



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: DeLima Associates

File: B-258278.2

Date: December 20, 1994

Henry DeLima for the protester,
Mike Colvin, Department of Health & Human Services, for
the agency,
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Protest that contracting agency improperly evaluated protester's technical proposal is denied where evaluation was reasonable and consistent with the evaluation criteria, and the record shows no evidence of agency bias toward the firm.
2. Where proposals are essentially equal technically, cost properly may become the determining factor in making an award decision under evaluation criteria which assigned cost less importance than technical considerations.

DECISION

DeLima Associates protests the award of a contract to Cygnus Corporation, Inc. under request for proposals (RFP) No. 200-94-0844(P), issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), for editorial support services at the National Center for Chronic Disease Prevention and Health Promotion. DeLima Associates primarily argues that the agency improperly evaluated its technical proposal.

We deny the protest.

The solicitation, issued on May 25, 1994, as a small business set-aside, contemplated the award of a cost-plus-fixed-fee contract for the provision of the necessary supplies and services required to develop, write, and edit publications and other communication materials that focus on chronic disease prevention, health promotion, and health education over a 3-year performance period. The solicitation instructed prospective offerors that paramount consideration would be given to technical proposals rather than to cost, and listed six technical factors to be

considered, among them, "samples of relevant work." These technical factors were worth a total of 100 points.

The agency received 19 proposals by the June 7 closing date, and the technical evaluation panel (TEP) evaluated the technical proposals and established a competitive range of four offerors, including DeLima. Both the TEP and the cost advisory activity evaluated the cost proposals of these four offerors. Discussions were conducted by telephone on August 15, and best and final offers (BAFOs) were submitted and evaluated, with the following relevant results:

	<u>Technical</u>	<u>Cost</u>
Company A	93.25	\$3,416,725.18
DeLima	93.00	3,582,137.00
Cygnus	93.00	2,650,618.00

The contracting officer accepted all three cost proposals as reasonable for completion of the work expected to be performed under the contract, and determined that all three proposals were technically superior and technically equal. Award was made to Cygnus, the offeror submitting the lowest-cost offer, and this protest followed.

A substantial portion of DeLima's protest is devoted to its contention that CDC's evaluation of its proposal was tainted by bias and by what it asserts to be a "pattern of retaliation" against the firm for initiating a congressional inquiry into the manner in which a previous contract with CDC was ended. The protester lists several CDC actions taken with respect to previous solicitations which it asserts evidence bias against the firm. In response, the agency points out that DeLima has presented no evidence of this alleged bias, and further notes that different contracting personnel were involved with these previous solicitations than were involved with the instant procurement.

When a protester alleges bias on the part of an evaluation official, the record must establish that the official acted with specific intent 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. Further, in addition to producing credible evidence showing bias, the protester must

The proposal submitted by the fourth offeror within the competitive range was rated significantly lower.

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 DeLima or in favor of any other offeror. With respect to this procurement, DeLima complains that the CDC's decision not to offer this acquisition as a section 8(a) set-aside represents bias against the firm. In its report, the agency provided a complete explanation of this decision, which the protester does not dispute. The agency determination to set aside the procurement, by itself, does not constitute any evidence of bias against an 8(a) contractor. PeopleWorks, Inc., B-257296, Sept. 2, 1994, 94-2 ¶ 89. DeLima's further recitation of what it claims to be facts that "clearly indicate CDC's intention to injure" the firm, amounts to mere inference of bias based on the protester's past and continuing disputes with the contracting agency concerning whether section 8(a) contracts for particular services would be issued to DeLima. As already noted, such decisions are not evidence of bias. *Id.* Further, 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. Technology Vectors Inc., B-252518.2, June 6, 1994, 94-1 CPD ¶ 345. In this instance, DeLima's proposal received a very high technical score, and the evaluation documents do not reflect any bias against the protester. In short, the record provides no credible evidence of bias.

The remainder of DeLima's protest of the evaluation of its technical proposal concerns areas in which it was downgraded, primarily under the "samples of relevant work" factor.

In reviewing an agency's evaluation of proposals, our Office will only question the agency's evaluation where it lacks a reasonable basis or is inconsistent with the stated evaluation criteria for award. DAE Corp., Ltd., B-257185,

²DeLima also argues that the CDC made an error in computing its final score for the BAFO by neglecting to average in the fifth TEP member's score. However, the record shows that, during the evaluation of BAFOs, there were only four TEP members; the final score for all four offerors was the average of these four scores.

Sept. 6, 1994, 94-2 CPD ¶ 95. A protester's mere disagreement with the agency over its technical evaluation does not establish that the evaluation was unreasonable, Horizon Trading Co., Inc.; Drexel Heritage Furnishings, Inc., B-231177; B-231177.2, July 26, 1988, 88-2 CPD ¶ 86. Our review of the record shows that the agency's evaluation here was reasonable and consistent with the evaluation criteria.

