

Matter of: Lancaster & Company

File: B-254418

Date: December 14, 1993

Stephen R. Clark, Esq., McCormick, Andrew & Clark, and Jan B. Lancaster-O'Brien, for the protester. Michael D. Weaver, Esq., Department of Housing and Urban Development, for the agency. Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that personal conflict of interest of government employee initially designated as source selection official impermissibly tainted evaluation and award process is denied where government employee recused himself from the selection decision, and record contains no evidence that employee with conflict influenced agency's technical evaluators or replacement source selection official, or that awardee gained access to any competitor's proposal or other sensitive information.

DECISION

Lancaster & Company protests the award of a contract to Gorman Management Company under request for proposals (RFP) No. 007-92-118N, issued by the Department of Housing and Urban Development (HUD), Tulsa Field Office, for real estate asset management services (REAMS) involving agency-owned properties located in north central Oklahoma. Lancaster contends that the award to Gorman Management was impermissibly tainted by a personal conflict of interest between the manager of the Tulsa field office and the awardee. Because of this conflict, Lancaster asserts, Gorman Management was selected either as a result of personal bias, or, in the alternative, because Gorman Management was given access to the contents of Lancaster's proposal.

We deny the protest.

BACKGROUND

The RFP

The RFP was issued on September 21, 1992, as a small business set-aside to 29 offerors. The core services required under the solicitation consist of inspecting and maintaining various HUD single family properties--including winterizing the properties, routine lawn and building maintenance, performing and/or arranging for any required repairs, collecting rental fees, paying utility and other required service bills, and investigating and responding to tenant complaints and concerns. Additional services required under the RFP include vacant property inspections, miscellaneous custodial duties, and rental collections.

The solicitation instructed offerors to submit proposals in two parts, a technical response in Part I and a price proposal in Part II, and provided that award was to be made to the offeror whose proposal was most advantageous to the government based on an assessment of five technical evaluation factors and prices.

Section M of the RFP, "FACTORS FOR AWARD," advised offerors that "the proposed price, although secondary to the technical and management factor considerations, will be considered [in] determining the proposal offering the most advantage to HUD" and would be evaluated for reasonableness. In the event that two or more offerors were considered "technically equivalent," the solicitation advised that award would be made to the lower-priced offeror.

The Procurement

In April 1992, as part of a reorganization, HUD decided to convert all of its area management brokerage (AMB) contracts into REAMS procurements; the procurement at issue in this protest is one of approximately 10 procurements in the Oklahoma area intended to replace expiring predecessor AMB contracts. As a result of the reorganization announcement, the Tulsa field office was advised that its contract responsibility for the AMB/REAMS procurements would eventually be transferred or "regionalized" to the Region VI HUD office, which is located in Oklahoma City.¹ In the meantime, the Tulsa field office was directed to begin

¹The Region VI Office is formally considered the "Fort Worth Regional Office" although it is apparently "outstationed" or physically located in Oklahoma City. For simplicity, following the testimony at the hearing, we refer to the Region VI Office as the Oklahoma City office.

conducting REAMS procurements to replace the expiring AMB services contracts.

In late September 1992, after this RFP was issued, the agency began transferring the Tulsa contracting function to the Oklahoma City site. On or around September 27, to implement this transfer, an Oklahoma City regional contracting officer was tasked to begin overseeing the Tulsa field office's ongoing REAMS procurements, including the instant RFP. On October 5, the acting manager of the Tulsa field office--at the direction of the Oklahoma City contracting officer--designated Ms. Jeanne King, a Tulsa site procurement official, as the source evaluation board (SEB) chairperson, and appointed two other Tulsa contract specialists. An Oklahoma City contract specialist was also appointed to the panel as a "non-voting" member.

Shortly thereafter, Ms. King prepared a source selection plan for this procurement which in part outlined the duties of the source selection official (SSO), the SEB Chairperson, the SEB panel and the contracting officer. While the plan identified the individuals who were serving as SEB Chairperson and SEB panel members, the plan did not name those individuals who would be serving as contracting officer or SSO, apparently because Ms. King was not certain who these individuals would be. Prior to the closing date for receipt of initial proposals, Ms. King and the other SEB panel members signed the "PREPARED BY" portion of the plan's cover page routing slip and forwarded the plan to the Oklahoma City regional office.

