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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: K9 Operations, Inc.

File: B-299923

Date: August 6, 2007

Patrick R. Currey for the protester.

Melissa K. Erny, Esq., Department of Homeland Security, for the agency.

Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation did not impose specific requirement that proposed facility have overnight parking approved by city, agency properly made award without regard to whether awardee's facility had such approval.

DECISION

K9 Operations, Inc. protests the award of a contract to Britt's Bow Wow Bed N Biscuit under request for proposals (RFP) No. 20024820SGK, issued by the Department of Homeland Security, Bureau of Customs and Border Protection (CBP), for commercial kennel facilities and services in support of CBP's Canine Enforcement Program. K9 asserts that the agency improperly evaluated Britt's proposal and that the agency contracting official was biased against K9.

We deny the protest.

The RFQ, issued as a small business set-aside on January 19, 2007, provided for the award of an indefinite-delivery/indefinite-quantity contract for a 10-month base period, with four 1-year options, to the firm submitting the lowest-priced, technically-acceptable proposal. The determination of technical acceptability was to be based on driving distance (including travel time for canine officers from the kennel to the workplace), and compliance with the statement of work (SOW) requirements, including, for example, facility requirements (e.g., the size and construction of indoor/outdoor kennel runs), sanitation requirements (such as bathing and flea and tick prevention), food and feeding requirements, and other general requirements. RFP at 2-3. Under the general requirements, the SOW

specified that [the] contractor shall provide an adequate number of secure parking spaces

for CBP personnel to arrive and exchange vehicles for scheduled work. The number of vehicle parking spaces will be equal to the number of CBP canines housed at the kennel. A one to one ratio is required. The kennel operator should provide a safe and lighted area to load and unload canines. The parking spaces must be designated for CBP use only and twenty-four hour access to the parking area will be required.

RFP, SOW, at 6-7.

The agency received six proposals. By amendment issued April 13, the agency clarified the evaluation terms and procedures and requested revised proposals by April 23. RFP Amend. 2, at 2-3. Following receipt and evaluation of revised proposals, the agency awarded a contract to Britt's on June 11.

K9 maintains that Britt's facility is technically unacceptable because it does not meet the 24-hour parking access requirement specified in the SOW. Specifically, the protester alleges that Britt's facility lacks the authorization for overnight parking required by the city. K9 concludes that Britt's should not have received the award.

The protest is without merit. While a solicitation provision that requires a contractor to possess a specific license is a definitive responsibility criterion, compliance with which is a necessary prerequisite to contract award, Mobile Medic Ambulance Serv., Inc.--Recon., B-251545.2, Mar. 26, 1993, 93-1 CPD ¶ 272 at 2, the RFP here contained no such requirement with regard to overnight parking. That is, the RFP did not specifically require offerors to demonstrate in their proposals that their facilities had been approved by the city for overnight parking as a prerequisite to being found technically acceptable. To the extent the protester believes city approval nevertheless will be required in order for Britt's to provide the required parking in performing the contract, this is a matter of contract administration; such matters are within the agency's discretion, and not subject to review by our Office. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (2007).¹

K9 also asserts that the award decision was flawed because it reflected bias on the part of the contracting officer. In support of this argument, K9 points to events

¹ We note further that, even where a solicitation contains a general requirement that the contractor obtain all necessary licenses and permits to perform the work--the protester points to no such requirement in the RFP here--the contracting officer is free to make award without regard to whether the awardee is licensed under local law at the time of award. Mobile Medic Ambulance Serv., Inc.--Recon., *supra*.

under a prior contract, including, for example, the agency's failure to authorize a new contracting officer's technical representative (COTR) in writing; unannounced visits and informal inspections; a formal inspection outlining two violations conducted by other than the assigned COTR; and the subsequent removal of CBP's canines from the protester's facility and the utilization of Britt's facility for an interim contract.

Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Worldwide Language Res., Inc., B-297210 et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 4.

There is no evidence of bias here. The factual support presented by K9 consists of agency actions in connection with its prior contract that K9 apparently believes were unwarranted. A protester's mere disagreement with an agency's actions establishes neither that those actions reflected bias at the time, nor that they translated into bias in the current evaluation and award decision. See TEAM Support Servs., Inc., B-279379.2, June 22, 1998, 98-1 CPD ¶ 167 at 6 (agency official's disagreement with protester over contract administration matters under prior contract did not show that the official was biased against protester during evaluation in current procurement).

Finally, K9 contends that the agency structured the evaluation, including mileage costs and travel time, in such a manner that, given its location, it could not realistically compete from a price standpoint, and that its status as a disabled, veteran-owned business was not given consideration in the selection process.

Under our Regulations, protests based on alleged improprieties in a solicitation that are apparent prior to the stated deadline for submitting offers must be filed before that time. 4 C.F.R. § 21.2(a)(1). Here, the RFP, as amended, clearly set forth the evaluation provisions about which the protester complains, and the solicitation was not set aside for service-disabled veterans. Therefore, it was apparent on the face of the amended solicitation how the agency would evaluate proposals, and that an offeror's status as a service-disabled veteran would not be a factor in the evaluation process. This being the case, any protest by K9 challenging the evaluation provisions had to be filed prior to the extended April 23 closing date for receipt of revised proposals. Since K9 did not protest until June 27, its protest on these issues is untimely, and will not be considered.

The protest is denied.

Gary L. Kepplinger
General Counsel