



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

Decision

Matter of: Technology Vectors Incorporated
File: B-252518.2
Date: June 6, 1994

James M. Stewart for the protester,
Jesse W. Rigby, Esq., Clark, Partington, Hart, Larry, Bond,
Stackhouse & Stone, for Aquasis Services, Inc., an
interested party.
Timothy A. Beyland, Department of the Air Force, for the
agency.
Jacqueline Maeder, Esq., and Mary G. Curcio, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Where protester contends that contracting officials were motivated by bias, it must submit convincing proof that the agency directed its actions with the intent to hurt the protester; mere inference and supposition is insufficient to prove its claim.
2. Where request for proposals provided for award to the offeror whose proposal is most advantageous to the government, contracting agency properly made price/technical tradeoff in awarding to higher-priced, higher technically rated offeror, since record shows tradeoff was reasonably based on awardee's superior rating.

DECISION

Technology Vectors Incorporated protests the award of a contract to Aquasis Services, Inc. under request for proposals (RFP) No. F28609-93-RA-005, issued by the Department of the Air Force for air transportation (gateway) services at Philadelphia International Airport. Technology Vectors contends that the evaluation of its proposal was tainted by agency bias and that it was entitled to award on the basis of its lower-priced, acceptable proposal.

We deny the protest.

The solicitation contemplated the award of a fixed-price-award-fee contract for a 10-month base period with three 1-year options to provide air transportation/commercial

gateway services. The solicitation provided for award to be made to the responsible offeror whose proposal was most advantageous to the government based upon the application of evaluation factors for technical/management and price, with the technical/management factor described as more important than the price factor.

The Air Force received six proposals in response to the solicitation. The proposals were evaluated by a Source selection evaluation team (SSET), which included a technical evaluation team and a contracting team. The technical evaluation team evaluated the technical/management proposals under the following six subfactors that were equal in importance: (1) statement of work requirements, (2) offeror qualifications, (3) data management, (4) staffing and personnel, (5) quality control procedures, and (6) support approach. The contracting team was responsible for conducting the cost/price analysis and determining the price reasonableness of each offer. The contracting officer, as chair of the SSET, participated in the cost/price analysis, reviewed the technical evaluation team report to ensure that the evaluations were thorough, and ensured that the source selection process complied with applicable regulations.

Five proposals, including those received from Technology Vectors and Aquasis, were included in the competitive range. After best and final offers (BAFO) were submitted and evaluated, Technology Vectors' BAFO was rated acceptable and ranked third in technical merit; Aquasis's BAFO was rated exceptional and ranked first in technical merit.¹ While the technical evaluation team rated Technology Vectors' proposal acceptable, the team found significant weaknesses in Technology Vectors' proposal, including poor accounting procedures, and a lack of emphasis on customer service and border clearance. In contrast, the evaluators found that Aquasis presented an outstanding training program and organizational management outline and well-defined lines of responsibility and authority. Aquasis also emphasized customer service and continuous quality performance through task coverage and feedback. Concerning cost, Technology Vectors submitted the lowest cost proposal and Aquasis submitted the third-low proposal. Both offerors' cost proposals were considered reasonable. The source selection official reviewed the evaluation documentation and determined that an award to Aquasis was worth the additional cost. This protest followed.

¹The adjectival rating scheme included four ratings: exceptional, acceptable, marginal, and unacceptable.

Technology Vectors protests that the contracting officer was biased against it as a result of disputes that occurred with Technology Vectors concerning claims that were submitted by the firm under the Contract Disputes Act of 1978 during the performance of a prior contract. The protester alleges that bias is demonstrated because its claims have not been resolved and the contracting officer has used intimidation and threats in an attempt to resolve the claims. Additionally, Technology Vectors contends that agency personnel improperly contacted the protester to ask if Technology Vectors would file a protest if it were not awarded a contract under this solicitation. The protester argues that, as part of the contracting team, the contracting officer had numerous occasions to express her position regarding Technology Vectors and must have negatively influenced the evaluation team. The protester does not protest any specific aspects of its evaluation or rebut the agency's statements regarding the weaknesses in its proposal.

