

**DECISION**

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

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FILE: B-184017

DATE: September 16, 1975

MATTER OF: Economic Development Corporation

## DIGEST:

1. Protester alleging that its offer was found to be outside competitive range due to bias or political pressures is denied where allegations are unsupported and where no objection is raised to specific findings of agency evaluators.
2. Once offer is found to be outside competitive range, no further discussions need be held with offeror despite fact that only two offerors remain and both are funded by agency involved and despite fact protester performed studies for agency in past.

The Economic Development Corporation (EDC) protests the determination of the Office of Minority Business Enterprise (OMBE) of the Department of Commerce (Commerce) that its proposal under request for proposals (RFP) No. 5-36473 was technically unacceptable.

Commerce issued the instant RFP with a closing date of April 18, 1975, requesting proposals for providing technical and management services to socially and economically disadvantaged persons interested in becoming owners of business firms and to minority businesses in the Washington, D.C. Metropolitan Area. The invitation was issued to 38 organizations, with 3 organizations submitting proposals: District of Columbia Development Corporation (DCDC), Greater Washington Business Center (GWBC), and EDC. All three proposals were sent to the OMBE Washington, D.C. Regional Director for technical evaluation. As a result of this evaluation, EDC's proposal was found technically unacceptable and it was eliminated by Commerce from further consideration for award by letter of May 13, 1975. However, the Post Office returned the letter stamped "moved - not Forwardable," and EDC did not learn of the decision until May 27, 1975, at which time it promptly filed a protest with our Office.

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Negotiations were continued with DCDC and GWBC and award was made to GWBC on June 30, 1975, because of the urgent need for minority business services in the Washington, D.C. area.

EDC has made many broad allegations in support of its protest. However, its main contention seems to be that the OMBE evaluators were biased or prejudiced or succumbed to political pressures in rejecting its proposal. EDC suggests that the bias was due to the fact that the other offerors were funded by OMBE or it was due to past studies in which EDC was critical of OMBE. EDC contends that the evaluators acted in secret, without internal objective guidelines, and in such a way as to perpetuate their own jobs.

EDC asserts that it was not afforded an opportunity to attend a debriefing session. It also questions the propriety of rejecting its proposal when the RFP statement of work was virtually identical to a statement prepared by EDC for a previous study. EDC also relies on the fact that it has successfully performed feasibility studies for OMBE in the past. EDC further contends that it should not have been excluded from the negotiations when only two other firms submitted offers and both were funded by OMBE.

EDC has also made very broad and serious allegations of fraud and illegality against OMBE and its evaluators. However it has offered no evidence to support these charges. The only proof submitted by EDC consists of work scopes prepared by its president, T. Edward Kinsey, for previous OMBE studies, and copies of two newspaper articles alleging political pressure on OMBE and support of OMBE by its funded organizations. EDC contends the charges should be self-evident to any unbiased person who reads its proposal and looks at the history of OMBE dealings.

Commerce has denied the EDC allegations and contends that the EDC offer was found to be technically unacceptable in accordance with the RFP evaluation criteria. Commerce is therefore of the view that further negotiations with EDC were not required as it was not considered to be within the competitive range. The evaluation factors and their respective weights were as follows:

<u>"Evaluation Factor</u>	<u>Weight</u>
"1. Experience in minority business developments and in successfully furnishing business assistance to minority business.	13
"2. Community base in the minority business community demonstrated through a working relationship with and support from the local minority community.	15
"3. Representation of entire minority business community and majority resource community on Board of Directors.	12
"4. Qualifications of proposed personnel in minority business development as demonstrated by experience in successfully furnishing business assistance to minority businesses.	12
"5. Awareness and understanding of the current unique problems facing the minority business community and the socio-economic and civic (not political) activities of the community as they may effect the success of individual ventures or minority enterprise in general.	15
"6. Understanding of the work to be done as reflected through projection of realistic goals and schedules on the time phased plan for execution of the scope of work.	10
"7. Techniques and methods of soliciting, selecting, assisting, monitoring and terminating clients.	5
"8. Responsiveness to reporting requirements as demonstrated by the offeror systematic approach for assuring accurate and timely reports.	8

- "9. Relation between quality and level of proposed effort, realistic accomplishments, and cost.

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The OMBE evaluators rated the three proposals based upon the criteria contained in the RFP as follows: EDC - 43%, GWBC - 85% and DCDC - 69%. Negotiations were consequently conducted only with GWBC and DCDC.

The OMBE evaluators found EDC deficient in these main respects:

- "1. There is no evidence of much business assistance experience to minority businesses by the proposed staff.
- "2. The proposal does not show much of an indication that the bidder has much of a working relationship with the minority business community.
- "3. There is no indication that the entire minority business community is represented on the Board; there is no evidence that the Spanish-speaking are represented on the Board. In addition, there is no indication that the majorities on the Board would serve as resources in the BRC sense of the word as spelled out in the scope of work.
- "4. The qualifications of the proposed staff are adequate insofar as their educational backgrounds are concerned. However, their work experience is limited and since they only include 13 resumes out of the 24 minimally required, it is difficult to determine if they can fulfill the scope of work.
- "5. The projection of goals is unrealistic in the loan and procurement categories. It is far in excess of the level of effort performance measures on the RFP on the one hand, and they did not include a staff allocation chart on the other to show how the goals would be accomplished by the staff.
- "6. Nothing was mentioned in the proposal regarding the reporting requirements requested in the RFP.
- "7. It is very difficult to measure the relation between the quality and level of proposed effort and realistic accomplishments, and cost because the proposal

only has thirteen resumes for professional staff in it, or 50% of the required staff. We have no way of knowing if the other 50% are qualified or not.

- "8. The time phased plan proposed 100 approved loans totaling \$6,000,000 vs. 1974 accomplishments of 79 loans for \$3,283,134; proposed procurement was \$30,000,000 from 400 contracts vs. \$22,894,900 from 166 awards in 1974. These unrealistically high proposals did not evidence an understanding of the amount of work involved to accomplish these goals.
- "9. According to the time phased plan instructions in the RFP the amounts were to be cumulative and procurement items 16-19 should total item 15. The proposal did not comply with these instructions. Also, Procurement Applications Submitted (Item 14) should be greater than Contracts Secured (Item 15). In the proposal Item 14 was less than Item 15 in the first three quarters, which indicated a lack of understanding of the plan's elements."

For the reasons stated below the protest is denied. Federal Procurement Regulations (FPR) § 1-3.805-1(a) (1964 ed. amend. 118) requires discussions only with responsible offerors who submit proposals within a competitive range, price and other factors considered. The term "other factors" has been held to include the technical acceptability of proposals. See 46 Comp. Gen. 606, 610 (1967). We have held that borderline proposals should not automatically be excluded from consideration if reasonably susceptible of being made acceptable. Moxon, Incorporated/SRC Division, B-179160, March 13, 1974. However, it is not the function of our Office to evaluate proposals and we will not substitute our judgment for that of the contracting officials by making an independent determination as to which offeror in a negotiated procurement should be rated first and thereby receive an award. Applied Systems Corporation, B-181696, October 8, 1974. The overall determination of whether a proposal is technically acceptable and within the competitive range is a matter of administrative discretion which will not be disturbed absent a clear showing that the determination

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was arbitrary or unreasonable. National Designers, Inc., B-181741, December 6, 1974; Pacific Training & Technical Assistance Corporation, B-182742, July 9, 1975. Mere allegations of biased evaluation provide no basis to interfere with an award where the record reasonably supports the agency's determination as to the relative technical merit of the proposals. Institute for Social Concerns, B-181800, May 1, 1975.

Significantly, EDC has decided not to comment on the agency report or any of the specific findings by the evaluators, and does not contend that these findings are erroneous. Based on our review of the proposal and the administrative report, particularly the point score evaluations of OMBE and the above analysis, we are unable to conclude that Commerce acted unreasonably in its determination that EDC's proposal was not within the competitive range for the subject procurement. Since we are unable to conclude on the record before us that the EDC proposal was readily susceptible of being made technically acceptable through discussions, Commerce was under no obligation to enter into technical discussions with the protester. 52 Comp. Gen. 382 (1972).

We have seen no evidence to substantiate the allegations that the evaluators rated the proposals in secret, or on the basis of hidden agendas, or without internal objective guidelines. Based upon our review of the EDC proposal and other documents submitted in the instant case, it appears that the evaluation factors were weighted and applied impartially and in accordance with the requirements of the solicitation.

EDC also contends that it was not afforded the opportunity to attend a debriefing session. We note that by letter of May 13, 1975, Commerce offered to debrief EDC after award, but that EDC did not receive this letter due to a change of address. Should EDC now request a debriefing, we assume that Commerce will honor the request.

EDC contends that since only three proposals were received, and since two were from OMBE-funded organizations, it had to be included in the further negotiations. We can find no merit

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in this contention. Commerce requested proposals from 38 organizations, and the fact that only 3 organizations responded has no bearing on the technical acceptability of EDC's proposal. Once EDC's proposal was determined technically unacceptable, Commerce had no further duty to negotiate with EDC. This is true even though the remaining offerors were funded by OMBE. We have upheld agency determinations that a proposal was not within the competitive range even though only one offeror was then left with which to negotiate. Comten-Comress, B-183379, June 30, 1975.

We also find no basis for EDC's contention that its statement of work for a previous study is identical to the statement of work in the present RFP. Although the statements cover some similar points, they are not identical, and even if they were, EDC's proposal could still be found technically unacceptable for not meeting the current RFP criteria. In addition, the fact that EDC has performed studies for OMBE in the past does not mean that its instant proposal must be found technically acceptable. 52 Comp. Gen. 382, 384-385 (1972).

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States