By the October 21 closing date, eight offers were received. On November 6, under the direction of the contracting officer, the proposals were forwarded to the SEB for evaluation.

On December 14, Mr. James S. Colgan became the manager of the Tulsa field office. Shortly thereafter, Mr. Colgan signed the source selection plan for this procurement in the "Approving Official" signature slot, at the bottom of the plan's cover page routing slip.

On January 11, 1993, the SEB convened and evaluated Lancaster's initial technical proposal; on February 4, the SEB evaluated Gorman Management's proposal. By February 18, the SEB had completed its evaluation of all eight initial proposals; by memorandum to the contracting officer dated that same day--and routed through Mr. Colgan--the SEB requested each offeror's price proposal in order to develop a competitive range recommendation.

By means of a February 23 memorandum addressed to Mr. Colgan, and sent to the attention of Ms. King, the contracting officer asked the SEB to clarify the technical scoring of initial proposals by advising whether each proposal was "acceptable, unacceptable, etc.," and forwarded each offeror's price proposal as requested.

On March 22, the SEB executed an "Initial SEB Report" memorandum, which set forth a suggested competitive range determination, based on each offeror's technical scoring and price; in this report--which was addressed to the contracting officer and routed through Mr. Colgan--the SEB recommended that three proposals, including Lancaster's and Gorman Management's, be included in the competitive range. By memorandum dated March 24, the contracting officer queried the SEB about its recommendation to exclude several other offerors from the competitive range; based on the SEB's April 9 response--which again was routed through Mr. Colgan--the contracting officer made an April 15 competitive range determination which concurred in the SEB's recommendation. That same day, the contracting officer forwarded written discussion questions to these three offerors, and requested best and final offers (BAFO) by April 26. All three offerors responded with BAFOs by this date.

On April 27, the contracting officer forwarded the BAFOs to the SEB for evaluation; on May 21, the SEB issued a memorandum through Mr. Colgan to the contracting officer which recommended an award to Gorman Management. Shortly thereafter, Mr. Colgan was informed by the contracting officer that he would be required to make a source selection decision on this procurement.

Apparently, because of the contracting responsibility transfer, Mr. Colgan was under the impression that an Oklahoma City regional office procurement official would be the SSO for this procurement. On May 25, immediately after realizing that he was the designated SSO for this requirement, Mr. Colgan issued a memorandum to the contracting officer which stated:

"The Source Evaluation Board has completed their final analysis of the [BAFOs] on [RFP No. 007] and their results are attached to this memo.

"As I believe I may have mentioned previously,⁽²⁾ Art Gorman (owner and princip[al] of Gorman Management Company) is married to my [first] cousin and due to this relationship I feel it would be inappropriate for me to make a recommendation as the Source Selection Officer and ask that you make the selection that is in the best interest of the government."

On May 27, the contracting officer responded with a memorandum to Mr. Colgan which stated that because the contracting officer was serving as an advisor to the SEB, he could not serve as the SSO. The contracting officer further advised Mr. Colgan that:

"In view of the above [your kinship to one of the offerors in the competitive range] I agree you should remove yourself as SSO; however, I suggest you designate another SSO.

"Notwithstanding the above, the SEB needs to prepare a final report pursuant to the Source Selection Plan. The attached one page memorandum dated May 21, 1993, is hardly a final report. Please ensure the SEB expedite this process by completing the final report."

Included as an enclosure with this memorandum was a copy of the SEB's May 21 recommendation which, in the opinion of the contracting officer, required further clarification.

On June 16, by means of a lengthy memorandum addressed to the contracting officer and routed through Mr. Colgan, the SEB chairperson--Ms. King--elaborated on the SEB's selection of Gorman Management for award. On June 17, Mr. Colgan designated the Tulsa Deputy Manager as the SSO, and formally recused himself from the procurement.

The Tulsa Deputy Manager ultimately concurred in the SEB's determination that the Gorman Management and Lancaster proposals were essentially technically equivalent; consequently, by memorandum dated July 1, 1993, he recommended to the contracting officer that Gorman Management be selected for award based on its lower price.

