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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: International Garment Processors

File: B-299674; B-299743; B-299746

Date: July 17, 2007

J. C. Viramontes for the protester.

Christine M. Choi, Esq., Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging bias against protester and favoritism toward awardee is denied where record fails to support protester's allegations.
 2. Protest of the scope of solicitation amendment's work requirements is denied where record shows amendment reasonably reflects agency's anticipated needs.
 3. Protest of agency's rejection of protester's revised quotation as late is denied where there is no evidence that the quotation was actually received at the designated location prior to the closing time.
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DECISION

International Garment Processors (IGP) has filed three protests with our Office. The firm's initial protest (B-299674) challenges an award to Supreme Laundry and Cleaners under solicitation No. W911SG-07-T-3000, issued by the Department of the Army for dry cleaning, laundry, and sewing services for personnel and programs at Fort Bliss, Texas. IGP primarily contends that the agency has made a series of misstatements that call into question the credibility of agency contract personnel, and that an agency evaluator was biased against IGP and favored Supreme. IGP's second protest (B-299743) challenges the terms of request for quotations (RFQ) No. W911SG-07-T-0201, issued for limited interim laundry services during the pendency of IGP's protest of the Supreme contract. IGP's third protest (B-299746) challenges the agency's determination that the protester's revised quotation for the interim work was not timely received by the agency.

We deny the protests.

Award to Supreme

The solicitation, posted on the FedBizOpps website on February 13, 2007, contemplated the award of a fixed-price, requirements-type contract to the offeror submitting the technically acceptable, low-priced offer.

IGP requested and received an emailed copy of the performance work statement (PWS) from the agency on February 13. The PWS was forwarded with another copy of the solicitation that the contracting specialist explains she had retyped to fix formatting problems in the original solicitation document; this copy of the solicitation mistakenly included a closing date of February 23 instead of the original date of February 26. The protester submitted questions about the solicitation to the agency on February 21. On February 23, IGP emailed the agency that it had not yet received a response to its solicitation questions. The contracting specialist (who had initially told the protester that the responses to its questions had been posted electronically a day earlier, but subsequently learned that the earlier attempt to do so had been unsuccessful) posted the agency's responses on the FedBizOpps website on February 23.

In the meantime, IGP had filed an agency-level protest challenging the agency's failure to answer its questions. IGP also argued that, since notices posted at Fort Bliss to inform personnel that the on-site laundry facility was closing stated that the laundry work would be done "downtown," it was apparent, at least to IGP, that the agency had already determined that the successful firm would be located "downtown."¹ By letter dated February 23, the contracting officer dismissed the protest, noting that answers had since been provided and a new closing date of March 6 had been scheduled. The agency also assured the protester that there was no predetermined contractor for the award and that the reference to "downtown" was intended to inform personnel that the work was going to be contracted out.² On February 26, IGP filed an agency-level challenge to the adverse ruling on its protest, reiterating its prior concerns, requesting to be treated in a fair manner, and challenging the contracting specialist's explanation that the February 23 closing date had only been a typographical error in a retyped version of the solicitation. The

¹ As discussed below, IGP explains in its protest to our Office that it had interpreted the term "downtown" to mean a location within the city limits of El Paso, which would have effectively precluded the firm's consideration for award because it is located outside the city boundaries.

² The agency has explained in its report in response to the protest that the reference to "downtown" was not intended to mean within the city limits, but rather to indicate that the work previously performed at the base was to be contracted out to be performed at an outside location off the grounds of Fort Bliss.

protester also generally suggested that a pattern of questionable behavior was evident in the procurement.

The protester met with contracting personnel on March 2 to discuss its concerns, and, after the meeting, submitted a letter dated March 5 in which it again questioned certain actions by contracting personnel, such as the contracting specialist telling the protester that answers to its questions had been electronically posted even though the contracting specialist had been sent an electronic message of the failed posting attempt.³ The agency responded by letter dated March 9 in which the contracting officer stated that the protest allegations were without merit, and assured the firm that its proposal would be reviewed fairly. On March 20, IGP appealed the agency's review of its challenges. By letter dated April 3 from the Director of Contracting at Fort Bliss, the agency advised IGP that the misstatements and errors it had complained about had been remedied, that insufficient factual support was found for other generally claimed improprieties, that no legal merit was found in the protest allegations, and that the firm's proposal would be fairly evaluated in accordance with the terms of the solicitation.

In the meantime, IGP and Supreme submitted timely offers under the initial solicitation. Both firms received favorable past performance evaluations and facility visit reports. Both firms' proposals were found to be technically acceptable. Among the technically acceptable proposals, award was made to Supreme on the basis of its substantially lower price.⁴

³ The contracting specialist has since explained that she had not yet read the message of the failed posting attempt when she told the protester the information had been posted.

