

DECISION



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

FILE:

B-220724

DATE: February 12, 1986

MATTER OF:

Trail Blazer Services

DIGEST:

1. General Accounting Office will not review a challenge to a contracting agency's affirmative responsibility determination where there is no allegation or showing that the contracting officials acted fraudulently or in bad faith or that the solicitation contained definitive responsibility criteria that have not been met.
2. Protest that a firm performing contracts under the Indian Self-Determination Act has an unfair financial advantage competing for a contract awarded under the Buy Indian Act is denied, since the government has no obligation to equalize a competitive advantage that results from the performance of other government contracts.
3. The protester has the burden of proving bias or favoritism on the part of procuring officials, and the protester fails to meet this burden where it presents only bare allegations.
4. Employment of procuring agency official by awardee does not itself establish an impropriety in the procurement, and the mere potential for improprieties does not provide a basis to question an award.

Trail Blazer Services protests the award of a contract to the United Sioux Tribes Development Corporation under requests for proposals (RFP) No. A00-0464, issued by the Department of the Interior, Bureau of Indian Affairs (BIA). The RFP sought offers to provide real estate appraisal services required to estimate the current market value of certain properties located on 14 Indian reservations in North Dakota, South Dakota, and Nebraska.

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We deny the protest in part and dismiss it in part.

The RFP was issued on August 12, 1985, under the authority of the Buy Indian Act, 25 U.S.C. § 47 (1982), as a set-aside limited to certified Indian/Alaska Native economic enterprises. To be considered as an eligible Indian/Alaska Native economic enterprise, each offeror was required to submit evidence to BIA to show that the firm was entirely owned and controlled by Indians or an Indian tribe. The RFP stated that award would be made to the offer representing the best combination of professional merit and related costs to the government. On September 26, BIA announced that an award would be made to United Sioux Tribes Development Corporation. Trail Blazer protested this decision to BIA, and following denial by the agency, protested to our Office.

The protester contends that the agency did not consider the alleged poor performance of the awardee with regard to two previous appraisal contracts; that United Sioux should not be permitted to contract with BIA under both the Buy Indian Act and the Indian Self-Determination Act, 25 U.S.C. § 450(f)-450(n) (1982); and that a BIA central office staff member improperly intervened on behalf of United Sioux prior to bid opening. Trail Blazer also asserts that the selection was biased because of a conflict of interest by a former BIA employee, now employed with the awardee.

The protester's first allegation, regarding the awardee's ability to perform under the contract because of poor prior performance, is a challenge to the contracting agency's affirmative determination that United Sioux is a responsible offeror. Our Office will not consider a protest of an affirmative responsibility determination unless there is a showing either that the determination may have been made fraudulently or in bad faith by contracting officials, or that definitive responsibility criteria have not been met. William A. Stiles, Jr., et al., B-215922, et al., Dec. 12, 1984, 84-2 CPD ¶ 658; 4 C.F.R. § 21.3(f)(5) (1985). Neither showing has been made here, and we dismiss this ground of Trail Blazer's protest.

The protester's second contention is that the awardee should not be able to participate in Buy Indian Act procurements since, as a tribal organization, the firm also contracts under the Indian Self-Determination Act. That statute directs the Secretary of the Interior and the Secretary of Health and Human Services to contract with requesting tribal organizations for the administration of certain

Indian education, health, agriculture and other programs unless the action would be improper under standards provided in the act. 25 U.S.C. §§ 450(f), 450(q). Trail Blazer argues that funding under the Indian Self-Determination Act gives tribal organizations financial advantages in competing for Buy Indian Act contracts.

We are aware of no restriction on tribal organizations competing in Buy Indian Act procurements simply because they participate in administering programs through the Indian Self-Determination Act. Moreover, BIA has no obligation to equalize a competitive advantage that a firm may enjoy because of its performance of other contracts with the government unless the government unfairly participated in establishing that advantage. Information Ventures, Inc., et al., B-219989, et al., Dec. 16, 1985, 85-2 CPD ¶ 668. The record in this case contains no evidence that any competitive advantage that United Sioux may have resulted from a preference or unfair action by BIA. We deny Trail Blazer's protest on this basis.

The protester also objects to alleged political considerations afforded United Sioux in BIA's selection process. The protester states that a BIA official in Washington, D.C., called the director of the BIA office in Aberdeen, South Dakota, that conducted the procurement, on behalf of the United Sioux to ask if the office would award the contract to United Sioux on a sole-source basis or under the Indian Self-Determination Act. The Aberdeen Area Director considered the matter, and concluded that neither was possible under applicable regulations. Trail Blazer contends that the telephone call represented an effort to influence evaluation of proposals. The procurement record contains no evidence that such an inquiry played any role in BIA's evaluation of proposals. The protester has the burden of proving bias or favoritism on the part of procuring officials, and Trail Blazer's bare allegations do not meet this burden. See Sess Construction Co., 63 Comp. Gen. 355 (1985), 85-1 CPD ¶ 319.

Finally, the protester raises an issue concerning a possible conflict of interest by a former BIA employee, who had agreed to retire and work for the protester if it was awarded the contract. During negotiation discussions with BIA, Trail Blazer emphasized that the individual would be an important contributor to Trail Blazer's performance of the contract. The protester states that it learned after United Sioux was selected that the BIA employee had also agreed

with United Sioux to work for that firm if it was successful, and that his name had been included as a prospective employee in United Sioux's proposal. According to the protester, the individual now works for United Sioux.

Trail Blazer contends that the former BIA employee had access to "inside" information concerning the procurement, and that his involvement with offerors constituted a breach of ethics and placed him in a conflict of interest situation. Trail Blazer has not suggested how United Sioux improperly benefited from the same agreement with the former BIA employee that the protester had with him, and the procurement record provides no evidence that improper influence was exerted by the individual. A procuring agency official's subsequent employment with an awardee does not itself establish that the award resulted from bias or improper influence. Bow Industries, Inc., B-216512, Apr. 17, 1985, 85-1 CPD ¶ 436. Trail Blazer's bare allegation establishes no more than a mere potential for improprieties, and is not a basis upon which to question the award. See Computer Sciences Corp., B-210900, Apr. 17, 1984, 84-1 CPD ¶ 422.

We deny the protest in part and dismiss it in part.

for Seymour Efron
Harry R. Van Cleave
General Counsel