



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DRI/McGraw-Hill

File: B-261181; B-261181.2

Date: August 21, 1995

Matthew S. Perlman, Esq., and Tenley A. Carp, Esq., Arent Fox Kintner Plotkin & Kahn, for the protester.

Leon J. Glazerman, Esq., Michael J. Lacek, Esq., and Prasan A. Pandite, Esq., Palmer & Dodge, for TASC, Inc., an interested party.

F. Jefferson Hughes, Esq., and Alden F. Abbott, Esq., Department of Commerce, for the agency.

Tania L. Calhoun, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency's decisions to eliminate protester from the competition and award the contract to the awardee were tainted because an improper conflict of interest existed between a member of the technical evaluation panel and an individual proposed by the awardee due to their prior co-authorship of various publications is denied where there is no evidence of any current economic relationship between the two individuals, and no evidence that the evaluator exerted improper influence in the procurement on behalf of the awardee or against the protester.

DECISION

DRI/McGraw-Hill protests the elimination of its proposal from the competitive range and the subsequent award of a contract to TASC, Inc. under request for proposals (RFP) No. 52SBNB5C8502, issued by the Department of Commerce, National Institute of Standards and Technology (NIST), for a study of technology trends in the service sector. DRI/McGraw-Hill primarily alleges that the agency's decisions were tainted by an improper conflict of interest between a member of the technical evaluation panel (TEP) and the awardee.

We deny the protests.

BACKGROUND

The solicitation, issued December 5, 1994, anticipated award of a fixed-price contract to furnish all personnel, materials, and services necessary to conduct this assessment and documentation

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of market failures, especially technology-related ones, that prevent specific elements of service technology from being developed and diffused in a timely manner. The RFP advised that award would be made to the offeror whose proposal offered the greatest value to the government, and that technical factors were significantly more important than price. Technical proposals would be evaluated under three factors not specifically at issue here, and price proposals would be evaluated for realism and reasonableness.

NIST received four proposals by the January 11, 1995, closing date. A three-member TEP, led by Dr. Gregory K. Tassej, evaluated the technical proposals as follows:

	<u>Company A</u>	<u>TASC</u>	<u>DRI</u>	<u>Company B</u>
Evaluator A	86	76	70	67.5
Evaluator B	73	67	80	67
Tassej	<u>65</u>	<u>75</u>	<u>49</u>	<u>14</u>
Total/Average	224/75	218/73	199/66	148.5/50

The TEP discussed the proposals in a January 19 meeting and concluded that Company B's proposal was unacceptable, and that the other three proposals were unacceptable but capable of becoming acceptable through discussions. Accordingly, Company B was excluded from further consideration and discussions were conducted in February with the remaining three offerors. Responses to the discussion questions were forwarded to the individual TEP members for evaluation, and Dr. Tassej compiled the results as follows:

	<u>Company A</u>	<u>TASC</u>	<u>DRI</u>
Evaluator A	75	85	60
Evaluator B	64	78	59
Tassej	<u>62</u>	<u>80</u>	<u>49</u>
Total/Average	201/67	243/81	168/56

The TEP determined that TASC submitted the only acceptable offer and recommended award to TASC pending an acceptable pricing proposal. The contract specialist reviewed the TEP's recommendation, as well as the offerors' prices: Company A's price was \$334,544, TASC's price was \$434,006, and DRI/McGraw-Hill's price was \$378,158. The contract specialist recommended that TASC's proposal be the only one included in the second competitive range because it was the only firm to submit sufficient responses to the discussion questions. TASC submitted a best and final offer on March 30, and was subsequently awarded the contract. These protests followed DRI/McGraw-Hill's debriefing. Performance of the contract has been suspended pending resolution of the protests.¹

¹DRI/McGraw-Hill filed copies of its protests with the Department of Commerce's Inspector General, which has initiated an investigation into these matters. We have decided to proceed with the protest concurrent with the ongoing investigation. See Litton Sys., Inc., 68 Comp. Gen. 422 (1989), 89-1 CPD ¶ 450; Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63.

