

Ayer



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Jordan-Delaurenti, Inc.

File: B-222576

Date: July 22, 1986

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## DIGEST

1. Protest that contracting agency improperly disclosed information in protester's quotation to its competitor before award is denied where it is not established that information was proprietary and only evidence of disclosure is protester's speculation.
2. Protest alleging contracting agency prejudice against firms in the Small Business Act's section 8(a) program is denied where protester fails to establish possible fraud, bad faith or violation of regulation, since absent such a showing GAO will not review agency decisions not to contract under the section 8(a) program.
3. GAO dismisses protest alleging that contracting agency treated quoters unequally when it advised awardee of intended award before notifying protester, since failure to give similarly prompt notice of award is merely a procedural deficiency that does not affect the validity of the otherwise valid award.

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## DECISION

Jordan-Delaurenti, Inc. (J-DL), protests the award of a contract to Conventions, Etc. (CE), by the Department of Health and Human Services (HHS) under request for quotations (RFQ) No. HHS-DAS-86-12 for conference planning and management services. J-DL contends that HHS improperly disclosed information in J-DL's quotation to its competitor before award; that, HHS is prejudiced against firms that are in the subcontracting program for socially and economically disadvantaged small businesses established pursuant to section 8(a) of the Small Business Act; and, that HHS treated quoters unequally with regard to notice of award.

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

The RFQ, which was set aside for small businesses was issued pursuant to small purchase procedures. Under those procedures, an agency obtains quotations from a reasonable number of potential sources, judges the

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merit of each quotation in relation to the price quoted, and selects the quotation that will best meet the needs of the government. See Le Prix Electrical Distributors, Ltd., B-213303, June 18, 1984, 84-1 C.P.D. ¶ 634.

The RFQ sought seven services (space location/reservation, communication with participants, agenda preparation, message service, food service, conference packets, and registration). Quoters were to submit plans for providing the required services as well as statements of company/staff qualifications and experience. The RFQ stated that technical merit and price would have equal weight in the evaluation, and reserved to the government the right to make an award without discussions.

HHS received five quotations, and found J-DL's and CE's quotations clearly superior to the others. J-DL named a downtown hotel in its quotation, the Dallas Sheraton. CE named a hotel that we understand is 10 minutes drive north of the downtown area, the Colony Parke. On May 2, 1986, HHS awarded the contract, without discussions, to CE because CE offered better staffing at a slightly lower price (\$3,275 vs. \$3,336).

HHS admits telling CE, on May 1, of its intent to award CE the contract. At that time HHS told CE that it desired a downtown hotel if prices were comparable. HHS notified the unsuccessful quoters of the award on May 2.

The protester's contention that HHS improperly disclosed information from J-DL's quotation to its competitor grows out of an alleged April 30 telephone conversation between CE and a Dallas Sheraton Hotel employee, which J-DL says it learned of on May 1, when the hotel called back to ask if J-DL would release its reservation. J-DL claims that CE asked the employee about the same space that J-DL had already reserved for the conference.

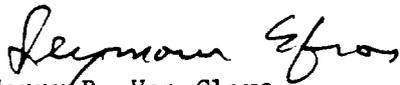
HHS admits that CE made inquiries at several downtown facilities, including the Sheraton Hotel, following HHS's request. HHS points out, however, that the RFQ did not require offerors to name a location for the conference in their quotations, and that the agency's evaluation of the quotations did not consider proposed conference sites.

We agree with HHS that this record fails to establish an improper disclosure by the agency. J-DL has not shown either that the existence of conference facilities at the Sheraton was proprietary information or that HHS told CE to contact the Sheraton. The record contains only J-DL's speculation based on its interpretation of uncorroborated hearsay evidence. We therefore find no legal basis to support J-DL's contention that HHS improperly disclosed information from the firm's quotation to a competitor. Further, in the small purchase context of this procurement, and since the proposed conference site was not part of the evaluation of quotations, we find no impropriety in HHS directing CE to begin considering possible sites in the downtown area as soon as HHS had identified CE as the awardee.

J-DL's allegation of HHS prejudice against section 8(a) firms also is unsupported by the record. J-DL's contention consists of a reference to previous unsatisfactory procurement experiences with HHS and a general claim that HHS's Region 6 never uses section 8(a) procedures to award contracts. We do not review decisions not to contract under the section 8(a) program unless there is a showing of possible fraud or bad faith on the part of contracting officials or that specific regulations have been violated. Splendid Dry Cleaners, B-220141.2, Dec. 24, 1985, 85-2 C.P.D. ¶ 711. Moreover, we will not attribute improper motives to contracting officials from inference or supposition, since the protester has the burden of proving its case. Business Communications Systems, Inc., B-218619, July 29, 1985, 85-2 C.P.D. ¶ 103.

Finally, J-DL alleges unequal treatment of quoters by HHS because HHS told CE about its intent to award CE the contract 1 day before it told J-DL. We need not consider the merits of this allegation, since a contracting agency's failure to give equally prompt notice of award is a procedural deficiency that does not affect the validity of an otherwise proper award. Auchter Industries, B-216841, Nov. 30, 1984, 84-2 C.P.D. ¶ 593.

The protest is denied in part and dismissed in part.

*for*   
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General Counsel