

DOCUMENT RESUME

02981 - [A2013086]

[Protests against Evaluation Methods, Subcontractors and Personnel, Grading of Contract Services, and Ignored Recommendations for Program Improvement]. B-188454. July 13, 1977. 6 pp.

Decision re: Pharos Inc.; by Paul G. Dembling (for Elmer B. Staats, 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: Decision Sciences Corp.; Small Business Administration.

Authority: 4 C.F.R. 20.2(b)(1). B-186333 (1976). B-188194 (1977). B-181723 (1975). 56 Comp. Gen. 62.

Protester contended that: proposal evaluation method was improper; agency failed to evaluate proposed subcontractors; evaluators erred in rating of firm for accounting, feasibility studies, and specialized services; and firm's recommendations for program improvement was overlooked by evaluators. The protester also contested awardee's responsibility determination, and requested that contract work be stopped pending protest decision. The protest was untimely and without merit. Affirmative determinations of responsibility are not reviewed by GAO, nor does GAO have authority to order that contract work be stopped. The protest was denied. (DJM)

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DECISION



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

FILE: B-188454

DATE: July 23, 1977

MATTER OF: Pharos Inc.

DIGEST:

1. Contention, made after award, that RFP's evaluation method should have required evaluators to contact clients directly will not be considered because it is untimely under section 20.2(b)(1) of GAO's Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), since alleged impropriety in evaluation method was apparent but not protested prior to closing date for receipt of initial proposals.
2. Protester contends that agency failed to evaluate proposed subcontractors. Since RFP required each offeror to submit detailed resumes of all personnel to be utilized, including subcontractors, and named personnel were required to perform tasks as specified by each offeror absent prior written permission by agency and since there is no indication that such information was not evaluated, contention is without merit.
3. Protester argues that its proposal should have been rated as "Excellent" instead of "Good" in areas of accounting, feasibility studies and specialized services. Procuring agencies have responsibility of determining the relative merit of proposals and such determinations must not be disturbed unless arbitrary or in violation of statute or regulation. After examining RFP's evaluation factors, instructions to evaluators, evaluators' score sheets, and proposals, it cannot be concluded that agency acted arbitrarily or in violation of statute or regulation.
4. Protester contends that recommendations for improving program were overlooked by evaluators because in GAO bid protest conference, program manager was unaware of such recommendations. Contention is without merit because: (1) program manager was not one of three evaluators of protester's proposal; (2) program manager could not reasonably be expected to be familiar with every detail of over 400 proposals evaluated; and (3) protester has not suggested particular evaluation factor that would directly encompass such recommendations and none is perceived.

5. Based on two specific instances of awardee's alleged poor performance under prior agency contracts, protester contests agency's affirmative determination of responsibility. This contention will not be considered since affirmative determinations of responsibility are no longer reviewed by GAO except in limited circumstances not present here.
6. Protester objects to agency issuing task orders under contract before final GAO decision on protest and requests action necessary to stop further work pending GAO decision. GAO has no authority to order such action.

Pharos Inc. protests the Small Business Administration's (SBA) award of a contract to Decision Sciences Corporation (DSC) under request for proposals (RFP) No. SBA-7(i)-MA-77-1 for providing management and technical assistance services to eligible individuals or enterprises in the Philadelphia area for 1 year. Pharos, the incumbent contractor in that area for the preceding 2 years, offered a price over \$4,000 lower than DSC this year and essentially contends that SBA should have scored its proposal higher than DSC's, as had been the case in the last 2 years.

The RFP provided that proposals would be evaluated on a point system pursuant to the following evaluation criteria:

"1. QUALITY, EXPERIENCE AND CAPABILITY OF STAFF
OFFEROR INTENDS TO ASSIGN TO THIS PROJECT40 points

"The proposal will present in detail the staffing offeror will assign to the project. This will include biographical data on professionals. The biographical data on the proposed Project Director (Part VIII) should include information as to his experience in consulting and supervising.

"2. PREVIOUS EXPERIENCE AND EFFECTIVENESS IN
PERFORMING SERVICES40 points

"Offeror must list: (A) List of various clients presently being served; (B) List of clients served in the immediate prior year with specific examples of work performed and the results of this service. Offeror should narrate business history, with emphasis on dealing with small firms.

"For both (A) and (B), offeror should narrate experience with business concerns owned and controlled or operated by minorities and disadvantaged persons, i.e., low income individuals--particularly, those located in urban or rural areas with high unemployment.

"3. MAN-DAY PRICING (Not to include Travel and Per Diem or Final Report).....20 points"

The RFP also provided an estimate of the number of man-days required for each type of service. For evaluation purposes each of the disclosed services was made a subfactor of the two nonprice factors and each was relatively weighted according to the disclosed man-day estimate. For the Philadelphia area, the disclosed estimates and undisclosed maximum point value by task type are as follows:

<u>Type of Task</u>	<u>Estimated No. of Days</u>	<u>Maximum Points</u>
Accounting	165	15
Production, Engineering and Technical	40	3
Feasibility Studies, Market Analyses and Advertising	120	11
Government Contracts	20	2
Specialized Service	<u>105</u>	<u>9</u>
	450	40

In addition to the RFP's requirement that offerors submit detailed resumes showing background and qualifications of all personnel to be utilized in performance of this contract, offerors were required to assign key personnel to specific types of tasks and these personnel would be excused from performing those specified services only when SBA granted prior written approval. With respect to the use of sub-contractors, the RFP permitted contractors to subcontract up to 50 percent of total man-days for technical or managerial skill not

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within the professional expertise of its permanent staff; however, no subcontracting was permitted absent prior written SBA approval for the specific project.

Finally, the RFP required offerors to show a demonstrated ability to deal effectively with the type of individuals and enterprises eligible to be served.

Three evaluators from areas other than Philadelphia reviewed and scored the proposals under the above criteria. DSC's proposal received the highest score (88.9) and Pharos' proposal received the second highest score (82.3). Each offeror's total evaluation score included a score for the "MAN-DAY PRICING" factor of 17.9 and 19.9, respectively, out of 20 maximum points, reflecting Pharos' higher score for its price lower by about \$4,500 for the contract awarded in the estimated total amount of \$53,750. After evaluation, the highest scored offeror was visited by the SBA area office representatives to make a responsibility determination. This visit resulted in SBA's determination that DSC was responsible and later award was made to DSC.

First, Pharos contends that the method of evaluating proposals, which allegedly did not include direct contact with SBA clients under prior contracts and evaluation of proposed subcontractors, was improper. Pharos argues that the best way to validate claimed effectiveness of services is to contact the recipients of such services and obtain their views. Pharos' contention, made after award, that the RFP's proposal evaluation method is improper will not be considered because it is untimely under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) (1977), since the alleged impropriety was apparent but not protested prior to the closing date for receipt of initial proposals.

Pharos' contention that the SBA failed to evaluate proposed subcontractors is without merit. The RFP clearly required each offeror to submit detailed resumes showing background and qualifications of all personnel, including consultants or subcontractors, to be utilized in performance of this contract. In addition, those named personnel were required to perform the tasks specified by each offeror. Only with the prior written permission of SBA could an awardee use personnel, including consultants or subcontractors, other than those listed in its offer. The record lends no support to the contention that proposed subcontractors were not evaluated.

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Second, Pharos contends that the evaluators erred in rating the firm only "Good" for accounting, feasibility studies and specialized services. We note from the evaluator's worksheets that numerical ratings were used to score each subfactor, however, the precise scores of each offeror were not disclosed by SBA to any offeror. Instead, Pharos was advised by SBA of its generalized rating for the above subfactors of "Good" on a scale of Excellent, Good, Fair, Poor, Unsatisfactory. We also note that the evaluators rated Pharos' proposal excellent in production, engineering and technical, Government contracts, and price. Pharos argues that the "unsolicited testimonial letters" in its proposal from clients under prior SBA contracts demonstrate an excellent record in providing services in accounting, feasibility studies and specialized services.

While an incumbent contractor may enjoy certain competitive advantages, award to an incumbent like award to any other offeror must be based on the highest total ranking under the ground rules of the procurement. Communication Products Co., B-186333, December 21, 1976, 76-2 CPD 508. Further, the determination of the relative merits of proposals is the responsibility of the contracting agency since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of procurement statutes or regulations. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386. After examining the RFP's evaluation factors, the instructions to the evaluators, the evaluators' score sheets, and Pharos' and DSC's proposals, we cannot conclude that the SBA acted arbitrarily or in violation of procurement statute or regulation.

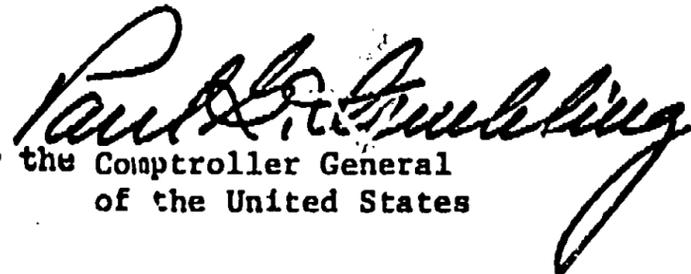
Third, Pharos believes that the recommendations for improving the SBA management assistance program contained in its proposal were overlooked by the evaluators. Pharos states that in a conference on this matter held in our Office the SBA program manager "was totally unaware of our innovative ideas" and that "it is obvious that the person evaluating our proposal has never brought forward the ideas presented." We find no merit in this contention because, as noted above, three evaluators scored the nonprice evaluation factors and the program manager was not one of the three evaluators. Further, in his position, the program manager could not reasonably be expected to be familiar with every detail of each of over 400 proposals received and evaluated under the RFP. Finally, Pharos has not suggested a particular evaluation factor that would directly encompass those program improvement recommendations and we can perceive none.

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Fourth, Pharos contends that based on two specific instances DSC has a poor performance record in the Philadelphia area under prior SBA contracts. In this situation, examples of poor performance on prior contracts would properly have been considered by SBA in determining the responsibility of the offeror rather than under the stated evaluation criteria. Since SBA determined DSC to be responsible and since we no longer review procuring activity affirmative determinations of responsibility, except under limited circumstances not present here, Pharos' contention will not be considered. Sis-Q Flying Service, Inc., B-188194, April 7, 1977, 77-1 CPD 245.

Finally, Pharos protests because work under the contract has allegedly been started by the issuance of task orders by SBA prior to the resolution of the protest. Pharos requests that our Office investigate and take the action necessary to stop further work under the contract. Our Office has no authority to order such action. Graphic Technology Corporation, B-181723, March 21, 1975, 75-1 CPD 183. In view of our decision here, Pharos would not have been prejudiced in any event.

Protest denied.


For the Comptroller General
of the United States