



Comptroller General  
of the United States

Washington, D.C. 20548

Burkard  
148458

## Decision

**Matter of:** Charles Trimble Company

**File:** B-250570

**Date:** January 28, 1993

Charles E. Trimble for the protester.  
James L. Weiner, Esq., and Justin P. Patterson, Esq.,  
Department of the Interior, for the agency.  
Richard P. Burkard, Esq., and John Brosnan, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

1. Agencies are not required to disclose budget information to potential offerors prior to the time set for receipt of proposals; allegation that a particular offeror gained access to such information does not state a basis for protest where there is nothing in the record to suggest that procurement officials aided offeror in obtaining relevant budget information.

2. Contention that evaluation was biased because of an alleged conflict of interest involving an evaluation panel member is denied where protester fails to show that the panel member exerted improper influence against the protester or in favor of the awardee.

### DECISION

Charles Trimble Company protests the award of a contract to CERT Technical Services Corporation under request for proposals (RFP) No. K51-92-301, issued by the Department of the Interior, Bureau of Indian Affairs (BIA). The protester argues that the RFP should have disclosed the estimated contract value and that one of the evaluators was biased in favor of the awardee.

We deny the protest.

The RFP sought offers for a comprehensive assessment of the BIA's direct and guaranteed loan programs, portfolios, and business development grants. These services were to be performed on a cost-reimbursement basis. The RFP provided that award would be made to the offeror whose proposal was determined to be most advantageous to the government and stated that "paramount consideration shall be given to the

evaluation of technical proposals rather than cost or price." In addition, the RFP advised that the "award may be made after receipt of proposals without further negotiations" and specified that the agency estimated that 10,080 staff hours would be needed to perform the required services.

The BIA received several proposals by the closing date. The technical proposals were evaluated and point scored by a technical evaluation panel consisting of two individuals. Trimble's proposal received the highest technical rating of 96.5 out of 100 possible points. CERT's proposal received the third-highest rating, 92.5. The awardee proposed a lower cost than did Trimble. Based on the contracting officer's determination that CERT's proposal was most advantageous, the agency awarded it the contract without conducting discussions with any offeror. This protest followed.

Trimble argues principally that the agency improperly refused to inform offerors of the "target cost" or estimated contract value. Additionally, the protester alleges that the awardee knew that the agency had \$500,000 available for the procurement and therefore had an advantage in preparing its cost proposal. It argues further that, having now learned from the agency that \$500,000 was "budgeted . . . for the study," the agency's staff estimate of 10,080 hours was too high. We disagree.

While the protester characterizes this \$500,000 figure as a "target cost" and contends that the BIA automatically awarded the contract to the firm which submitted the cost closest to the "target," from our review of the record, we see nothing which would indicate that the award was made to CERT because its cost estimate was close to \$500,000 budgeted for the project. The rationale for the selection was simply that the slight technical superiority offered by Trimble was not worth the extra cost. Moreover, we are aware of no requirement that such budgetary information be disclosed in solicitations. See Gartrell Constr., Inc., U.S. Floors, Inc., B-237032; B-237032.2, Jan. 11, 1990, 90-1 CPD ¶ 46. To the extent that the protester alleges that the awardee became aware of the budget figure, there is nothing in the record to suggest that BIA procurement officials provided that firm with the information or aided the awardee in preparing a cost proposal that was below it. Our Office will not attribute such improper conduct to procurement officials solely on the basis of inference or supposition. See Davey Compressor Co., B-215028, Nov. 30, 1984, 84-2 CPD ¶ 589.

While the protester also surmises that CERT may have learned of the funding limitations from congressional budgetary documents which were not easily accessible to Trimble (and other offerors), such documents were equally available to all offerors. Consequently, even assuming the awardee was aware of the available funding, we do not see how the agency afforded any offeror an unfair competitive advantage. Agencies are not required to compensate for the experience, resources, or skills enjoyed by a particular offeror where such competitive advantage is not the result of preference or unfair action by the government. Regional Envtl. Consultants, 66 Comp. Gen. 67 (1986), 86-2 CPD ¶ 476.

Concerning the contention that the agency's estimated staff hours were misstated or misleading in light of the available funding, we find Trimble's position to be without support. Here, the agency estimated that 10,080 hours would be required to perform the work and set that estimate out in the RFP. If the protester thought that the estimate was too high based on the description of the services required, it should have raised that concern prior to the closing time for receipt of proposals. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1992). Trimble also focuses on the costs required to perform the services for the estimated number of hours. In essence, the protester complains that in order for it to submit an offer in accordance with the agency's level-of-effort estimate and within the budget figure, it would have to significantly lower its hourly rates.

We do not think that this states a valid basis of protest since Trimble has not identified any impropriety on the part of the agency. In deciding how most effectively to use available funds, the determination of the government's minimum needs and the best method of accommodating them are primarily the responsibility of the procuring activity. Kato/Intermountain Elec., A Joint Venture, B-245807; B-245925, Jan. 30, 1992, 92-1 CPD ¶ 129. While the protester may not wish to or be able to provide the services at a cost that is within the agency's available funding, this does not render the solicitation defective. See Colin A. Houston & Assocs., Inc.--Claim for Proposal Preparation Costs, B-196187, May 5, 1980, 80-1 CPD ¶ 323. The agency here has decided that its needs as set forth in the RFP can be met within the amount budgeted. While the protester clearly disagrees, we have no legal basis upon which to question the agency's decision in this regard. Moreover, the record shows that several offerors submitted initial proposals which were below the budget figure.

Next, Trimble argues that one of the evaluators was biased in favor of CERT. The protester states that this evaluator, "for at least 10 years up to 1992," served as the "operating head" of an office responsible for processing BIA loan applications, servicing BIA loans, approving BIA guarantees, and monitoring bank loans by the BIA. In this capacity, according to the protester, the evaluator had a "close prior working relationship" with the awardee. Trimble does not explain the nature of this relationship other than to state that the evaluator, acting as a government official on behalf of BIA, had contracted with CERT in the past. Because of this "relationship," Trimble argues, the evaluator was biased toward CERT. We find no support for this argument.

When a protester alleges bias on the part of an evaluation official, the record must establish that the contracting official intended to harm the protester, since contracting officials are presumed to act in good faith. Advanced Sys. Tech., Inc.; Engineering and Professional Servs., Inc., B-241530; B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153. Where, as here, a protester infers that an evaluator is biased because of his or her past experiences or relationships, we will examine whether the individual involved exerted improper influence in the procurement on behalf of the awardee, or against the protester. George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433.

Trimble has not shown how the evaluator's past contacts with CERT in his capacity as a government official establish a "relationship" which could result in a conflict of interest or a biased evaluation. Even assuming there was such a "relationship," however, Trimble has presented no evidence, and the record does not show, that this evaluator exerted any improper influence in the procurement for CERT or against Trimble. To the contrary, the record shows that this evaluator awarded Trimble's technical proposal the highest score of all offerors. With respect to the awardee's technical proposal, this individual awarded that firm a lower score than did the other evaluator, whom the protester does not claim was biased. We thus have no basis to conclude that this evaluator was biased.

Finally, the protester also argues that it was improper for this individual to be an evaluator because the successful offeror under the contract would be required to evaluate his prior performance as head of a BIA office. According to the protester, this provided the evaluator with an incentive to choose a firm which would be less critical of his work. There is nothing in the record to suggest that this alleged incentive worked to the favor of CERT or to the detriment of Trimble. Accordingly, and in light of the scores awarded by this individual, we have no basis to conclude that his

participation on the evaluation panel violated any procurement statute or regulation or provided any offeror with a competitive advantage, and we see no reason why he could not have served on the panel.<sup>1</sup>

The protest is denied.



*/s/* James F. Hinchman  
General Counsel

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<sup>1</sup>In this connection, the protester argued in its comments that this evaluator did not sign and provide to the contracting officer a "Conflict of Interest Certificate" before serving on the panel as required by the agency. In response, the agency has provided our Office with a copy of this certificate signed by the evaluator. The protester argues that this certificate was not prepared or submitted to the contracting officer prior to the initial evaluation. Even assuming this to be true--the argument is based entirely on conjecture--in light of the scores awarded, we do not see how the protester was prejudiced by a failure by the agency to obtain this certificate.