



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Executive Security & Engineering Technologies, Incorporated

File: B-270518; B-270518.2; B-270518.3

Date: March 15, 1996

Cyrus E. Phillips IV, Esq., Kilcullen, Wilson, and Kilcullen, for the protester.
Donald G. Featherstun, Esq., and Grace Bateman, Esq., Seyfarth, Shaw,
Fairweather & Geraldson, for Security USA, an intervenor.
Michael F. Kiely, Esq., Department of Agriculture, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protester is not prejudiced such as to justify disturbing the award where even assuming the validity of its specific protest bases its technical score would remain significantly lower than that awarded the awardee's lowest-priced proposal.

DECISION

Executive Security & Engineering Technologies, Incorporated protests the award of a contract to Security USA under request for proposals (RFP) No. 00-95-R-16, issued by the Department of Agriculture for security guard services. Executive argues that the agency did not properly evaluate Executive's proposal and was biased against Executive.

We deny the protest.

The solicitation, issued as a small business set-aside, requested offerors to provide fixed hourly rates for unarmed security guards and supervisory guards for a 1-year base period with four 1-year option periods. Offers were to be evaluated against three technical factors: corporate background and experience; management and plan of operations; and quality control. There were three subfactors under management and plan of operations: proposed staff, management controls, and plan of operation.

Six offers were received. The price proposals were referred to the contracting specialist for evaluation and the technical proposals were referred to a technical evaluation panel (TEP) comprised of four members. Each of the four members individually evaluated each technical proposal by assigning a point score to each evaluation factor and a total score to the technical proposal. The consensus score

for each proposal was the average of the total scores reached by the four evaluators. Following the technical evaluation, Security was ranked first with a score of 93 points, and Executive, the incumbent contractor, was ranked fifth with a score of 63 points. Security also offered the lowest price, \$1,953,412.20; Executive offered the third low price, \$2,044,263.24. Award was made to Security on the basis of its highest technical score and lowest price. This protest followed.

Executive raises four arguments concerning the evaluation, however, prejudice is an essential element of every viable protest, and we will not disturb an agency's award decision even where the record reflects some minor error in the evaluation of proposals, so long as the error does not render the evaluation results unreasonable or prejudicially affect the protester. Mesa, Inc., B-254730, Jan. 10, 1994, 94-1 CPD ¶ 62. We find no reasonable possibility of prejudice here.

Executive first argues that, even though it included information in its proposal regarding its experience as the incumbent, three of the four evaluators improperly gave it no points for this experience. The record shows that Executive's proposal was downgraded in this area because, while it listed the incumbent contract, as well as others, it did not provide information regarding the estimated dollar value of the contracts, the estimated annual productive and supervisory hours provided, and other specifically requested information. Because of these informational deficiencies, most of the evaluators determined that they could not properly evaluate the proposal for corporate experience and background.

It does appear that the zero points assigned the proposal in this area by three evaluators was unwarranted given the proposal's reference to the firm's incumbent contract and the evaluators' apparent familiarity with that contract.¹ See generally J.M. Cashman, Inc., B-233773, Apr. 14, 1989, 89-1 CPD ¶ 380; G. Marine Diesel; Phillyship, B-232619; B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90. Nevertheless, some

¹Executive also appears to argue that by assigning zero points to its proposal the three evaluators essentially were performing an improper pass/fail, rather than a comparative evaluation of traditional responsibility matters. See Docusort, Inc., B-254852, Jan. 25, 1994, 94-1 CPD ¶ 38. This argument is without merit. "Comparative evaluation" means that competing proposals will be rated on a scale relative to each other. Advanced Resources Int'l, Inc.-Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348. The RFP provided for a best value evaluation based on the factors specified, and the record shows that the agency performed a comparative evaluation--as reflected by the numerical scores--under each factor, including corporate background and experience. Despite its receiving zero points from three evaluators, Executive's proposal was not rejected based on its low experience scores; it was merely downgraded for purposes of the ultimate comparison with other proposals.

downgrading of Executive's proposal was reasonable because an offeror has the burden of submitting an adequately written proposal, and its failure to provide required information properly may be taken into consideration in the evaluation. See Premier Cleaning Sys., Inc., B-255815, Apr. 6, 1994, 94-1 CPD ¶ 241. The one evaluator, whose scoring is not in issue, who was able to score Executive's proposal assigned it 10.72 points in this area. If the other three evaluators had assigned the same score (instead of zero points), Executive's total overall score (derived by adding points assigned by each of the four evaluators and dividing the total by four) would be increased by only 8.04 points.

Executive's second challenge is that the individual evaluators' scoring of Executive's proposal under grooming standards, maintenance of required report logs and records and correcting deficiencies in quality of performance, was inconsistent.² However, the record shows that Executive's score could have improved only an additional 1.25 points for grooming standards, and an additional 3.008 points for maintenance of required records and logs and correcting deficiencies in the quality of its performance for a total increase of 4.258 points, even assuming Executive contentions had merit.

Third, Executive claims that the agency applied undisclosed evaluation subfactors.³ However, Executive points to only one potential item it would have changed in its proposal had it been aware of the allegedly undisclosed subfactors—it would have provided more detail regarding its procedures for preventing, identifying, and correcting service deficiencies. Executive could have received only an additional 2.084 points for this subfactor.

Thus, assuming the validity of Executive's protest in the foregoing areas, the total number of points that could possibly be added to Executive's score would be 14.382 points, which would give Executive's proposal a total score of approximately 77 points. Since this score does not approach the 93 points awarded Security's

²We note that it is not unusual for evaluators to reach different conclusions and assign different scores when evaluating proposals, since both subjective and objective judgments are involved. Thus, the mere presence of such apparent inconsistencies is not a basis for disturbing an award. See Novel Pharmaceutical, Inc., B-255374, Feb. 24, 1994, 94-1 CPD ¶ 149.

³Executive also argues that the agency did not evaluate proposals in accordance with the source selection plan. In evaluating proposals, however, agencies are required to follow the evaluation scheme set out in the solicitation, not the internal evaluation plan. Mandex, Inc.; Tero Tek Int'l, Inc., B-241759 et al., Mar. 5, 1991, 91-1 CPD ¶ 244.

lower-priced proposal, we find no possibility of prejudice that would justify disturbing the award.

Fourth, noting that the solicitation required offerors to propose costs for a 12-month period, but the contract was awarded for only a 10-month base period, Executive protests that because contractors are responsible for vacation benefits for new hires after 12 months, the cost of performance for a 10-month contract is substantially lower than for a 12-month contract. Executive argues that because the agency did not provide offerors with the opportunity to submit revised price proposals, it could not make an accurate award decision.

Here too there is no basis for finding a reasonable possibility of competitive prejudice. Security's proposed price was \$90,851.04 lower than Executive's. To establish prejudice from being deprived of the opportunity to revise its price based on a 10-month contract period, Executive would have to show that it would have reduced its price sufficiently to offset both Security's price advantage and Security's substantial technical advantage. Executive has not made this showing. Specifically, while Executive argues that the cost for a 10-month contract would be substantially lower than for a 12-month contract, all offerors presumably would be able to reduce their prices for the same reason. Moreover, although Executive should know roughly by how much it would be able to reduce its price, it has not specified an amount, or asserted that any price impact would eliminate Security's more than \$90,000 price advantage, much less be great enough to offset Security's technical advantage. See Falcon Carriers, Inc., 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96.

Executive finally maintains that one of the evaluators was biased against Executive. To support this allegation, Executive has submitted statements by two of its employees asserting that a third employee told them that the contracting officer's representative, who was also an evaluator for this solicitation, told the employee that if she had anything to do with it, Executive would not be awarded the contract, and that she did not like Executive's supervisor or president.

Where a protester alleges bias on the part of a contracting official, the record must establish that the official intended to harm the protester, since government officials are presumed to act in good faith. See Docusort, Inc., *supra*. Furthermore, even where there is credible evidence of bias, the protester must demonstrate that the bias translated into action which unfairly affected the protester's competitive position; that is, the protester must demonstrate that the allegedly biased official exerted improper influence in the procurement on behalf of the awardee or against the protester. *Id.*

Executive has met neither burden. Unsupported, self-serving statements such as those on which Executive's allegations are founded generally are insufficient by themselves to establish agency bias. See W.R. Moore, Brokerage, B-245729.4,

July 27, 1992, 92-2 CPD ¶ 53. Executive itself acknowledges the weakness of its evidence in this regard, and the agency has submitted an affidavit from the allegedly biased employee in which she denies making the statements attributed to her. In any case, as there is no basis in the record to question the outcome of the proposal evaluation or the award decision, Executive has not demonstrated that any bias on the part of this employee was translated into improper action.

The protest is denied.

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