

November 28, 2001

P.S. Protest No. 01-09

ROBERT OTTE

Solicitation No. 800-141-01

DIGEST

Protest of contract award is denied; evaluations were reasonable and in accordance with the listed criteria, and allegation that a personal relationship may have influenced the contract's award was unsupported.

DECISION

Mr. Robert Otte protests his failure to receive award of a contract to operate a highway contract route (HCR) in metropolitan Denver, CO.

On May 1, 2001, the Western Area Distribution Network Office issued solicitation 800-141-01 for HCR 80163, Ken Caryl Ranch-Trailmark Parkway. Section M.1 of the solicitation discussed the basis for award.¹ Only two offerors submitted proposals: Mr. Otte

¹ M.1 GENERAL

Offerors are encouraged to submit their best offers both whether within or outside the service requirements specified in Section B, Statement of Work, and Specifications (the "service requirements"). Offers will be evaluated in the following way:

Award will be made to the responsible offeror whose proposal, in the business judgment of the Contracting Officer, offers the best value to the Postal Service. Best value will be determined by comparing differences in the value of technical and management features with the differences in price. Proposals will be more favorably considered to the extent that they demonstrate a high degree of compliance with the service requirements at a reasonable price. The evaluation process specified in M.2, Evaluation of Technical Management Information, will be used to evaluate technical information. A proposal that offers an unrealistic level of service or a level of service at an unrealistic price will be downgraded. Award will be made to the responsible offeror who proposes the best value – i.e., the best combination of price and service for the service requirements. Award will not necessarily be made to the offeror who provides the best service or to the offeror who provides the lowest price. In addition, the Postal Service reserves the right to reject any and all offers that are determined to be excessive or unreasonable in price.

M.2 EVALUATION OF TECHNICAL/MANAGEMENT INFORMATION

(Footnote continued on next page.)

and Ron Terry. Mr. Otte's original offer was priced at \$40,953.61, while Mr. Terry's was priced at \$41,400.00. It was Mr. Otte's intent to hire a driver to operate the contract route, while Mr. Terry planned to service the route himself.

As part of the evaluation process, each offeror was interviewed. On June 17, a senior contract specialist and a contract specialist interviewed Mr. Terry. According to the contracting officer, during the interview, Mr. Terry said he worked as a contract hauler for the Rocky Mountain News, a Denver newspaper. Mr. Terry indicated that he also had worked for the newspaper in a supervisory capacity and had experience addressing customer service issues.

On June 18, Mr. Otte, accompanied by his wife, was interviewed by the senior contract specialist. Before the interview, the specialist talked to the Ken Caryl Ranch station manager about the service records of two other highway contract routes operated by Mr. Otte: HCR 80155 and HCR 80154. The manager indicated that while Mr. Otte provided very good service on route 80155, there were many delivery problems and customer complaints with Mr. Otte's hired driver who oper-

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The Postal Service will assess each offeror's Technical/Management information to determine (i) the degree to which it offers to meet the solicitation requirements and (ii) its underlying realism.

The factors that will be used in evaluating Technical/Management information are stated below. The major factors (i.e., those preceded by a letter) are listed in descending order of importance. That is, factor (a) is more important than factor (b), factor (b) is more important than factor (c), and factor (c) is more important than factor (d).

- a. Past Performance/Experience/Capability
- b. Schedule
- c. Type of Equipment and Capacity
- d. Oral Presentation/Interview

ated HCR 80154. According to Mr. Otte, during the interview, the specialist produced 15 copies of complaint forms concerning the operation of his hired-driver route. While he acknowledges problems with the hired-driver route, he adds that he was “surprised” by the 15 complaints, indicating he previously “had not received that amount.” He also asserts that not all the complaints were “chargeable.”

During their interviews, Mr. Terry and Mr. Otte were each given the opportunity to provide a best and final offer. Mr. Terry did so, submitting an amended offer of \$38,900.00. Mr. Otte chose to let his original offer stand.

The two offers were ranked closely in the technical evaluations: Mr. Terry received a score of 737.5, while Mr. Otte received 735.0. According to the contracting officer, this close ranking increased the importance of price. Inasmuch as Mr. Terry’s amended offer represented the better price, he was awarded the contract. During the course of a telephone conversation on June 21, the senior contract specialist informed Mr. Otte’s wife that the award had been made to Mr. Terry.

Mr. Otte requested a debriefing, which the contracting officer provided in a letter dated June 26. Mr. Otte indicates that he received this letter on June 27. In a letter dated July 2, Mr. Otte protested the Postal Service’s decision to award the contract to Mr. Terry. Mr. Otte directed his letter to the Managing Counsel of the Postal Service’s Salt Lake City, UT, law office. On July 12, Mr. Otte’s letter was forwarded to this office, where it was ultimately received on July 16.

Mr. Otte questions the propriety of the Postal Service’s decision to rate Mr. Terry’s proposal higher than his own inasmuch as Mr. Terry did not have previous box delivery experience. He further alleges that Mr. Terry “may” have benefited from a “personal relationship” with the contracting officer, who worked at the same Denver newspaper as Mr. Terry.

In his report, the contracting officer asserts that the evaluations were conducted properly. He notes that during his interview, Mr. Terry described his experience as a contract hauler for the Rocky Mountain News, where he daily delivered newspapers throughout the Denver metropolitan area and had worked in a supervisory capacity in the paper’s distribution section, handling delivery and customer service issues. In the contracting officer’s words, this delivery experience made Mr. Terry “a very good candidate for a successful box delivery contractor.” On the other hand, Mr. Otte’s past performance, according to the contracting officer, hindered, rather than helped, his efforts to win a third highway contract route. While noting that Mr. Otte had “proven his capability on his self-operated route,” the contracting officer determined that numerous customer complaints indicated he had “failed to demonstrate superior performance” on his hired-driver route. Mr. Otte acknowledges there were problems with his hired-driver route; however, he appears to question whether they were serious enough to be considered in the evaluation process.

Aside from having the higher-ranking technical proposal, the contracting officer notes that Mr. Terry submitted a better price to the Postal Service. When asked for his “best and final” offer, Mr. Terry submitted an amended offer of \$38,900.00 – over \$2,000 less than Mr. Otte’s offer of \$40,953.61. Thus, the contracting officer determined that Mr. Terry’s offer represented the better value for the Postal Service.

With regard to Mr. Otte’s second allegation, the contracting officer denies that any relationship he may have had with Mr. Terry influenced the award of the contract. Specifically, the contracting officer asserts that although he works part-time for the same newspaper as Mr. Terry, there was no reporting relationship between them. Furthermore, he states that he saw Mr. Terry at the newspaper only “occasionally” and that they were “at most” only “casual acquaintances.” Finally, he states that he did not participate in the interview and evaluation process, but simply relied on the recommendations of the technical reviewers.

DISCUSSION

This office has consistently held that our review of the merits of technical evaluations is limited: “[w]e will not substitute our views for the considered judgment of technical personnel upon which such a determination is premised in the absence of fraud, prejudice, or arbitrary and capricious action.” *Liberty Diversified Industries*, P.S. Protest No. 00-23, January 22, 2001, *quoting Pharmchem Laboratories*, P.S. Protest No. 99-19, December 17, 1999 (internal quotations and citations omitted); *see also, Pam Associates, Inc.*, P.S. Protest No. 97-09, May 29, 1997. Furthermore, our review is not *de novo*, and involves only a determination that the evaluation has a reasonable basis. *Liberty Diversified Industries, supra*; *see also, Timeplex Federal Systems, Inc., Sprint Communications Company*, P.S. Protest Nos. 93-22; 93-24, February 2, 1994. In the present case, the record shows the evaluations were reasonable and were in accordance with the listed criteria. In particular, inasmuch as Mr. Otte intended to operate the route with a hired driver, it was clearly reasonable for the evaluators to consider the performance on the route that he did not operate personally.

With regard to the allegation of an improper personal relationship, we have held that “[m]ere supposition is considered insufficient to overcome the presumption of regularity attending a contracting officer’s performance of his official duties.” *Stephen W. Du Puy*, P.S. Protest No. 92-51, October 9, 1992, *quoting Robin P. McGinnis*, P.S. Protest No. 92-04, March 25, 1992. A protester must offer specific proof of allegations of bad faith, bias or unfairness; prejudicial motives will not be attributed to individuals on the basis of inference or supposition. *Federal Properties of R.I., Inc.*, P.S. Protest No. 93-02, May 20, 1993. Mr. Otte offers no evidence to support his allegation that a personal relationship may have influenced the contract’s award. Therefore, it must fail for lack of proof. *Federal Properties of R.I., Inc., supra*.

The protest is denied.

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Contract Protests and Policies