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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Sage Diagnostics

File: B-222427

Date: July 21, 1986

DIGEST

1. A protest alleging that evaluation of the protester's experience was improper and not based on the stated criteria is denied where the record shows that the agency's downgrading of the protester's proposal for lack of experience directly related to the work to be performed was reasonable and the requirement was encompassed by the stated evaluation criteria and subcriteria.
2. Where bias is alleged, the protester has the burden of affirmatively proving its case, and the General Accounting Office (GAO) will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Where the record is completely devoid of evidence supporting some of the protester's inferences and refutes others, GAO will deny the protest.
3. Award of a contract to a higher priced offeror is proper where the awardee received the highest overall score under an evaluation formula that gave four times as much weight to technical factors as to price.

DECISION

Sage Diagnostics protests the United States Customs Service's award of a contract for technical assistance in improving its intelligence capabilities under request for proposals (RFP) No. CS-86-029. The protester contends that the agency's evaluation of technical proposals was not in accord with stated criteria; that the process unfairly favored the awardee, who may have had "inside" information; and that Sage should have been selected for award on the basis of its superior technical proposal and lowest price.

We deny the protest.

BACKGROUND

Customs issued the RFP on December 31, 1985 as a total small business set-aside, soliciting offers for a fixed-price, level-of-effort contract for an estimated 2,000 hours of assistance to be furnished over a

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12-month period. The contractor generally is to study and review various aspects of Customs' intelligence operation and periodically to submit its findings to the Commissioner. According to the statement of work, the primary objective is to improve the agency's intelligence capabilities with respect to the professionalism of its staff, tactical intelligence support, and support to marine and air anti-smuggling operations. The contractor is also to monitor progress in the areas of intelligence training and automated data systems and to assist in the implementation and expansion of inter-agency agreements.

The solicitation provided that proposals would be evaluated under five criteria, with maximum points assigned to each as follows: experience, 35 points; knowledge of intelligence ADP and telecommunications activities, 15 points; organizational qualifications, 10 points; methodology and work plan, 20 points; and cost, 20 points. Award was to be made to the offeror whose proposal provided the quality/cost relationship most advantageous to the government. The RFP further provided that although numerical ratings would be used as a guide to contractor selection, the agency might not make award to the technically acceptable offeror having the lowest estimated cost.

Eleven firms submitted proposals; five, including the protester and Richard Chillemi, the awardee, were included in the competitive range. After discussions and submission of best and final offers on March 3, 1986, the technical and cost scores of the awardee were 73 and 18, respectively, for a combined score of 91, while those of the protester, which ranked third, were 64 and 20 for combined point score of 84.^{1/} The contracting officer determined that the offer submitted by Chillemi was most advantageous to the government and awarded the contract to that firm.

DISCUSSION

Technical Evaluation

Sage initially contends that the evaluation of technical proposals, particularly with respect to experience, was neither performed properly nor conducted in accord with the stated criteria. Additionally, Sage argues that its score was improperly reduced for lack of a particular type of experience--in mini-computer systems--that was not required by the RFP.

In reviewing protests against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. See ORI, Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266.

^{1/} The scores of the other three firms in the competitive range are not at issue here.

After examining this record in its entirety, we find that Customs' downgrading of Sage's experience was not unreasonable. First, the record supports the evaluation panel's view that the personnel proposed by the protester had no direct experience in law enforcement. All three members of the evaluation panel were uniformly concerned with Sage's lack of specific experience in this area. The key personnel proposed by Sage, as noted by one evaluator, only had related experience with the military or the Central Intelligence Agency. Due to this perceived weakness, Sage's proposal received an average of 3 points less for experience than Chillemi's.

Customs did not completely discount related experience, as demonstrated by the relatively high score it awarded Sage, compared with other offerors in the competitive range, for this criterion. Customs nevertheless acted reasonably in desiring experience directly relating to its own law enforcement needs, and we think this consideration is related to and encompassed by the listed evaluation subcriteria covering (1) knowledge and experience in the role of the Customs Service, and (2) experience in designing and developing law enforcement applications.

As for Sage's allegation that Customs improperly downgraded its proposal for stressing a large-scale centralized operation and for lack of experience in mini-computer systems, we find this contention to be without foundation. A debriefing document submitted for the record by Sage states that Sage failed to demonstrate knowledge in the area of "mini-nationally coordinated systems with individual data bases." This need was clearly reflected in the statement of work, which indicated that one objective of the contract was to establish an automated data system capable of communicating directly with the field. This objective is not inconsistent with the two ADP evaluation subcriteria that generally require experience developing, establishing, and monitoring a national network system in support of tactical operations. The overall system required by Customs is large. However, as reflected by the solicitation, this system will be decentralized, and each mini-system will have an individual data base that must be coordinated with the others. We therefore deny the protest concerning evaluation of Sage's experience.

