



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Conceptual Systems, Inc.

File: B-227018

Date: July 14, 1987

DIGEST

1. Protester's allegation of conflict of interest on the part of a technical evaluation panel member is dismissed as untimely where it is clear from the record that the protester was aware of the alleged conflict nearly 2 months before filing the protest.

2. Where the record contains no evidence that the technical evaluation panel chairman was biased and unduly influenced the panel members evaluating the protester's proposal, the protester has not met his burden of proving bias on the chairman's part in favor of another offeror.

DECISION

Conceptual Systems, Inc., protests the award of a contract to University Research Corporation under request for proposals (RFP) No. RFP5-54620/055, issued by the National Aeronautics and Space Administration (NASA), Goddard Space Flight Center, for support services for a training and human resources management program. Conceptual Systems argues that the evaluation process was tainted by the conflict of interest of one of the members of the technical evaluation panel with respect to a consultant to the awardee, and by bias on the part of the panel chairman, to whom three of the panel members reported.

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

The RFP was issued on August 18, 1986. Five offerors submitted proposals. A two person technical evaluation panel and a four person business evaluation panel reviewed the proposals and eliminated two offerors from the competitive range. NASA conducted discussions with the three remaining offerors--including Conceptual Systems and University Research. After evaluating best and final offers, NASA awarded a contract to University Research on February 17, 1987.

Conceptual Systems first alleges that a member of the technical evaluation committee had a conflict of interest because of his affiliation with a professor who was proposed as a consultant by University Research.

This allegation is untimely. Our Bid Protest Regulations require that protests of allegedly improper agency actions be filed within 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). NASA asserts that Conceptual Systems knew all the facts behind the conflict of interest allegation in January of 1987, and states that it orally notified Conceptual Systems of award to University Research on February 17, and then confirmed its decision in writing. Conceptual Systems, however, did not file the protest with our Office until April 10. Moreover, although the timeliness issue was raised by NASA in the agency's protest report and at a subsequent conference on the protest, Conceptual Systems presented no rebuttal arguments in its comments as to when it learned of the alleged conflict. We therefore dismiss this issue. In any event, our review of the record shows that the committee member in question had disclosed his relationship with the professor proposed as a consultant to University Research and that there is no evidence (other than the protester's speculation) that this relationship constituted a conflict of interest that biased the member's evaluation.

The second issue raised by Conceptual Systems concerns the technical evaluation panel chairman. The protester suggests that the chairman was biased against Conceptual Systems in favor of University Research, and that because three of the five panel members are employees of, and responsible to, the chairman, the chairman was able to influence their evaluations unduly.

NASA acknowledges that three of the technical evaluation committee members work for the chairman. However, NASA asserts that it is not uncommon for this to be the case since evaluation committee members are often the most knowledgeable people available in a particular area. NASA further argues that the chairman did not attempt to exert improper influence over the evaluators.

In order to prove bias, a protester must provide hard facts showing undue influence on the other panel members so as to result in favoritism or antagonism toward a particular offeror. Agua-Chem, Inc., B-221319, Apr. 3, 1986, 86-1 C.P.D. ¶ 319. Conceptual Systems has not presented any evidence of improper influence on the part of the panel chairman, and our own review of the record discloses no

indication that the chairman tried to influence any member of the technical evaluation committee in favor of University Research or against Conceptual Systems. The mere fact that three of the panel members reported to the chairman is not, in itself, evidence of any impropriety.

The protest is dismissed in part and denied in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel