



United States Government Accountability Office
Washington, DC20548

Decision

Matter of: Alanna Orr

File: B-310966.2

Date: May 14, 2008

Alanna Orr for the protester.
Elin M. Dugan, Esq., for the Department of Agriculture.
Frank Maguire, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that successful quotation did not include adequate technical proposal, that agency improperly provided sample quality control program to successful vendor, and that successful vendor submitted plagiarized technical documents is denied where stated evaluation factors included only price and past performance; since evaluation of vendors' technical proposals, including quality control program and technical documents, was not a factor in evaluation, allegations regarding technical proposal do not provide a basis for challenging selection decision.

DECISION

Alanna Orr protests the issuance of a purchase order to Jan Breakfield under request for quotations (RFQ) No. SO5SC0908278, issued by the Department of Agriculture, U.S. Forest Service, for janitorial services. The protester contends that Ms. Breakfield's quotation did not comply with technical requirements of the RFQ, that the agency improperly provided a sample quality control program to her, that she submitted plagiarized technical documents, and that she received preferential treatment.

We deny the protest.

The RFQ requested quotations for janitorial services at the Forest Service's Big Valley Ranger District Office for a period of 1 year, with two 1-year options. The RFQ, in the statement of work (SOW), required that vendors establish a quality control program and an operating plan, setting forth, *inter alia*, a schedule of services, areas to be serviced, and estimated time to complete work in each area. RFQ at 5-6. The RFQ provided that the government would issue an order "to the

responsible quoter whose quote conforming to the solicitation will be most advantageous to the Government, price and relative past performance considered.” Id. at 38.

Quotations were received from Ms. Orr and Ms. Breakfield. The agency ultimately selected Ms. Breakfield’s quotation on the basis of her significantly lower price. Agency Report (AR) at 54-55, Contracting Officer’s Statement, Dec. 20, 2007. On December 17, 2007, Ms. Orr filed a protest in our Office challenging issuance of the order to Ms. Breakfield, contending that Ms. Breakfield’s quotation did not comply with requirements of the RFQ, that Ms. Breakfield (but no other vendor) improperly had been provided a sample quality control program, and that Ms. Breakfield received preferential treatment as a result of her relationship with an employee in the contracting office. Subsequent to the filing of that protest, the agency advised us that it would take corrective action by assigning a different evaluator and reevaluating the quotations based only on past performance and price, as provided by the RFQ. Based on this corrective action, we dismissed the protest as academic (B-310966, Jan. 16, 2008).

The new evaluator evaluated the quotations based on price and past performance. Using a numerical points system, he ranked Ms. Orr’s quotation higher than Ms. Breakfield’s in past performance, but lower on price with regard to every line item. Following the reevaluation, the contracting officer again issued the purchase order to Ms. Breakfield, finding that, “taking into consideration both price and past performance,” her quotation provided “the best value to the government.” AR at 38. This protest followed.

Ms. Orr challenges the selection on the basis that technical information included in Ms. Breakfield’s quotation was inadequate in several respects. Specifically, Ms. Orr claims that Ms. Breakfield failed to provide an adequate quality control program and operating plan and did not provide for the use of approved products or address specific cleanliness requirements set forth in the solicitation, consistent with the RFQ. Ms. Orr further contends that the quality control program included in Ms. Breakfield’s quotation was copied from a sample program provided to her, but no other vendor, by the agency, and that other technical documents were plagiarized. Protest at 3.

