



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: E.H. Pechan & Associates, Inc.

File: B-244583

Date: October 30, 1991

Edward H. Pechan for the protester.
David Speser for Foresight Science & Technology, Inc., an interested party.
Jesse E. Lasken, Esq., National Science Foundation, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the award of a contract for conference arrangements is denied where the record does not support protester's assertion that the awardee engaged in improper business practices, with the assistance of the agency, designed to influence the competition.

DECISION

E.H. Pechan & Associates, Inc. protests the award of a contract to Foresight Science & Technology, Inc. under request for proposals (RFP) No. SEE 91-004, issued by the National Science Foundation (NSF) for logistical services in support of a series of Federal High Tech Conferences which the agency sponsors to aid small businesses. The protester, who was the incumbent High Tech contractor, principally alleges that Foresight should have been disqualified from competing because, in August 1990, the firm's president engaged in improper business practices which interfered with Pechan's then-current contractual responsibilities to assist in site selections for the High Tech program.

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

The RFP was issued on March 1, 1991, contemplating a 3-year contract to provide support services for High Tech conferences beginning on October 1. In addition to providing these services, during the period of the contract the contractor was obligated, with NSF's approval, to "conduct searches and reserve facilities for the following three years (i.e., Fiscal Years 1995 through 1997)." At the

time the RFP was issued, Pechan was the incumbent contractor whose duties included arranging for conference facilities for Fiscal Years 1992 through 1994. Prior to Pechan, Foresight had been the High Tech contractor for NSF for a period of 6 years.

On July 17, following a competition in which five initial offers were submitted and Pechan and Foresight were determined to be in the competitive range, Foresight was awarded a contract based on its higher technical rating and lower price.¹ The proposal evaluation is not at issue; rather, Pechan argues in its protest that NSF should have disqualified Foresight based upon events occurring in August of 1990--7 months before the issuance of the RFP--which the protester considers to constitute improper business practices designed to affect the later competition.

The events of concern to Pechan involve a telephone contact on August 15 between Foresight's president and the Seattle-King County Convention and Visitors Bureau concerning the potential availability of hotel space and conference facilities in the Seattle area for a High Tech conference either in October of 1992 or 1993. The contact was memorialized by a Seattle Bureau representative in a "sales lead" form which was circulated to five area hotels to determine their interest. The sales lead had High Tech as its subject, contained data concerning such matters as the number of tabletop exhibits NSF would use and the number of rooms rented at a 1989 High Tech conference in Los Angeles, and indicated that Foresight's president would be following up in late August. No follow-up ever occurred.

At the same time, Pechan was in the process of contacting hotels in the Seattle area for a possible High Tech conference to be held in October 1991 as part of its then-current contractual duties. During this endeavor, a hotel official informed the protester about Foresight's earlier contact and provided a copy of the Seattle Bureau's sales lead form. On October 9, 1990, Pechan wrote to NSF requesting an investigation of the incident and expressing dismay at what the firm believed to be interference with its contractual performance. NSF conducted an investigation of the matter which included interviews with Foresight's president, a representative of the Seattle Bureau and the contracting officer's technical representative (COTR), who was in charge of site selection and who Pechan believed was involved.

¹The RFP provided that technical factors would be more important than price. Foresight's technical rating was 285 while Pechan's was 250; the awardee's price was \$393,061 while the protester's was \$429,121.

As the result of the investigation, NSF, while not finding that Foresight had acted improperly, informed the Seattle Bureau that it was to deal with Pechan as NSF's contractor and cautioned Foresight not to represent itself as the agency's High Tech contractor. Also, NSF advised the COTR to refrain from contact with Foresight's president in light of the upcoming RFP.

Pechan reports that, as of November 1, 1990, when it was advised by NSF that it had cautioned Foresight and the Seattle Bureau, it did not pursue the matter further. Pechan further states that it assumed at the time that the agency would take further, albeit unspecified, action with regard to its competitor. When Pechan learned of the award, it filed this protest requesting Foresight's disqualification on the basis of improper past business practices.

