

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

Decision

Matter of: Training Management Solutions, Inc.

File: B-403461.2

Date: September 29, 2010

Don Pruitt for the protester.

LTC Dana J. Chase, Department of the Army, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's corrective action, which was to amend the solicitation, request new proposals, and make a new award decision, is denied where the agency reasonably determined that the solicitation's evaluation criteria were stated inaccurately, and the corrective action was necessary to remedy the error.

DECISION

Training Management Solutions, Inc. (TMSI), of Phoenix, Arizona, protests the corrective action taken by the Department of the Army under request for proposals (RFP) No. W91QF4-10-R-0021 for digital training management system sustainment. In response to TMSI's earlier protest, the agency took corrective action, and we dismissed the protest as academic. See Training Mgmt. Solutions, Inc., B-403461, Aug. 19, 2010. The protester challenges the corrective action on multiple grounds, arguing that the contracting officer abused his discretion.

We deny the protest.

The original RFP contained three technical evaluation factors—technical approach, management and staffing, and past performance. When combined, those factors were significantly more important than cost/price. Original RFP at 41. Three offerors, including the awardee and the protester, submitted proposals. The earlier protest followed contract award.

In response to that protest, the agency announced it would take the following corrective action: amend the solicitation to reflect that the combination of the technical factors is approximately equal to (not significantly more important than)

price; accept revised proposals; reevaluate; and make a new award decision. The contracting officer asserts that the protest warranted corrective action for two main reasons. The protester complained that it had not been accorded the opportunity to respond to negative past performance information, as required by Federal Acquisition Regulation § 15.306. The contracting officer saw reopening the competition to allow the protester to respond as “the only way to remedy the agency error in evaluating adverse past performance information.” Contracting Officer’s Statement of Facts at 2. The contracting officer also discovered an error in section M of the RFP; contrary to the terms of the original RFP, the agency did not intend for the technical factors to be significantly more important than cost/price. Accordingly, the RFP was amended to state that all evaluation factors other than cost/price, when combined, are approximately equal to cost/price. *Id.* at 3.

We see no basis to object to the agency’s corrective action. The contracting officer states that the original RFP was in error when it identified the combined technical factors as significantly more important than cost/price. Contracting Officer’s Statement of Facts at 3. A contracting agency properly may take corrective action in order to rectify an error in the solicitation concerning the basis for award, where there is no evidence that the agency acted in other than good faith. Alfa Consult S.A., B-298164.2, B-298288, Aug. 3, 2006, 2006 CPD ¶ 127 at 2. Here, the agency reasonably remedied the misstatement of the relative weight of the evaluation factors by amending the solicitation and requesting revised proposals.¹

The protester argues that the agency in fact acted in bad faith and that its corrective action intentionally favored the prior awardee. *See* Comments, Sept. 12, 2010 at 7. The protester offers no evidence to support its assertion of agency bias, other than its own bare allegation that the agency’s actions improperly favored the awardee. Government procurement officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. In the absence of any evidence of bias in the record, we see no merit to this protest allegation.

The protester also asserts, correctly, that the agency’s corrective action does not address certain of the protester’s original protest grounds. For example, the protester asserted in the underlying protest that the awardee had an unmitigated conflict of interest. There is currently no contract award and, therefore, no alleged

¹ As the contracting officer noted, the protester could have been permitted to respond to the negative past performance information if the agency had simply reopened the competition and conducted discussions, without amending the RFP. Contracting Officer’s Statement of Facts at 2. The need to permit the protester to respond to the negative past performance information is therefore not an independent basis for amending the RFP.

violation of procurement regulation or statute to protest. The protester's allegations are premised on the agency making award to the same firm again, and, because they anticipate allegedly improper agency action, they are speculative and premature. Paramount Group, Inc., B-298082, June 15, 2006, 2006 CPD ¶ 98 at 6-7. Our Office will not assume in advance that an agency will conduct its procurements improperly.² Id.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

² The protester also argues that the prior awardee was not able to begin timely performance of the contract and that the agency's corrective action fails to address this allegation. Whether a contractor is able to begin timely performance is a matter of contract administration, which is the responsibility of the agency and not for consideration by our Office. See Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2010); Securiguard, Inc.; Vance Uniformed Protection Servs.; MVM, Inc., B-254392.8 et al., Feb. 9, 1994, 94-1 CPD ¶ 92 at 6.