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Bray did not furnish a sample with its original proposal. Rather, its proposal noted two sample films that had been produced for the Navy, which Bray contends demonstrate Bray's abilities along the line required by the RFP. Since the films are classified for security purposes, Bray could not supply them, and therefore asked DAVA to seek them from the Navy. Bray complains that DAVA refused to ask the Navy for the films and instead requested Bray to submit another sample, which Bray contends was not as indicative of its capabilities with respect to the effort solicited by the Navy. DAVA responds that the evaluation of the Navy films would have violated Department of Defense Information Security Program Regulations.

We find no merit to Bray's complaint. We do not believe that the contracting agency was required to seek a sample from any other source; since the RFP required the offeror to submit a sample film, the burden was on the offeror to do so. In fact, we believe that DAVA could have rejected Bray's offer lacking the sample as being technically unacceptable, instead of giving Bray an opportunity to submit a new sample. We therefore have no legal basis to object to the Navy's evaluation of the sample actually submitted.

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-207723, B-207746 **DATE:** October 27, 1982

MATTER OF: Bray Studios, Inc.

DIGEST:

1. Where an RFP states award will be based on the offer representing the greatest value to the Government, price and other factors considered, award need not be made to the lowest priced offeror, since price and technical evaluation criteria listed in the RFP have substantially equal importance.
2. Film producer's placement on the Qualified Film Producers List indicates only a minimum level of competence qualifying the film producer to submit offers for specific productions. Since the contracting agency must evaluate a producer's proposal in light of the specific requirements and evaluation criteria listed in an RFP, the technical merits of prequalified producers' offers may vary significantly.
3. The determination of the relative merits of technical proposals is the procuring agency's responsibility, and GAO will not disturb such a determination unless shown to lack a reasonable basis or otherwise violate procurement statutes and regulations. Also, bias in the evaluation will not be attributed to individuals on the basis of inference or supposition.
4. GAO will examine evaluation documents not disclosed to the protester to determine if the protested evaluation was fair and reasonable.
5. Agency which issued RFP requiring offerors to submit samples has no obligation to secure a sample from another agency when requested by the offeror.

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6. No statute or regulation sanctions the exclusion of former Government employees from obtaining Government contracts.

Bray Studios, Inc. protests the Defense Audiovisual Agency's (DAVA) award of contracts to Stefan Dobert Productions, Inc. and Animation Arts Associates, Inc. under requests for proposals Nos. DAVA02-82-R-0004 and DAVA02-82-R-0005, respectively. The RFPs solicited proposals from film producers on the Qualified Film Producers List (QFPL) to produce certain motion pictures. Bray basically complains that in each case DAVA made an award to a higher priced offeror, and questions how DAVA could have evaluated the technical merits of the awardees' proposals as being significantly higher than Bray's in light of the fact that Bray is on the QFPL. We find no legal merit to this complaint. Bray also complains that the awardee under RFP -0005 should have been found ineligible for the award. We dismiss the complaint.

Background

Generally, any acquisition of motion picture productions must comply with Federal Procurement Policy Letter No. 79-4, "Contracting for Motion Picture Productions," dated November 28, 1979. Defense Acquisition Circular (DAC) No. 76-28, July 15, 1981. This Policy Letter implements a uniform Government-wide system developed by the Office of Federal Procurement Policy (OFPP) for the acquisition of audiovisual productions. The Policy Letter designates the Directorate for Audiovisual Management Policy of the Department of Defense as the Executive Agent responsible for administering the system. The Executive Agent also is chairman of the Interagency Audiovisual Review Board. The Board, consisting of representatives from various Federal agencies, evaluates samples submitted by producers interested in obtaining Government contracts for motion picture and videotape productions to determine if the producer should be placed on the QFPL (or Qualified Videotape Producers List, as appropriate). If a producer receives the minimum acceptable score, based on standardized criteria, it receives a contract and is placed on the QFPL. The contract contains standard provisions covering Government motion picture or videotape work pursuant to which agencies may place orders for specific productions. See Office of Federal Procurement Policy's films production contracting system; John Bransby Productions, Ltd., 60 Comp. Gen. 104 (1980), 80-2 CPD 419.

When an agency needs to acquire the production of a motion picture or videotape, it generally must prepare an RFP describing its requirement using the basic format prescribed by OFPP. That format includes the following evaluation criteria:

- Qualification and relevant experience of proposed production team members.
- Creativity, as demonstrated in sample production and sample treatment.
- Technical quality of sample production.
- Offeror's understanding of the production purpose and subject matter."

The Policy Letter mandates that award be made to the responsible producer submitting the best proposal, price and other factors considered, and that the acquiring agency conduct the evaluation to determine the awardee.

DAVA is the Department of Defense contracting agency responsible for acquiring audiovisual productions. Its RFPs in this case requested the submission of separate technical and pricing proposals, and informed offerors of the relative weights of the evaluation factors listed above. They further explained that DAVA would evaluate proposals in three phases: 1) a technical proposal would be evaluated under the first three evaluation criteria, 2) the price proposal would be evaluated on a pass/fail basis to determine if it demonstrates an understanding of the RFP's specific requirements by committing appropriate resources in required areas, and 3) offers that are deemed technically acceptable and pass phase 2 would be compared to determine which offer represented the greatest value to the Government, "price and other factors considered." The RFPs expressly provided:

"The Government reserves the right to award to other than the lowest priced technically acceptable offer."

To determine the offer representing the greatest value, DAVA used a predetermined 55 percent to 45 percent ratio of technical merit to price. DAVA's technical evaluators gave Bray's technical proposal under RFP -0004 a score of 47.3 out of 100 (ranking 20th of the 23 proposals submitted) and the awardee Stefan Dobert Productions a score of 74.0. While Bray's price of \$57,391 was the lowest one offered, and was \$7,593 less costly than the awardee's price, application of the 55/45 evaluation method resulted in Bray receiving a greatest value score of 71.0 (ranking 7th) compared to 80.4 for the awardee.

Under RFP -0005, Bray's technical score was 52.8 (11th of 15) and its price, which again was low, was \$39,568. The awardee Animation Arts received a technical score of 84.9, and its price was \$42,372. Applying the 55/45 evaluation method, DAVA gave Bray a greatest value score of 74.0 (ranking 5th) and Animation Arts a score of 88.7.

Selection of higher priced offer

Bray's complaint that DAVA did not select its lower priced offers lacks any merit. It is well established in negotiated procurements that awards need not be made solely on the basis of lowest price, and absent a showing that offers were not evaluated in conformance with the evaluation scheme listed in the RFP, an award is not improper simply because it was not made to the lowest priced offeror. See Price Waterhouse & Co., B-203642, February 8, 1982, 82-1 CPD 103. Where an RFP states, as here, that award will be made to the offeror presenting the greatest value to the Government, "price and other factors considered," and lists certain technical factors and their relative weights, price and technical merit have substantially equal importance. See BDM Corporation, B-201291, June 26, 1981, 81-1 CPD 532.

We have carefully reviewed Bray's and the awardee's proposals, the greatest value computation worksheets, and the evaluation/award memoranda (DAVA has not disclosed these materials to Bray), and we find that DAVA basically adhered to the evaluation scheme listed in the RFP. As stated previously, the relative value of technical merit to price was 55/45, but even if the ratio had been 50/50, the evaluation would have resulted in the same selection under each RFP, that is, the awardee's overall score in each case would have been higher than Bray's.

Regarding how Bray's technical proposals could be significantly inferior to other technical proposals submitted by producers on the QFPL, we point out that the QFPL only provides an agency with the names of those producers which the Interagency Audiovisual Review Board deemed to be minimally acceptable; the list does not rank the producers according to their qualifying scores. Rather, the procuring agency must evaluate each proposal based on the specific criteria set forth in the RFP, only using the QFPL as its source of producers. Centurion Films, Inc., B-205570, March 25, 1982, 82-1 CPD 285. Since inclusion on the

QFPL only indicates a minimal level of technical competence, and each proposal must be evaluated in light of the specific requirements and evaluation criteria listed in the RFP, there is no reason why the technical merits of proposals submitted by prequalified producers should be substantially equal. Thus, DAVA's low scoring of Bray's technical proposals is not inconsistent with the Bray's inclusion on the QFPL.