⁴ We note that IGP does not argue that, but for the agency's allegedly improper actions, it would have offered a lower price and been in line for award. In its comments on the agency report, IGP does assert that at a facility visit months ago, an evaluator indicated that the quantity estimates in the solicitation may not have been accurate. Any challenge to the offerors' prices on the ground that the estimates in the solicitation are inaccurate is untimely, however, since it was not raised until months after the information on which it is based was obtained. See 4 C.F.R. § 21.2(a)(2) (2007). Also regarding prices, we note that while IGP claims the contracting specialist misstated Supreme's price in the award notice, the record shows no error; rather, the award notice lists the firm's price for the base year award, and the higher prices provided at the protester's debriefing include the awardee's option year prices.

IGP filed its initial protest with our Office on April 12, incorporating many of its prior generally stated, agency-level protest challenges.⁵ IGP also alleges bias against IGP by an evaluator whose wife used to work at IGP, but whose employment was terminated in a downsizing action years earlier. IGP states that it has heard that the evaluator will retaliate against the firm for terminating his wife's employment. IGP also contends the evaluator favored Supreme for award, since Supreme allegedly offered employment to his wife.

Regarding the firm's allegations of bias and favoritism, government officials are presumed to act in good faith and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Where a protester alleges bias, it not only must provide credible evidence clearly demonstrating a bias against the protester or for the awardee, but also must demonstrate that this bias translated into action that unfairly affected the protester's competitive position. Advanced Sci., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 17. As discussed further below, the record does not support the protester's allegations of bias and favoritism.⁶

⁵ Shortly after the protest was filed, the agency requested dismissal of the protest as untimely, arguing that it restated agency-level protest allegations which had been answered by the agency weeks earlier. We declined to dismiss the protest at that time without a full account of the prior protest communications between the parties and a response to the contentions of bias (which the protester alleged were based on information it had only recently received). Upon receipt of the full agency report, we again reviewed the timeliness of the protest contentions and now conclude that, to the extent the protester's agency-level protest contentions are again raised in its protest to our Office, they are untimely. Under our Bid Protest Regulations, to be timely, matters previously protested to an agency must be protested to our Office within 10 days of learning of the initial adverse agency action on the protest. 4 C.F.R. § 21.2(a)(3). Here, IGP knew the agency had dismissed or denied each of its protest challenges more than 10 days prior to filing its protest with our Office. While the protester apparently delayed filing a protest with our Office in order to continue pursuit of the challenges with the agency, a protester's continued pursuit of protest matters with a contracting agency does not toll our timeliness rules. See Instruments for Indus., Inc., B-250693, Feb. 16, 1993, 93-1 CPD ¶ 143 at 3.

⁶ IGP has filed a multitude of general allegations of bias in the procurement, and although our Office has reviewed the allegations and found that they provide no basis to question the propriety of the agency's source selection, we discuss only a representative sampling of those contentions in this decision. IGP also fails to provide sufficient detail or support for many of its allegations. For example, while the firm generally complains that documentation shows the contracting specialist has also used the job title of procurement clerk, or that procurement integrity regulations have been violated, general allegations of impropriety (without

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IGP generally alleges that the agency “pre-selected” Supreme for award based on IGP’s suspicion that Supreme’s laundry facility, which is located within the city of El Paso, is the “downtown” facility referenced in the notices posted on the base prior to the competition. The protester suggests that favoritism is evident from certain events; for example, while the solicitation generally stated that no telephone calls would be allowed for solicitation clarifications or inquiries, Supreme spoke with the contracting specialist by telephone after the submission of proposals to inquire about the status of the award. As stated above, inference and speculation are insufficient to show bias, and our own review of the record shows no support for any alleged unfair or improper consideration of offers. Moreover, in light of Supreme’s substantially lower price, which has not been challenged, the protester has not shown that the actions it complains of, such as Supreme’s telephone call to the contracting specialist (which does not appear to have been other than a routine procedural inquiry), prejudiced the protester’s competitive position (*i.e.*, that but for the agency’s actions, it would have had a substantial chance of receiving the award). See NV Servs., B-284119.2, Feb. 25, 2000, 2000 CPD ¶ 64 at 18; Advanced Sciences, Inc., *supra*, at 17.

Regarding the challenged notices informing personnel that the on-site laundry services at Fort Bliss were being moved to a facility “downtown,” we find reasonable the agency’s explanation that the reference simply meant that the on-site facility would be replaced with one off the military base’s property (and within the 60-mile radius set out in the solicitation). This interpretation includes IGP’s facility, and IGP was permitted to compete for the award. In short, no evidence of bias or favoritism to the protester’s detriment has been shown by the protester.⁷

To the extent IGP argues that one of the evaluators is biased against it, the record shows only favorable evaluation findings regarding IGP from the evaluator at issue. Similarly, there is no evidence in the record to suggest that the evaluator retaliated against the firm in any way in the evaluation for any action in the past regarding termination of his wife’s employment. Further, the record shows that the agency

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specifying what procurement statute or regulation the protester believes has been violated, along with adequate evidence of the alleged violation) do not provide the level of factual detail and legal support necessary to constitute valid bases of protest. 4 C.F.R. § 21.5(f).

⁷ The record indicates that, at least initially, IGP too may have read the notice to mean what the agency says it had intended, since in an earlier email to the contracting specialist, IGP referred to the notice as one advising that the work would be performed “off-post” without suggesting that it was more restrictive than the solicitation’s area of consideration for the work. IGP Email to Contracting Specialist, Feb. 22, 2007.

promptly investigated the protester's bias allegations as soon as its protest was received and concluded that no impropriety existed related to the evaluator's involvement in the procurement. For instance, the agency confirmed that, contrary to the protester's allegation, the evaluator's wife is currently employed and not pursuing a job with Supreme; moreover, Supreme confirmed that it has not offered employment to the evaluator's wife.

In sum, the protester's claims of bias against it and favoritism to Supreme have no support in the record; the record simply shows that IGP lost the competition because it was not the low-priced offeror.

Interim RFQ

In light of the suspension of performance of the protested award to Supreme, the agency, on April 16, issued RFQ No. W911SG-07-7-0201, for limited interim laundry services. IGP submitted questions to the agency shortly before the closing time for receipt of quotations on April 18. Without protesting its failure to receive a response to its questions prior to the closing time, IGP submitted a timely quotation for the work. On April 20, the RFQ was amended to substantially reduce the amount of laundry work required, and all vendors were asked to submit revised quotations by the close of business on April 26. Shortly before the closing time, IGP filed a protest of the terms of that amendment with our Office.⁸

IGP alleges that the amendment unreasonably reduced the quantity of work to allow the agency to improperly "bid shop" to the protester's disadvantage; according to IGP, the reduced amount of work does not allow it to lower its prices to reflect the "economies of scale" that are available where larger workloads are required.

We find no basis to question the challenged work reduction in light of the agency's reasonable explanation that the amendment reflects a change in its anticipated needs. The agency reports that, at the time of the amendment reducing the amount of the interim work, it believed IGP's initial protest might be dismissed, and, if so, it would not need the initially solicited level of interim services. In its comments responding to the agency's explanation of the required amended workload, the protester does not refute the reasonableness of the agency's asserted basis for the amendment's reduced workload. Rather, the firm alleges that it has been disadvantaged by having to price a smaller amount of work. Since the same amount of work was to be priced by each offeror, however, IGP's suggestion that it is put in a

⁸ To the extent IGP's second protest incorporates the questions IGP submitted to the agency prior to the initial closing time, without specifically protesting the matters raised in those questions or the agency's failure to respond to the questions prior to that initial closing time, that portion of the protest is untimely filed. See 4 C.F.R. § 21.2(a)(1).

disadvantaged position by having to compete for a smaller amount of work is without merit, and, in any event, provides no basis to sustain its protest.

Receipt of IGP's Revised Quotation

IGP filed a third protest with our Office on May 2, having learned on April 27 from agency contracting personnel that no revised quotation under the interim RFQ was received from IGP by the scheduled closing time (which was identified in the amendment as the close of business on April 26). IGP states that it timely faxed its revised quotation to the agency prior to the closing time and that, on April 27, it forwarded a copy of the transmission confirmation report that its fax machine had generated at the time of transmission, indicating that the transmission had been successful.

The agency reports that the fax machines in its contracting offices were checked for incoming faxes throughout the day on April 26; that the fax machines were again checked at 5 p.m. (after the close of business that day, the stated closing time for receipt of quotations); that they were checked again later that evening before the contracting specialist went home, and again the next morning when she arrived; and that no revised quotation had been received from the protester. The agency reports that two copies of the IGP revised quotation were received on April 27, after the closing time and after the source selection had been completed and Supreme had been selected as the successful vendor.

IGP essentially requests that the agency accept its fax machine's transmission report as confirmation that the quotation was not only sent in a timely manner, but timely received. The transmission report does not demonstrate that the revised quotation was actually timely received at the designated and intended agency location, only that it was transmitted. See The Microscope Co., Inc., B-257015, Aug. 8, 1994, 94-2 CPD ¶ 157 at 2. Since there is no evidence in the record to show actual timely receipt of the firm's revised quotation, we find reasonable the agency's determination that the quotation was late. In any event, the agency points out that IGP's revised quotation was higher-priced than the one received from Supreme. Accordingly, IGP's revised quotation would not have been selected even if it were considered timely received.

The protests are denied.

Gary L. Kepplinger
General Counsel