



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Jean-Paul O'Brien

File: B-405668; B-405669

Date: December 12, 2011

Jean-Paul O'Brien, the protester.
Dennis J. Gallagher, Esq., Department of State, 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

Protests alleging bias in favor of the awardees and against the protester in the evaluation and award of personal services contracts are denied where the protester has not supported the bias allegations with convincing proof, and the record does not otherwise evidence bias.

DECISION

Jean-Paul O'Brien protests the award of two personal services contracts under solicitation Nos. PSC-11-025-INL (PSC-025) and PSC-11-026-INL (PSC-026), issued by the Bureau of International Narcotics and Law Enforcement Affairs, Department of State (DOS), for advisors to the Colombian National Police.¹ Mr. O'Brien argues that the agency's selections of the awardees were the result of bias.

We deny the protests.

The solicitations, issued as combined synopses/solicitations on March 25, 2011, included descriptions of the services to be provided, place and period of performance, and the evaluation criteria to be used in selecting the individuals for

¹ Our Office has jurisdiction over these protests as they concern contracts for the procurement of services. See 31 U.S.C. §§ 3551(1), 3552 (2006); Federal Acquisition Regulation § 37.104; Joseph W. Beausoleil, B-285643, Aug. 31, 2000, 2001 CPD ¶ 26 at 1 n.1; Mary Jo McDonough, B-270530, B-270530.2, Mar. 13, 1996, 96-1 CPD ¶ 154 at 2 n.2.

award. Specifically, PSC-025 informed prospective contractors that DOS was soliciting for a personal services contractor to serve as a Counter Narcotics Re-establishment Program Advisor in the Narcotics Affairs Section (NAS) of the United States (U.S.) Embassy, in Bogota, Columbia, for 1 year. Agency Report (AR), Tab 3, PSC-025, at 2. PSC-025 included a detailed description of the position's duties, which provided, among other things, that the successful personal services contractor would advise, oversee, and assist "in the development, coordination, and implementation of all aspects of police establishment and plans in support of counter-narcotics and rural police establishment operations." Id. at 3. PSC-025 set forth certain minimum qualifications, including the requirements that the personal services contractor be a U.S. citizen able to "obtain and maintain a DOS security and medical clearance," and "[p]ossess in-depth knowledge and experience as a security advisor with the U.S. Armed Forces and/or U.S. Civilian Agency/Corporation." Id. at 3-4. PSC-025 further informed prospective personal services contractors that their applications would be evaluated under the following four criteria: (1) experience and knowledge in developing, coordinating, organizing, and implementing support programs to foreign country security forces (35 points); (2) past performance (25 points); (3) experience in procurement and providing logistical support (20 points); and (4) experience in initiating, performing oversight, and evaluating security training and logistical programs (20 points). Id. at 4.

PSC-026 informed prospective applicants that DOS was soliciting for a personal services contractor to serve as a Field Advisor/Air Mobile Operations Specialist in the NAS of the U.S. Embassy, in Bogota, Columbia, for 1 year. AR, Tab 4, PSC-026, at 2. PSC-026 also included a detailed description of the position's duties, which provided, among other things, that the successful personal services contractor would advise, oversee, and assist "in the development, coordination, and implementation of all aspects of police airmobile narcotics interdiction plans and operations." Id. PSC-026 included the same minimum qualifications and evaluation criteria as PSC-025. Id. at 3-4.

The agency received 12 applications in response to PSC-025, and 9 applications in response to PSC-026. AR, Tab 17, Agency Letter to Mr. O'Brien (Aug. 27, 2011), at 1; Tab 18, Agency Letter to Mr. O'Brien (Aug. 30, 2011), at 1. The agency established a competitive range of four applications under PSC-025, and five applications under PSC-026. AR, Tab 9, Technical Evaluation Panel (TEP) Report for PSC-025, at 1-4; Tab 11, TEP Report for PSC-26, at 1-4. Three individuals whose applications were included in the competitive range for PSC-025 and PSC-026, including Mr. O'Brien, submitted applications in response to both solicitations.

The applications were evaluated individually by each member of the cognizant TEP, and interviews were conducted with the applicants. AR at 7-8; Tab 9, TEP Report PSC-025, at 1-4; Tab 11, TEP Report, PSC-026, at 1-4. The TEPs then developed consensus scores for each application and ranked the applicants based upon these scores. Under PSC-025, the highest-rated application received a consensus score of 86 points, and Mr. O'Brien's fourth-ranked application received a score of 74 points.

