

Protest of)
SERVICE AMERICA CORPORATION) Date: August 22, 1989
Solicitation No. 249990-89-A-0054) P.S. Protest No. 89-27

DECISION

Service America Corporation protests the award of a contract to Canteen Company for vending food services under Solicitation No. 249990-89-A-0054. The protester questions the fairness of the evaluation of its proposal.

Solicitation No. 24990-89-A-0054 was issued by the Woburn, Massachusetts, Procurement and Materiel Management Service Office on January 16, 1989, with an offer due date of February 27. The solicitation which listed the evaluation factors on P.S. Form 7291.

Of the proposals received, Canteen Company was given the highest evaluated score. Service America received the second highest score. The rankings were as follows:

<u>Factor</u>	<u>Maximum Score</u>	<u>Service America</u>	<u>Canteen Company</u>
Reputation, Experience, and Resources	200	126	156
Sanitation Practices	150	100	118
Personnel Staffing and Management	175	123	153
Menu Prices, Portion Sizes, and Management Controls	175	175 ^{1/2}	144
Menu Variety	175	150	159
Budget (<u>pro forma</u>), Accounting System, and Controls	125	98	103
Satellite Vending	<u>100</u>	<u>100</u>	<u>67</u>
TOTAL	1100	872	900

Service America protested the award, based upon information received at its debriefing, alleging that in those categories where the competitors were scored according to a formula, Service America was granted the highest possible number of points. In the other categories, which the protester calls "discretionary", the protester asserts that, although the members of the evaluation committee "had no negative comments", it was awarded lower scores than Canteen. The protester broadly implies that the evaluation committee was biased.

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The contracting officer states that, while Service America was given the maximum number of points in two categories, it scored lower than Canteen in the other categories. He states that there is no basis for any objection to the evaluation. The contracting officer contends that the lack of negative comments on the part of the evaluation committee indicates that Service America's offer was merely satisfactory. It does not mean that the evaluation committee found no fault with Service America's proposal; they did not memorialize the facts which downgraded the proposal. The evaluation committee found Canteen's proposal to be superior to that of Service America in certain categories. The granting of Canteen a higher score is not inconsistent with no negative comments about Service America's proposal.

In a conference held with this office, the protester emphasized that the contracting officer adjusted upward its score in the category "Menu Prices, Portion Sizes, and Management Controls" to the maximum points allowed, while Canteen's score was unchanged. It contends that as the contracting officer adjusted Service America's score upward, Canteen's score should have been decreased.

Canteen submitted comments in response to the protest. Their thrust is that the criteria used to evaluate the proposals were applied fairly and consistently to all offerors, and that these "tried and proven" evaluation criteria should not be re-examined.

Discussion

It is well settled that the evaluation or scoring of proposals is the procuring activity's responsibility, and procuring officials have a reasonable degree of discretion in that regard.¹⁷ Apec

Technology, Limited, P.S. Protest No. 88-23, June 30, 1988; Cohlma Airline, Inc., P.S. Protest No. 87-118, April 13, 1988; see also Falcon Systems, Inc., et al., P.S. Protest Nos. 86-31, 86-33, and 86-35, July 25, 1986; F. R. and Lee Mackercher, P.S. Protest

No. 85-45, September 17, 1985. Our review of the technical evaluation of proposals is limited, Computer Systems & Resources, Inc, P.S. Protest No. 86-04, March 27, 1986; Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986, and we 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. Canteen Company, P.S. Protest No. 89-15, March 22, 1989; Evergreen International Airlines, Inc., P.S. Protest No. 86-07, May 5, 1986; H & B Telephone, Systems, P.S. Protest No. 83-61, February 6, 1984. The protester bears the burden of proof in this regard. Apec Technology Limited, *supra*.

While the record evidences disagreement between Service America and the contracting officer concerning its evaluation, it does not provide a basis upon which we may conclude that the evaluation of the protester's proposal was arbitrary or unreasonable. Cf. Apec Technology Limited, *supra*; Concepts Office Furnishings, Inc., P.S. Protest No. 85-59, November 18, 1985; Garden State Copy Company, P.S. Protest No. 84-31, July 5, 1984.

Service America's contention is that since the evaluators did not state negative comments, its offer in the categories in which it did not receive the maximum score must have been at least as good as the awardee's. Our review of the worksheets of the evaluation committee reveals that the numerical scores assigned to Canteen are supported by the evaluators' comments.¹⁷

Finally, Service America broadly alleges that the evaluation committee was biased against it. To prevail in this regard, the protester must show, by sufficient affirmative evidence, Good & Good Contractor, P.S. Protest No. 81-16, August 27, 1981, virtually irrefutable proof that the evaluators had a specific and malicious intent to harm the protester. Prejudicial motives will not be attributed to evaluators on the basis of inference or supposition. OSM Corporation, P.S. Protest No. 88-36, August 18, 1988; L. C., Inc., P.S. Protest No. 86-06, April 25, 1986. Here, the protester's allegations consist merely of its own view of the evaluation of its proposal, and are insufficient to meet the required burden of proof of impermissible bias.

The determination of the evaluators is supported in the record, which affords no basis on which it may be overturned. Minnesota Vikings Food Service, P.S. Protest No. 86-86, October 31, 1986.

The protest is denied.

William J. Jones
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Office of Contracts and Property Law

[checked against original JLS 5/21/93]