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The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Transaction Response Management, Inc.--Request for  
Reconsideration  
File: B-228938.5  
Date: September 1, 1988

## DIGEST

Prior decision is affirmed where, in request for reconsideration, protester alleges that procuring agency evaluated its proposal in bad faith without furnishing any corroborative evidence of this fact and the record of the evaluation process does not support the contention. The protester has not affirmatively proven its case, since in order to show bad faith there must be irrefutable proof that contracting officials had a specific intent to harm the protester.

## DECISION

Transaction Response Management, Inc. (TRM), requests reconsideration of our decision in Transaction Response Management, Inc., B-228938.3, Apr. 4, 1988, 88-1 CPD ¶ 336, in which we denied in part and dismissed in part its protest against the alleged improper evaluation of its proposal under request for proposals (RFP) No. FCGA-S2-SS201-N, issued by the Federal Supply Service, General Services Administration (GSA), for debt collection services.

We affirm our prior decision.

The RFP solicited separate prices for 15 line items and contemplated multiple awards to separate contractors. Line item Nos. 1-4 were for the collection of first referral and second referral commercial debts, line item Nos. 5-10 were for the collection of first referral and second referral consumer debts, and line item Nos. 11-15 were for the provision of adjunct services. First referral debts were defined in the RFP as accounts properly placed by an ordering agency with a private sector debt collection contractor for the first time. Second referral debts are those accounts placed with a private sector debt collection contractor for the second time.

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The RFP advised that award would be made to the offeror(s) whose offer(s) conforming to the RFP were most advantageous to the government considering technical factors and cost or price. Technical factors were deemed far more important than cost or price and GSA reserved the right to make awards based on technical quality, regardless of an offeror's cost or price relative to other offers.

TRM submitted an offer for line item Nos. 3, 4, 8, 9 and 10. After discussions and best and final offers (BAFOs), the Source Selection Evaluation Board (SSEB) rated TRM at 53.3125, American Credit and Collection (ACC) at 80.7125, and Credit Claims and Collection (CCC) at 85.625. Although TRM submitted the lowest prices for its line items, the contracting officer determined that award to a lower technically rated offeror would not be in the government's best interest. GSA awarded line item Nos. 3, 4, 8, 9 and 11 to CCC and line items Nos. 10 and 11 to ACC.

In its initial protest, TRM argued that GSA committed several errors in evaluating its proposal. TRM alleged that GSA considered its proposal deficient in corporate experience but failed to apprise TRM of this fact during discussions. Further, TRM contended that GSA misapplied or misinterpreted the experience/business background evaluation factor by improperly downgrading its proposal because it lacked experience as a commercial debt collector. TRM also contended that GSA did not conduct a proper cost/technical trade-off analysis prior to making awards.

We held that from the record before us we could not conclude that GSA deprived TRM of meaningful discussions because GSA pointed out several weaknesses to TRM in oral discussions and in writing which should have alerted TRM of the need to amplify its proposal in the area of experience. Further, we did not find that GSA acted unreasonably in rating proposals for corporate as well as debt collection experience because these were qualifications that GSA reasonably could consider under the experience/business background evaluation factor, since these were encompassed by the stated evaluation criterion.

We found no merit in TRM's contention that GSA improperly downgraded its proposal because it lacked commercial debt collection experience. The protester asserts that Data Flow Corp., B-209449, July 6, 1983, 83-2 CPD ¶ 57, stands for the proposition that GSA should have considered TRM's management's personal experience in this respect. However, while this decision holds that a procuring agency may consider such experience if it finds the experience germane, the agency also may give such personal experience the weight it

considers appropriate in the circumstances. Here, the SSEB downgraded TRM's proposal because TRM had only been in existence since 1986 and its debt collection experience was with only 1,000 accounts. TRM officials, while employees of the General Accounting Office (GAO), gained experience collecting debts on 1,000 accounts that were referred to GAO by other federal agencies. Even though it was downgraded on the experience factor, TRM received well over half of the total points allocated to that factor. The fact that TRM's total debt collection experience was extremely limited constituted a major deficiency. As the RFP required the successful contractor to handle several thousand accounts, we did not find that it was unreasonable that GSA downgraded TRM's proposal because it lacked sufficient experience in collecting debts. We concluded that TRM's arguments merely reflected its disagreement with the evaluation of its proposal and did not show that GSA unreasonably evaluated the proposal and, further, given TRM's acknowledged limited experience, the evaluation was not unreasonable.

Further, we found no basis to question GSA's decision to make award to higher cost, more technically qualified offerors. The RFP specifically reserved the government's right to make award to higher priced more technically qualified offerors based on the expectation of superior performance. ACC and CCC received significantly higher technical scores than TRM. Further, GSA reported that a contractor with a technically superior proposal could be expected to collect a larger dollar volume of debt than a contractor with a technically inferior proposal, and that in most cases the government will not be the party paying the collection fee.

In its request for reconsideration, TRM again states that its proposal was improperly downgraded, and argues that recently discovered new information establishes the validity of the contention. TRM contends that its final score of 53.3125 was wrongfully downgraded from an original score of 80 points, after improper action on the part of the SSEB. TRM alleges that disciplinary actions have been taken against certain SSEB members as a result of their improper action. TRM states that at the SSEB meeting, which was composed of seven members, two members arrived late and were not permitted to turn in their scoring. Further, TRM states that the Chairman left the meeting before a vote was ever taken by the SSEB and that two members were not regularly appointed members of the board.

TRM also advises that it discovered that the SSEB voted it the winner of the award and that two members left the meeting thinking that TRM was the winner. However, after

further discussions, its proposal was downgraded for lack of corporate debt collection experience. TRM argues that it was mathematically impossible for the experience/business background evaluation factor to have downgraded its proposal by 30 points. Therefore, TRM argues that its proposal was improperly downgraded to widen the gap between it and the other offerors so the SSEB could justify awarding contracts to offerors with no prior federal debt collection experience at prices significantly higher. Further, TRM advises that the contracting officer initially rejected the SSEB's evaluation of its proposal but was overruled.

Given the seriousness of TRM's allegations, we requested that GSA furnish comments in response to the protester's allegations. GSA has specifically requested that certain documents furnished with its comments not be released outside of our Office. The record of the evaluation process does not support TRM's belief that its proposal was improperly downgraded to widen the gap between it and the other proposals so that award could be made to inexperienced higher offerors.

Based on our in camera review of statements provided by the Chairman of the SSEB and the contracting officer, we find no basis to question the evaluation and award process. Both of those individuals have furnished affidavits categorically denying that TRM's offer was initially given 80 points, that TRM was ever chosen as the awardee, the alleged misconduct by the SSEB, or that any government employees involved in this procurement were disciplined. These statements and the evaluation documents clearly refute TRM's allegations concerning the manipulation of its initial score and the voting conduct of the SSEB. In addition, we have contacted the Inspector General's Office at GSA and no suspension or other disciplinary action has been taken against any employees involved in the procurement.


Although TRM argues that the facts evidence extreme bad faith and that the information concerning the alleged improper treatment of its proposal came from reliable government officials, TRM has not rebutted the agency's position nor presented any evidence or affidavits corroborating its allegations. A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Leslie Building Associates, B-229815, Apr. 19, 1988, 88-1 CPD ¶ 381. Where a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the

award, there must be evidence that contracting officials had an intent to harm the protester, since contracting officials are presumed to act in good faith. Scipar, Inc., B-220645, Feb. 11, 1986, 86-1 CPD ¶ 153.

As further support for the bad faith argument, TRM has again argued that the only reasonable conclusion that can be drawn from it being placed in the competitive range with an initial score of 52.8625 is that the score was manipulated downward. We considered TRM's argument about the propriety of including its proposal in the competitive range in our initial decision and we concluded that GSA had not acted improperly in this regard. In this connection, we note that 30 proposals were received, 15 were included in the competitive range and 6 awards were made. For the items on which TRM offered, there were 4 firms in the competitive range, including one which received a technical score closer to TRM's than to the score of the awardees. While TRM received the lowest technical score of those in the competitive range, it also offered the lowest price, which is to be considered in a competitive range determination. Howard Finley Corporation, 66 Comp. Gen. 545 (1987), 87-2 CPD ¶ 4. From these facts and the array of scores in the competitive range, we see no evidence of bad faith on the part of GSA.

Further, as noted above, the determination that it lacked sufficient corporate commercial debt collection experience was based on the fact that TRM had only been in existence since 1986, and that its debt collection experience was with only 1,000 accounts gained during government service. While TRM's principals had developed a software program, which was the focal point of their proposal, we do not find GSA acted unreasonably in downgrading the firm for having no commercial experience as a private firm since it, nevertheless, received well over half the points allocated to experience. Thus, without any evidence except TRM's speculation, there is no basis to conclude that TRM's proposal was evaluated in bad faith.

The prior decision is affirmed.

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Comptroller General  
of the United States