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|-----------------------------------|---|------------------------|
| Protest of                        | ) | Date: May 24, 1990     |
|                                   | ) |                        |
| RESTAURA, A GREYHOUND COMPANY     | ) |                        |
|                                   | ) |                        |
| Solicitation No. 169991-89-R-0267 | ) | P.S. Protest No. 90-14 |

DECISION

Restaura, a Greyhound Company, (~Restaura~) timely protests the award of a food service contract to Canteen Company. Restaura contests the evaluation committee's judgment in the evaluation of its proposal.

Solicitation No. 169991-89-R-0267 was issued by the Chicago Procurement & Material Management Service Office to provide cafeteria and vending services at the Detroit General Mail Facility (GMF). Restaura had been the incumbent contractor providing services at the GMF.

Section nine of the Solicitation Instruction and Conditions stated that "award will be made to the responsible offeror whose proposal (price and other factors considered) is most advantageous to the Postal Service.~ The solicitation further stated that offers would be evaluated on six criteria to determine to whom the award would be made. The six evaluated criteria and their maximum points were:

|   |                    |
|---|--------------------|
| 1. Reputation, Experience and Resources                   | 100 points         |
| 2. Sanitation Practices                                   | 250                |
| 3. Personnel Staffing and Management                      | 150                |
| 4. Menu Prices, Portion Sizes, and<br>Management Controls | 200                |
| 5. Menu Variety   | 250                |
| 6. Budget, Accounting Systems and<br>Controls             | <u>50</u>          |
|   | 1,000 Total Points |

Six employees at the GMF comprised the evaluation committee.

On January 18, 1990, three proposals were received in response to the solicitation. Thereafter, the committee members reviewed the proposals and provided their evaluations of them. The file reflects that these evaluations were completed on February 8 and 9.

Restaura received a total score of 578 points, broken down by category as follows:

|  |                  |
|--|------------------|
| 1. Reputation, Experience and Resources                | 80 points        |
| 2. Sanitation Practices                                | 50               |
| 3. Personnel Staffing and Management                   | 148              |
| 4. Menu Prices, Portion Sizes, and Management Controls | 100              |
| 5. Menu Variety  | 150              |
| 6. Budget, Accounting Systems and Controls             | <u>50</u>        |
|  | 578 Total Points |

Canteen received a total of 844 points.

In the course of proposal evaluation, arrangements were made for site visits at the facilities of the offerors. The contracting officer's report reflects that arrangements were made on February 9 for the committee to visit Restaura's GMF facility on February 16. At that time, the evaluation committee was accompanied by two procurement specialists. The file reflects no adjustments in the evaluation of any of the proposals as the result of the site visits.

Canteen was awarded the contract on March 1, 1990.<sup>1/</sup> The unsuccessful offerors were notified by phone on the same date. The protester requested the committee evaluation report and asked how Restaura compared to the other offerors. The contracting officer responded with a letter that summarized the evaluation committee's findings about the Restaura facility and gave the total scores of the offerors.

The contracting officer received Restaura's timely protest on March 9 and denied it by letter dated March 12. Responding to Restaura's assertion that the committee's evaluation of the site visits may have been unfair, the contracting officer set out a list of 12 unsanitary conditions noticed by the evaluation committee during its site visit to Restaura's facility at the GMF. Restaura has timely protested to this office, asserting that the evaluation committee unfairly compared its operations at the "antiquated" GMF to facilities of its competitors, and that it was denied an opportunity to take the site visit to another of its accounts. The protester laments that it received only 24 hours' notice of the site visit as compared to the "ample" notice given its competitors. The protester disagrees with the evaluation committee's determinations concerning the various unsanitary conditions the committee reported it saw at its site visit. Restaura attached its local health sanitation reports for the last few years, where it reportedly received scores over 90% each year. The protester adds that it has on staff a full time "health department sanitarian" who gave Restaura scores of 86% and 95% in its last two reviews. Restaura asserts that these reports contradict the subjective observations of the committee, and questions the professional credentials of the committee members. The protester concludes by stating that the unfavorable judgment of the committee was

<sup>1/</sup> Canteen began contract performance on March 16, as scheduled. The contracting officer determined that an uninterrupted continuation of food service during these protest proceedings was in the best interests of the Postal Service.

unfair and detrimental to Restaura's reputation.

The contracting officer's statement refutes the protester's allegations. The contracting officer states that each offeror was telephonically contacted on February 9, and informed that a site visit would be conducted on February 16. Further, the contracting officer asserts that Restaura's Vice President agreed to the site visit at the GMF. The contracting officer emphasizes that Restaura received only 578 points on its proposal during its initial evaluation before the site visit and that this number remained the same after that visit. Concerning the "professionalism" of the evaluation committee members, the contracting officer states that he chose the six individuals according to applicable rules, which do not require professionals to be on the committee.<sup>1/</sup>

### Discussion

Our standard for reviewing a protester's challenge to the technical evaluation of its proposal is as follows:

[T]his office will not substitute our judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the technical evaluation was unreasonable. [Citations omitted.]

Computer Systems & Resources, Inc. P.S. Protest No. 86-4, March 27, 1986; York International Corporation, P.S. Protest No. 89-77, January 19, 1990.

The protester has not shown how the evaluators' judgment concerning the sanitation of its facility was arbitrary or in violation of applicable regulations. Apparently as the result of the contracting officer's comments in the course of its initial protest, Restaura has centered its objections on the circumstances of the site visit. However, as noted above, the site visit does not appear to have had any effect on Restaura's evaluation, and thus was irrelevant to the evaluation process.<sup>1/</sup> In any event, no possible adjustment of

<sup>2/</sup> Handbook AS-702, entitled Contracting for Food Services, states in Section 413.1: ~[t]he installation head selects 3 to 6 employees to be the evaluation committee and designates one of them as the chairman. ~ The contracting officer's statement listed the names and job titles of the six persons who served on the committee.

<sup>3/</sup> Indeed, the solicitation made no reference to a site visit. While Food Service Handbook section 435 provides for site visits at the request of the evaluation committee, it contemplates the adjustment of the evaluation as a result of the visits. While we are at a loss to understand why the site visits conducted here were not reflected in the evaluations, the omission does not appear to have affected the outcome.

Restaura's sanitation score would affect the outcome here. Even if the protester had received the maximum score for sanitation practices, its score would have remained lower than that of the awardee. See Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986.

Restaura complains that it was given inadequate notice of the site visit and that it was not allowed to choose its site. The contracting officer has disputed this, stating that all offerors were given the same six days' notice. "In resolving factual conflicts between the protester and the contracting officer, the statements of the contracting officer are given a 'presumption of correctness' which the protester bears the burden of overcoming. Equipment Marketing Consultants Corporation, P.S. Protest No. 90-07, April 17, 1990, (quoting Fairfield Stamping Corporation, P.S. Protest No. 88-04, June 3, 1988). Since Restaura has not met this burden, we must accept the contracting officer's statement as the correct version of the events.

Further, the protester has not shown how the selection of the GMF site, rather than some other Restaura facility, was improper. Restaura's complaint misses the point of the site visit. The purpose of a site visit is to obtain an evaluation of how the offeror will perform the service requested by the Postal Service. Where an offeror is an incumbent at the site where the work is to be performed, it is reasonable to evaluate its performance there. It is merely because the non-incumbents are not currently performing that they must be evaluated at alternative sites. See Institute of Modern Procedures Inc., Comp. Gen. Dec. B-236964, 90-1 CPD &93, January 23, 1990.<sup>4/</sup>

The protester also raises concerns about possible harm to its reputation arising from the committee's unfavorable comments. However, Restaura has not alleged that any of the evaluation materials were disseminated in some way to third parties. Neither has the protester alleged how its reputation could or has been impugned absent such communication.<sup>4/</sup>

Regarding the protester's complaints about the professionalism of the evaluation committee, there is no requirement that food service site evaluators be professional. The evaluation committee was chosen according to procurement regulations and the evaluation criteria, as required. There was no impropriety in the selection of the members or the actions of the evaluation committee.

<sup>4/</sup> In that case, a protester was complaining that the awardee had a distinct advantage in its technical evaluation because it was also the incumbent contractor. The Comptroller General held that "the opportunity for bias is not a sufficient basis to question an award of a contract, but that the protester must provide 'hard facts' showing actual bias. [T]he fact that some panel members had prior contact with an offeror [the incumbent] does not demonstrate that the evaluation was not objective. ~ Although, in this case, Restaura is alleging that its position as the incumbent worked against it during the site visit, the above rule still applies.

<sup>5/</sup> In any event such an allegation of injury would comprise a tort claim beyond the purview of this office under our protest regulations.

The protest is denied.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 5/26/94 WJJ]**