Bias

Sage next alleges that the evaluation process for this procurement was a mere formality, used only to ratify the prior selection of Chillemi. Referring to Chillemi's proposal, which admittedly demonstrated a first-hand awareness of the problems within Customs' intelligence program, Sage speculates that the awardee may have been given "inside" information not available to the other competitors. Sage next alludes to a significant reduction in price in Chillemi's best and final offer as evidence that Chillemi may have been given improper information, since

all other offerors either increased or retained their original prices. Sage also suggests that Chillemi's proposal was upgraded (from 85 to 91 points) during the evaluation of best and final offers because it alone was given precise advice concerning its weaknesses during discussions. One final example of Customs' favoritism toward the awardee, Sage states, was the agency's "gratuitous" addition of \$3,795 to Chillemi's final proposal price of \$61,379.

In cases where bias is alleged, 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. Ted L. Bidy and Associates, Inc., B-209297 et al., Apr. 22, 1983, 83-1 CPD ¶ 441.

Here, Sage's allegations concerning the revisions Chillemi made during the preparation of its best and final offer and Customs' review of this proposal are based entirely on inference. The record is devoid of evidence suggesting that Chillemi may have been apprised of information not provided to other offerors during proposal preparation or during discussions. In fact, the record clearly shows that an increase of 3 points in Chillemi's score is directly attributable to its strengthening of the resumes of its proposed personnel in its best and final offer. The firm's price reduction is attributable to Chillemi's elimination of labor costs for an administrator/secretary position. This action was in accord with the solicitation, which provided that firms were to offer a fixed price for not to exceed 2,000 hours of professional services. Support personnel costs were not to be included in this level of effort, but were to be included as overhead or general and administrative costs. Chillemi erroneously did not so include these costs, but instead indicated that they would be submitted on a reimbursable basis. ^{2/} Customs states that it added \$3,795 to Chillemi's best and final offer to account for this obvious omission. Custom's then rescored Chillemi's proposal, giving it one less point under the cost criterion to account for this correction.^{3/}

^{2/} The RFP provided that travel and incidental expenses required under the resulting contract were to be reimbursed on the basis of actual expenses incurred. Apparently, Chillemi, in revising its proposal, concluded that clerical costs also were an incidental expense to be reimbursed as incurred.

^{3/} Arguably, the agency should have gone back to Chillemi for clarification before correcting this mistake. See the Federal Acquisition Regulation, 48 C.F.R. § 15.607(a) (1984). We cannot conclude that the protester was prejudiced by the agency's failure to do so, since the agency reduced the point score for the awardee's cost proposal to reflect the amount added to overhead to cover the cost of support personnel.

We find that the arguments presented by Sage to be insufficient to demonstrate bias, and we regard them as mere speculation. Lithographic Publications, Inc., B-217263, Mar. 27, 1985, 85-1 CPD ¶ 357. Accordingly, we deny this basis of Sage's protest.

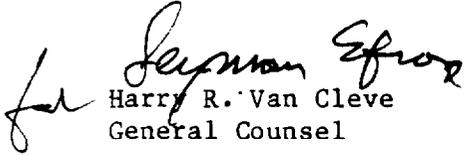
Award Selection

Finally, Sage contends that it should have been selected for award because of its superior technical proposal and its lowest price. In a negotiated procurement, unless the solicitation so specifies, there is no requirement that award be made on the basis of lowest price. Rather, the procuring activity has discretion to select a higher-rated, higher cost technical proposal if doing so is consistent with the evaluation scheme of the solicitation and is deemed worth the difference in cost. See Litton Systems, Inc., Electron Tub Division, 63 Comp. Gen. 385 (1984), 84-2 CPD ¶ 317.

Here, the source selection official concurred with the evaluation panel's finding that Chillemi's proposal was most advantageous to the government, technical and price factors considered. Since the basis for this determination was the overall point scores received by the offerors, which were calculated in accord with the formula set forth in the solicitation that gave four times as much weight to technical considerations as to price, we also deny the protest on this basis.

CONCLUSION

The protest is denied, as is Sage's claim for bid preparation costs and attorney's fees.


for
Harry R. Van Cleve
General Counsel