



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

Decision

Matter of: CMT Associates
File: B-242644.4
Date: November 1, 1991

T. J. Phillips for the protester.
James M. Stewart for Technology Vectors, Inc., an interested party.
Lt. Colonel William H. Spindle, Department of the Air Force, for the agency.
Linda S. Lebowitz, Esq., and Michael P. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where there is no support in the record for the allegation that an Air Force sergeant who served as a technical consultant on the protested solicitation and who was hired as the awardee's project manager upon retirement from the government improperly influenced the contracting officer's determination of the awardee's responsibility or the award decision.

DECISION

CMT Associates protests the award of a contract to Technology Vectors, Inc. (TVI) under invitation for bids (IFB) No. F28609-90-B-A027, issued by the Department of the Air Force for air transportation services at the Philadelphia International Airport. CMT contends that an Air Force sergeant who served as a technical consultant to the contracting office and who was hired upon retirement from the government as the project manager for TVI on this contract improperly influenced the contracting officer's affirmative determination of TVI's responsibility and the award decision.

We deny the protest.

The Air Force issued the solicitation on July 3, 1990, and 12 firms submitted bids by the August 31 bid opening date. Access Flight Services was the apparent low bidder. Access Flight contended, however, that it had made a mistake in its apparent low bid based on allegedly incomplete information furnished by the Air Force. On January 14, 1991, Access Flight filed a protest with our Office requesting that the

Air Force resolicit its requirements. During the pendency of that protest, the Air Force awarded an interim contract to Delcor International for the period from February until July. On March 8, our Office dismissed Access Flight's protest.

Following our dismissal of Access Flight's protest, the Air Force sergeant, who had applied for retirement in August 1990, was informed that TVI was now the apparent low bidder and would receive the award upon Delcor's completion of the interim contract. On April 23, 1991, the sergeant called TVI concerning a post-government employment position as TVI's project manager. In May, the sergeant submitted his resume to TVI.

The record shows that in June 1991, to determine TVI's capability to perform the Air Force contract, the contract specialist initiated interviews with five references who were familiar with TVI's performance history and ability to satisfy contractual requirements. These references reported that TVI's performance was outstanding and of a highly exceptional nature, and its personnel were highly qualified and motivated. The references strongly recommended TVI. On the basis of these interviews and the fact that TVI was not debarred or suspended from government contracting, the contracting officer subsequently affirmatively determined TVI to be a responsible contractor capable of performing the services required by this solicitation.

On July 2, the Air Force awarded a contract to TVI. On July 14, 2 days after formally retiring from the government, the sergeant interviewed with TVI, and on July 18, he was hired by TVI. CMT filed an agency-level protest based on the alleged "illegal contact" between the sergeant and TVI. CMT requested an investigation into the sergeant's conduct. Because the Air Force did not respond promptly to CMT's agency-level protest, CMT filed this protest challenging the award to TVI.

In its initial protest to our Office, CMT asserted that the sergeant had drafted the specifications and performance work statement (PWS) to favor TVI. CMT also argued that, prior to award, the sergeant acted on behalf of TVI in several ways, including compiling government and contractor employment records for TVI and interviewing potential employees for TVI. Finally, CMT also alleged that the sergeant may have improperly influenced the contracting officer's decision not to conduct a preaward survey of TVI and the contracting officer's subsequent affirmative determination of TVI's responsibility. For these reasons, CMT believed TVI should have been excluded from receiving an award under this solicitation.

In response to CMT's allegations, the contracting officer conducted an investigation. The contracting officer found that the sergeant was involved, but played no major role, in the development of the PWS, which was primarily prepared by another individual and approved by a higher-level Air Force officer. The contracting officer noted that the PWS was drafted and bid opening occurred substantially before the sergeant's contact with TVI. Further, the contracting officer stated that the sergeant had no involvement in the award decision since the contracting officer was the individual responsible for the affirmative responsibility determination and the award decision. The contracting officer concluded that while the sergeant's contact with TVI may have given rise to the appearance of a conflict of interest, the contact had no effect on the award.

An agency may take action to exclude an offeror where the record contains evidence that there is a likelihood that an actual impropriety or conflict of interest existed, as well as some basis for determining that the impropriety or conflict warrants the exclusion of that offeror. NES Gov't Servs., Inc.; Urgent Care, Inc., B-242358.4; B-242358.6, Oct. 4, 1991, 91-2 CPD ¶ _____. The determination that an impropriety is likely to have occurred must be based on facts and not mere innuendo or suspicion. Id. Here, the record, which includes the results of the contracting officer's investigation of CMT's protest allegations of improper influence, contains no evidence which would warrant the exclusion of TVI from receiving the award under the solicitation.

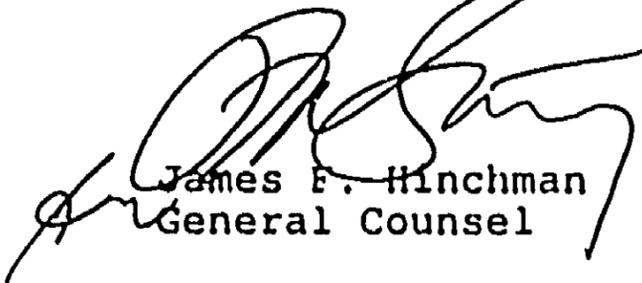
In its comments to the agency report, CMT admits that 8 months after bid opening, the sergeant "could not, [and] did [not], slant the development of the [specifications and] performance work statement toward [any] contractor," including TVI. Moreover, CMT admits that the sergeant did not compile government and contractor employment records, nor did the "alleged interviews of perspective TVI employees by [the sergeant take place]." Hence, we deem these particular allegations of improper influence to have been abandoned by CMT.

With respect to CMT's remaining allegation of improper influence by the sergeant concerning the contracting officer's responsibility determination, the contracting officer's decision not to conduct a preaward survey in this case does not establish any impropriety on the agency's part. See Cinpac, Inc., B-243366, July 15, 1991, 91-2 CPD ¶ 57. The record shows that the solicitation did not require a preaward survey and, in any event, we have held that a preaward survey is not a legal prerequisite to an affirmative determination of responsibility as contracting officials have broad discretion concerning whether to

conduct such surveys and may use other information available to them concerning a firm's responsibility. Hotel Donuts & Pastries, B-227306, Sept. 18, 1987, 87-2 CPD ¶ 275; Hercules Painting, B-223647, July 31, 1986, 86-2 CPD ¶ 131. The record shows that the determination of TVI's responsibility was made by the contracting officer on the basis of the previously described interviews and the fact that TVI was not a debarred or suspended government contractor.

While the contracting officer's investigation confirms that the sergeant called TVI concerning a job prior to award, there simply is no evidence in the record that the sergeant had any communications, directly or indirectly, with the contracting officer during the award process. The record shows that at the point in time when the sergeant applied for employment with TVI, sealed bids, based on specifications developed and written over a year earlier, had been opened for 8 months after a public bid opening. By April, the procurement had progressed so far that, as essentially admitted by CMT, the sergeant had no way of influencing the bidding and the award to be made to the low bidder based on bids publicly opened 8 months before. Other than CMT's mere speculation, the record contains no evidence of any influence by the sergeant on the contracting officer's responsibility and award decisions concerning TVI.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel