

DECISION



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

FILE: B-209499, B-209499.2; **DATE:** July 6, 1983
B-209499.3

MATTER OF: Data Flow Corporation; Dynamic Key punch,
Inc.; SAID, Inc.

DIGEST:

1. Where protest is against a contract award which has been terminated and the contract has been reawarded to protester, it is academic and will not be considered on the merits. Also, protest against initial proposal evaluation is academic where agency reevaluated the proposal and awarded protester the maximum possible score.
2. GAO will review a contracting agency's decision to terminate a contract for the convenience of the Government when that decision results from the agency's determination that the contract award was improper.
3. Agency properly terminated contract with protester where reevaluation of proposals showed that under the stated criteria, another firm received the highest score.
4. GAO will not disturb an agency's technical evaluation unless that evaluation is arbitrary, unreasonable, or in violation of law. In evaluating a firm's experience under an evaluation criteria, an agency may consider the experience of the firm's personnel and the firm's experience prior to its incorporation.
5. Agency correctly found that the personal statements of evaluators concerning a firm should not be considered in evaluating that firm's experience.
6. The fact that proposals were reevaluated by one person who was not on the original panel is not improper.

7. Since agency was not required to conduct technical evaluation by comparing the proposals it received, offeror's claim that it had greater experience than two other offerors and, therefore, should have received a higher evaluation score is without merit.

Data Flow Corporation (Data Flow), Dynamic Keypunch, Inc. (Dynamic), and SAID, Inc. (SAID), have filed protests under Small Business Administration (SBA) request for proposals (RFP) No. 82-16. The RFP was issued for keypunching and verifying services. SAID was initially awarded the contract and this award was protested by Data Flow and Dynamic. After reevaluating the proposals, the SBA determined that Data Flow was the proper awardee, terminated the contract with SAID and awarded the contract to Data Flow. SAID and Dynamic have filed protests against this latter award.

We dismiss the protests by Data Flow and Dynamic against the award to SAID and deny the protests by Dynamic and SAID against the award to Data Flow.

The RFP specified that proposals would be evaluated on the basis of 60 percent for experience, 20 percent for background and 20 percent for cost and that an award would be made to the offeror who received the highest evaluation score. The SBA received six proposals and all were found technically acceptable. These proposals were evaluated by a panel and the three protesters received the following scores:

	<u>Experience</u>	<u>Background</u>	<u>Cost</u>
Data Flow	45	20	\$144,000
Dynamic	40	15	146,000
SAID	60	20	179,000

Based on this evaluation, SAID had the highest score and was awarded the contract.

Data Flow, the incumbent contractor, filed a protest against the solicitation's evaluation criteria and panel's decision to give Data Flow a score of 45 out of 60 points for experience. Data Flow claimed that the panel based this score on its unsupported finding that Data Flow was not

dependable. After the SBA admitted that it overlooked information in Dynamic's proposal, Dynamic also filed a protest against its evaluation score.

Subsequently, the SBA reevaluated the proposals of Data Flow and Dynamic. The reevaluation of the scores were:

	<u>Experience</u>	<u>Background</u>	<u>Cost</u>
Data Flow	60	20	\$144,000
Dynamic	60	20	146,000
SAID	60	20	179,000

Since the three companies had equal technical scores and Data Flow had submitted the lowest cost proposal, the SBA terminated its contract with SAID and awarded a contract to Data Flow.

Since the SBA awarded the contract to Data Flow, its protest is academic. See VSI Corporation, Aerospace Group, B-204959, July 30, 1982, 82-2 CPD 94. Since, on reevaluation, Dynamic received the maximum possible score for experience and background, we find that Dynamic's protest against its initial evaluation also is academic. See Castoleum Corporation, B-195724, November 29, 1979, 79-2 CPD 381.

These protests are dismissed.

Dynamic and SAID claim that the SBA improperly reevaluated Data Flow's proposal and each claims that it is the proper awardee. We find, however, that there is no basis on which to question the SBA's decision to award the contract to Data Flow.

As a preliminary matter, our Office will review a contracting agency's decision to terminate a contract for the convenience of the Government where, as here, that decision results from the agency's finding that the initial contract award was improper. See EMS Development Corporation, B-207786, June 28, 1982, 82-1 CPD 631. Under the present facts, we agree with the SBA that the contract award to SAID was improper.