²The record shows that in mid-January, Mr. Colgan had advised the contracting officer that Art Gorman was married to Mr. Colgan's first cousin; this disclosure was made during the course of another REAMS procurement, which had been awarded by the Tulsa field office--under the direction of the Oklahoma City contracting officer--on February 16.

On August 2, the contracting officer concurred in the selection decision, and executed a "Memorandum for the File," detailing the agency's decision to award the contract to Gorman Management. On August 6, Lancaster filed this protest with our Office.

PROTESTER'S CONTENTIONS

As noted above, the record shows that the Tulsa Manager, Mr. Colgan, is a first cousin-in-law to Mr. Gorman. Lancaster contends that this familial relationship impermissibly tainted this procurement since Mr. Colgan failed to withdraw himself from the procurement until after the SEB had prepared its final recommendation to award the contract to Gorman Management. Based on Mr. Colgan's late recusal, Lancaster concludes that Mr. Colgan either exerted improper influence upon the SEB board members--particularly, the SEB Chairperson, Ms. King--to select Gorman Management, or in the alternative, that Mr. Colgan disclosed the contents of the Lancaster proposal to Mr. Gorman, thereby enabling Gorman Management to submit a more competitive BAFO.

As explained below, we find that there is no evidence in the record that the personal conflict of interest between Mr. Colgan and Mr. Gorman affected the integrity of this procurement.

ANALYSIS

Federal Acquisition Regulation (FAR) § 1.602 requires procurement officials to safeguard the government's interests in its contractual relationships. Consequently, contracting agencies are to avoid any conflict of interest or even the appearance of a conflict of interest in government procurements. See FAR § 3.101-1; RAMCOR Servs. Group, Inc., B-253714, Oct. 7, 1993, 93-2 CPD ¶ ____; Applied Resources Corp., B-249258, Oct. 22, 1992, 92-2 CPD ¶ 272, aff'd, B-249258.2, Feb. 26, 1993, 93-1 CPD ¶ 180, aff'd--Second Recon., B-249258.4, Mar. 26, 1993, 93-1 CPD ¶ 269. Contracting officials have a responsibility to assist the procuring agency in avoiding the appearance of favoritism or preferential treatment by disclosing and mitigating any conflicts of interest from which an inference of impropriety might arise. See Applied Resources Corp., supra; Marc Indus., B-246528 et al., Mar. 10, 1992, 92-1 CPD ¶ 273.

Where, as here, a protester alleges bias or conflict of interest on the part of a procurement official, the question is whether the official 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. In determining whether a record suggests the likelihood that the integrity of a procurement was compromised by a government official's personal conflict of interest, we generally consider: (1) the nature of the conflict, see H H & K Builders, Inc., B-238095, Feb. 23, 1990, 90-1 CPD ¶ 219, aff'd, B-238095.2, May 8, 1990, 90-1 CPD ¶ 458; Laser Power Techs., Inc., B-233369; B-233369.2, Mar. 13, 1989, 89-1 CPD ¶ 267; (2) the government official's involvement in the procurement, see NES Gov't Servs., Inc.; Urgent Care, Inc., B-242358.4; B-242358.6, Oct. 4, 1991, 91-2 CPD ¶ 291, aff'd, B-242358.7, Nov. 19, 1991, 91-2 CPD ¶ 474; (3) whether the government official disclosed the conflict, see Applied Resources Corp., supra; (4) whether the government official had access to source selection or competitive information, see Childers Serv. Cntr., B-246210.3, June 17, 1992, 92-1 CPD ¶ 524; (5) whether the awardee's proposal or the agency's evaluation documents suggest bias or an improper disclosure of proprietary information, see Johnson, Basin and Shaw, Inc., B-240265; B-240265.2, Nov. 7, 1990, 90-2 CPD ¶ 371; and (6) the credibility of the government official and his version of events. See Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives on the basis of mere inference or supposition, and we require evidence that the individual alleged to have the conflict of interest may be subject to undue influence likely to result in favoritism toward the awardee. Johnson, Basin and Shaw, Inc., supra.

