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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Anchorage Enterprises, Inc.

**File:** B-261922

**Date:** November 7, 1995

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Erling T. Johansen, Esq., Davison & Davison, Inc., for the protester.

Richard P. Castiglia, Jr., Esq., Department of the Air Force, for the agency.

Christina Sklarew, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Where solicitation provided that technical and price considerations would be balanced to determine the best overall value to the government, and specifically reserved the right to award based on other than the lowest price, decision to award to offeror with significantly higher technically scored proposal and slightly higher price was unobjectionable.

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## DECISION

Anchorage Enterprises, Inc. (Anchorage) protests an award of contract by the Department of the Air Force to Record and Construction, Inc., under request for proposals (RFP) No. F10603-94-R-0003. Anchorage alleges that the Air Force's award decision was based on a flawed evaluation of proposals and was influenced by an improper bias toward the awardee. We deny the protest.

The solicitation was issued as a competitive 8(a) set-aside for Simplified Acquisition of Base Engineering Requirements (SABER) for Mountain Home Air Force Base in Idaho. The SABER program provides for small-to-medium size maintenance and repair and minor construction projects in support of base civil engineers. The RFP contemplated the award of an indefinite quantity, indefinite delivery 12-month contract, with 4 option years.

The RFP instructed offerors to submit separate technical and price proposals, and described the manner in which these would be reviewed by evaluation teams. The RFP stated that technical and price factors would have equal weight in the source selection. The solicitation specifically reserved the agency's right to award the contract to an offeror whose price was not the lowest proposed and stated that the award would be based on the best overall value to the government.

Six offerors, including Anchorage and Record, submitted initial proposals. The RFP instructed offerors to delete their company name and address from their technical proposals. The contracting officer labeled the six proposals as proposals A through F during the review process. After the initial round of evaluations, written discussion questions were sent to each offeror. None of the offerors' responses to the questions was considered sufficiently compelling to warrant a change in the ratings that had been assigned to the proposals during the initial evaluation.

Record's proposal received the second-highest overall technical score, while Anchorage's received the lowest. Anchorage offered the lowest price; Record's was slightly higher. The source selection officials determined that Record offered the best overall value to the government. After receiving approval of Record's eligibility for award from the Small Business Administration, the Air Force awarded the contract to Record.

Anchorage protests the Air Force's award decision, arguing that its own proposal should have been selected because it allegedly was technically equivalent to Record's and offered a lower price.<sup>1</sup>

An award to an offeror with a higher technically scored proposal and a higher price is unobjectionable, so long as the result is consistent with the evaluation criteria and the agency has determined that the technical difference is sufficiently significant to outweigh the price difference. Calspan Corp., B-258441, Jan. 19, 1995, 95-1 CPD ¶ 28. Here, the record supports the agency's decision to select Record for award as the technically superior offeror, even though it was slightly higher in price. The evaluation documents show that in the 11 technical evaluation areas established

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<sup>1</sup>In addition to its main basis for protest, Anchorage initially raised a number of general allegations that were not supported by specific information, and were not further elaborated upon in the protester's comments on the agency report. For example, Anchorage alleged that the Air Force was arbitrary and capricious in its evaluation; engaged in technical leveling; violated the Competition in Contracting Act of 1984; and deprived Anchorage of its constitutional rights. We find no support for these generalized allegations in the record and therefore will not discuss them individually. In addition, Anchorage states that it filed a Freedom of Information Act (FOIA) request with the agency to obtain certain evaluation-related documents, and complains that these were withheld from the firm. Our Office has no authority under FOIA regarding the release of documents in the possession of an agency. All Am. Moving and Storage, B-243630; B-243804, July 8, 1991, 91-2 CPD ¶ 32. Moreover, we fail to see how Anchorage's ability to support its protest allegations was in any way impeded, since all of the evaluation documents were released to Anchorage's attorney under a protective order that was issued in connection with this protest.

in the evaluation scheme, Anchorage's proposal was given the second-highest rating ("meets standards"). Record's proposal received the highest possible rating ("exceptional or exceeds standards") in seven of the areas, and was rated as meeting the standards in the remaining four areas. Record's proposal included a larger work force, exceptional technical support (e.g., computers and software), and better management staff. Anchorage has not challenged the evaluation with any specific allegations, stating only that the Air Force was arbitrary and capricious in its evaluation of proposals and that the evaluators were biased in favor of Record.<sup>2</sup> Under these circumstances, the agency reasonably determined that Record's proposal was technically superior to Anchorage's; the agency also could reasonably determine under the RFP's evaluation scheme that Record's proposal's technical superiority offset Anchorages somewhat lower price.

Anchorage also alleges that it received an anonymous telephone call purporting to be from a person "involved in the . . . solicitation," stating that Record had received "inside" information between the "best and final offering phases one and two," showing the firm "how to restructure its proposal to enhance their chances of being the successful bidder." The protester provides no further support for this allegation.

Procurement authorities are presumed to act in good faith and, in order for our Office to find otherwise, the protester must clearly demonstrate that the agency intended to injure the protester. QualMed, Inc. B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94. Accordingly, we will not attribute prejudicial motives to contracting officials on the basis of unsupported allegations, inferences or supposition. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114. Here, there is no evidence to support Anchorage's allegations other than its assertion of an "anonymous telephone call." Moreover, the evaluation record tends to contradict the contention that Record was given "inside" information on how to "restructure" and enhance its best and final

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<sup>2</sup>Anchorage also alleges that, contrary to the RFP instructions, Record had included its name and other identifying information in its proposal, and that the contracting officer failed to remove these references before the evaluation. The protester first raised this issue in its comments filed on September 1, 14 days after receiving the agency report. Protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis for the protest, whichever is earlier. 4 C.F.R. § 21.2 (a)(2) (1995). Since the protester received the agency report on August 14, 1995, its comments on that report were due on August 28. Pursuant to the protester's request, our Office granted the protester a short extension to file its comments. Since a time extension for purposes of filing comments to an agency report does not waive the timeliness rules with regard to new grounds of protest, Telephonics Corp., B-246016, Jan. 30, 1992, 92-1 CPD ¶ 130, we dismiss this basis of protest as untimely.

offer. The Air Force engaged in two rounds of discussions with each of the offerors, during which Record's initial proposal was never determined to be deficient or in need of "restructuring"; in fact, its proposal (and best and final offers) consistently received the second-highest technical rating throughout the evaluation process. Therefore, it is apparent that Record's proposal was technically competitive from the outset; its competitive standing did not change after discussions were held.

The protest is denied.

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