

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

Melody  
PLIT  
31332

**FILE:** B-216596

**DATE:** May 31, 1985

**MATTER OF:** Telefax, Inc.

**DIGEST:**

1. Protester fails to show that any unauthorized disclosure of information regarding its proposal was made to awardee where only evidence offered is unsubstantiated rumor of disclosure of information regarding another offeror's proposal and, in any event, there is no indication that awardee changed its best and final offer based on information allegedly disclosed.
2. Protester fails to show that procurement was biased in favor of awardee where only support offered is a series of internal contracting agency memos regarding the procurement which show no evidence of bias in favor of awardee, and there is no evidence that Marine Corps officer who was a member of technical evaluation team exerted undue influence in favor of awardee.
3. Where solicitation provided that offers would be evaluated on the basis of the extent to which they met contracting agency's technical requirements, it was not inconsistent with the evaluation scheme to rate awardee's proposal as technically acceptable even though it failed to comply with one of numerous technical subcriteria.
4. To the extent protester challenges contracting agency's decision, evident from the solicitation, not to require total compliance with specified technical standards, protest is untimely because not filed before date for receipt of initial proposals.

032178

Telefax, Inc. protests the award of a contract for lightweight digital facsimile machines to Magnavox Government and Industrial Electronics Co. under request for proposals (RFP) No. DAAB07-84-R-K024, issued by the United States Army Communications-Electronics Command, Fort Monmouth, New Jersey. Telefax argues that its competitive position was prejudiced by an alleged unauthorized disclosure of information to Magnavox by a member of the agency's technical evaluation team regarding Telefax's technical and price proposals. Telefax also contends that the procurement was biased in favor of Magnavox as a result of both a conflict of interest by the same member of the technical evaluation team and improper influence exerted by a superior Army official. Finally, Telefax contends that Magnavox's proposal was technically unacceptable for failure to meet one of the operational requirements in the RFP. We deny the protest.

The RFP was issued on July 19, 1984, with initial proposals due on August 3. Proposals were submitted by three offerors--Telefax, Magnavox, and Val-U-Tec. Equipment demonstrations with all the offerors were held on August 16-21. Discussions also were conducted with each offeror on September 5-7. Best and final offers were received on September 14. Based on their final offers, both Telefax and Magnavox were rated technically acceptable; Val-U-Tec was rated technically unacceptable. Award to Magnavox was made on March 27, 1985.

Alleged unauthorized disclosure of  
technical and price information

Telefax contends that a Marine Corps<sup>1/</sup> member of the technical evaluation team for the procurement disclosed information regarding Telefax's technical and cost proposals to Magnavox, which then used the information to improve its best and final offer. Telefax's allegation is based on the following assertions: (1) the alleged disclosure was discussed during a meeting held among the Army and Marine Corps officials involved in the procurement before the due date for best and final offers; (2) Marine Corps personnel not connected with the procurement had

---

<sup>1/</sup>Some of the machines under this contract will go to the Marine Corps.

information regarding Val-U-Tec's proposal which should not have been known outside the technical evaluation team; and (3) during a break in discussions between the Army and Telefax on September 7, the Army project manager asked Telefax's representative to step outside the meeting room so that they could converse outside the hearing of the Marine Corps team member who was present during the discussions.

We find no support in the record for Telefax's contentions. The protester has offered no direct evidence of an unauthorized disclosure of information regarding its own proposal. Rather, as detailed above, the primary basis for Telefax's argument is its assertion that information regarding another offeror, Val-U-Tec, was disclosed to Marine Corps personnel not involved in the procurement. The Army states that the rumor regarding the alleged disclosure of information concerning the Val-U-Tec proposal was discussed during the September 7 meeting referred to by Telefax. All the members of the evaluation team denied making the alleged disclosure. In addition, because the rumor involved Marine Corps personnel, the Marine Corps member of the evaluation team was questioned individually and denied making any unauthorized disclosure. His statement is reiterated in an affidavit submitted to our Office in connection with this protest.

As a result of these inquiries, the Army concluded that the rumor regarding disclosure of Val-U-Tec information was unfounded. Since Telefax offers only speculative evidence in support of its contrary assertion that the disclosure occurred, we find that Telefax has failed to meet its burden of proof concerning this allegation. See Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 CPD ¶ 74. In any event, even assuming the rumor had been substantiated, the alleged disclosure involved information regarding only Val-U-Tec's proposal, not Telefax's proposal. Lacking any direct evidence of disclosure of information regarding its own proposal, Telefax offers nothing more than its bare and unconvincing speculation that, in light of the alleged disclosure of Val-U-Tec information, information regarding Telefax's proposal must also have been disclosed.

We find similarly unconvincing Telefax's reliance on the conversation between the Army's project manager and a

Telefax representative during discussions concerning Telefax's proposal. The Army attributes its project manager's apparent reluctance to speak in front of the Marine Corps evaluation team member to the fact that the member was believed to favor Magnavox's proposal. Regardless of the project manager's perception of the evaluation team member's position or the reason for his remark, we find no basis in that remark on which to conclude that the evaluation team member made an unauthorized disclosure to Magnavox.

Finally, the Army states that there is no indication in Magnavox's best and final offer that Magnavox made changes to its initial proposal based on information it received regarding Telefax's proposal. The Army's position is supported by the fact that there is no significant difference between the Army's technical evaluation of Magnavox's initial proposal and its best and final offer. Thus, even if Telefax had been able to show that disclosure had occurred, there is no indication that the information allegedly disclosed was used to improve Magnavox's best and final offer. The Army also states that members of the technical team had no access to the offerors' price proposals, and, therefore no technical team member was in a position to disclose pricing information to Magnavox.

#### Alleged bias in favor of Magnavox

Telefax argues that the procurement was biased in favor of Magnavox as a result of undue influence exerted by the Under Secretary of the Army. Telefax also contends that the Marine Corps technical evaluation team member had a conflict of interest which tainted the procurement. We find these contentions to be without merit.

Our review of the protester's contentions is limited to determining whether the individuals referred to by the protester exerted undue influence which resulted in bias in favor of Magnavox, without regard to whether they also may have violated conflict of interest statutes or regulations. See National Service Corp., B-205629, July 26, 1982, 82-2 CPD ¶ 76. The protester has the burden of affirmatively proving its case; unsupported allegations do not satisfy this burden, J. L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 CPD ¶ 99, nor does

establishing the mere potential for improprieties. Computer Sciences Corp., B-210800, Apr. 17, 1984, 84-1 CPD ¶ 422. In addition, we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Architectural Preservation Consultants; Resource Analysts, Inc., B-200872, et al., Dec. 8, 1981, 81-2 CPD ¶ 446.

Telefax's first allegation of undue influence by the Under Secretary is based on several internal memos by Army officials not directly involved in the procurement, written in response to a letter from Magnavox to the Under Secretary questioning the need for several requirements included in the RFP. The Under Secretary requested his subordinates to address the points made by Magnavox. His request was forwarded through the Army's administrative channels and did not reach the contracting officer until August 7, after the date on which the RFP was issued (July 19) and the due date for initial proposals (August 3). The contracting officer was instructed to disregard a direction in the memos to stop further progress on the procurement, a direction which apparently predated issuance of the RFP.

The letter from Magnavox which prompted the memos dealt solely with the contents of the RFP; it did not discuss or promote the merits of any particular proposal. We find nothing in the Army's memos to indicate any bias in favor of the Magnavox proposal or any evidence that the Under Secretary or his subordinates attempted to influence the outcome of the procurement. Rather, the memos reflect only the efforts of Army officials to respond to an inquiry regarding a procurement under their responsibility.

Telefax next argues that the Marine Corps evaluation team member's participation in the procurement involved a conflict of interest because two of the members of the Magnavox team were retired Marine Corps officers who had a close personal relationship with him. Telefax also questions the propriety of allowing those retired officers to remain during discussions of Magnavox's price proposal, even though a former Army officer also on the Magnavox team was asked to leave.

The Army replies that, during discussions regarding the Magnavox proposal, only one member of the Magnavox

team identified himself as a former Marine Corps officer. In addition, in his affidavit the Marine Corps evaluator states that his relationship with the Magnavox employees was of a professional nature only, and that, in any event, he did not discuss the proposals submitted under the RFP with any offeror. Further, the contracting officer states that he was not influenced by any individual member of the procurement team, including the Marine Corps team member.

Telefax has not attempted to rebut the Army's finding that no improper influence in favor of Magnavox was brought to bear by the Marine Corps evaluator or by the presence of the former Marine Corps officers during discussions with Magnavox and has itself offered no support for the allegations of bias made in its first submission to our Office. As a result, we find that Telefax has failed to show that the Marine Corps evaluator's participation in any way resulted in bias in favor of Magnavox.

Award to Magnavox allegedly does not  
comply with the evaluation criteria

Telefax argues that award to Magnavox was inconsistent with the evaluation criteria in the RFP. Specifically, Telefax contends that Magnavox's proposal was unacceptable for failure to meet a technical standard relating to the compatibility of the facsimile equipment with equipment used by other NATO nations.

According to the Army, the facsimile equipment being acquired was designated a nondevelopmental item, meaning that the Army would acquire the equipment from manufacturers' existing models rather than conduct a research program to develop equipment tailored to the Army's needs. The desired capabilities of the equipment were set out in a Joint Operational Requirement (JOR). Because the Army recognized that no manufacturer's existing equipment could satisfy all the JOR standards, the RFP stated that offers would be evaluated based on the extent to which a proposal provided the features listed in the JOR; total compliance with the JOR was not required and a proposal's failure to meet a particular requirement in the JOR would not make the entire proposal unacceptable.

The RFP contained two principal evaluation factors-- technical considerations and price. The technical considerations factor consisted of three subfactors-- operational suitability, production readiness, and

management. The standard relating to the equipment's compatibility with other NATO nations' equipment, called "standards compliance," was one of 13 criteria making up the operational suitability subfactor. The record shows that the Magnavox proposal was rated unacceptable under the standards compliance criterion; Magnavox's noncompliance with that criterion was not considered serious enough, however, to merit an unacceptable rating on the broader operational suitability subfactor or on the overall technical considerations factor. Rather, while the Army's technical evaluations show that the Telefax proposal was considered superior on the standards compliance criterion, both the Telefax and the Magnavox proposals were rated technically acceptable overall.

An agency must adhere to the evaluation criteria in a solicitation. See, e.g., Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD ¶ 80. We find no support in this case, however, for Telefax's contention that consistency with the evaluation criteria in the RFP required Magnavox's proposal to be found technically unacceptable. Section M.24, II.A, of the RFP, which described the evaluation factors for award, specifically stated that proposals would be evaluated on "the extent to which" they met the Army's various technical requirements; absolute compliance with all the requirements was not called for. In addition, the standards compliance criterion which Magnavox failed to meet was only one of numerous subordinate criteria to be considered by the Army in rating a proposal under one of three subfactors, which themselves composed the final technical rating. As a result, we conclude that it was reasonable for the Army to rate the Magnavox proposal as technically acceptable, despite its failure to meet the standards compliance criterion.

Moreover, to the extent that Telefax challenges the Army's decision not to require in the RFP total compliance with the JOR requirements relating to equipment compatibility, the protest is untimely. As Telefax concedes, the Army's decision to accept less than full compliance was clearly reflected in the RFP. Thus, the basis for a protest of the Army's decision was apparent on the face of the RFP and, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), the protest was required to be filed before the date for submission of initial proposals, August 3. As noted above, Telefax's protest was not filed until September 28.

B-216596

The protest is denied.

*for Seymour Efron*  
Harry R. Van Cleve  
General Counsel