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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: AllWorld Language Consultants, Inc.

File: B-291409.3

Date: January 28, 2003

John E. Jensen, Esq., Shaw Pittman, for the protester.
Richard D. Lieberman, Esq., McCarthy, Sweeney & Harkaway, for Worldwide Language Resources, Inc., an intervenor.
Sherry Kinland Kaswell, Esq., Department of Interior, and John D. Inazu, Esq., Department of the Air Force, for the agencies.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency was biased against protester is denied where evidence does not demonstrate that agency acted to harm the protester and, in any case, there is no showing that any alleged bias affected the protester's competitive position.

DECISION

AllWorld Language Consultants, Inc. (ALC) protests the award of a contract to Worldwide Language Resources, Inc. under a solicitation issued by the Department of the Interior to procure linguists to support the Department of the Air Force Office of Special Investigations (AFOSI). ALC complains that the Air Force acted in bad faith and was biased against it.¹

We deny the protest.

Interior issued the solicitation in accordance with Federal Acquisition Regulation § 8.404 and the General Services Administration Federal Supply Schedule (FSS) to four vendors holding applicable FSS schedule contracts, whose names were provided to Interior by AFOSI. Initially, ALC was not sent a solicitation, as its name

¹This protest is related to an earlier protest by AllWorld against the award to Worldwide, which we denied in our decision AllWorld Language Consultants, Inc., B-291409, B-291409.2, Dec. 16, 2002, 2003 CPD ¶ ____.

was not provided to Interior. However, when Interior learned that ALC was interested in the procurement, it provided ALC with a copy of the solicitation and extended the due date for offers so that ALC would have the opportunity to compete. The solicitation, for a fixed-price, level-of-effort contract, provided for award based on a “best value” evaluation under three factors--technical approach, past performance and price. The technical approach factor was comprised of four equally weighted subfactors: security clearances, project manager, qualifications, and management approach. ALC and Worldwide submitted proposals; Air Force personnel evaluated the proposals under the technical and past performance factors and Interior evaluated the offered prices. As the two offerors received identical ratings under all non-price factors, Interior made award to Worldwide based on its significantly lower proposed price.

ALC maintains that the award to Worldwide was improper because the Air Force was biased against ALC, as evidenced by the fact that it acted to exclude ALC from the procurement. In this regard, ALC notes that, despite the fact that it was the incumbent linguist contractor for the 89th and 11th contracting squadrons and requested information regarding any follow-on contracts, it was not notified of the solicitation. Similarly, ALC asserts that, when it asked the Air Force about a procurement for a follow-on contract, the agency stated that the current requirement no longer existed and that any new solicitation would be announced in FedBizOps or solicited in accordance with the FSS. ALC notes that the requirement here was in fact a follow-on to the prior contract, and that it was not announced in FedBizOps.

In order for a protester to succeed in a claim of bias on the part of a contracting official, the record must establish that the official intended to harm the protester, since government officials are presumed to act in good faith; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Moreover, in addition to producing credible evidence of bias, the protester must show that the agency bias translated into action that unfairly affected the protester’s competitive position. Docusort, Inc., B-254852.2, Feb. 22, 1995, 95-1 CPD ¶ 107 at 3.

We find no showing of bias on the part of the agencies here. The Air Force and Interior both deny any bias against ALC or purposeful action to exclude ALC from the competition, and the Air Force goes on to specifically deny that the actions cited by ALC were improper. For example, the Air Force states that it did not initially provide ALC’s name to Interior as a possible source for the linguist services because it did not consider ALC an incumbent contractor for this requirement, which was not a follow-on procurement to either of ALC’s current contracts. Air Force Report (AFR) at 5. The Air Force further explains that it did not believe that ALC would be available to perform this requirement, because it was to begin before ALC’s current linguist contracts expired, id. at 5, 6, and that it did not notify ALC of the pending solicitation because the procurement was being conducted by Interior, not the Air Force. While the protester believes that the agency’s actions were designed to

preclude the firm from competing, it has presented no evidence establishing that such a motivation, rather than the agency's explanation, was the basis for its actions.

Even if we disregarded the Air Force's explanation, the protester was permitted to compete and there is nothing in the record to suggest, and ALC does not allege, that bias on the agencies' part led to an unreasonable or otherwise improper evaluation of its proposal. Indeed, while ALC did argue in its earlier protest (AllWorld Language Consultants, Inc., supra) that the agency improperly evaluated its proposal with respect to past performance, it abandoned this protest ground after receiving the agency report. In any case, as noted above, the determining consideration in the award decision was Worldwide's significantly lower price, not the evaluation of ALC's technical or past performance proposals. Again, in order to succeed in a claim of agency bias, the protester must show that any agency bias translated into action that unfairly affected the protester's competitive position. Docusort, Inc., supra. ALC has not made such a showing here.

ALC also complains that the agency failed to follow the solicitation's evaluation scheme. Specifically, ALC asserts, although offerors were required to submit resumes for all proposed linguists, the agency based its evaluation of Worldwide on its use of incumbent ALC employees, rather than on its submitted resumes. This argument is without merit. Worldwide's proposal included resumes for proposed personnel, but also provided that the firm intended to retain qualified and government approved incumbent personnel. Worldwide Proposal at 9. The Air Force explains that it evaluated Worldwide's proposal based on both the submitted resumes and the incumbent employee retention plan. Interior Report at 4. Thus, the evaluation was consistent with both the evaluation scheme and the contents of Worldwide's proposal.

The protest is denied.

Anthony H. Gamboa
General Counsel