In order to resolve Lancaster's conflict of interest allegation, we conducted a hearing pursuant to 4 C.F.R. § 21.5 (1993); five witnesses--Mr. Colgan, Mr. Gorman, Ms. King, the Oklahoma City contracting officer,³ and the Tulsa Deputy Manager--testified at the hearing. We conclude that Mr. Colgan's personal conflict of interest with Gorman Management did not affect either the SEB's evaluation or the agency's final selection decision in any way; consequently, we have no basis for objecting to the Gorman Management award on the basis of this conflict.

Mr. Colgan's Relationship to Mr. Gorman

Mr. Colgan is related to Mr. Gorman as a first cousin-in-law; specifically, Mr. Gorman is married to Mr. Colgan's first cousin, Carolyn. Carolyn Gorman is not involved in any way with Gorman Management. (Tr. at 59.) As a result of the Gorman marriage, Mr. Colgan and Mr. Gorman have known

³Each witness was questioned separately; references to the hearing transcript are identified by "Tr.".

each other for approximately 26 years; during this period they have maintained an infrequent social relationship limited to family gatherings such as Thanksgiving. (Tr. at 11, 37, 60.) Mr. Colgan and Mr. Gorman do not share any financial or business interests. (Tr. at 14.)

Since joining HUD in December 1992 as the Tulsa field office Manager, Mr. Colgan testified, he has had more frequent telephone and personal contact with Mr. Gorman due to Gorman Management's performance of several other contracts for the Tulsa field office; Mr. Colgan reported that because of this professional interaction, during the instant procurement he and Mr. Gorman consulted by telephone regarding other HUD matters approximately 10 or 12 times, or on a monthly basis. (Tr. at 39.) Mr. Colgan testified that at no point did he ever discuss the merits of this procurement--including the evaluation findings, or any competitor's proposal--with Mr. Gorman. (Tr. at 19, 24.)

With respect to the challenged award, Mr. Colgan testified that at the time this procurement was proceeding, he was aware that Mr. Gorman performed AMB contracts in the Tulsa area, and because of this, he knew that Gorman Management was a potential competitor for this contract. (Tr. at 14.) Mr. Colgan also acknowledged that he learned Gorman Management was an actual competitor "not too long after joining HUD," when the Tulsa SEB routed its February 18 initial technical evaluation report through him for signature. (Tr. 14-15.)

Mr. Colgan's Involvement in the Procurement

The record shows that the Tulsa SEB reports, evaluations and recommendations were routed through and reviewed by Mr. Colgan. Because of this review, Mr. Colgan was given full access to the Tulsa SEB's internal deliberations which identified the competitors for this procurement, their respective proposal strengths and deficiencies, each offeror's technical scores--including the evaluators' technical scoresheets and comments--and each offeror's price estimates. Notwithstanding this access, and the knowledge that Mr. Gorman was a competitor on this procurement, Mr. Colgan failed to withdraw from this procurement until June 17, after the Tulsa SEB prepared its final report recommending Gorman Management for award.

At the hearing, Mr. Colgan explained that although he was aware of his responsibility to avoid an apparent conflict of interest, and although he recognized that the HUD standards

⁴These contracts were awarded prior to Mr. Colgan joining HUD.

of conduct "are high," he did not recuse himself because he did not perceive that his relationship to Mr. Gorman constituted a conflict of interest with respect to this procurement. (Tr. at 35.) Mr. Colgan also testified that he did not realize he was the designated SSO for this procurement. (Tr. at 9.) In this regard, notwithstanding the fact that the relevant HUD acquisition regulation provides that the head of the contracting activity--such as the Tulsa field manager--serves as the SSO for that activity's procurements, Mr. Colgan and several other Tulsa field office procurement officials apparently assumed that because the REAMS contracting function and responsibility were being transferred from Tulsa to Oklahoma City, the head of the Oklahoma City Regional Office--or even the Oklahoma City contracting officer--would be the SSO for this procurement.⁵

The testimony of Mr. Colgan, the SEB Chairperson, and the Oklahoma City contracting officer established that where, as here, procurement documentation--or indeed, any correspondence--is sent from the Tulsa field office to the Oklahoma City regional office, internal agency procedures require it to be routed "through" the Tulsa field office Manager.⁶ (Tr. at 107, 122, 192, 195.) Thus, according to Mr. Colgan, he concluded that by signing and reviewing the source selection plan as well as each of the forwarded Tulsa SEB memorandums, he was acting simply as an administrative channel for transferring this information to the Oklahoma City contracting officer. (Tr. at 10.)

According to Ms. King's testimony, she forwarded the reports to Mr. Colgan for his signature only so that this correspondence could be properly routed from the Tulsa field office to the Oklahoma City regional office site. (Tr. at 110-111.) Significantly, the "through" headlines on the SEB's memoranda and reports identify Mr. Colgan as the

⁵The contracting file for this procurement--which contained the copy of the source selection plan--was officially transferred to and maintained by the Oklahoma City contracting officer. (Tr. at 137.) The location of this file was a primary element in the Tulsa field office staff's assumption that an Oklahoma City procurement official would be making the source selection for this procurement.

⁶We reviewed the record from several other REAMS procurements which corroborate this routing practice.

⁷Because the source selection plan required his signature as an "[a]pproving [o]fficial" rather than as the SSO, Mr. Colgan believed he signed this document in the capacity of Manager and not as the SSO. (Tr. at 121-123.)

"Manager"; none of the documents routed through Mr. Colgan identify or refer to him as the source selection official.

According to Mr. Colgan, he decided to recuse himself on May 25 because that was when he was asked to "do something as a Source Selection Official"; on or around that date was "the first time that I would have been asked to participate in any way in this contract other than those memos coming through me." (Tr. at 17, 18.) The record shows that no one ever advised Mr. Colgan to recuse himself; rather, the withdrawal decision was made on his own initiative. (Tr. at 17.)

Mr. Colgan's Interaction with Ms. King and the SEB

During this procurement, Mr. Colgan testified that except for the documentation which was forwarded through him to the contracting officer, his interaction with the SEB was limited to administrative contacts with Ms. King, the SEB Chairperson.

Although the Tulsa field office's REAMS procurement responsibility was transferred to Oklahoma City, as noted above, responsibility for the expiring AMB contracts which the REAMS procurements were replacing was left under the administration of the Tulsa field office. Consequently, Mr. Colgan was responsible for ensuring that there were no lapses in management services coverage between an expiring AMB contract and its replacement REAMS procurement. (Tr. at 56.)

At the hearing, Mr. Colgan stated that he had requested "status" updates from Ms. King regarding this procurement for the sole purpose of ascertaining whether to extend the expiring AMB coverage; Mr. Colgan testified that these contacts occurred "very infrequently . . . no more than two or three times" during the life of the procurement, and that during these "status" requests, he did not discuss any of the results or evaluation proceedings but merely inquired to see "if a report was ready" for the Oklahoma City contracting officer. (Tr. at 16, 28.)

The only other instance involving contact between himself and Ms. King regarding this procurement occurred on April 23, 1993--after BAFO letters had been issued to Gorman Management, Lancaster and the other competitive range offeror. Ms. King's position is that of a resident initiative specialist, an administrative post responsible

^aMs. King also testified that until she saw Mr. Colgan's recusal memorandum, she did not know he was related to Mr. Gorman. (Tr. at 109, 123.)

for multifamily properties, cooperative conversions, and resident association organizations. (Tr. at 95.) In performing these responsibilities, Ms. King was required to oversee and implement resident initiatives to eliminate drug problems at various housing projects; one of these projects is the Pecan Creek multifamily property which was under the AMB management of Gorman Management. On April 25, Ms. King, Mr. Colgan, and Mr. Gorman met to discuss grants and implementing measures for the Pecan Creek drug elimination program. During the course of this discussion, Mr. Gorman changed discussion topics and asked both Mr. Colgan and Ms. King how his firm should respond to the agency's BAFO letter issued for the procurement at issue here; Mr. Colgan deferred to Ms. King who advised Mr. Gorman to simply follow the instructions in the letter. (Tr. at 22, 113.) No further discussion of this procurement ensued.

In sum, except for this April 23 meeting and the infrequent "status" checks, Mr. Colgan never discussed any aspect of this procurement with Ms. King. (Tr. at 118.)

Mr. Colgan's Access to Source Selection and Proprietary Data

Although, as the Manager of the Tulsa field office, Mr. Colgan could have requested and reviewed the actual proposals submitted in connection with this procurement (Tr. at 171), each of the hearing witnesses independently testified that Mr. Colgan never saw the proposals. Mr. Colgan testified that he had never requested or reviewed any offeror's initial proposal or BAFO. (Tr. at 228.) Ms. King--who secured the proposals and BAFOs during the Tulsa SEB's evaluation by locking them in a file in her office--testified that Mr. Colgan never requested the proposals or was given access to them. Finally, the contracting officer testified that "to my knowledge, [Mr. Colgan] never [had] any access . . . to any of the proposals." (Tr. at 155-156.)

While Mr. Colgan admitted that he had seen other source selection data inherent in the SEB's evaluation--for example, the evaluators' score sheets, narrative assessments identifying each proposal's strengths and deficiencies, and each offeror's proposed price--Mr. Colgan stated that he did not divulge any of this information to Mr. Gorman, or any other competitor.¹⁰ (Tr. at 19, 24.) In fact, Mr. Colgan

⁹Mr. Colgan had no interaction whatsoever with any other SEB member. (Tr. at 28.)

¹⁰Mr. Gorman corroborated this testimony by stating at the hearing that Mr. Colgan never disclosed any such information (continued...)

testified that he did not discuss the SEB data he reviewed with any individual, including the SEB members and the contracting officer. (Tr. at 31, 50.)

The testimony of the SEB chairperson and the contracting officer confirmed Mr. Colgan's representations. Except for status checks, (Tr. at 111), Ms. King testified that: "[Mr. Colgan] did not get involved in the evaluation process at all" or ask about the standing of offerors or any evaluation merits. (Tr. at 110, 111.) Moreover, the contracting officer reports that except for his recusal decision, Mr. Colgan never discussed any aspect of this procurement--including the merits of any competitor's technical or cost proposal--with the contracting officer or his staff and that Mr. Colgan never conveyed any award recommendation or opinion. (Tr. at 153-154.) In sum, while Mr. Colgan had access to the SEB's deliberations and memoranda containing proprietary and source selection findings, there is nothing in the record to suggest that Mr. Colgan divulged any of this information to Mr. Gorman.

CONCLUSION

Based on our review of the record--and particularly in light of the confusing transfer of REAMS procurement responsibility from the Tulsa field office to the HUD regional site in Oklahoma City--we find credible Mr. Colgan's testimony, which is corroborated by the other witness' statements, that he did not realize that he was to have any active role in this procurement. Mr. Colgan's access to source selection and other sensitive data, coupled with his relationship to Mr. Gorman, clearly created the appearance of a personal conflict of interest, warranting Mr. Colgan's withdrawal from the procurement. As soon as Mr. Colgan realized a family member was competing for a contract under his administrative review, Mr. Colgan should have delegated his administrative role--and consequently his access to source selection and other sensitive data--to another procurement official, such as the Tulsa Deputy Manager.

¹⁰ (...continued)
(Tr. at 220); in fact, Mr. Gorman reported:

"[Mr. Colgan] was really pretty conservative about his remarks. I think he was specifically conservative about it. He didn't want to speak out of turn. And I didn't . . . ask him to speak out of turn. I just asked him . . . when are the results out." (Tr. at 219.)

While Mr. Colgan wrongly delayed his recusal, we have no evidence that he exerted improper influence on any involved procurement official or divulged sensitive information to Mr. Gorman. The witnesses in this matter presented credible, straightforward and consistent testimony.

There is nothing in the evaluation record which suggests that Mr. Colgan influenced any of the Tulsa SEB members or their deliberations. The Gorman and Lancaster management strategies and proposal format are completely distinguishable and unique in their technical approach; each offeror's pricing strategy appears similarly individualized. Taken together with the testimony of Mr. Colgan and the other hearing witnesses, we find no basis in the record for concluding that the Tulsa SEB conducted other than an independent, unbiased evaluation. For the same reasons, we find no evidence to suggest that Mr. Gorman acquired access via Mr. Colgan to the Lancaster proposal. Accordingly, we conclude that Mr. Colgan's involvement did not in any way compromise the integrity of the procurement.

The protest is denied.

James F. Hinchman
General Counsel