



Comptroller General
of the United States
Washington, D.C. 20548

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Jordan

Decision

Matter of: Huffman Prairie Physicians, Inc.

File: B-246050

Date: October 25, 1991

Stephen L. DeVita, Esq., for the protester,
Paul E. Jordan, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where solicitation provides for award to low, technically acceptable offeror without discussions, allegations that agency did not conduct discussions or perform a cost-technical trade-off do not state a valid basis for protest.
2. Challenges to solicitation award criteria and statement of requirements are untimely when not raised prior to closing date for receipt of proposals.
3. Absent showing of fraud, bad faith, or misapplication of definitive responsibility criteria, General Accounting Office will not review protest against an agency's affirmative determination of an awardee's responsibility.

DECISION

Huffman Prairie Physicians, Inc. protests the award of a contract to any other firm under request for proposals (RFP) No. F33601-91-R-9031, issued by the Department of the Air Force for medical services at Wright-Patterson Air Force Base, Ohio.

We dismiss the protest.

Huffman first alleges that the agency failed to consider evaluation factors apart from price and improperly made an award without conducting discussions. The RFP provided that award would be based, in descending order of importance, on: price; compliance with the statement of work; verification of licenses; and submission of references. This evaluation scheme essentially provides that award will be made to the low, technically acceptable offeror. The RFP also provided that the agency intended to award the contract without discussions on the basis of initial proposals.

Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds of a protest, 4 C.F.R. § 21.1(c)(4) (1991), and that the grounds stated be legally sufficient, 4 C.F.R. § 21.1(e). These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. In view of the RFP provisions noted above, Huffman's allegations regarding the agency's intention to award on the basis of low price without conducting a cost-technical trade-off, and without discussions, fail to state a valid basis for protest and must be dismissed.

To the extent that Huffman is asserting that the RFP was defective because it emphasized price over technical factors and provided for award without discussions, the protest is untimely since it was filed after the closing date for receipt of initial proposals. Likewise, the allegation that the RFP did not adequately state the agency's needs for a skilled and competent, rather than a minimally acceptable, physician is also untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1), as amended by 56 Fed. Reg. 3759 (1991); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. Since the RFP clearly set forth the agency's evaluation factors and award basis, any alleged improprieties were apparent prior to the closing date.

Huffman also contends that the awardee is not responsible to perform the contract. A determination that a bidder or offeror is capable of performing a contract is based, in large measure, on subjective judgments which generally are not susceptible to reasoned review. Thus, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Where, as here, there is no showing of

possible fraud or bad faith, or that definitive responsibility criteria have been misapplied, we have no basis to review the protest.

The protest is dismissed.

A handwritten signature in cursive script, appearing to read "Paul I. Lieberman", followed by a horizontal line.

Paul I. Lieberman
Assistant General Counsel