upon the survey responses it received from the three contract sources identified by Adelphia in its proposal and the DCMA pre-award survey. See Agency Report, Tab 9, Past Performance Assessment, at 1; Contracting Officer's Statement at 3. The past performance surveys, however, did not seek or receive any information concerning Adelphia's record of integrity or ethics.⁶ Furthermore, as asserted by the protester, Adelphia performed these three referenced contracts while the indicted members of the Rigas family had significant ownership interest and control in the awardee and its parent companies. Given the specific RFP language, the charges brought by the SEC and the indictment of the Rigas family members should have been (but were not) evaluated as relevant information in the agency's assessment of Adelphia's past performance. In short, because the agency's past performance evaluation was not in accord with the stated RFP criteria, we find the agency's evaluation of Adelphia's past performance to be inconsistent with the RFP evaluation scheme and unreasonable. See Beneco Enters., Inc., B- 283512.3, July 10, 2000, 2000 CPD ¶ 176 at 7.

We also find no basis in the record to find reasonable the Air Force's evaluation of Southwestern Bell's past performance. As indicated above, the agency's entire explanation of its evaluation rating of the protester's past performance was that Southwestern Bell had a dozen contracts with the Air Force's procuring office, that these contracts were "well documented," and that the protester's evaluated price was higher than that of the awardee. Agency Report, Tab 9, Past Performance Assessment, at 2. Despite the agency's statement that Southwestern Bell's performance of contracts with its office were "well documented," no documentation or explanation of that performance has been provided to support the agency's evaluation rating, which was equal to Adelphia's rating. In fact, despite the protester's specific complaint of the paucity of the Air Force's explanation, the agency has provided no further information of any kind in support of its evaluation assessment. We find this inexplicable, given that the RFP provided for a qualitative assessment of the offerors' past performance and for an integrated assessment of the merits of the offerors' respective assessments and their evaluated price to determine the "greatest value." See RFP at 20.

⁶ As discussed in detail below, DCMA also did not comment on Adelphia's integrity or business ethics.

Thus, the agency's judgment that Adelphia's slightly lower price reflected the best value to the government lacks a reasonable basis. As noted above, the RFP provided for a tradeoff between the offerors' qualitative past performance rankings and their respective evaluated price. The Air Force concluded here that the two firms' "very good" past performance rankings reflected essentially equal merit and therefore price became the discriminating factor. However, because the agency did not reasonably evaluate the firms' past performance in accordance with the RFP criteria, the agency did not have a reasonable basis for its conclusion that the firms were essentially equal under this factor, so as to justify an award based solely on price. In fact, the comment regarding the protester's higher price in the past performance evaluation suggests that the agency did not qualitatively evaluate the offerors' past performance, as required by the RFP's evaluation scheme, but improperly converted the procurement to one based upon low price and the submission of a technically acceptable proposal by an offeror with acceptable past performance. See Dewberry & Davis, B-247116, May 5, 1992, 92-1 CPD ¶ 421 at 5.

Under a reasonable evaluation of past performance, Southwestern Bell's past performance rating might have been found to be superior to Adelphia's, such that the Air Force would be required to conduct a tradeoff analysis to determine whether in fact Adelphia's slightly lower price represented the best value to the government. Accordingly, we agree with Southwestern Bell that the Air Force's award selection is not consistent with the RFP evaluation and is unreasonable. See Trijicon, Inc., B-244546.3, June 22, 1992, 92-1 CPD ¶ 537 at 11.

Southwestern Bell also challenges the contracting officer's affirmative determination of Adelphia's responsibility. Simply stated, the protester argues that the agency failed to consider evidence about Adelphia's integrity and business ethics in making its responsibility determination as is required by FAR § 9.104-1(d).

As an initial matter, the Air Force argued that this aspect of Southwestern Bell's protest should have been dismissed because the contracting officer allegedly had sufficient information upon which to find that Adelphia was responsible because the contracting officer was aware of the indictments of the principals of the awardee's parent company.

Because the determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion, our Office will generally not consider a protest challenging an affirmative determination of responsibility except under limited, specified exceptions. 4 C.F.R. § 21.5(c) (2003); Verestar Gov't Servs. Group, B-291854, B-291854.2, Apr. 3, 2003, 2003 CPD ¶ 68 at 3. One specific exception provided in the revised Bid Protest Regulations is that our Office will consider a protest that identifies serious concerns that a contracting officer in making an affirmative determination of responsibility failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c).

As explained in the preamble to our revised regulations, the revision to our regulations was

intended to encompass protests, where, for example, the protest includes specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible.

67 Fed. Reg. 79,833-834 (2002).

We did not dismiss Southwestern Bell's protest because on its face it fell within this exception, inasmuch as this well-documented, detailed protest raised serious concerns that the contracting officer failed to consider relevant information bearing on Adelphia's record of integrity and business ethics, such that, if the allegations were true, it could not be said that the agency's affirmative determination of responsibility was reasonably based. The agency's dismissal request in response to the protest did not show that the agency gave any consideration to Adelphia's record of integrity and business ethics in making its responsibility determination.⁷

Contracts may only be awarded to responsible prospective contractors. FAR § 9.103(a). In making the responsibility determination, the contracting officer must determine, among other things, that the contractor has "a satisfactory record of integrity and business ethics." FAR § 9.104-1(d). "In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility." FAR § 9.103(b). Although the contracting officer is not required to explain the basis for his or her responsibility determination, "[d]ocuments and reports supporting a determination of responsibility or nonresponsibility . . . must be included in the contract file." FAR § 9.105-2(b).

The contracting officer, in his statement in response to the protest, states:

Because of the notoriety associated with Adelphia and its founders, [he] added various notes to block 23 (Remarks) of the SF-1403, Pre-Award Survey of Prospective Contractor, putting the DCMA Pre-Award Survey Monitor (PASM) on notice of the fact that [Adelphia's] parent company . . . had allegedly filed for bankruptcy protection, had allegedly been charged with fraud by the [SEC], was allegedly being audited by the Pennsylvania Attorney General, and that

⁷ As discussed below, as the case developed the record established that the agency did not reasonably consider Adelphia's record of integrity and business ethics in making its responsibility determination.

the Adelphia CEO had been indicted for alleged conspiracy and fraud by the US Attorney for Southern New York.

Contracting Officer's Statement at 2.

As noted above, DCMA performed a pre-award audit of Adelphia Business Solutions, Inc. and recommended "a complete award." Agency Report, Tab 14, Pre-Award Survey of Adelphia, at 2. However, the pre-award survey did not comment upon Adelphia's record of integrity and business ethics, or discuss in any way the indictments of members of the Rigas family or the charges brought by the SEC against Rigas family members and the parent company, Adelphia Communications Corporation. Nor has there been any information provided from or on behalf of DCMA that shows that DCMA considered the awardee's record of integrity and business ethics, as requested by the contracting officer. Based upon this record, there is no basis to conclude that DCMA reviewed the awardee's integrity and business ethics prior to recommending award.

In reply to the protester's comments detailing the problems relating to Adelphia's integrity and business ethics and his responsibility determination, the contracting officer contends that he was aware of Adelphia's alleged improprieties through "various media outlets" and the Internet. Contracting Officer's Affidavit at 2. It was apparently based upon his awareness of allegations against Adelphia that the contracting officer requested the pre-award survey, which, as noted above, did not address Adelphia's integrity and business ethics.⁸ The contracting officer also asserts that he spoke to two other government officials who apparently provided "no negative performance information" about Adelphia, although their agencies did "substantial business with them."⁹

The extent to which the contracting officer was aware of the allegations against Adelphia's principals and parent company is neither documented in the record nor explained by the agency. Nevertheless, we believe that the contracting officer's general recognition that there were allegations of misconduct concerning Adelphia is not alone sufficient to establish that the contracting officer reasonably assessed the awardee's record of integrity and business ethics. In fact, the contracting officer's

⁸ In his affidavit, the contracting officer notes "DCMA recommended complete award, corporate financial fraud allegations and bankruptcy notwithstanding." Contracting Officer's Affidavit at 2. This statement fails to recognize that DCMA did not address Adelphia's integrity and business ethics, even though this was requested by the contracting officer.

⁹ There is no documentation in the record of these two conversations or identification of what aspect of Adelphia's past performance was discussed or even what Adelphia entity was being discussed.

statements in response to the protester's comments suggest that he may not have known relevant facts concerning Adelphia's integrity and business ethics. That is, the contracting officer appears to argue that members of the Rigas family could not have any influence over Adelphia because these family members had resigned their positions as corporate officers and that "their status as stockholders was and is basically irrelevant."¹⁰ Contracting Officer's Affidavit at 2. However, significant evidence has been presented by the protester to show that Rigas family members continued (and continue today) to own a controlling interest in Adelphia due to their majority ownership of class B (voting interest) stock. Moreover, the record supports the protester's assertion that some amount of "debtor-in-possession" financing has been provided to the awardee by Adelphia Communications Corporation, the entity charged by the SEC with fraudulent conduct. Despite the apparent relevance of the potential control and influence of these Rigas family members and of Adelphia Communications Corporation, the record establishes that the contracting officer did not consider the extent of the Rigas family members' stock ownership in Adelphia, and what influence or control over the awardee this ownership interest accorded them. Also, the record indicates that the contracting officer did not consider, nor was he apparently aware of, the relationship between the awardee and Adelphia Business Solutions (doing business as TelCove).¹¹

Based upon this record, we find that the contracting officer simply assumed that Adelphia had an adequate record of integrity and business ethics. This assumption appears to have been based upon the award recommendation of the pre-award survey, which did not address in any way Adelphia's integrity or business ethics. In any event, the record does not establish that the contracting officer obtained sufficient information to decide, or for that matter even considered, Adelphia's record of integrity and business ethics. In the absence of any consideration of the involvement, control or influence of the indicted Rigas family members and Adelphia Communications Corporation in the awardee, the contracting officer's statements of general awareness of alleged misconduct on the part of the Rigas family members and Adelphia Communications Corporation is not sufficient to show that the

¹⁰ The contracting officer also admits in his affidavit that he did not know at the time of his responsibility decision that the Rigas family members had resigned their corporate offices, and only learned of their resignations in the protest submissions. See Contracting Officer's Affidavit at 2. We note that this statement appears inconsistent with the Air Force's legal argument that the contracting officer had determined before his responsibility determination that Rigas family members were no longer officers of the corporation. See Air Force Response to Protester's Comments at 5.

¹¹ The contracting officer's review apparently also did not consider which Adelphia entity was the offeror and awardee here, given the confusion in the record on this matter and the lack of comment by the contracting officer. See note 1 above.

contracting officer's affirmative determination of responsibility is reasonable. Compare Impresa Construzioni Geom. Domenico Garufi v. United States, 52 Fed. Cl. 421, 428 (2002) (agency failed to reasonably consider questions concerning an awardee's integrity and business ethics) with Verestar Gov't Servs. Group, supra (agency specifically and reasonably considered questions concerning the awardee's integrity and business ethics in making its responsibility determination).

Southwestern Bell also protests that Adelphia falsely certified that none of its principals had been indicted within the 3 prior years. The protester argues that, because of this misrepresentation, Adelphia should be found ineligible to receive award. The Air Force denies that any misrepresentation occurred.

However, as admitted by the intervenor, Adelphia "submitted a mistaken certificate that did not indicate that some of its shareholders had been indicted." See Intervenor's Reply to Protester's Comments, Aug. 20, 2003, at 5. That is, although Adelphia certified that none of its principals had been indicted within the identified time period, in fact three members of the Rigas family had been indicted. The term "principals" is defined to include officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity. See FAR § 52.209-5. Given that these stockholders owned the majority of the stock, Adelphia does not dispute that the indicted Rigas family members are owners and therefore principals whose indictments should have been disclosed.

In Universal Techs. Inc.; Spacecraft, Inc., B-248808.2 et al., Sept. 28, 1992, 92-2 CPD ¶ 212 at 13, we noted that where an offeror has made an intentional misrepresentation that materially influenced the agency's consideration of its proposal, a proposal should be disqualified and a contract award based upon the proposal canceled. In Universal, we found that an offeror's inaccurate completion of the same certificate that is at issue in this case did not disqualify the offeror there because it did not appear that the false certification was made in bad faith, nor did it materially influence the agency's affirmative determination of the offeror's responsibility. Id. at 15.

Here, it is not clear from the record what impact, if any, the false certification had upon the contracting officer in making his affirmative determination of Adelphia's responsibility. Nor is it clear that Adelphia intentionally misrepresented whether its principals had been indicted; in this regard, Adelphia asserts that it mistakenly believed that the "intent" of the certificate was to restrict the identification to those principals that had primary management or supervisory responsibility. See Intervenor's Reply to Protester's Comments at 5. Nevertheless, some of the contracting officer's statements suggest that the false certificate may have materially influenced the contracting officer. For example, the contracting officer in response to the protester's comments states that he "did not consider the Rigas family to be principals any longer" and that the "management of TelCove has completely changed." See Contracting Officer's Affidavit at 2. These statements reflect a

misreading of the definition of “principals” as well as confusion on the part of the contracting officer as to which Adelphia entity was making this certification. In any case, the record shows that the agency did not know of, much less consider, the inaccuracy of Adelphia’s certification or how this should affect that firm’s eligibility for award.

We recommend that the Air Force determine whether Adelphia’s incorrect certification renders that firm ineligible for award. If the agency determines that Adelphia is eligible to continue to compete for award, the Air Force should re-evaluate the firms’ proposals in accordance with the RFP’s past performance criterion, conduct further discussions (if necessary), make a new source selection decision, and, if Adelphia is selected for award, reasonably determine that firm’s responsibility. If Southwestern Bell is selected for award, the Air Force should terminate Adelphia’s contract and make award to Southwestern Bell, if otherwise appropriate. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1). The protester’s certified claim for costs, detailing the time spent and costs incurred, must be submitted to the Air Force within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel