

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-206523

DATE: June 16, 1982

MATTER OF: Art Services and Publications,
Incorporated

DIGEST:

1. Composition of a technical evaluation panel is within the discretion of the contracting agency and will not be objected to in the absence of evidence of fraud, bias or conflict of interest.
2. Bias in evaluation of proposals will not be attributed to an evaluation panel on the basis of inference or supposition.
3. RFP provision for site visit to Government facilities was not applicable to this procurement. Moreover, visit to offerors' facilities was not provided for in RFP. Thus, agency failure to visit offerors' facilities did not violate RFP.
4. Award may be made without discussions where it can be clearly demonstrated from the existence of adequate competition that acceptance of the most favorable initial proposals without discussions will result in fair and reasonable prices provided the solicitation so advises.
5. Where record indicates that evaluation of protester's proposal was in accordance with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offerors' disagreement with evaluation is denied.
6. Protest questioning whether or not evaluation criteria state agency's actual needs and objecting to failure of request for proposals to include onsite visit of offerors' facility is untimely under 4 C.F.R. § 21.1(b)(1) where filed after the closing date for receipt of initial proposals.

Art Services and Publications, Incorporated (ASAP), protests the Department of Energy (DOE) award of contracts under request for proposals (RFP) DE-RP01-82AD66203. The contracts are to provide graphic arts and related services for the DOE Graphic Arts Office.

The RFP stated that a technical evaluation committee (TEC) would evaluate technical proposals according to the following evaluation criteria: criterion "A"--portfolio review; criterion "B"--performance; criterion "C"--key personnel; criterion "D"--equipment & facility.

The TEC determined ASAP's technical proposal was not acceptable. Five firms out of 12 offerors were found acceptable. The TEC further advised that, in its view, oral discussions or written comments would not improve the ratings of the offerors, and awards could be based on the initial proposals. The agency plans to make multiple awards on the basis of initial proposals.

ASAP questions the composition and objectivity of the TEC. ASAP also objects to the award of contracts without discussions, to the failure of DOE to make an onsite visit of offerors' facilities as stated in the RFP, and to DOE's evaluation of its proposals.

We dismiss the protest in part and deny the protest in part.

As to the composition of the TEC, ASAP suggests that the evaluators lacked prior experience in reviewing graphic art portfolios, that the evaluators were biased in favor of graphic art firms which worked primarily for the Washington, D.C., DOE office as opposed to the Germantown DOE facilities, and that allegedly one of the evaluators had professional associations with a potential awardee.

This Office has consistently held that the composition of a technical evaluation panel is within the discretion of the contracting agency, and we will not object to the panel makeup in the absence of evidence of fraud, bad faith, conflict of interest, or actual bias. Westec Services, Inc., B-204871, March 19, 1982, 82-1 CPD 257. DOE reports that the TEC members were highly competent and fully qualified to serve in such a capacity and that representatives of both the Germantown and Washington, D.C., graphics facilities were included on the TEC. Also, DOE advises that all members had professional associations

with both successful and unsuccessful offerors, and that all such associations were in the evaluators' professional capacity in DOE's graphics facilities. There is no evidence to indicate that any member of the TEC was not qualified or that any evaluator failed to exercise independent judgment in his or her evaluation of proposals.

We have repeatedly held that bias will not be attributed to procurement officials based on inference or supposition and, even where bias is shown, we will deny a protest if there is no indication that the bias adversely affected the protester's competitive standing. Earth Environmental Consultants, Inc., B-204866, January 19, 1982, 82-1 CFD 43.

We recognize that where subjective motivation of an agency's procurement personnel is being challenged, it may be difficult for the protester to establish on the written record--which forms the basis for our decisions--the existence of bias. Nevertheless, the protester has the burden of proving its case. Earth Environmental Consultants, Inc., supra. Since ASAP's allegation of bias is based on inference and speculation only, the firm has not met its burden of proof here.

ASAP also contends that the RFP required an onsite inspection of the offerors' facilities, which was not performed by DOE. ASAP simply misread the RFP. Section C.6 of the RFP sets forth the procedures for an onsite visit to agency facilities if section "A" indicated a site visit is planned. Section "A" did not indicate a site visit was planned. In any event, the site visit referred to involves a visit by the offerors to DOE facilities, not the DOE officials' visit to the offerors' facilities. To the extent that ASAP contends the RFP should have required visits to offerors' facilities, this is an alleged impropriety in the RFP which is untimely raised after the closing date for receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1981).

ASAP also contends that, had DOE held oral or written discussions, its technical proposal could have been improved to make ASAP an acceptably rated offeror. However, the RFP permitted award based on the initial proposals submitted, and award on this basis is not legally objectionable here.

We have held that award may be made without discussions where the record supports the existence of adequate competition so as to insure award at a fair and reasonable price

and where the solicitation advises offerors of the possibility the award might be made without discussions. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285; Westvold Associates, B-201032, May 6, 1981, 81-1 CPD 354. Here, RFP provision C-17 provided notice that award might be made without discussion, and the record indicates that the competition was adequate and that the contemplated multiple awards will result in fair and reasonable prices.

