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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Done Right Building Services, Inc.

File: B-310568

Date: December 17, 2007

Paul J. Hogan, Esq., Hogan & Associates, for the protester.
Michael A. Gordon, Esq., and Fran Baskin, Esq., Holmes & Gordon, for NHI/Urban Services Group, Inc., the intervenor.
Gary L. Brooks, Esq., National Archives and Records Administration, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of proposals and source selection are unobjectionable where the record does not support the protester's contention that the agency's evaluation and source selection evidenced bias against the protester and was unreasonable.

DECISION

Done Right Building Services, Inc. protests the award of a contract to NHI/Urban Services Group, Inc., under request for proposals (RFP) No. NAMA-07-R-0002, issued by the National Archives and Records Administration, for operations and maintenance services at the Franklin D. Roosevelt Presidential Library in Hyde Park, New York. Done Right argues that the agency's evaluation of its proposal and selection of NHI/Urban's proposal for award evidenced bias against Done Right and was unreasonable.

We deny the protest.

The RFP provided for the award of a fixed-price contract for a base period of 1 year with four 1-year options to the offeror submitting the proposal determined to represent the best value to the government based upon the evaluation factors of technical understanding and management approach (hereinafter technical understanding), personnel, relevant past performance, and price. RFP at 84. The solicitation stated that the non-price factors were equal in importance, and when combined, would be considered significantly more important than price in determining which proposal represented the best value. Id.

The agency received proposals from three offerors, including Done Right (the incumbent contractor) and NHI/Urban. Done Right's proposal initially received ratings of "marginal" under each of the non-price evaluation factors, and was informed that its proposal was excluded from the competitive range. Agency Report (AR), Tab 11, Initial TEP Report, at 5-6; Tab 12, Competitive Range Exclusion Letter (Aug. 30, 2007). Done Right requested that the agency's decision to exclude its proposal from the competitive range be reconsidered. AR, Tab 15, Done Right Letter to Agency (Sept. 7, 2007). In response, the agency reevaluated Done Right's proposal, raised the rating assigned under the personnel factor from "marginal" to "acceptable," and included Done Right's proposal in the competitive range. AR, Tab 17, Agency Letter to Done Right (Sept. 19, 2007). Discussions were held, and revised proposals were requested and received. Done Right's revised proposal was rated by the agency as "acceptable" under the technical understanding and personnel factors, "marginal" under the past performance factor and "marginal" overall, at a proposed price of \$3,113,820. AR, Tab 20, Source Selection Decision, at 1. NHI/Urban's proposal received ratings of "acceptable" under the personnel factor, "outstanding" under the technical understanding and past performance factors, and "better" overall, at a proposed price of \$3,718,240. *Id.* The source selection authority (SSA) found that NHI/Urban's proposal represented the best value to agency and documented the reasons why this was the case. Thus, award was made to NHI/Urban.

Done Right argues that the agency's evaluation of its proposal and selection of NHI/Urban's proposal for award were unreasonable and evidenced bias against Done Right. With regard to the allegation of bias, Done Right points out that a former employee of Done Right is the Library's current facility manager and acted as the technical evaluation panel (TEP) chairperson for this acquisition, and asserts that this individual is biased against Done Right because he "left Done Right under troubling circumstances." Protester's Comments at 2. The protester continues by pointing to what it believes are flaws in the evaluation process that, in the protester's view, evidence bias. As explained in detail below, we have reviewed the record and find no credible evidence of bias or bad faith on the part of the facility manager/TEP chairperson or any other agency officials.

First, in response to Done Right's general allegation of bias, the agency report includes the detailed declaration of the facility manager/TEP chairperson, as well as various other documents, including the facility manager/TEP chairperson's letter of resignation from Done Right. These documents, including the facility manager/TEP chairperson's detailed declaration, do not provide any support for the protester's assertion that the facility manager/TEP chairperson left Done Right under "troubling circumstances," nor do they provide any support for the protester's claim of bias.

In contrast to the documents submitted by the agency, the protester has submitted the declarations of Done Right's president and current Library site supervisor, which state, in virtually identical terms, that these individuals had become "aware" that the

facility manager/TEP chairperson had been “disappointed” and had expressed “anger” as to the terms of his previous employment at Done Right. Protester’s Comments, exhs. A and B. These declarations are devoid of any detail or explanation as to how the president and site supervisor had become “aware” of the previous facility manager/TEP chairperson’s “anger” or “disappointment,” nor do they provide any other information in support of the protester’s allegation of bias. Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition, and these general and unsupported allegations provide no basis on which to question the propriety of the actions of the facility manager/chairperson of the TEP, or the agency’s evaluation and selection of NHI/Urban for award. See McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28.

A more specific and equally unsupported example of bias offered by the protester concerns the agency’s evaluation of the proposals submitted by NHI/Urban and Done Right under the personnel factor. In this regard, the protester points out that NHI/Urban stated in its proposal that it recognized the “dedication of the incumbent employees and the benefits to Library continuity of operations of their continued service under the new contract,” and would thus seek to “retain incumbent personnel at the Library.” Protester’s Comments at 3; see AR, Tab 9, NHI/Urban Proposal, § 2, at 1. The protester next points out, based upon its understanding of the record, that NHI/Urban’s proposal was initially rated as “acceptable” under the personnel factor while Done Right’s proposal was rated as “marginal,” even though the proposals offered essentially the same personnel. The protester asserts that this disparate treatment “bolsters the evidence” of bias against Done Right during the evaluation and source selection processes. Protester’s Comments at 3.

We find the protester’s argument here to be without merit because as set forth previously and demonstrated by the record, the proposals submitted by NHI/Urban and Done Right each ultimately received the same rating of “acceptable” under the personnel factor. AR, Tab 20, Source Selection Decision, at 1. In fact, in selecting NHI/Urban’s proposal for award, the source selection authority specifically recognized that the proposals of NHI/Urban and Done Right “received the same rating” under the personnel evaluation factor. Id. at 4.

The protester also points to the agency’s evaluation of NHI/Urban’s and Done Right’s proposals under the past performance factor as evidencing bias. Specifically, the protester argues here that the agency’s evaluation of past performance evidenced bias because the agency’s evaluation of Done Right’s proposal as “marginal” was based upon the agency’s assessment of Done Right’s performance of two contracts, rather than each of the five contracts referenced in Done Right’s proposal, and because, in Done Right’s view, the evaluation “focused” on “negative comments” regarding Done Right’s performance of these contracts. Protester’s Comments at 5.

With regard to the number of contracts referenced by the agency during its evaluation of Done Right's proposal under the past performance factor, we note that although agencies are required to evaluate the past performance of all offerors on the same basis, there is no requirement that an agency contact all of an offeror's references, or that an agency contact the same number of references for each offeror. IGIT, Inc., B-275299.2, June 23, 1997, 97-2 CPD ¶ 7 at 6. As such, the fact that the agency's past performance evaluation references two contracts performed by Done Right and five performed by NHI/Urban does not establish that the evaluation evidenced bias or was unreasonable. Additionally, we note that the contracts considered by the agency concern Done Right's performance as the incumbent contractor at the Library, and at another government facility at which Done Right's performance was considered to be similar in quality to that experienced by the Library officials. Given the relevance of the past performance information referenced by the agency to the work to be performed under this solicitation, the detailed and largely negative assessment of the protester's past performance provided by the evaluation documents, and the protester's failure to specifically challenge a number of the agency's factual representations and conclusions regarding the protester's past performance, we find no basis to object to the agency's evaluation of the protester's proposal under the past performance factor as "marginal," nor do we find that the agency's evaluation here evidenced bias.

Finally, the protester points in a number of instances to the differing conclusions reached by the agency during its initial evaluation of Done Right's proposal and during the reevaluation of Done Right's proposal, and argues that because the proposal was unchanged, and the evaluation results differed, the evaluation must have been tainted by bias. We disagree. It is not uncommon that an agency, in response to a protest filed at the agency or at our Office, decides to reevaluate a proposal with those evaluation results differing from the conclusions initially reached. The mere fact that the evaluators reached differing conclusions does not establish bias, and again, while Done Right asserts that the evaluation of proposals and selection of NHI/Urban's proposal for award was the result of bias against Done Right, the protester's assertions in this regard amount to no more than unsupported allegations, inference, or supposition.¹

¹ Done Right has made a number of other related contentions during the course of this protest having to do with its allegations of bias on the part of contracting officials. Although these contentions may not be specifically addressed in this decision, each was considered by our Office and found either to be invalid with regard to the protester's primary argument regarding bias, or invalid or insignificant with regard to the merits of the evaluation and source selection based upon the record as a whole.

In sum, in the absence of evidence in the record that shows that the agency's evaluation and source selection evidenced bias against the protester or were unreasonable, we find no basis to object to the award.

The protest is denied.

Gary L. Kepplinger
General Counsel