

DECISION

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

FILE: B-182686

DATE: August 2, 1976

6/25/2
98772

MATTER OF: Mission Economic Development Association

DIGEST:

1. Even if request for proposals incorporated a requirement that the bidder be a "legally incorporated entity," that requirement was satisfied since the awardee was a corporation at the time of solicitation.
2. Protest based upon various allegations of biased conduct by the Regional Director of the Office of Minority Business Enterprise (OMBE) is denied since allegations are unsupported and record provides no basis for objecting to proposal evaluation by other agency evaluators.

The Mission Economic Development Association (MEDA) protests the decision by the Office of Minority Business Enterprise (OMBE) of the Department of Commerce to award a contract under request for proposals (RFP) No. 5-36691 to Mission Development Center, Inc. (MBDC).

The record indicates that immediately prior to the establishment of the regional office of the OMBE, a decision was made at the national level not to renew the then-existing contract for business development services with the Latino Local Development Company. Commerce, through the newly-formed OMBE regional office, undertook to initiate a sole-source contract negotiation with MBDC for a business development project. However, Commerce subsequently decided, in consideration of the strong interest of three other applicants, to contract for the business development project through competitive negotiation procedures.

The subject solicitation requested proposals for a cost type contract, without fee, for the furnishing of technical assistance to minority business enterprise in the Mission District of San Francisco. Five organizations submitted technical proposals in response to the solicitation. These offers were evaluated by a technical team and after their report, the Contracting Officer determined that it would be most advantageous to the Government to award the contract to MBDC.

The four major grounds for this protest are that: (1) the awardee's proposal was nonresponsive since it was not a corporation; (2) the awardee's proposal was prepared by staff of the OMBE Regional Office; (3) OMBE misled the protester concerning the status of its proposal; and (4) the OMBE Regional Director was biased due to his social contacts with the principals of the awardee.

As to whether the contractor was an incorporated entity, we have confirmed with the Office of the Secretary of the State of California that this contractor was incorporated more than one year prior to the date of award. Thus, for purposes of this decision we need not decide the materiality of the alleged solicitation requirement that offerors be incorporated.

As to the allegation that the contractor's proposal was prepared by staff members of the OMBE Regional Office and that OMBE misled the protester concerning the status of its proposal, the OMBE Regional Office has denied these allegations and MEDA has submitted no evidence to substantiate its position. It is not the practice of our Office to conduct investigations pursuant to our bid protest functions for the purpose of establishing the veracity of a protester's speculative statements. In the absence of probative evidence (other than conclusory statements from each side), we must assume that the protester's allegations are speculative and conclude that it has not met its burden of proof. See Contract Support Company, B-184845, March 18, 1976, 76-1 CPD 184; Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

Finally, the protester wishes us to hold that the award of the contract to MBDC was invalid due to an alleged informal, social and unofficial relationship between the OMBE Regional Director, and the principals of MBDC. The protester has shown that a principal of MBDC, was one of the hosts for a reception held on November 30, 1973, for the Regional Director. Contrary to the implications of MEDA's allegations, the record shows that the well publicized purpose of this reception was to welcome the newly appointed OMBE Regional Director and his staff to San Francisco on behalf of the entire Mission District community and to present him with a greeting from the Mayor of San Francisco. The nonpartisan nature of the event is reflected by the attendance of the protester's president at this reception.

In any event, our Office will not overturn the discretionary judgments of contracting agencies absent a clear showing of unreasonableness, an arbitrary abuse of discretion, or a violation of the

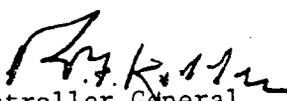
procurement statutes and regulations. Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195. Allegations of biased evaluation provide no basis to interfere with an award where the record reasonably supports the agency's determination as to the relative technical merits of the proposals. Economic Development Corporation, B-184017, September 16, 1975, 75-2 CPD 152; Institute for Social Concerns, B-181800, May 1, 1975, 75-1 CPD 274.

In the present case, MEDA has submitted no evidence that the reception held for the Regional Director affected the procurement process. The reception was held over a year prior to the issuance of the solicitation for the contract in question. Furthermore, all of the proposals submitted for the subject contract were evaluated by a technical team, which did not include the Regional Director. This team rated the proposals as follows:

	<u>Initial Rating</u>	<u>Final Rating</u>
1. MBDC	73.00	82
2. OBFCA	65.00	67
3. Latino	45.40	48
4. MEDA	42.20	44
5. U. of San Francisco	40.60	41

While the protester's final estimated cost of \$121,004.00 was lower than the awardee's estimate of \$124,163.00, this factor is not controlling. Federal Procurement Regulations 1-3.805.2 provides that there is no requirement that cost reimbursement type contracts be awarded on the basis of the lowest proposed cost. Rather, the cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. Accordingly, this Office has interposed no legal objection to the award of such contracts at higher estimated costs where technical superiority justifies the cost premium. Applied Management Sciences Inc., B-184654, February 18, 1976, 76-1 CPD 111. In the present case, the results of the technical evaluation favored award to MBDC. Given this situation, we do not find that the agency's decision to award the contract to MBDC was unreasonable.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States