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**Comptroller General
of the United States**

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

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Decision

Matter of: JWK International Corporation

File: B-296969.3

Date: January 5, 2006

Kurt D. Ferstl, Esq., and Leigh T. Hansson, Esq., Reed Smith LLP, for the protester.
Richard B. Oliver, Esq., McKenna Long & Aldridge LLP, for C Martin Company, the intervenor.

Peter F. Pontzer, Esq., Department of the Army, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the cognizant contracting specialist was biased in favor of the awardee is denied, where the record, which includes the unrebutted declarations of the contracting specialist and other agency employees, does not contain any evidence of bias or bad faith on the part of the contracting specialist or any other agency official.

DECISION

JWK International Corporation protests the award of a contract to C Martin Company under request for proposals (RFP) No. W9124Q-05-R-0006, issued by the Department of the Army, for base operations support services for the White Sands Missile Range.

We deny the protest.

The RFP, issued on August 1, 2005, provided for the award of a fixed-price requirements contract for 5 years to the offeror whose proposal was determined to represent the best value to the government, based upon the following evaluation factors listed in descending order of importance: technical/management, past performance, and price.¹ The RFP specified that the technical/management factor

¹ The technical/management factor was comprised of the following four subfactors, that were stated to be equal in importance: mission understanding, key personnel, employee recruitment and retention, and program management.

would be addressed solely through oral presentations. The solicitation also informed offerors that their past performance proposals were to consist of questionnaires completed by three of their current customers, and that their price proposals were to consist of a completed copy of the RFP's price schedule.

The agency received proposals from five offerors, including C Martin and JWK. JWK's proposal was evaluated as "blue" under each of the four subfactors comprising the technical/management factor and "low risk" under the past performance factor, at an evaluated price of \$22,527,478.² C Martin's proposal was evaluated as "green" under one of the technical/management evaluation subfactors and "blue" under the remaining three technical/management subfactors, and "low risk" under the past performance factor, at an evaluated price of \$16,365,915. The agency concluded that the "proposals submitted by JWK and C Martin are basically equal for technical/management and past and present performance," and that C Martin's proposal represented the best value to the government, given its lower evaluated price. Agency Report (AR), Tab 23, Pre-Negotiation Objective Memorandum/Price Negotiation Memorandum, at 3. After requesting and receiving a debriefing, JWK (the incumbent contractor) filed this protest.³

JWK argues that certain actions of the cognizant contracting specialist during the conduct of the acquisition evidenced bias in favor of C Martin. Specifically, the protester asserts that the contracting specialist had an individual dismissed from the proposal evaluation board (PEB) "because [the contracting specialist] was concerned that the [individual] would ask critical questions that could downgrade C Martin's technical scoring." Protest (Sept. 30, 2005) at 2. The protester also asserts "upon information and belief" that the contracting specialist "attempted to persuade two members of the [PEB] to change their respective technical scoring of JWK's proposal and oral presentations." *Id.* Finally, JWK argues that the contracting specialist was biased in favor of C Martin because she "enjoys robust social relationships and interaction with various C Martin managers and employees." *Id.* at 5.

The record reflects that JWK is correct that an individual was removed from the PEB. The declaration submitted by the contracting specialist provides in this regard that the individual had made a number of comments after C Martin's oral

² In accordance with the RFP, the following adjectival evaluation ratings could be received under the technical/management factor, listed in descending order of merit: green, blue, yellow, red. RFP at 36.

³ JWK filed a protest with our Office shortly before receiving its debriefing. Although our Office dismissed this protest as premature, JWK incorporated the contents of this protest, docketed by our Office as B-296969.2, into its subsequent protest to our Office that is the subject of this decision. Protest at 1 n.1.

presentation (that are set forth in detail in the declaration) that, in the contracting specialist's view, indicated that the individual "was biased in favor of JWK and against C Martin." The contracting specialist adds that the comments of the individual "tended to pull the [PEB] away from focusing on the relevant consideration of the criteria that the Board was supposed to apply to C Martin's presentation," and that the "information that [the individual] was providing was factually inaccurate as well." The contracting specialist states that because of this, she requested that the contracting officer remove the individual from the PEB, and that the contracting officer agreed to this request.

The contracting specialist also specifically denies in her declaration that she attempted to influence the PEB's evaluation of proposals and oral presentations. AR, Tab 3, Declaration of Contracting Specialist, at 2. In support of the contracting specialist's declaration, the agency has also submitted the declaration of the PEB Chairman, stating that contrary to the protester's assertion, the contracting specialist did not attempt "to change the scoring of the oral presentation and technical approach." AR, Tab 4, Declaration of the PEB Chairman, at 1.

In addition, the contracting specialist and several C Martin employees who were named by the protester as having social relationships with the contracting specialist have provided declarations expressly denying that the contracting specialist had other than strictly professional relationships with C Martin employees.⁴ AR, Tab 3, Declaration of Contracting Specialist, at 3; C Martin's Comments (Nov. 17, 2005), attaches.

We have reviewed the record and find no credible evidence of bias or bad faith on the part of the contracting specialist or any other agency officials. In this regard, we note that the agency report includes detailed explanations and declarations in response to the protester's claims of bias. In contrast, JWK, while claiming in its pleadings that certain agency actions evidence bias, has failed to provide any

⁴ The protester also asserts that the contracting specialist had a "robust social" relationship with a previous employee of C Martin, who during the pendency of this acquisition had been retained by C Martin as a consultant. In support of this claim, the protester provided as an attachment to its comments on the agency report a copy of a complaint filed by another individual with the agency's Office of Inspector General concerning the activities of the C Martin employee/consultant. Our Office has been informed by the agency that the Office of Inspector General "has an open case" in response to the complaint. Because of this, the protest issues associated with the actions of the C Martin employee/consultant are dismissed pending completion of the Inspector General's investigation. See Oceaneering Int'l, Inc., B-278126; B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 1-2 n.1.

statement, declaration, or any other evidence in support of this aspect of its protest.⁵ Prejudicial motives will not be attributed to contracting officials on the basis of unsupported allegations, inference, or supposition. See McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 28. Given the record here that provides no evidence of bias or bad faith, JWK has provided no basis on which the validity of the award to C Martin can be challenged.⁶

The protest is denied.

Anthony H. Gamboa
General Counsel

⁵ While JWK complains of the agency's failure to provide a statement from the individual who had been dismissed from the PEB, JWK has provided no declarations or affidavits from this individual (with whom JWK employees had evidently conversed) or from any persons who had knowledge of this individual's contentions or of the validity of the concerns he raised.

⁶ JWK argues that the agency's evaluation of proposals under two of the subfactors comprising the technical/management evaluation factor was unreasonable, that C Martin in general does not have the required technical capabilities or past performance necessary to perform the contract, and that the evaluators did not have the statement of work when they evaluated the proposals. Because in its report on the protest the agency responded in detail to these arguments (e.g., provided declarations stating that the evaluators did have the statement of work before evaluating proposals), and the protester did not respond to the agency's positions on these issues in its comments on the agency report, we consider JWK to have abandoned this aspect of its protest. Uniband, Inc., B-289305, Feb. 8, 2002, 2002 CPD ¶ 51 at 5 n.3