Evaluation of Bray's proposals

The protester also complains that its proposals were not fairly evaluated and suggests that the technical evaluators biased their evaluations to deprive Bray of the contracts.

In resolving cases where a protester challenges the validity of technical evaluations, it is not this Office's function to evaluate proposals independently to determine which should have been selected for award. The determination of the relative merits of proposals is the procuring agency's responsibility, and procuring officials necessarily have a reasonable degree of discretion in that regard. We therefore will not disturb such determinations unless they are shown to lack a reasonable basis or otherwise violate procurement statutes and regulations. See Centurion Films, Inc., supra; Alan-Craig, Inc., B-202432, September 29, 1981, 81-2 CPD 263. Regarding bias, we repeatedly have held that improper motives will not be attributed to individuals on the basis of inference or supposition. Earth Environmental Consultants, Inc., B-204866, January 19, 1982, 82-1 CPD 43.

The protester has not submitted any evidence showing the evaluations in this case were unfair or biased. Of course, the protester does not have access to the evaluation documents. In this respect, Bray has requested that our Office disclose the names and score sheets of the evaluators, since DAVA refused Bray's request for that information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1976). Our Office has no authority under FOIA, however, to determine what information must be disclosed by Government agencies. While we will consider information in an agency report which the agency believes is exempt from disclosure under FOIA, we will not disclose it outside the Government. The protester's recourse in such situations is to pursue its disclosure remedy under the procedures provided in the statute. Claude E. Atkins Enterprises, Inc., B-205129, June 8, 1982, 82-1 CPD 553.

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Under RFP -0005, Bray received a low score for its qualifications because it neglected to propose a production crew despite an RFP requirement that the

technical proposal include a "description of the qualifications of the proposed production team." Without identifying any other members, Bray submitted the resumes of only three personnel--its executive producer, director of photograph, and art director--whereas the RFP required a photographic crew with the following minimum composition:

"Director, Assistant Director Cameraman, Assistant Cameramen, Electrician, Mixer-Recordist, Group, Make-up-Person, Script Clerk * * *."

Bray's sample also received low scores. The evaluators found it to be of a poor-to-average production quality with poor acting, poor lighting and a slow pace.

On the other hand, the evaluators gave Stephan Dobert a higher qualifications score because Dobert described its production team and submitted extensive resumes. The evaluators also found Dobert's sample film to be of a higher quality.

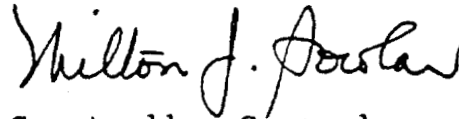
Our review provides no basis to conclude that DAVA's evaluation of Bray's proposals was biased or unreasonable. The fact that Bray disagrees with DAVA's judgment does not invalidate it. See Centurion Films, Inc., supra.

Awardee's eligibility under RFP -0004

Lastly, Bray argues that DAVA should have found Dobert ineligible for award because its president was a previous Government employee "in the same capacity * * * as he is now engaged." The president left the Government in 1975.

We dismiss the protest on this issue. There is no statute or regulation which sanctions the exclusion of retired or former Government employees from obtaining Government contracts. See Edward R. Jereb, 60 Comp. Gen. 298 (1981), 81-1 CPD 178. While 18 U.S.C. § 207 (Supp. IV, 1980) imposes criminal penalties on former Government employees who represent anyone but the Government on specific matters in which the former employee participated or over which he had responsibility as an employee, we see no basis to suggest that the statute should apply in this case. Moreover, the interpretation and enforcement of this statute is generally the responsibility of the Department of Justice, not this Office. See Polite Maintenance, Inc., B-194669, May 10, 1979, 79-1 CPD 335.

The protest is denied in part and dismissed in part.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States