

DOCUMENT RESUME

02695 - [A1812829]

[Protest against Awards Board's Reversal of Technical Board's Ranking of Firms for Negotiation]. B-188444. June 17, 1977. 6 pp. + 2 enclosures (2 pp.).

Decision re: SRG Partnership, PC; by Milton Socolar, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Forest Service; Broome, Origdulp, O'Toole, Rudolf & Associates.

Congressional Relevance: Sen. Mark O. Hatfield; Sen. Bob Packwood.

Authority: B-187585 (1977). B-188201 (1977). 54 Comp. Gen. 896. 55 Comp. Gen. 499. 56 Comp. Gen. 62. 56 Comp. Gen. 77. 56 Comp. Gen. 78. F.P.R. 1-4.1004-1(a). F.P.R. 1-4.1004-3-4(a). F.P.R. 1000 et seq.

A protest was made to a decision to negotiate a small-business set-aside contract with another firm for architect-engineer work. The basis of the protest was that the awards board had reversed the technical board's order of firms for priority of negotiation without required written documentation. The awards board, with responsibility for final selection, gave supportable reasons for reversing the order of negotiation priority. The requirement for complete written documentation was satisfied. Protest was denied. (DJM)

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**DECISION**



Michael Gale  
Proc. I  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-186444

DATE: June 17, 1977

MATTER OF: SRG Partnership, PC

**DIGEST:**

1. Rational basis is found for awards board's reversal of firms for priority of negotiation for architect-engineer contract recommended by technical board where technical board findings show essential equality of the two firms (one firm was ranked over other by secret ballot after no consensus was reached) and awards board entrusted by regulation with responsibility for final selection gave supportable reasons for reversing order of negotiation priority some of which protester admits.
2. Noncontemporaneous timing of report documenting reversal of priority of negotiation selections of technical board by awards board, delegated authority of agency head to make final selection for negotiation of architect-engineer contract does not affect substance of justification where proper basis for negotiation priority existed. In any event, noncontemporaneous report essentially elaborated on reasons for priority already in contemporaneous report.
3. FPR § 1-4.1004-1(a) requires that private practitioners be appointed to architect-engineer evaluation board only if provided for by agency procedure. Since agency's procedures do not require private practitioners on boards, there is no basis to object to their absence.

SRG Partnership, PC (SRG) protests the decision of the Forest Service to negotiate a contract with another firm for architect-engineer work for the Timberline Day Lodge in Mt. Hood National Forest, Oregon. The contract is a small business set-aside for firms in the State of Oregon. The contract was negotiated under the provisions of Federal Procurement Regulations (FPR) § 1-4.1000, et seq. (1964 ed. a end. 150). The estimated cost for the project is \$3 million.

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Two boards were set up pursuant to FPR § 1-4.1004-1(a), the Architect-Engineer Technical Evaluation Board (the technical board) and the Board of Contract Awards (the awards board). The awards board was delegated the authority of FPR § 1-4.1004-4, as follows:

"(a) The agency head (or the responsible official to whom the authority has been delegated) shall review the recommendations of the architect-engineer evaluation board and shall, in concert with appropriate technical and staff representatives, make the final selection, in the order of preference, of the firms considered best qualified to perform the work. Should that final selection of the best qualified firms be other than as recommended by the architect-engineer evaluation board, the agency head shall provide a complete written documentation of his decision which shall become a part of the contract file.

"(b) The agency head or his authorized representative shall inform the board of his decision which will serve as an authorization for the contracting officer to commence negotiation."

The delegation of authority letters to the chairmen of each board refer to and discuss the division of responsibility set forth in the regulation.

The technical board began meeting on January 13, 1977, to evaluate the proposals received as a result of the Forest Service advertisement in the Commerce Business Daily. Thirty-two proposals were received. The technical board began by eliminating those which were obviously not top contenders; 12 firms were eliminated on this basis. The remaining 20 were evaluated on the basis of the evaluation criteria set forth in FPR 1-4.1004-3, namely: (1) technical competence and specialized experience, (2) past performance, (3) familiarity with the area and with the people flow in mountain recreation situations, and (4) capacity to perform. Since capacity to perform had been initially evaluated on the first cut, primary emphasis in evaluating the 20 remaining firms was on the other three criteria. These three criteria were broken down into many subcriteria with each weighted according to its importance. The rankings of the firms resulted in the selection of four remaining firms to be considered. Among these were Broome, Oringdulp, O'Toole, Rudolf & Assoc. (BOOR) and SRG.

On January 18 and 20, 1977, the technical board met with the awards board to discuss the selection procedures up to that point; at that time, the awards board discussed with the technical board some pertinent

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information to be developed during the interview process. The technical board then interviewed the four firms.

After the last firm was interviewed, the technical board met on January 25 to discuss the four firms and to develop a ranking of the firms. All agreed on the ranking of the fourth firm. Because there was no consensus as to how to rank the remaining three firms, the board listed the pros and cons for each. The results of that listing were later presented to the awards board. On January 26, the technical board agreed upon the third choice, but it could not agree on the first and second choices between BOOR and SRG. According to a memorandum from the technical board to the awards board:

"\* \* \* We could not, however, determine which of the remaining two firms (SRG Partnership & BOOR), we would rate as our first choice and our second choice for the daylodge contract. The members of the Technical Evaluation Board agreed that either of the two firms was very competent, had many desirable features, and would most likely perform the A-E contract in a very satisfactory manner. \* \* \*

"Since it was obvious we were not going to come to a consensus, the Chairman of the Technical Evaluation Board requested a secret ballot. \* \* \* It then shows that between firm 3 and firm 4, three members of the board felt firm 4 (SPG) should be first choice in negotiations for the A-E contract; and firm 3 (BOOR) should be our second choice. This ranking is based strictly on a democratic voting process, since the members of the Technical Evaluation Board could not come up with any consensus of agreement on a number 1 and number 2 choice."

On the afternoon of January 26, the technical board presented for 2 to 3 hours the results of the selection process to the awards board, including a report on the closeness of its decision. All materials developed and used by the technical board were given to the contracting officer and made part of the contract file.

On January 27, the awards board met to consider a tentative final ranking of the firms. Two available members of the technical board were present a portion of the time to answer questions. Because of the closeness of the technical board's decision between SRG and BOOR, the awards board decided to again review the criteria. The board

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referred back to the four basic criteria for negotiation selection mentioned above set forth in FPR § 1-4.1004-3. The board members then separately ranked the firms in order of preference using their own method of ranking against the criteria. They found that they were unanimous in selecting BOOR as their first choice; two of the three members ranked SRG second, while one member ranked SRG third.

The thrust of SRG's protest is that the reversal of the rankings was arbitrary and capricious and was an unauthorized extension of authority.

SRG argues that the Federal Procurement Regulations restrict the awards board to perform a review function that cannot reverse the technical board without complete written documentation that can substantiate due cause and justification to question that decision. We do not read FPR § 1-4.1004-4 as precluding the awards board from reversing the ranking unless the decision is clearly erroneous or has no basis for support. We interpret the regulation as requiring an independent evaluation function with appropriate technical and staff representatives assisting in making the final selection. See B-187585, Industrial and Systems Engineering, Inc., April 22, 1977, 77-1 CPD 273. Where the recommendation of the technical staff is as close as the ranking of SRG and BOOR, the importance of the independent exercise of judgment by the awards board increases.

Our review is limited to deciding whether the record reasonably supports a conclusion that the selection was rationally founded. Tracor Jitco, 54 Comp. Gen. 896 (1975), 75-1 CPD 253, reconsidered, 55 Comp. Gen. 499, 75-2 CPD 344. We have frequently held that it is not our function to make independent evaluations of proposals to determine which offer should have been selected for award, that the determination of the relative merit of technical proposals is the responsibility of the procuring activity concerned which must bear the major burden of any difficulties encountered because of defective analysis, and that the procuring activity's determination will ordinarily be accepted by our Office unless it is clearly shown to be unreasonable. See Gloria G. Harris, B-188201, April 12, 1977, 77-1 CPD 255.

The awards board's rationale for selection was, as follows:

"The Board of Contract Awards concurs with your preference ranking #3 and #4, but disagrees with your #1 and #2 rankings. This board by using the evaluation criteria in 1-4.1004-3 of the Federal Procurement Regulations determined that Broome, Oringdulph, O'Toole, Rudolf & Associates

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should be ranked #1 and SRG Partnership should be ranked #2. Broome, Oringdulph, O'Toole, Rudolf & Associates has an excellent past performance record in the area of cost controls, and quality of work. This firm has significant facility construction experience as evidenced by their form 255. Staffing and organization of the firm provides for very good in-house construction management capabilities."

Arguing that the decision of the awards board is unreasonable, SRG contends that the reasons stated by the board for reversing SRG's and BOOR's rankings could apply to any of the final four firms being considered. However, SRG admits that (1) it does not have in-house construction project management; (2) BOOR is an older and substantially larger firm with a much greater list of completed projects; and (3) BOOR does have experience in at least two projects similar to the Day Lodge, while SRG has none. We, therefore, find that the record reasonably supports the conclusion that BOOR's and SRG's rankings were rationally founded and reflected a valid exercise of discretion required by the applicable regulation.

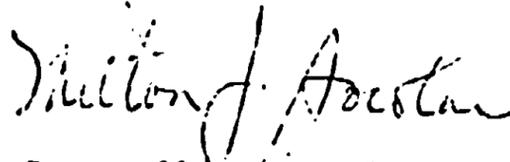
SRG contends that the brief one-page contemporaneous report issued by the awards board on February 4, 1977, to document its reversal of SRG's and BOOR's rankings is not sufficient to satisfy the requirement of FPR § 1-4.1004-4(a) for complete written documentation of the decision. The awards board later issued a report on March 4, 1977, detailing its evaluation process and the basis of its reversal. SRG objects to the timing of this report. In Tracor, Inc., 56 Comp. Gen. 62, 77 and 78 (1976), 76-2 CPD 386, we held that the time of preparation of the report to justify acceptance of a higher-priced, higher-scored offer does not affect the substance of the justification and that a documentation requirement is procedural in nature and does not affect the validity of an award if a proper basis for the award existed. The same principles govern the present situation. We have already determined that, for purposes of our review, a proper basis for the rankings existed; the timing of the awards board report is therefore not determinative of the validity of the decision the awards board reached. The requirement for complete written documentation of the decision is satisfied by the later report of March 4, 1977. In any event, we note that the March 4 report contained essentially an elaboration of the reasons for the reversal already contained in the contemporaneous report of February 4. Moreover, we cannot conclude that the February 4 report was clearly in violation of the regulation.

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SRG objects to the fact that no private practitioners were on the boards. FPR § 1-4.1004-1(a) requires that private practitioners be appointed to the board only if provided for by agency procedures; however, neither the Forest Service nor the Department of Agriculture has issued any regulation pursuant to FPR § 1-4.1004-1(a) to require private practitioners on the board.

Of particular significance, we observe that the awards board recognizes that SRG is considered well qualified to perform the contract and that, if negotiations with BOOR are unsuccessful, SRG would be given the opportunity to negotiate for the contract.

SRG's protest is denied.



Assistant Comptroller General  
of the United States



Michael Hale  
Proc. 1

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

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JUN 17 1977

The Honorable Mark O. Hatfield  
United States Senate

Dear Senator Hatfield:

Pursuant to your letter of February 28, 1977, we are enclosing a copy of our decision of today, SMC Partnership, PC, B-188444, which involved a bid protest in which you were interested.

Sincerely yours,

Acting  
WILTON BOGGS  
Comptroller General  
of the United States

Enclosure



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

Michael Gale  
Proc.I

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JUN 1 1977

The Honorable Bob Packwood  
United States Senate

Dear Senator Packwood:

Pursuant to your letter of May 26, 1977, we are enclosing a copy of our decision of today, SBC Partnership, PC, B-188444, which involved a bid protest in which you were interested,

Sincerely yours,

MILTON SIEGEL

*Milton Siegel*  
Comptroller General  
of the United States

Enclosure