

DECISION

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

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FILE: B-215956**DATE:** September 4, 1984**MATTER OF:** Family Service of Burlington County**DIGEST:**

1. Solicitation provision reserving contracting agency's right to award more than one contract to cover its need for counseling services in a particular area permits, but does not require, that more than one contractor be selected.
2. Protester alleging bad faith on the part of the contracting officer must present virtually irrefutable proof that the contracting officer had a specific and malicious intent to harm the protester. Even where bias or bad faith is shown, GAO will deny a protest if there is no indication that it adversely affected the protester's competitive standing.

Family Service of Burlington County protests the Veterans Administration's (VA) decision not to award multiple contracts under request for proposals No. 642-77-83, to provide readjustment counseling services for Vietnam veterans in the Mount Holly-Pemberton, New Jersey area. The solicitation expressly reserved to the VA the right to award one or more contracts on the basis of its needs, and advised offerors that awards would be made in the same order as the evaluated ranking of proposals based on the evaluation criteria in the solicitation. The VA ultimately decided to award only one contract, to the highest-ranked offeror, Drenk Memorial Guidance Center (the protester submitted the only other proposal). Family Service argues that two awards are needed to assure the availability of readjustment services to veterans in the Mount Holly-Pemberton area, because the area is large and public transportation services are scarce. The protester also maintains that it was treated unfairly by the contracting officer.

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The protester has furnished copies of correspondence which establish the facts and set forth the VA's position. On the basis of these protest documents, we find that there is no legal merit to the protest, which we summarily deny.

The solicitation's provision reserving the VA the right to award one or more contracts operated to permit the VA to make more than one award if reasonably supportable on the basis of need; the provision in no event required the selection of more than one contractor. Since a single award thus was consistent with the solicitation, we summarily deny this aspect of the protest. See Jazco Corporation, B-193227, March 16, 1979, 79-1 CPD ¶ 186.

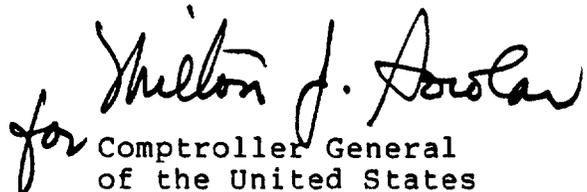
The protester's contention that the VA acted in bad faith in dealing with Family Service is based on an alleged pattern of incorrect information from the contracting officer. The protester alleges that during the evaluation process, the contracting officer informed Family Service that the firm would receive an award if it agreed to a delay in the process. The protester further complains that the contracting agency reported, in response to an inquiry on Family Service's behalf, that it never received a protest that Family Service had filed with the contracting officer, although the VA later reported finding the protest.

Initially, we note the protester correctly does not contend that the contracting officer's alleged promise created a contract or should operate to prevent the government from rejecting its proposal. The acceptance of a prospective contractor's offer by the government must be clear and unconditional; it must appear that both parties intended to make a binding agreement at the time of the purported acceptance. Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD ¶ 167. That clearly is not the case here, since the alleged promise was to award a contract in the future if Family Service agreed to a delay in the procurement process. Moreover, even if the promise was made, which the contracting agency denies, the government cannot be estopped from denying a contract unless, among other things, the offeror relies on the promise to its injury, see Stauffer Construction Co., Inc., B-187026, Nov. 3, 1976, 76-2 CPD ¶ 379, another circumstance not present here.

A protester bears a heavy burden to show bad faith by contracting officials, and must submit virtually irrefutable proof that the officials had a specific and malicious intent to harm the protester. See Syosset Laboratories, Inc., B-212139, Sept. 23, 1983, 83-2 CPD ¶ 369. Family Service has not met its burden of proof. As stated above, the VA denies Family Service ever was promised a contract, and while the VA may have been wrong in responding initially to the inquiry on the protester's behalf, the agency later corrected its error. Further, even if Family Service had been assured a contract, the protester merely infers from the rejection of its proposal and the temporary mislaying of its protest that the contracting officer had a specific motive to harm it. Contracting officials are presumed to act in good faith, and we will not attribute prejudicial motives to them on the basis of inference or supposition. See Eaton-Kenway, B-212575.2, June 20, 1984, 84-1 CPD ¶ 649.

In any event, we fail to see how the protester was harmed. The firm does not contend that the VA failed to comply with the solicitation's evaluation criteria and applicable procurement law in selecting a contractor, or that it would be entitled to an award except as a second selected contractor. In this regard, we have held that even if bias or bad faith is shown, we will deny a protest if there is no indication that it adversely affected the protester's competitive standing. See Ensign-Bickford Company, B-211790, April 18, 1984, 84-1 CPD ¶ 439.

The protest is summarily denied.

for 
Comptroller General
of the United States