



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Dynamic Aviation--Helicopters

File: B-274122

Date: November 1, 1996

Sam Z. Gdanski, Esq., for the protester.

James L. Weiner, Esq., and Sherry Kaswell, Esq., Department of the Interior, for the agency.

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DIGEST

1. Where an agency uses traditional responsibility factors, such as experience or past performance, as technical evaluation factors, the comparative evaluation of proposals under such factors does not involve a matter of responsibility subject to the Small Business Administration certificate of competency procedures.
 2. In a negotiated, best value procurement, an agency may select a higher technically rated, higher-priced offer for award, where the agency reasonably determines in accordance with the stated evaluation criteria that the technical superiority of the higher-rated proposal outweighs the price advantage of the lower technically rated proposal.
 3. Allegations of bias on the part of government officials in the evaluation of proposals must be supported by credible evidence clearly demonstrating a bias against the protester or in favor of the awardee, and that the agency's bias translated into action that unfairly affected the protester's competitive position; bias is not established by inference or supposition.
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DECISION

Dynamic Aviation--Helicopters protests the award of a contract to Timberline Helicopters under request for proposal (RFP) No. 8096-09, issued by the Office of Aircraft Services, Department of the Interior, for helicopter services.

We deny the protest.

The RFP, which was issued as a total small business set-aside, sought fixed-priced proposals for flight services, consisting of one helicopter to be flown, maintained, and fuel serviced by the contractor, for a base year with 4 option years. The RFP

provided that, among other things, the contractor would transport personnel and cargo in support of fire suppression; assist in search and rescue operations; and perform wild horse and burro gathering, herding, capturing, and counting.

Offerors were informed that award would be made on a best value basis, determined pursuant to the following technical evaluation factors in descending order of importance:

1. Past Performance

- a. Quality of Service
- b. Timeliness and responsiveness of performance
- c. Commitment to customer satisfaction
- d. Quality awards/certifications
- e. Problems
- f. Cost Control

2. Technical

- a. Safety
- b. Maintenance
- c. Personnel
- d. Aircraft
- e. Certification

The RFP did not state the relative weight of technical vis-a-vis price in the evaluation of proposals; thus, price and the technical factors were of approximately equal weight. See Jack Faucett Assocs., B-233224, Feb. 3, 1989, 89-1 CPD ¶ 115.

Proposals were received from Timberline--the incumbent contractor--and Dynamic in response to the RFP. Discussions were conducted, and best and final offers (BAFO) received. Dynamic proposed a total price of \$481,600, and Timberline proposed a total price of \$511,250. The agency's final evaluation was that Timberline's BAFO was superior to Dynamic's under the past performance factor and under the technical factor's safety, maintenance, and personnel subfactors. In the contracting officer's judgment, Timberline's proposal represented the best value to the government. Award was made to Timberline, and this protest followed.

Dynamic challenges the evaluation of its proposal, asserting that the evaluation of its past performance concerns a matter of its responsibility, which Dynamic, as a small business concern, has a right to have reviewed by the Small Business Administration (SBA) under the certificate of competency (COC) procedures. Dynamic also argues that it is entitled to award as the lowest-priced offeror.

We disagree with Dynamic that the evaluation of its past performance under this RFP was a matter of responsibility subject to COC procedures. An agency may use traditional responsibility factors, such as experience or past performance, as technical evaluation factors, where, as here, a comparative evaluation of those areas is to be made. Advanced Resources Int'l, Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348. A comparative evaluation means that competing proposals will be rated on a scale relative to each other as opposed to a pass/fail basis. Id. Where a proposal is determined to be deficient pursuant to such an evaluation, the matter is one of relative technical merit, not nonresponsibility, as would require a referral to the SBA. Id.; Aerospace Design, Inc., B-247793, July 9, 1992, 92-2 CPD ¶ 11.

With regard to Dynamic's protest objection that it is the lowest-priced offeror, the government in a negotiated procurement is not required to make award to the lowest-priced, technically acceptable offeror unless the RFP specifies that price will be determinative. Miltop Corp.; Aydin Corp., B-258554.4 et al., June 6, 1995, 95-1 CPD ¶ 285.

Here, the RFP provided for a cost/technical tradeoff in the selection of the most advantageous offer to the government, and the record supports the contracting officer's decision to select Timberline's proposal for award on the basis of Timberline's reasonably evaluated technical superiority, notwithstanding Dynamic's price advantage. Specifically, under the past performance factor, the agency's evaluators found that, despite specific discussion questions, Dynamic had not demonstrated relevant experience in horse/burro herding or in fire suppression; Timberline, on the other hand, demonstrated extensive relevant and high quality experience in wild horse and fire suppression missions. Under the technical factor's safety subfactor, the evaluators found that in 1991 Dynamic had a single safety incident (which did not result in injuries),¹ while Timberline had no reported accidents or safety incidents. Under the technical factor's maintenance subfactor, the evaluators found that Dynamic offered only a minimal quality assurance program, consisting of a "system design of cards requiring a calculation to determine when overhaul of components would be required," while Timberline offered "an excellent computerized aircraft records system" to facilitate tracking of overhaul components under its quality assurance program and, unlike Dynamic's proposal, an on-site mechanic other than the pilot. The evaluators concluded that Timberline offered a superior proposal, based upon its extensive related experience, excellent past performance, safety record, and maintenance system. The contracting officer agreed, as follows:

¹Although Dynamic objected during discussions that there was no actual safety incident, the evaluators noted that the government contract involved was terminated for default as a result of this incident.

"The greatest advantage in the Timberline proposal over the Dynamic proposal is the demonstrated and supported level of related past experience, safety record, quality assurance program and maintenance support. Timberline's proposal contained a high level of information to support sustained high quality performance relative to responsiveness to the customer's program and mission satisfaction.

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"I have determined that Timberline's superior past performance, experience, maintenance approach and safety record are significant and should result in more effective and timely contract performance in support of the Bureau of Land Management wild horse missions. I believe that these differences overcome Dynamic's slight price advantage and that an award to Timberline would be the most advantageous to the Government in accordance with the evaluation factors stated in the solicitation and represents the best value to the Government."

Dynamic does not show that the evaluation of its proposal, or the contracting officer's cost/technical tradeoff, was unreasonable. Instead, the protester contends that the evaluation was motivated by bias against Dynamic and in favor of Timberline. Specifically, the protester alleges that the United States District Court for the District of Columbia in an unrelated case found that the agency's chief of the Office of Aircraft Services' Acquisition Management Division was biased against Dynamic Aviation. Dynamic contends that this alleged bias affected the evaluation of its proposal.

Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Ameriko Maintenance Co., B-253274; B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121. Thus, where a protester alleges bias on the part of government officials, the protester must provide credible evidence clearly demonstrating a bias against the protester or for the awardee and that the agency's bias translated into action that unfairly affected the protester's competitive position. Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52; E.J. Richardson Assocs., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185.

Here, there is no credible evidence of bias. Contrary to Dynamic's arguments, the District Court did not find, in response to Dynamic's complaint of de facto debarment, that the agency or its chief of the Office of Aircraft Services' Acquisition Management Division was biased against Dynamic Aviation; rather, our review of the court's file shows that the court merely denied the government's motion for summary judgment based upon the court's finding that there were material facts in

dispute. The parties subsequently settled Dynamic's de facto debarment claim, and no decision was issued on the merits of Dynamic's complaint.

Furthermore, the protest record here does not evidence any bias against Dynamic or in favor of Timberline. The record shows that only involvement with this procurement of the Acquisition Management Division chief² was to provide past performance information concerning Dynamic and Timberline. Despite having access to this information under the protective order, the protester has not shown this information to be inaccurate or unreasonable. Given Dynamic's failure to show that the agency's evaluation conclusions were inaccurate or unreasonable, as well as the lack of any credible evidence of bias, there is no basis to find that the agency's evaluation or source selection was motivated by bias.

The protest is denied.

Comptroller General
of the United States

²This official did not otherwise participate in the procurement; he was not a member of the technical evaluation panel, nor did he advise the contracting officer regarding the selection of a contractor in this procurement.