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An evaluation pursuant to an RFP must be based on information contained in the offeror's proposal. The Management and Technical Services Company, a subsidiary of General Electric Company, B-209513, December 23, 1982, 82-2 CPD 571. In addition, all offerors must be treated equally. Analytics Incorporated, B-205114, August 18, 1982, 82-2 CPD 147.

The SBA violated these principles when it failed to consider information in Dynamic's proposal. See DSI Computer Services, Inc., B-207423, August 24, 1982, 82-2 CPD 173. Thus, since the agency was obligated to make an award based on the specified criteria, once a proper evaluation showed that Data Flow received the highest score, it was proper for the SBA to terminate its contract with SAID. See United States Testing Company, Inc., B-205450, June 18, 1982, 82-1 CPD 604.

We now turn to the merits of the protests filed by SAID and Dynamic against the contract awarded to Data Flow. Essentially, the protesters are claiming that, on reevaluation, the SBA should not have given Data Flow's proposal the maximum points for experience.

This Office will only disturb a contracting agency's technical evaluation if it is arbitrary, unreasonable, or in violation of law. Armidir, Ltd., B-205890, July 27, 1982, 82-2 CPD 83. The protesters' claim that this standard is met because in reevaluating Data Flow's proposal, the SBA changed the evaluation criteria for Data Flow alone. To support this allegation, the protesters claim that Data Flow was given 60 points for experience based on the evaluator's belief that Data Flow had 8 years' experience. The protesters note that in its proposal, Data Flow only claimed to have 5 years' experience. They further claim that since Data Flow was incorporated in March 1979, it only has 3-1/2 years' experience.

In response to the protesters' claim that it has no more than 3-1/2 years' experience, Data Flow states that while it has only been incorporated as Data Flow, Inc., since March 1979, it operated as Data Entry Services with the same employers identification number, staff and stockholders since 1978.

The SBA report submitted to our Office states that Data Flow was given a maximum score for experience on reevaluation because its proposal showed that it had 5 years'

experience and supervisory personnel with an average of 8 years' experience and the references listed in the proposal were contacted. Thus, the record shows that the evaluator was fully aware that Data Flow was claiming 5 years of experience.

Further, the protesters are wrong to the extent they claim that under our decision in Medical Services Consultants, Inc.; MSH Development Services, Inc., B-203998; B-204115, May 25, 1982, 82-1 CPD 493, the SBA was prohibited from evaluating Data Flow's experience on the basis of its experience as Data Entry Services or the qualifications of its supervisory personnel. In Medical Services, supra, we found that in evaluating the experience of a newly formed subsidiary, an agency was not obligated to consider the experience of a parent company which was not eligible for the contract award. We did not state that an agency could never use a parent company's experience in evaluating a subsidiary. Notably, in Vector Engineering, Inc., B-200536, July 7, 1981, 81-2 CPD 9, we came to the opposite conclusion.

Moreover, we have specifically held that in evaluating a new business, an agency could consider the experience of supervisory personnel. B-167051(1), July 14, 1970. Finally, in a case where experience was stated as a definitive responsibility criteria, we found that where a corporation changed ownership, but continued operating with the predecessor's name and personnel, the experience of the predecessor firm could be considered in evaluating the experience of the successor firm. 36 Comp. Gen. 673, 674 (1957); Harry Kahn Associates, Inc., B-185046, July 19, 1976, 76-2 CPD 51.

Given these decisions, we find no basis on which to find that by awarding Data Flow 60 points for experience, the SBA changed the evaluation criteria for Data Flow. In reaching this conclusion, we also point out that while an agency must evaluate proposals in accordance with the specified criteria, the agency also is responsible for determining its minimum needs and the criteria which will meet those needs. Western Ecological Services Company, B-204550, September 13, 1982, 82-2 CPD 220. In this procurement, the SBA did not specify that the relevant experience was limited to the institutional experience of the entity. Accordingly, it was under no obligation to evaluate proposals on this basis. See Energy and Resource Consultants, Inc., B-205636, September 22, 1982, 82-2 CPD 258.

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Dynamic and SAID also claim that the SBA changed the evaluation criteria for Data Flow because either Data Flow did not submit references with its proposal or the SBA did not check these references. They base this conclusion on the SBA's failure to consider negative statements concerning Data Flow's performance on its SBA contract made by the initial evaluators. In addition, SAID has submitted a memorandum written by the SBA contracting officer while Data Flow was performing its SBA contract. SAID claims that this memo demonstrates that Data Flow performed poorly.

The SBA claims that Data Flow did submit references with its proposal and that the person who reevaluated Data Flow's proposal considered these references. Since the record contains only the agency's and the protester's conflicting statements, the protester has not met its burden of affirmatively proving its claim. International Automated Systems, Inc., B-205278, February 8, 1982, 82-1 CPD 110.

Further, the memo which SAID has submitted was written by the contracting officer 2 days after Data Flow began to perform its SBA contract. While the memo states that Data Flow was experiencing difficulty, it concludes that these problems were normal for a new contractor and could be worked out.

Thus, this letter does not demonstrate that the SBA failed to consider a negative reference. Finally, our Office consistently has found that evaluations must be made on the basis of the contents of the proposal as submitted. University of New Orleans, B-184194, January 14, 1976, 76-1 CPD 22. Accordingly, the SBA correctly concluded that the personal statements of the evaluators should not have been considered. See Reimbursement of State of New York Under Olympic Support Contract, B-202518, January 8, 1982, 82-2 CPD 2.

Since we have concluded that the agency's decision to award Data Flow the maximum score for experience was proper, the protesters' claim that the award was made on the basis of cost alone is without merit. Since Data Flow, Dynamic and SAID each received the same score for background and experience, the only evaluation factor left was cost. Thus, the agency properly determined that because Data Flow submitted the lowest cost proposal, it was entitled to the contract award. See Compuserve Data Systems, Inc., B-206274, May 20, 1982, 82-1 CPD 482.

Finally, our Office has found that the composition of a technical evaluation panel is to be determined by the procuring agency. New York University, B-195792, August 18, 1980, 80-2 CPD 126. Thus, the fact that the Dynamic and Data Flow proposals were reevaluated by one person who was not a member of the original panel is not objectionable. See Development Associates, Inc., B-205380, July 12, 1982, 82-2 CPD 37.

In addition to the above claims, SAID individually has raised two protest grounds. SAID first claims that the agency's decision to give all three offerors the same score for experience and background was arbitrary and unreasonable. SAID reaches this conclusion by reasoning that it should have received a higher score than either Dynamic or Data Flow because, unlike Dynamic, it has previously performed this contract and in comparison to Data Flow's 3-1/2 years' experience, it has 20 years' experience.

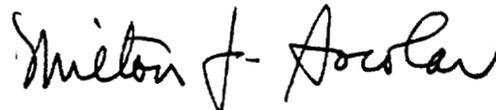
It is not the function of our Office, however, to reevaluate proposals and we do not object to evaluations which are consistent with the stated criteria. AAA Engineering and Drafting, Inc., B-204664, April 27, 1982, 82-1 CPD 387. In the present RFP, since the evaluation criteria did not state that experience would be evaluated based on the type or length of experience, the SBA was not required to consider these factors. See Western Ecological Service Company, supra. Nor was it improper for the evaluators to judge each proposal against the stated criteria rather than against each other. See AAA Engineering and Drafting, Inc., supra. SAID's claim is a mere disagreement with the agency's conclusion rather than a showing that the agency's decision was arbitrary or unreasonable. See DCG Construction, Ltd., B-205574, May 6, 1982, 82-1 CPD 431; Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439.

SAID has also questioned the SBA cost evaluation methods and the calculations used to arrive at the weighted scores. However, even if SAID is correct on the cost evaluation, Data Flow would have still submitted the lowest cost proposal. Moreover, in view of our decision that the SBA properly evaluated the experience and background of Data Flow, Data Flow would be the proper awardee, in any event, notwithstanding SAID's new calculation for the weighted scores. Accordingly, we find it unnecessary to review this final allegation. See Custom Janitorial Service, B-205023, August 23, 1982, 82-2 CPD 163; Mutual of Omaha Insurance Company, B-201710, January 4, 1982, 82-1 CPD 2.

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The protests by Dynamic and SAID are denied.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States