AR, Tab 9, TEP Report, PSC-025, at 1-2, 4. The highest-rated application under PSC-026 received a consensus score of 89 points, and Mr. O'Brien's fifth-ranked application received a score of 75 points. AR, Tab 11, TEP Report, PSC-026, at 1-2, 4.

The record reflects that the contracting officer, who served as the source selection authority for PSC-025 and PSC-026, reviewed the TEP reports and independently evaluated the applications received. Under the contracting officer's evaluation the highest-rated applications remained highest-rated. However, the applications of Mr. O'Brien were ranked by the contracting officer as third (rather than fourth) under PSC-025, and fourth (rather than fifth) under PSC-026. AR, Tab 13, Source Selection Statement, at 6; Tab 14, Source Selection Statement, at 7. The individuals whose applications were highest-rated were awarded personal services contracts for the advertised positions. These protests followed.

The protester alleges that the record evidences bias in favor of the awardees and against the protester. In support of his contention that the award of PSC-025 evidences bias in favor of the awardee, the protester points out only that the agency failed to notify the disappointed applicants that an award had been made under the solicitation. In support of the assertion of bias in favor of the awardee under PSC-026, the protester points to an e-mail from the awardee to the TEP chairperson shortly after the TEP had provided its consensus evaluation to the contracting officer. The passages of the e-mail pointed to by the protester provide as follows:

Again, many thanks for your support on dislodging the packet and championing the decision as you did. We remain in your debt . . . How quickly the contracting officer moves is beyond my control – I'll depend on your pushing (urging) her to act with dispatch.

Protest, attach. 1, at 2. The protester argues that this passage demonstrates that the awardee was "pre-selected." The protester adds with regard to both solicitations that he had previously filed agency-level protests of the awards for these same positions, and that the agency responded by taking the corrective action of resoliciting for the personal services contractors. The protester concludes here that his relatively low ranking among the applicants included in the competitive range under PSC-025 and PSC-026 was the result of retaliation for his previous filing of these agency-level protests.

Government officials are presumed to act in good faith and a protester's claim that contracting officials are motivated by bias or bad faith must be supported by convincing proof. Our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Brian X. Scott, B-310970, B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 4.

The protester has not provided such convincing proof, and we disagree with the protester's assertion that the record here evidences bias with regard to either PSC-025 or PSC-026. With regard to PSC-025, we fail to see why the agency's

apparent failure to notify disappointed applicants of the award constitutes convincing proof of bias. In this regard, our Office generally considers such notification to be procedural in nature without effect on the validity of an award. Trover's Security Serv., Inc., B-242662, Jan. 28, 1991, 91-1 CPD ¶ 78 at 1-2.

Further, the protester's claim that his relatively low ranking among the competitive range applicants was due to retaliation is supported only by the protester's view that he must have been the most qualified applicant. We note here that the protester, who pursued his protests without counsel, received a redacted version of the agency report that did not provide the record of the agency's evaluations of the other applications received. Based upon our review of the record provided to our Office, which included the well-documented evaluations of all competitive range applicants, we agree with the agency that it received applications from a number of qualified individuals in response to PSC-025, and that the protester's assertion is the result of his disagreement with the agency's evaluation of his own application and lack of knowledge as to the other applications received.

With regard to PSC-026, the e-mail string provided by the protester indicates that the eventual awardee had inquired by e-mail a number of times as to the status of the evaluation and selection decision, and his concern that a selection decision be made as quickly as possible was due to his personal circumstances. See Protest, Attach. 1, at 1-3. Further, although the e-mail string includes a number of e-mails from the awardee and the agency's responses to these e-mails, there is nothing in any of the agency's responses providing or indicating in any manner that the agency was biased in favor of the eventual awardee or against the protester. Id.

Given the context and timing of the e-mails, as well as their content and the responses by the agency, we do not agree with the protester that the e-mails in themselves establish bias in favor of the awardee or against the protester. In this regard, and as noted with regard to PSC-025, the record reflects that the agency received applications from a number of qualified individuals. In fact, the protester's belief that his application's relatively low ranking among the other applications in the competitive range was not warranted is not supported by the record. Instead, this belief appears to be the result of his disagreement with the agency's evaluation of his application and his lack of knowledge as to the other applications received.

The protests are denied.

Lynn H. Gibson
General Counsel