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DECISION



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

FILE: B-218125.2 **DATE:** April 15, 1985
MATTER OF: Maceto, Inc.

DIGEST:

1. Protester alleging bias has the burden of proof, and where the record fails to demonstrate the existence of bias, GAO regards the protester's allegations as mere speculation.
2. Requirements for management and quality control plans, which must be approved by the contracting officer before award, and for a preaward survey, do not demonstrate the existence of an opportunity for bias in evaluation. Rather, this information relates to responsibility, and the contracting officer must consider it and make an affirmative determination of responsibility before proceeding to award.

Maceto, Inc. protests the alleged bias in the procurement conducted under request for proposals (RFP) No. N00228-85-R-2005, issued by the Naval Supply Center, Oakland, California. The RFP, for operation of the Library at Mare Island Naval Shipyard, Vallejo, California, was issued as part of a cost comparison under Office of Management and Budget Circular A-76; the results will be used to determine whether the services should be provided by a contractor or by government personnel. We deny the protest. 1/

1/ Maceto also initially protested that the RFP was defective because no workload statistics had been provided. The firm subsequently withdrew this ground of protest.

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Maceto's contentions are directed at the head of the Shipyard's Technical Information Branch, which organizationally includes the library. According to the RFP, this individual will serve as the contracting officer's technical representative. The protester contends that she is biased against having the work contracted out and, through the evaluation process and preaward survey, will improperly influence the Navy's determination as to whether this should be done.

The Navy argues that the protester fails to present any evidence of bias and thus does not carry its burden of proof. The agency reports that the direct involvement of the individual in question with this procurement was limited to preparation of the Performance Work Statement and a Most Efficient Organization Study in support of the library. The agency further states that she has no preaward authority and no responsibility for evaluation of proposals; in fact, the position of contracting officer's technical representative will not exist until after award has been made. The agency maintains that the individual in question will continue her employment as head of the Technical Information Branch regardless of the outcome of the cost comparison and that this is one of the reasons why she was designated as the contracting officer's technical representative.

The protester has the burden of affirmatively proving its case, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Medi Coach, Inc., B-214034, May 2, 1984, 84-1 CPD ¶ 501. Where, as here, the written records fails to demonstrate the existence of bias, the protester's allegations are properly regarded as mere speculation. Id. Because of the lack of involvement in the cost comparison or the evaluation and award process of the individual in question in this case, we view this basis of protest as purely speculative and insufficient to meet Maceto's burden of proof.

Additionally, in its comments on the agency report, Maceto discusses requirements for a written management plan and a quality control plan, both of which must be approved by the contracting officer before award. The firm

argues that these requirements amount to a test of technical capability and provide an opportunity for rejection of the low offeror, despite the Navy's assertion that the only basis for evaluation will be price, with offerors competing against each other and the government. Maceto therefore requests that the due date for this information be changed until after award and that a requirement for a preaward survey be waived.

We do not believe that these requirements demonstrate the existence of an opportunity for bias in evaluation. Rather, they relate to responsibility, that is the ability of the successful offeror to perform if the results of the cost comparison indicate that contracting out will be preferable to the Navy's performing in-house. If this occurs, the contracting officer must make an affirmative determination of responsibility, in this case based upon the management and quality control plans and the preaward survey, before proceeding to award. See Federal Acquisition Regulation, 48 C.F.R. § 9.103(b) (1984). Accordingly, this basis of protest is without merit.

The protest is denied.

for *Raymond E. Fure*
Harry R. Van Cleve
General Counsel