In response, the agency denies any bias on the part of contracting personnel, pointing out that the protester offers no support for its allegations and that the contracting officer accused of bias did not participate in the technical assessment of the proposals. The agency also denies that agency personnel contacted the protester to question it regarding its intent to file a protest if the firm were not awarded the contract.

When a protester alleges bias on the part of an evaluation official, the record must establish that the contracting official intended to harm the protester since government officials are presumed to act in good faith. Charles Trimble Co., B-250570, Jan. 28, 1993, 93-1 CPD ¶ 77. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Ameriko Maintenance Co., B-253274; B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121. Furthermore, in addition to producing credible evidence showing bias, the protester must demonstrate that the agency bias translated into action which unfairly affected the protester's competitive position. Id. That is, the protester must demonstrate that the allegedly biased official exerted improper influence in the procurement on behalf of the awardee or against the protester. E.J. Richardson Assocs., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185.

There is no evidence in the record of any bias against Technology Vectors or in favor of any other offeror. While Technology Vectors states that it submitted a sworn statement concerning the awardee's access to agency documents and that, upon request, it will submit to our Office documents or sworn statements to support its protest,

no sworn statement or other supporting documentation was submitted.² What remains is a mere inference of bias based on the protester's past and continuing disputes with the contracting officer regarding claims submitted under an earlier contract. Despite the protester's assertion however, that "these matters are relevant to this protest since they establish the relationship which the [c]ontracting [o]fficer continued to maintain with th's [c]ontractor," each procurement stands on its own and the fact that the contractor and agency personnel may have disagreed under the particular circumstances of another procurement does not establish--without additional evidence--bias on the part of the contracting officer in the procurement here. Moreover, as noted above, the contracting officer did not evaluate the technical merit of the proposals; she only participated in the cost analysis and reviewed the evaluation report. In fact, the record shows that because of her review of the technical evaluation results, Technology Vectors' scores on two of the six subfactors were revised upward and the protester's overall rating was revised from marginal to acceptable. Since there is no evidence of bias and Technology Vectors has not shown that the evaluation was flawed, Monarch Enters., Inc., B-233303 et al., Mar. 2, 1989, 89-1 CPD ¶ 222.

Technology Vectors also alleges that because it is the low-priced offeror it should have been awarded the contract. This allegation is without merit. In a negotiated procurement, the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative award factor. Miller Bldg. Corp., B-245488, Jan. 3, 1992, 92-1 CPD ¶ 21. Since the RFP here stated that award would be made to the offeror whose proposal was determined to be most advantageous to the government, considering price and other factors, the agency had the discretion to determine whether the technical advantages associated with Aquasis's proposal was worth its higher price. Our Office will not object to that determination if the agency reasonably determined that the

²Under our Bid Protest Regulations, 4 C.F.R. § 21.1(a)(4) (1994), parties to the protest have an affirmative duty to submit all information and documents available during the course of the protest; the failure to provide relevant documents undermines the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of parties' arguments on a fully developed record. See ABA Indus., Inc.; Department of the Air Force; Dexter Tool Co.--Recon., B-250186.2 et al., June 2, 1993, 93-1 CPD ¶ 415.

price premium involved is justified by the technical superiority of the proposal. Ameriko Maintenance Co., supra.

While Technology Vectors states that Aquasis is less qualified than it to perform the contract, Technology Vectors does not specifically challenge the superior rating that Aquasis's proposal received and the record provides no basis for questioning the agency's determination of the technical superiority of Aquasis's proposal. Indeed, while the agency found that Technology Vectors' and Aquasis's proposals demonstrated that both firms could perform the work required, it also concluded that the awardee proposed a superior quality control program and transition and training plans. In addition, Aquasis provided a strong, detailed statement of work addressing all contract requirements and emphasizing customer service and improvement of any service deficiencies, an outstanding organizational management outline, and a clear plan for the assignment of personnel. Technology Vectors, on the other hand, submitted a proposal with poor accounting procedures and a lack of emphasis on customer service and border clearance. Based on these factors, which were more important than price, the agency reasonably could conclude that Aquasis's proposal was worth the additional cost. Accordingly, award on the basis of Aquasis's higher-priced, technically superior offer was reasonable.

The protest is denied.


for Robert P. Murphy
Acting General Counsel