



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Martin Advertising Agency, Inc.

File: B-225347

Date: March 13, 1987

DIGEST

1. Protest that agency should have found protester's offer more desirable than the awardee's is denied, since a protester's mere disagreement with the contracting agency's evaluation does not render that evaluation unreasonable, and the record does not otherwise suggest the evaluation was improper.
2. An agency, during negotiations, does not have to discuss elements of a proposal that are not deficient; it is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition, to bring the proposal up to the level of the other ones.
3. Whether or not a firm actually performs in compliance with contract requirements is a matter of contract administration, which the General Accounting Office does not review as part of its bid protest function.

DECISION

Martin Advertising Agency, Inc., protests the award of a contract to the Clearwater Sun under a request for proposals (RFP) issued by the Public Affairs Office of MacDill Air Force Base, Florida, for a commercial enterprise installation newspaper, the "Thunderbolt." Martin, the incumbent, essentially argues that its proposal to publish the newspaper was better than Clearwater's and questions why, if the Air Force did not think so, the agency did not help Martin improve or explain its offer during negotiations. Martin also complains that the Air Force discriminated against the firm, and that Clearwater is not performing the contract properly.

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

The Air Force issued the solicitation on September 8, 1986, in accordance with the procedures for obtaining commercial enterprise newspapers set forth in Air Force Regulation 190-1 (April 15, 1985). In this type of agreement, the right to sell and circulate advertising to Air Force readers generates revenue for the contractor, so that the government does not pay the contractor any money.^{1/}

The RFP as issued specified general requirements for the publication, and stated that a selection group would hear oral presentations; review data furnished by the offerors and independently-secured data; and visit offerors' sites. The RFP provided that the group would investigate each offeror's competence, reliability, and technical, production and business capabilities and resources, and would choose "the best obtainable product and service."

Three proposals were received in response to the RFP, and were reviewed by the selection group, which was comprised of eight representatives from various base activities. The Air Force held discussions and then issued a revised RFP, which requested best and final proposals by November 12. The revised RFP stated that proposals were to be evaluated on frequency of processed color capability, quality of graphic display, availability of back-up production personnel and equipment, and extra color offered, in addition to compliance with the size, color process, type and pick-up delivery requirements of the original statement of work. The request for best and final proposals reiterated that the primary criterion for selection was the acquisition of the best obtainable product and service. Based on the comments of the selection group, the chairperson chose the Clearwater Sun for award and, according to the Air Force, notified all offerors of the decision by telephone on November 14; Martin received a letter of confirmation on November 20. On December 1, in response to a request Martin filed with the Air Force pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1982), Martin received copies of the other offerors' proposals. Martin filed its protest with our Office on December 4.

^{1/} Although appropriated funds are not involved, since the Air Force is conducting this procurement our Office has jurisdiction to decide Martin's protest under the Competition in Contracting Act of 1984, 31 U.S.C. § 3552 (Supp. III 1985). Artisan Builders, 65 Comp. Gen. 240 (1986), 86-1 C.P.D. ¶ 85; Micronesia Media Distributors, Inc., B-222443, July 16, 1986, 86-2 C.P.D. ¶ 72.

The Air Force initially argues that Martin's protest of the evaluation of proposals is untimely since Martin was notified of award on November 14 and did not protest to our Office until December 4. In this respect, according to our Bid Protest Regulations Martin had to protest these issues no later than 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). We find the protest timely in that regard, however, because Martin did not receive copies of Clearwater's initial or best and final proposals until December 1, and Martin could not have known what Clearwater was offering, in contrast to its own offer, until that date.

As to whether Martin's offer should have been judged better than Clearwater's, the record shows that the Air Force found Clearwater's proposal to be superior to Martin's at both the initial and best and final stages with regard to all evaluation factors. It is not the function of our Office to determine independently the relative merit of proposals, Georgetown Air & Hydro Systems, B-210806, Feb. 14, 1984, 84-1 C.P.D. ¶ 186, but rather to review whether an evaluation was unreasonable or in violation of procurement laws or regulations. Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 C.P.D. ¶ 589. Martin basically is questioning the Air Force's evaluation judgment. However, that, in itself, does not provide a legal basis for our Office to object to the award, since it is well-established that a protester's mere disagreement with the contracting agency's evaluation does not render that evaluation unreasonable. See Harbert International, Inc., B-222472, July 15, 1986, 86-2 C.P.D. ¶ 67. Martin has offered no evidence, other than disagreement, to rebut the Air Force's evaluation of proposals, and there is nothing in the protest record that convinces us that the Air Force's relative assessment of proposals was unreasonable. Accordingly, we will not question the agency's judgment in this regard.