DISCUSSION

DRI/McGraw-Hill primarily alleges that the agency's decisions to exclude its proposal from the competitive range and to award the contract to TASC were tainted because an improper conflict of interest existed between Dr. Tassej and an individual proposed by TASC, Dr. Albert N. Link. The protester asserts that Drs. Tassej and Link have a professional partnership based upon their co-editorship and co-authorship of various books and articles, and that Dr. Tassej stands to benefit to the extent that he can further the professional reputation of Dr. Link. According to the protester, this relationship also violates the procurement integrity provisions of the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423(b) (1988 and Supp. V 1993).

Contracting agencies are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure impartiality in the evaluation and to preserve the integrity of the procurement process. SeaSpace Corp., B-252476.2, June 14, 1993, 93-1 CPD ¶ 462. Where, as here, a protester asserts that an evaluator is biased because of his past experiences or relationships, we will examine both the nature of the relationship, see id., and whether the evaluator exerted improper influence in the procurement on behalf of the awardee, or against the protester. E.J. Richardson Assocs., Inc., B-250951, Mar. 1, 1993, 93-1 CPD ¶ 185; Charles Trimble Co., B-250570, Jan. 28, 1993, 93-1 CPD ¶ 77; George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433. Here, we conclude that the prior relationship between Drs. Tassej and Link does not present a current conflict of interest, and that the record contains no evidence that Dr. Tassej improperly influenced the outcome of the evaluation.

With respect to the relationship issue, the protester's claim that an ongoing economic relationship exists between Drs. Tassej and Link is not supported by the record. Our review of the relationship between the two men shows that Dr. Tassej, the senior economist in NIST's program office, conceived of the study at issue in this procurement, selected the evaluators, and was responsible for coordinating the technical evaluation. The RFP names him as the person to whom contract deliverables were to be made, and TASC's contract lists him as the contracting officer's technical representative (COTR).

TASC proposed Dr. Link as its director of economic analysis, and he will also serve on its advisory board for this project. According to TASC's proposal, Dr. Link will be involved in the details of every analysis and will be in regular contact with the COTR. The proposal included Dr. Link's resume, which cites each of the publications co-authored or co-edited with Dr. Tassej, listing him by name. Dr. Tassej states that he was not aware of Dr. Link's

involvement with TASC until he received the proposal, and that he did not see the need to recuse himself or to seek legal counsel on the matter.²

In a hearing conducted by our Office, it was established that Dr. Tassej and Dr. Link, a professor of economics at the University of North Carolina at Greensboro, have known each other for some 15 years. The two men co-authored a book which was published in 1987, and co-edited a volume of technical papers which was published in 1989. Dr. Tassej testified that each man signed a separate contract with the publisher, not with each other. The agency reports that

Dr. Tassej's royalties for the 1987 book total \$374.38 over the four years during which royalties were earned (1988 to 1991), and that the 1989 book generated a total of \$311 in royalties, primarily in 1990 and 1991. Drs. Tassej and Link also co-authored four articles which were published in academic journals between 1983 and 1993, and co-authored the introduction to a book which was published in 1987.

Dr. Tassej received no royalties from these activities.

Dr. Tassej testifies that there are no plans to continue such activities with Dr. Link, and explains that he is currently co-authoring an article with another member of the economics community.

Our conclusion that this procurement is not tainted by an improper conflict of interest is based on the record, which shows that: the two men had separate contracts with the publisher of their royalty-generating endeavors; these royalties ceased in 1991, at least two years prior to the beginning of this procurement; and there are no plans for the two to co-author or co-edit additional books or articles. Further, there is no evidence that Dr. Tassej has anything to gain by enhancing Dr. Link's reputation.³

Our conclusion is also based on the overall publishing pattern of these two individuals. The publications co-authored by Drs. Tassej and Link are examples of just a few of Dr. Tassej's published works; his other published works include a 1992 book and numerous papers, some of which were co-authored with other economists. Dr. Tassej also testified that he is currently writing a paper with another economist. Likewise, Dr. Link's resume lists numerous publications, many of which were written by himself or with co-authors other than Dr. Tassej.

²Given the nature of the relationship between Drs. Tassej and Link, it should have occurred to Dr. Tassej to consult with the agency's ethics official designated to consider these matters and obtain advice concerning the propriety of his role in the procurement. See Seaspace Corp., supra; Visucom Prods., Inc., B-240847, Dec. 17, 1990, 90-2 CPD ¶ 494. Such a consultation could have clarified the matter at the appropriate time, before the evaluation of proposals.