With regard to ASAP's contentions that its technical proposal was not evaluated fairly, we have held that it is the evaluators' function, not this Office's, to determine the relative merits of technical proposals, and they have considerable discretion in making that determination. Therefore, we will not question an agency's technical evaluation unless the protester shows the agency's judgment lacked a reasonable basis, was an abuse of discretion, or otherwise was in violation of procurement statutes or regulations. Centurion Films, Inc., supra; Earth Environmental Consultants, Inc., supra.

ASAP specifically challenges the evaluation of its portfolio samples. ASAP contends that although it received low ratings in the areas of cover design, mastheads, logo designs, color airbrush and halftone reproduction, these factors should not have been given as much weight in the evaluation as the features stressed in its oriented art samples.

In this connection, ASAP points to the appendix of deliverable samples and the pricing matrices which, in ASAP's view, indicated that production art products were most important to DOE. In addition, ASAP states it had performed graphics work for DOE for 7 years and had first-hand knowledge of the work required by DOE. Thus, ASAP apparently composed its portfolio based on its previous experience and an analysis of deliverable samples and pricing matrices rather than following criterion "A," which stated that samples in four categories (inking, rendering, mechanical art, and slide art) must demonstrate a broad spectrum of knowledge and abilities in all areas of graphic production and illustration.

ASAP's allegation that the portfolio areas in which it received a low evaluation should not have been given as much weight as portfolio areas where ASAP received higher ratings is without merit. The RFP did not indicate

that the technical evaluation of the portfolio would involve weighting of the different portfolio samples, or that heavier emphasis would be given to those which occur more frequently in the appendix exhibits or pricing matrices. Technical evaluation criterion "A" clearly advised offerors that "samples must demonstrate a broad spectrum of knowledge and abilities in all areas of graphic production and illustration." RFP figure 2 listed 52 factors for evaluating the portfolio. We also note that the pricing matrices and deliverable appendix are referenced and discussed in the pricing proposal section of the RFP, not the technical evaluation section. Under the circumstances, DOE's evaluation of the portfolio was in accordance with the stated criterion. We also note that the evaluation of sample artwork by its nature is an extremely subjective exercise. The fact that ASAP disagrees with DOE's judgment does not invalidate it. See Centurion Films, Inc., supra.

We note that to the extent ASAP is contending that the RFP portfolio requirements are defective because the RFP may not reflect DOE's actual needs, this allegation is untimely raised. Protests based upon alleged improprieties in an RFP which are apparent prior to the closing date for initial proposals must be filed prior to that closing date. 4 C.F.R. § 21(b)(1) (1981).

ASAP also alleges that DOE based its technical evaluation under criterion "B," history of performance, on conversations with only three of the 10 references listed and that, had DOE investigated all its references, ASAP would have been rated higher. As DOE points out, the RFP did not indicate that all 10 of the requested references would be investigated. The RFP required that 10 previous clients must be included in the short written narrative describing the company's past performance and that these previous clients might be contacted. DOE also advises, and the record indicates, that history of performance was not considered by the TEC as a weakness of the ASAP proposal. Thus, we deny this allegation.

ASAP also challenges DOE's finding that "the composition personnel was not in depth" under criterion "C," key personnel. ASAP argues that criterion "C" required one full-time compositor and ASAP met this requirement by offering one full-time compositor.

Criterion "C" advised that offerors were to submit resumes of key personnel "depicting their experience,

technical qualifications and the extent of their commitment to this project." Thus, the RFP indicated that resumes of key personnel were to be submitted and personnel qualifications, experience, and commitment to the project would be evaluated. The DOE TEC, in its judgment, based on the resume, found ASAP's offered compositor lacked depth of experience and ASAP has not shown this determination was arbitrary.

Under criterion "D," equipment and facility, ASAP objects to receiving a low rating because it did not possess certain equipment. ASAP also challenges the fact that expensive equipment and inexpensive equipment were weighted the same. Finally, ASAP argues that DOE failed to consider its offered workflow process.

Criterion "D" stated that equipment and facilities would be evaluated in accordance with figure IV, panel equipment and facility evaluation sheet. Two items on this sheet, black and white continuous tone print capability and color transparency capability, are specifically required in-house. ASAP admits it did not have those items in-house, but states it has ready access to photo studios with these capacities. Similarly, ASAP admits it did not have other equipment, but could have obtained the equipment in a week. Thus, ASAP concedes that it did not satisfy all the RFP requirements in this regard and, therefore, in our view, DOE's decision to reduce ASAP's score under this criterion is not objectionable.

Also, contrary to ASAP's contention, DOE advises that it did not weigh expensive and inexpensive items the same. The weighting formula was not available to the offerors; however, since all offerors were evaluated under the same weighting system, we do not find that ASAP was unfairly evaluated under this criterion. ASAP's low evaluation under this criterion was because of its failure to provide certain equipment.

We note that, contrary to ASAP's contention, limited composition was not listed as a weakness of ASAP's proposal under criterion "D" and, therefore, we need not address this issue.

DOE admits one evaluator inadvertently did not consider the workflow process required under criterion "D." However, since the TEC evaluator gave ASAP the second highest score

possible with regard to this criterion, the failure of one evaluator to score this one requirement would not have raised its overall score sufficiently to affect the award decision.

Our review of the technical evaluation, in light of ASAP's allegations, does not indicate that the evaluation of ASAP's proposal was improper or arbitrary.

We deny the protest in part and dismiss it in part.

for *Wm. D. W. Chase*
Comptroller General
of the United States