We also find no legal merit in Martin's complaint that the Air Force did not help Martin improve, or let the firm explain, its initial offer during negotiations. The record shows that the Air Force included all three offerors in the competitive range and invited all offerors to "present" their proposals to the reviewing committee. After Clearwater's presentation, and after the other offeror's presentation, the committee asked a number of questions relating to transportation problems, color separations, company location, printing presses, quality control procedures, copy deadlines, and size of the work force. Examples of the offerors' work were distributed. Clearwater was also questioned about its computer

link-up, delivery system, advertising layout delivery date, photo reproduction quality and editorial changes. The committee did not ask Martin any questions after the firm's presentation since the committee was fully familiar with Martin's work as Martin was the incumbent.

The committee then went on to recommend the selection of Clearwater, citing the offeror's superior graphics, color and copy quality, as well as the advantage of utilizing the professional capability of a large, technically advanced company. The committee noted that Martin "had not listed any specifics in their proposal" and that its presentation did not indicate any services beyond the minimum required. The Air Force then revised the RFP to include the evaluation factors listed above and requested best and final proposals from all offerors.

The purpose of negotiations is to lead all offerors having a reasonable chance at being selected into the areas of their proposals that require amplification, or to point out weaknesses or deficiencies in them, and then to afford the firms the opportunity to revise their offers. See Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 C.P.D. ¶ 400. We think that the Air Force met its obligation in that respect. The Air Force considered Martin's proposal, both as initially submitted and revised, to have met the agency's requirements and to be technically acceptable, so there were no deficiencies or uncertainties that required discussions. In evaluating the relative merits of the firms' proposals, the Air Force concluded that Martin's proposal simply was inferior to Clearwater's. As a general matter, the items that are to be discussed during negotiations are those weaknesses in the offeror's own proposal relative to the solicitation requirements, not the merits of a competitor's offer or how to help the offeror bring its proposal up to the level of other proposals. See generally 51 Comp. Gen. 621 (1972).

We note here that Martin suggests that the Air Force's request for best and final offers was a subterfuge to allow Clearwater to match Martin's proposal. It is clear from the record, however, that the Air Force considered Martin's proposal to be inferior, rather than superior, to Clearwater's before issuing the request; moreover, the issuance of such a request to offerors with whom the agency negotiated, and who still have a chance at the award, is procedurally correct upon completion of the discussions. See Joseph L. De Clerk and Associates, Inc., B-221723, Feb. 10, 1986, 86-1 C.P.D. ¶ 146.

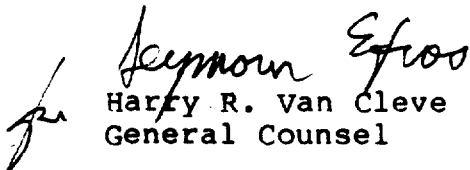
Martin also alleges that the community will be inconvenienced by a change in publisher, and that the award to Clearwater constitutes discrimination against Martin, a woman-owned small business.

As indicated above, our Regulations provide that to be timely a protest must be received in our Office within 10 working days after the basis of protest was or should have been known. 4 C.F.R. § 21.2(a)(2). Oral notification of the basis of protest is sufficient to start the running of the 10-day period for filing a protest; a protester may not delay filing its protest until receipt of some written notification that merely reiterates the information transmitted orally. Pacific Fabrication--Request for Reconsideration, B-224065.2, Sept. 9, 1986, 86-2 C.P.D. ¶ 277.

In contrast to the issue we have treated on the merits, Martin did not need to know the contents of Clearwater's offer to protest these matters, so that the protest is untimely as to these issues. We note for the record, however, that the Air Force's evaluation contains no evidence of the alleged discrimination.

Finally, Martin challenges the awardee's compliance with the contract's delivery terms and the required tabloid size of the paper, and asserts that Clearwater did not publish during the week after award. Whether a contractor actually performs according to the solicitation's requirements, however, is a matter of contract administration, which is the responsibility of the contracting agency and is not reviewable under our Bid Protest Regulations. A C.F.R. § 21.3(f)(1); Satellite Services, Inc., B-219679, Aug. 23, 1985, 85-2 C.P.D. ¶ 224.

The protest is denied in part and dismissed in part.


Harry R. Van Cleve
General Counsel