³While DRI/McGraw-Hill does not so state, we assume that the protester believes that award of this contract to TASC will enhance Dr. Link's reputation.

In response to the protester's assertion, that Dr. Tasse's reputation is inextricably linked with Dr. Link's such that the enhancement of the latter accrues to the former, we do not find that the record supports such a conclusion. Rather, the record shows that the research community in this area is a small one and that Dr. Tasse and Dr. Link, as well as an individual proposed by the protester, are all professional colleagues.⁴ E.J. Richardson Assocs., Inc., supra.

With respect to the conduct of the evaluation, our review leads us to conclude that Dr. Tasse did not exert improper influence in the procurement on behalf of the awardee, or against the protester. The record contains no evidence of improper influence by Dr. Tasse either on the other evaluators, or on the outcome of the evaluation.

First, both of the other members of the TEP testified that their evaluations were not improperly influenced by

Dr. Tasse. Both report that they evaluated the initial proposals on their own, and that the only time the TEP met to discuss the proposals was on January 19. The TEP members testify that the panel discussed the strengths and weaknesses of each proposal under the evaluation factors and subfactors, and that while they listened to Dr. Tasse's point-of-view, he also listened to theirs. Both TEP members testify that as the panel came to a consensus conclusion as to the evaluation of the various factors and subfactors,

Dr. Tasse entered the conclusions directly into his computer, and produced the memorandum of the meeting, as well as the resultant discussion questions, and that both documents accurately reflect that consensus. The evaluation of both firms by all TEP members is fully documented, and Dr. Tasse's colleagues specifically testify that the final evaluation memorandum is reflective of their views, formed absent any discussion of the matter with Dr. Tasse.

Second, we find unpersuasive DRI/McGraw-Hill's comparison of various passages of the final evaluation memorandum with Dr. Tasse's comments in an effort to show his undue influence on the outcome of the evaluation. A careful review of the document shows that while a number of its passages are nearly identical to Dr. Tasse's comments, these comments are largely consistent with the comments of the other evaluators, and other passages clearly reflect the views of the other two TEP members. That Dr. Tasse, who wrote this memorandum, would use his own language to express the views of the panel does not evidence any improper influence. See id.; Charles Trimble Co., supra.

Finally, our review of the regulations implementing the procurement integrity provisions of the OFPP Act, Federal Acquisition Regulation (FAR) § 3.104, shows that DRI/McGraw-Hill's

⁴For the same reasons, we have no basis to conclude that Dr. Tasse violated DOC's conflict of interest regulations. See 15 C.F.R. § 0.735-13(b) ("No employee shall participate in a manner, on behalf of the United States, in the negotiation of contracts, . . . which affects chiefly a person with whom he has any economic interest . . .").

allegation that the relationship between Drs. Tasse and Link violated these provisions is unsupported. First, with respect to FAR § 3.104-6(a)'s prohibition on a procurement official's discussing, soliciting, or accepting future employment or business opportunities with a competing contractor during a procurement, there is no evidence of any such contact between Drs. Tasse and Link during the course of this procurement. Second, with respect to FAR § 3.104-3(b)'s prohibition on a procurement official's disclosing proprietary or source selection information regarding a procurement to one not authorized to receive the information, Dr. Tasse testified that he had scrupulously avoided doing any such thing, and Dr. Link's affidavit confirms Dr. Tasse's statement. In its post-hearing comments, DRI/McGraw-Hill does not address the matter, and we have no basis to dispute Dr. Tasse's account.⁵ See Data Sys. Analysts, Inc., B-255684; B-255684.2, Mar. 22, 1994, 94-1 CPD ¶ 209.

The protests are denied.

Ronald Berger for
Robert P. Murphy
General Counsel

⁵To the extent that DRI/McGraw-Hill contends that the relationship between Drs. Tasse and Link created an organizational conflict of interest (OCI) which TASC improperly failed to disclose, we surmise that the protester believes TASC was afforded an unfair competitive advantage due to Dr. Link's presence in its proposal. See FAR § 9.501 (An OCI exists when because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.) Again, the record does not support this contention.