



**The Comptroller General
of the United States**

Washington, D.C. 20548

Pietraite

Decision

Matter of: Western States Management Services, Inc.

File: B-231545.3

Date: March 27, 1989

DIGEST

1. Protest that procuring agency intends to modify contract to include requirement for operation of newly constructed dining facility that should have been included in the competition for that contract is denied where at the time of award agency did not know when construction of facility would be completed and agency is now operating facility with government employees.

2. Protest that agency was biased against protester in its evaluation of proposals is denied where protester does not show that evaluation of its proposal was unreasonable but merely speculates that members of proposal evaluation review committee were biased because of an earlier contract dispute.

DECISION

Western States Management Services, Inc., protests the award of a contract to Diversified Contract Services, Inc., under request for proposals (RFP) No. F26600-88-R0050, issued by the Department of the Air Force for food services. Western argues that the Air Force intends to modify Diversified's contract to include the performance of services for a new dining facility which was not included in the RFP statement of work and that the Air Force was biased against Western in the evaluation of proposals.

We deny the protest.

The RFP sought proposals for the performance of mess attendant services at three dining facilities at Nellis Air Force Base for 1 basic and 4 option years. The RFP provided that award would be made to the offeror whose proposal was the most advantageous to the government, price and other factors considered.

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Of 33 proposals received in response to the RFP, 10 offers, including those of Western and Diversified, were found to be in the competitive range. Discussions were conducted and best and final offers requested. As a result of its evaluation of revised proposals, the Air Force determined that Diversified's offer of \$7,673,731 was the most advantageous to the government, while Western's offer of \$9,634,519 was ranked last of the 10 offers in the competitive range. The Air Force awarded a contract to Diversified on November 21, 1988.

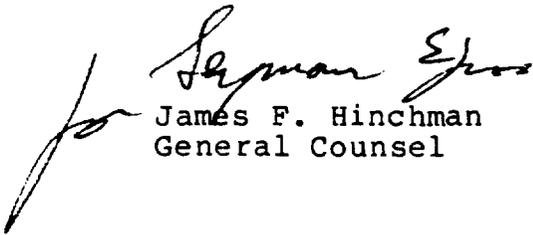
As a preliminary matter, Western argues that the Air Force improperly failed to withhold award of the contract as required by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c)(1) (Supp. IV 1986), where a protest is filed before award. Western's protest, however, was not filed prior to award. While its protest letter is dated November 18, Western's protest was filed in our Office on November 23, 2 days after the Air Force had made award. The Air Force, however, in accordance with CICA, 31 U.S.C. § 3553(d)(1), has suspended contract performance pending our resolution of the protest.

Western's first protest contention is that the Air Force intends to improperly modify Diversified's contract to include the performance of food services at a newly constructed dining facility. Western contends that the Air Force knew that construction of this facility would be completed by contract award and, therefore, that this facility should have been included in the RFP statement of work. The Air Force responds that at the time of contract award it did not know when construction would be completed and therefore determined that the facility would not be considered "in this particular solicitation." Moreover, the Air Force has informed us that the new dining facility is now open and is staffed by civilian government employees. Accordingly, on this record, we do not find any support for Western's contention.

Western also argues that the Air Force was biased against it in the evaluation of proposals. Western states that it presently has a contract dispute claim pending before the Armed Services Board of Contract Appeals seeking the award of \$300,000 for extra food services that Western, as the prior contractor, allegedly performed at Nellis Air Force Base. The protester contends that some members of the technical evaluation committee had served as supervisors of its performance under the prior contract and may be biased.

A protester bears a heavy burden of showing bad faith or bias by contracting officials. NDI Engineering Co., B-228207, Jan. 26, 1988, 88-1 CPD ¶ 73. A protester alleging bias in an agency's evaluation of its proposal must offer proof not only that agency officials were biased against it, but also that this bias was translated into action that unfairly affected the protester's competitive position. Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43. The protester does not meet its burden here. We have reviewed Western's and Diversified's proposals and the agency's technical evaluation and cannot conclude that the evaluation was unreasonable. Furthermore, Western has failed to direct us to any specific area where the Air Force's evaluation of its proposal was unreasonable; Western simply states that members of the technical evaluation committee supervised its prior contract work and are biased against it because Western filed a contract dispute claim. We will not attribute bias to procurement officials based on inference or supposition. Seville Management Corp., B-225845, Mar. 18, 1987, 87-1 CPD ¶ 308. In this regard, we note that none of the individuals, whom Winston identified as being on the review committee and being biased against it, served on the review committee that evaluated Winston's proposal.

The protest is denied.


James F. Hinchman
General Counsel