First, DeLima's argument that the agency improperly downgraded its proposal due to concerns regarding the time-zone difference between the firm's California offices and the agency's Georgia offices is factually misplaced. The record shows that no points related to this concern were deducted from DeLima's proposal during the initial evaluation. While the TEP asked DeLima, during discussions, to assure it that the time-zone difference would not present a problem, the record shows that DeLima's response to this concern sufficiently reassured the TEP as to result in no points being deducted for this issue in evaluation of DeLima's BAFO. DeLima's assertion that "since the question was asked, it must have been factored into" DeLima's technical score is contradicted by the record.

Second, under the "samples of relevant work" factor, while the TEP believed that DeLima had demonstrated experience in editing and producing materials of a highly technical nature, during discussions, it asked the firm to demonstrate its expertise and comfort in dealing with health-related materials for an essentially nontechnical audience. After evaluating the samples provided by DeLima in response to this question, three of the four TEP members still had concerns. Overall, one point was deducted because DeLima's samples did not relate to public health, and one point was deducted due to concerns about DeLima's supervisory-level expertise in health-related editing and writing.

DeLima argues that its samples were health related.³ While our review of these samples shows that at least some of them are related in some way to health, the record is not clear exactly what the TEP meant by "public health." However, even if that additional point were factored into DeLima's final score, raising it to 93.25, the results would be the same, as all offerors were considered to be technically equal and it is implausible that an increase of one-quarter

³ DeLima does not specifically challenge the second deduction, and we have no basis to find it unreasonable. In addition, DeLima argues that the CDC penalized the firm for not providing enough samples related to a specific topic. However, our review of the record shows that this allegation is without factual basis.

of a point would have affected this assessment. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Third, the TEP asked DeLima to provide samples of "marked" hard copy to show the firm's ability to perform substantive editing--"more than just copyediting." The TEP reviewed the submitted samples and judged that they demonstrated a lack of proficiency in the level of substantive editing required for the contract. The TEP noted that the biomedical writing generated by the agency would require the contractor to encounter "obtuse, information-laden sentences that . . . require careful revision and rewriting." However, instead of dealing with such problems, DeLima's samples were primarily limited to copyediting and general clarification. As a result, the TEP collectively deducted 6 points from DeLima's score.

While DeLima argues that it should have been provided with a sample of the kind of "obtuse" writing expected to be encountered during the contract, our review of the record shows that attachment J of the solicitation contains a sample of an edited manuscript of the kind described. Moreover, the thrust of the agency's concern was that DeLima did not provide samples of substantive editing, but limited itself to samples of copyediting and general clarification. Our review of these samples shows the agency's concern to be reasonable.

Fourth, and finally, during discussions the TEP asked DeLima--and the other offerors--to take a timed editing exercise. The TEP found that DeLima performed fairly-to-poorly on the exercise; problems such as nonparallelism, misplaced modifiers, inconsistent verb tense, and general lack of clarity remained unaddressed or were addressed in a way that introduced other problems. Overall, two points were deducted from DeLima's score under the "samples of relevant work" factor. DeLima objects to these deductions because this exercise was not an evaluation factor specified in the solicitation.

Where detailed technical proposals are sought and technical evaluation criteria are used to enable the agency to make comparative judgments about the relative merit of competing proposals, offerors are on notice that qualitative distinctions among the technical proposals will be made under the various evaluation factors. In making those distinctions, the agency may properly take into account specific, albeit not expressly identified matters that are logically encompassed by or related to the stated evaluation criteria. AWD Technologies, Inc., B-250081.2; B-250081.3, Feb. 1, 1993, 93-1 CPD ¶ 83. Here, while the RFP did not specifically require a timed editing exercise, the "samples

of relevant work" factor required offerors to, among other things, demonstrate experience with substantive technical editing and copyediting. Since the solicitation is for editorial support services, editing is encompassed by this factor and was properly considered in the evaluation.⁴

AWARD DECISION

DeLima asserts that the agency improperly considered cost to be more important than the technical factors when it made its award decision.

As discussed above, the record shows that the agency considered all offerors within the competitive range to be equal technically, and then made award to the lowest-cost offeror, Cygnus. Where, as here, proposals are essentially equal technically, cost may become the determining factor in making an award decision notwithstanding that the evaluation criteria assigned cost less importance than technical considerations. Watkins Sec. Agency, Inc., B-248309, Aug. 14, 1992, 92-2 CPD ¶ 108.

The protest is denied.

\s\ Paul Lieberman
for Robert P. Murphy
General Counsel

⁴To the extent that DeLima is protesting the requirement of this exercise, the protest is untimely, as protests not based upon alleged improprieties in the solicitation must be filed not later than 10 days after the basis is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1994).