Agencies are required to evaluate quotations and base ordering decisions only on evaluation factors stated in the RFQ. Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142; Federal Acquisition Regulation (FAR) § 13.106-2. Here, as noted above, the stated evaluation factors included only price and past performance; nothing in the RFQ provided for evaluation of any technical information included with the quotations. Accordingly, evaluation of vendors’ technical information would have been improper, and the adequacy of those proposals thus could not have

been a factor in the agency's source selection decision. See, e.g., Cellular One, B-250854, Feb. 23, 1993, 93-1 CPD ¶ 169 at 4.¹ This is the case notwithstanding that the RFQ specifically called for vendors to provide additional information regarding performance of the requirement. Solicitations may establish informational, technical, administrative, and other requirements that are not to be included in the evaluation process. See, e.g., All Phase Envtl., Inc., B-292919.2 et al., Feb. 4, 2004, 2004 CPD ¶ 62 at 4 (informational requirements included in solicitation's instructions were not evaluation criteria); JW Associates, Inc., B-275209.3, 97-2 CPD ¶ 27 at 3 (protest that awardee's proposal failed to include sufficient explanation of its technical approach denied where evaluation criteria included no "technical approach" criterion); SWR Inc., B-286044.2, B-286044.3, Nov. 1, 2000, 2000 CPD ¶ 174 at 4 (quality control plan and phase-in plan were mandatory parts of every offer, but solicitation provided that only price and past performance would be evaluated).

Since the technical information underlying the protest assertions did not affect the selection decision, any impropriety regarding that information did not result in competitive prejudice to Ms. Orr. Prejudice is an essential element of every viable protest and, where it is not demonstrated or otherwise evident, we will not sustain a protest allegation, even where the record shows that the agency's actions arguably were improper. GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 7-8. The protester's assertions regarding the adequacy of Ms. Breakfield's technical proposal therefore do provide a basis for questioning the selection decision.²

Ms. Orr alleges that an employee in the agency's contracting office had a "familial/friendship" relationship with Ms. Breakfield. More specifically, Ms. Orr seems to claim that Ms. Breakfield's mother-in-law was employed at the facility, that the contracting officer's representative (COR) who conducted the original evaluation was a friend of the mother-in-law's, and that the evaluator who conducted the new

¹ To the extent the protester believes technical proposals should have been included in the agency's evaluation scheme, it was required to protest on that ground prior to the deadline for receipt of quotations. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2008). Since Ms. Orr did not protest until after issuance of the purchase order, any protest on this ground is untimely. SWR Inc., supra, at 4; K9 Operations, Inc., B-299923, Aug. 6, 2007, 2007 CPD ¶ 146 at 3.

² Ms. Orr complains that Ms. Breakfield improperly was permitted to submit a second quality control program. Protest at 3. Again, given that the program was not part of the evaluation, Ms. Orr suffered no competitive prejudice from this alleged action. In any case, moreover, we note that the RFQ specifically provided for amendments to the quality control program on approval of the contracting officer. RFQ at 5.

evaluation was a friend of the COR's. Ms. Orr concludes that these relationships unfairly influenced the evaluation. Protest at 3, exh. H.

Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Such allegations must be supported by convincing proof. Midwest Metals, B-299805, July 17, 2007, 2007 CPD ¶ 131 at 3 n.2. In addition to producing credible evidence showing bias, the protester must demonstrate that any bias translated into action that unfairly affected the protester's competitive position. RTF/TCI/EAI Joint Venture, B- 280422.3, Dec. 29,1998, 98-2 CPD ¶ 162 at 6. Ms. Orr has not met this standard.

The agency removed the COR from the evaluation process following the original protest, and Ms. Orr's speculation based on the fact that Ms. Breakfield's relative worked in the office and that other employees involved in the evaluation may have been friendly with her, does not constitute the convincing proof required in order for us to conclude that the evaluation was biased. Nor, in any case, is there any showing that any bias translated into improprieties in the evaluation. As discussed, the agency's actions about which Ms. Orr complains--the manner in which the agency applied the RFQ requirements concerning the technical proposals--were consistent with the evaluation scheme in the RFQ, and there is no evidence that the new evaluator acted improperly or that the evaluation was inconsistent with the RFQ or otherwise unreasonable. Ms. Orr has raised no viable challenge to the agency's price and past performance evaluation, which was the basis for the selection decision. We note, moreover, that the best value decision was driven primarily by Ms. Breakfield's low price, an objective discriminator. There thus is no basis for a finding of bias in the selection decision.

The protest is denied.

Gary L. Kepplinger
General Counsel