Specifically, Pechan alleges that NSF's COTR encouraged Foresight to make contact with the Seattle Bureau and aided the firm by providing "inside information" known only to the COTR's staff with regard to the number of tabletop exhibits to be required and the number of rooms previously rented in Los Angeles. It is Pechan's position that Foresight's president, whose son had previously managed the firm's High Tech business, contacted the Seattle Bureau in an attempt to convince NSF in the upcoming 1991 procurement that the company was still capable of meeting the agency's requirements.

It is the agency's position that no misconduct warranting disqualification occurred, that its 1990 investigation and subsequent actions were sufficient to remedy the problem that existed at the time, and that the record does not support Pechan's speculation that this procurement was in any way influenced by the earlier events. In this regard, NSF notes that the COTR, who Pechan suspected as favoring Foresight, was the only member of the evaluation panel under RFP No. SEE 91-004 to score the protester's proposal higher than the awardee's.

In order to protect the integrity of the procurement system, contracting officers are granted wide latitude to exercise business judgment in deciding whether or not to impose restrictions on competition that are not explicitly provided for by regulation; in this regard, a contracting officer may disqualify a firm for improper business conduct engaged in by representatives of the firm where there is a reasonable basis on the record for determining that the conduct afforded the firm an unfair competitive advantage.

See Compliance Corp., B-239252, Aug. 15, 1990, 90-2 CPD ¶ 126, aff'd, Compliance Corp.--Recon., B-239252.3, Nov. 28, 1990, 90-2 CPD ¶ 435; Compliance Corp. v. United States, 22 Cl. Ct. 193 (1990). However, such a decision must be based on facts and not mere innuendo or suspicion. Id.

We have reviewed the entire record concerning the August 1990 telephone contact (including the investigation materials provided by NSF and the awardee's voluntary statement to this Office) in light of the protester's concerns. While the motivation behind Foresight's contact is not readily apparent, the record clearly establishes that Foresight did not engage in any improper business practice that resulted in an unfair competitive advantage for the firm.

First, Foresight's president has twice stated, once during the investigation and once in his comments to this Office, that he did not represent himself as NSF's High Tech contractor to the Seattle Bureau. There is nothing in the record which would lead us to conclude otherwise. In this regard, no one other than the protester states that such a representation was made.

Second, as to the alleged involvement of the COTR in this incident, he has denied any contact with Foresight's president concerning High Tech twice during the investigation, and there is simply nothing in the record which contradicts this account. If anything, the record supports a conclusion that the COTR was not biased in favor of Foresight since he was the only evaluator who scored the protester's proposal higher than the awardee's.

Third, with respect to the alleged "inside information" to which Pechan refers--the number of tabletop exhibits NSF might use at a given conference and the number of rooms it rented the previous year--this hardly can be characterized as "proprietary" or "procurement sensitive" data of the sort which could not be obtained through a Freedom of Information Act request, or even a less formal inquiry to the agency, by anyone interested in such information.


Fourth, the record does not support a conclusion that Foresight benefited in anyway during the present competition as a result of its 1990 contact with the Seattle Bureau. The admonition the firm received from NSF in October 1990 following the investigation could only have operated against the company. The preliminary contact was not mentioned in Foresight's proposal, and there is no indication in the record that it played a part in the evaluation of proposals. To the extent that Foresight's demonstrated ability to make conference arrangements for the government was important to the evaluators, the record contains ample evidence that the

firm had such experience under its earlier NSF contract and through its efforts with other agencies.

We therefore have no basis upon which to conclude that the competition was affected in favor of the awardee and no reason to disturb the contracting officer's decision not to disqualify the firm.

Finally, Pechan alleged in its initial protest that in 1989 the COTR had improperly issued a press pass to Foresight's president for a Washington area meeting, that Foresight had recently been operating under a lapsed corporate charter in the District of Columbia, and that its work with a San Diego hotel before the present contract was awarded suggested a change in scope from the RFP under which the competition was conducted. In its agency report, NSF addressed these matters indicating that there was nothing unusual or improper about the issuance of the press pass, that the RFP did not require incorporation in the District of Columbia, and that the statement of work in Foresight's contract is identical to that contained in the RFP. Since Pechan has offered no substantive response to the agency's positions (except to state that it now regards the press pass issue as "minor"), and since the agency's positions otherwise appear to be reasonable, we consider the issues abandoned and will not consider them further. Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel