



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: FRC International Inc.
File: B-244299
Date: October 1, 1991

Joseph D. Dunne for the protester.
Ken Marsden for Fire Combat, an interested party.
Frank Ledford, Jr., Esq., and Michael G. Winchell, Esq.,
United States Marine Corps, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest that improper actions by the contracting agency
evidence bias in favor of the proposed awardee is denied where
the record shows that alleged improper actions were unobjec-
tionable or did not occur, and contains no other evidence of
bias on agency's part.

DECISION

FRC International Inc. protests the proposed award of a
contract to Fire Combat under U.S. Marine Corps request for
proposals (RFP) No. M67004-91-R-0011, issued as a total small
business set-aside for 475 fire extinguishers. FRC contends,
in essence, that the Marine Corps was biased in favor of Fire
Combat, the previous sole-source contractor for this
requirement.

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

Fire Combat previously furnished this identical item to the
Marine Corps under a sole-source contract during Operation
Desert Storm in the Middle East. After the cessation of
hostilities, the Corps decided to obtain additional fire
extinguishers through the use of negotiated procedures.
Accordingly, on March 28, 1991, the Corps issued this RFP,
which provided for award to the responsible offeror whose
offer, conforming to the solicitation, will be most advanta-
geous to the government, price and other factors considered.
The RFP also notified offerors that the agency intended to
make award on the basis of initial offers, although it
reserved the right to hold discussions if deemed necessary.

The agency received three proposals by the April 29 closing date. Fire Combat's offer was the lowest priced at \$4,701,550, and FRC's was the next lowest at \$5,189,375. On May 3, the agency requested a preaward survey on Fire Combat. The agency received an informal recommendation of award before receiving the formal survey report, and notified offerors on May 16 of its intent to make award to Fire Combat based on the firm's initial price, which the agency determined was reasonable. FRC initially challenged the intended award in a protest to the agency. After denial of that protest, FRC filed this protest with our Office.

FRC argues on several grounds that the agency acted improperly in making its award decision, and that these alleged improprieties evidence bias in favor of Fire Combat. Specifically, FRC argues that the agency improperly held discussions only with Fire Combat and made its award decision before receiving the formal preaward survey report. FRC also cites in support of its bias claim the fact that the agency made award at the beginning of the 60-day acceptance period and the "sudden and dramatic" reduction in Fire Combat's price here compared to its sole-source contract price. Again, FRC concludes that these actions and facts indicate a predisposition by the agency to select Fire Combat for award.

These arguments are without merit. First, since an agency is not required to conduct a preaward survey prior to finding a prospective contractor responsible, Charl Indus. Inc.-- Recon., B-236928.2, Feb. 6, 1990, 90-1 CPD ¶ 155, the failure to withhold an award decision pending receipt of a preaward survey report is not in itself improper. Automated Data Mgmt., Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229. Moreover, given the agency's total discretion in ordering a survey, it follows that there is nothing inherently indicative of bias in an agency's decision to proceed with award without receiving the preaward survey report; this is particularly the case where, as here, the agency proceeded after being advised informally that the survey results were favorable.

Second, FRC's contention that the Corps improperly held discussions with Fire Combat is baseless. The record shows that, after evaluating the initial proposals and finding Fire Combat's low-priced offer acceptable, the Corps decided to make award to Fire Combat based on its initial proposal without holding discussions with any offerors and without requesting best and final offers from any firm. It appears FRC's argument may have arisen out of a February 14, 1991, letter from the Corps denying the protest of another firm, Flag Fire Inc., which questioned the discussions in connection with Fire Combat's previous sole-source award (contract No. N67004-91-C-0033). The agency's actions under that procurement are irrelevant to the propriety of the award here.

FRC maintains that making the award decision at the beginning of the acceptance period shows that the agency did not even intend to consider offers from other firms. An award may be made any time within an acceptance period, however, and an award early in that period in no way evidences bias in favor of FRC. Further, it is not evident to us, and FRC does not explain, how the reduction in Fire Combat's price compared to its prior sole-source contract price evidences any impropriety on that firm's, or the Corps's, part; it is not improper for a firm to offer to furnish an item at different prices under different contracts.

The protester seems to object that Fire Combat had an unfair competitive advantage as the previous sole-source contractor for the fire extinguishers. We find no basis for this argument. There is no indication that Fire Combat received preferential treatment due to its prior contract or otherwise and, moreover, it is not apparent to us how such an advantage could arise in a competition for a fixed-price supply contract. In any case, the government is under no obligation to eliminate an advantage a firm may enjoy because of its particular circumstances where, as here, the advantage did not result from improper preferential treatment by the government. Bautech, Inc., B-232766, Jan. 25, 1989, 89-1 CPD ¶ 78.

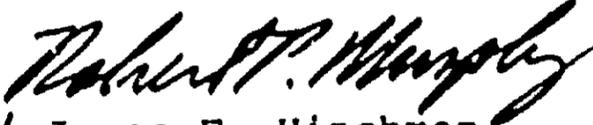
In sum, we find no improper action or bias on the agency's part. In this latter regard, we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. A protester must produce credible evidence showing bias, and must demonstrate that the bias translated into agency action which unfairly affected the protester's competitive position. Facilities Eng'g & Maintenance Corp., B-233974, Mar. 14, 1989, 89-1 CPD ¶ 270. FRC clearly has not met this standard.

Finally, FRC argues that the solicitation was deficient because it failed to contain a first article testing requirement and because the agency should have used sealed bidding rather than negotiated procedures. Our Regulations require that protests based upon alleged improprieties in the solicitation be filed before the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991). Since FRC raised these issues on July 18, well after the April 29 closing date, they are untimely and will not be considered. See Campbell Eng'g, Inc., B-231126, Aug. 11, 1988, 88-2 CPD ¶ 136.

FRC requests that we investigate the agency's actions in this procurement. Our Office does not conduct investigations pursuant to our bid protest function to establish the validity

of a protester's allegations. Key Book Serv., Inc., B-226775,
Apr. 29, 1987, 87-1 CPD ¶ 454.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel