

117305

Pettit

20560

DECISION



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

FILE: B-205582

DATE: January 19, 1982

MATTER OF: Decision Sciences Corporation

DIGEST:

1. Complaint that the contracting agency did not conduct a preaward survey of the awardee is dismissed. A preaward survey is not a legal prerequisite to an affirmative determination of a prospective contractor's responsibility.
2. Solicitation provisions which require that the contractor develop and use a fiscal impact model in evaluating a program to be studied under the contract merely state how the work is to be accomplished and constitute performance specifications. Such provisions are not preconditions for award and do not establish definitive responsibility criteria.
3. Protest alleging that the awardee cannot perform the work required at its low proposal price, which allegedly constitutes a below-cost or "buy-in" proposal, is dismissed. Absent a finding of non-responsibility, a below-cost proposal provides no reason to challenge an award. The allegations further involve questions of the offeror's responsibility which GAO does not review except in circumstances not presented here and matters of contract administration which are the responsibility of the contracting agency, not GAO.

Decision Sciences Corporation (DSC) protests the award of a contract to Tatum-Harvey Associates for management consulting services to evaluate the Labor Surplus Area Procurement Program under request for proposals (RFP) No. WFC-E4-N-B-DO163-1-9-23-81 issued by the General Services Administration, Federal Supply Service (GSA).

DSC essentially contends, notwithstanding GSA's determination to the contrary, that Tatum-Harvey is not a responsible contractor, that its price of \$156,000 constitutes a below-cost or "buy-in" proposal, and that it does not have a recognized, tested fiscal impact model as required by the RFP. The protester asserts that GSA's decision not to conduct a preaward survey of the awardee was not in the agency's best interest. DSC also asks that we examine the selection, qualifications and decision of the GSA Review Board chosen to review the proposals and to recommend the successful offeror because the Board's decision was allegedly made in haste.

We dismiss the protest because it actually challenges the awardee's responsibility and the contracting agency's affirmative determination of responsibility, matters which our Office generally does not review.

Before awarding the contract to Tatum-Harvey, GSA had to determine that the firm was a responsible concern. Federal Procurement Regulations (FPR) § 1-1.1204-1 (1964 ed. amend. 192). In the RFP, GSA merely reserved the right to conduct a preaward survey of any firm under consideration for the award. The survey, an evaluation which the contracting officer uses as an aid to determine the prospective contractor's responsibility, may be accomplished by using data on hand. An onsite preaward survey, however, is required only when information available to the contracting officer is not sufficient to make a responsibility determination. FPR § 1-1.1205-4(b) (1964 ed. amend. 95). We have held that there is no requirement that a preaward survey be conducted in all cases to determine the responsibility of a prospective contractor. Klein-Sieb Advertising & Public Relations, Inc., B-194553.2, March 23, 1981, 81-1 CPD 214. The award of a contract to Tatum-Harvey constituted GSA's affirmative determination of the firm's responsibility. Ibid.

Our Office does not review affirmative determinations of responsibility except where there is a showing of fraud on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. DSC has not alleged fraud, and the RFP provisions concerning the use of a fiscal impact model

to which DSC refers do not constitute definitive responsibility criteria. The RFP requires only that the contractor develop and use a fiscal impact model to assess 1) potential tax benefit, 2) reduction in Federal payments to labor surplus areas, and 3) reduction in State unemployment costs. These provisions state how the work is to be accomplished and are in the nature of performance specifications rather than preconditions for award. Whitco Industrial Corp., B-202810, August 11, 1981, 81-2 CPD 120; Contra Costa Electric, Inc., B-190916, April 5, 1978, 78-1 CPD 268. Because DSC has not presented either of the exceptions under which we review an affirmative responsibility determination, these grounds of the protest are dismissed.

Absent a finding of nonresponsibility, a below-cost or "buy-in" proposal provides no reason to challenge an award. Bob McDorman Chevrolet, Inc. and Jack Roach Cadillac, B-200846, B-200847, B-200847.2, B-200848, March 13, 1981, 81-1 CPD 194.

To the extent DSC questions Tatum-Harvey's capability to perform the work required at its proposal price, the protest pertains to GSA's affirmative determination of the firm's responsibility and also raises matters of contract administration. For the reasons discussed above, we will not review GSA's responsibility determination. Whether the firm will perform GSA's management consultant services in accordance with the RFP specifications is a matter of contract administration which is the responsibility of the contracting agency, not GAO. J & J Maintenance, Inc.--Reconsideration, B-201484.3, December 21, 1981, 81-2 CPD _____; Lite Industries, Inc., B-200646, January 30, 1981, 81-1 CPD 55.

As to DSC's request that we review the selection, qualifications and decision of the GSA Review Board, it is not our practice to conduct investigations pursuant to our bid protest function for the purpose of establishing the validity of a protester's speculative statements. Servo Corporation of America, B-193240, May 29, 1979, 79-1 CPD 380; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. The composition of an evaluation panel is within the discretion of the

contracting agency and will not be questioned by our Office absent evidence of fraud, bad faith, or conflict of interest. Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365. Further, procurement officials enjoy a reasonable degree of discretion in the evaluation of proposals and the exercise of that discretion will not be questioned unless shown to be arbitrary or in violation of procurement statutes and regulations. Work System Design, Inc.--Reconsideration, B-200917.2, September 29, 1981, 81-2 CPD 261. Our Office will not substitute its judgment for that of the procuring agency by making an independent determination to decide who should have been selected for award. Ibid.

Because it is clear from DSC's initial submission that we would not review the allegations made, we have not requested a report from the contracting agency. Technical Food Services, Inc., B-203742.2, September 15, 1981, 81-2 CPD 219.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel