

**DECISION**



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

**FILE:** B-221261

**DATE:** April 16, 1986

**MATTER OF:** Service Ventures, Inc.

**DIGEST:**

1. Contracting officer does not abuse his discretion in not setting aside a particular procurement for small business concerns where the record shows that he did not expect a sufficient number of offers from responsible small business concerns to assure award at a reasonable price and where the protester has provided no evidence that other small business concerns were interested in competing.
2. A protest alleging that the technical evaluation of a protester's corporate experience is improper because the agency failed to consider the experience of key personnel is denied where the record demonstrates that the contracting activity properly considered this experience but reasonably concluded that it only partially offset a lack of any corporate experience.
3. Small Business Administration (SBA) certificate of competency procedures are inapplicable, and referral is not required, when a small business firm's offer is downgraded under technical evaluation criteria relating to experience. The SBA reviews matters relating to the nonresponsibility of small business concerns, but not the evaluation of their technical proposals.
4. Where a protester fails to provide any direct evidence that the contracting activity disclosed portions of its proposal to the successful offeror, the protester has not met its burden of establishing that the activity engaged in technical leveling.

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5. Award of a contract to a higher priced offeror is proper where the awardee received the highest technical overall score under an evaluation formula set forth in the solicitation which gave significantly greater weight to technical concerns than to cost.

Service Ventures, Inc. protests the award of a contract to Raven Systems and Research, Inc. under request for proposals (RFP) No. WASC-86-00001, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). The contract covers operation and maintenance and mail distribution services at NOAA's Western Regional Center in Seattle, Washington. Service Ventures contends (1) that the agency's decision not to restrict the competition to small business concerns reflects an improper bias in favor of Raven, the incumbent contractor; (2) that the agency improperly evaluated its proposal; and (3) that it should have been selected for award because it submitted the lowest-priced, technically acceptable proposal. In addition, the protester contends that the agency's decision to retain a portion of the work in-house violated Office of Management and Budget (OMB) Circular A-76.

We deny the protest.

#### Background

The solicitation, issued on July 15, 1985, solicited offers for a fixed-price contract for a base year plus two 1-year option periods. The contractor is to provide, as Task I, mechanical and electrical operations, maintenance, and selected services for nine buildings and all common areas at the NOAA facility. The contractor is also to provide, as Task II, for the operation of two facilities for centralized mail, messenger, and internal distribution services.

The solicitation stated that offers would to be evaluated with respect to four technical criteria, listed in descending order of importance: specialized experience and technical competency of the firm; management plan and key personnel assignments; capacity to perform; and understanding the concept of the project and approach. Cost was to be evaluated by comparing the prices proposed by technically qualified offerors. The RFP further provided that the relative importance of technical merit to cost was four to one, with 500 technical and 125 cost points the maximum possible for each of six evaluators. Finally, the

solicitation stated that award might or might not be made to the lowest offeror, but would in any case be on an all-or-none basis.

Six firms submitted proposals; three were included in the competitive range. Of these, Raven, with a technical score of 2,700, was ranked first, while Service Ventures, with a score of 2,440, was ranked third. (The second-ranked offeror is not at issue here.)

By letter dated September 16, 1985, the agency requested these offerors to respond to brief questions regarding their cost proposals. In addition, in the same letter, NOAA asked for technical and cost proposals for a third task, warehouse management and transportation services at the Western Regional Center. The letter stated that proposals for Task III would be evaluated in accord with the criteria listed in the original RFP<sup>1/</sup>.

After receiving proposals for this new work, the source selection board reconvened and decided to reevaluate the proposals and award an overall technical score for all three tasks. The resulting scores were slightly lower than the previous ones, although Raven was still first with 2,560 points, while Service Ventures continued third with 1,920.

Following a review of cost proposals, the agency requested best and final offers. The board did not change the technical scores after reviewing these. Service Ventures, submitting the lowest price, received the maximum 750 points for cost. Raven, quoting the highest price (approximately 18 percent more than that of Service Ventures), received 630. Raven, with a resulting combined score of 3,190 points (2,560 technical plus 630 cost), was ranked first overall. The second-ranked offeror received 3,118, while Service Ventures received only 2,670 points overall.

The source selection board determined that Raven should be selected for award; the source selection official concurred. Noting that the government's estimate for

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<sup>1/</sup> The agency decided to solicit offers for warehouse and transportation services following a review of this function, which was then being performed by agency personnel. To save time and costs, the agency states, it included this new task in the subject RFP. Although the agency apparently intended to use proposals for Task III to decide whether to contract out this work, the September 16 letter did not so indicate.

performing the warehouse services in-house was less than the price proposed by Raven, the selection official concluded that it was cost effective to retain this function in-house. NOAA awarded a contract for Tasks I and II, operations and maintenance and mail distribution services, to Raven on November 29, 1985. The firm has been providing the services since NOAA determined on December 16, 1985 that urgent and compelling circumstances did not permit suspension of performance pending resolution of this protest.

#### Small Business Set-Aside

Service Ventures initially contends that the agency's decision not to restrict the competition to small business concerns indicates continuing preferential treatment toward Raven. This improper bias, Service Ventures asserts, was demonstrated by the agency's decision to open this procurement to all competitors following its discovery that Raven would be ineligible to compete for a small business set-aside.

Under the Federal Acquisition Regulation (FAR), § 19.505-2 (FAC 84-5, Apr. 1, 1985), a procurement must be set aside for small business concerns if there is a reasonable expectation of receiving offers from two such concerns that are responsible and whose prices are reasonable. The record here indicates that NOAA determined that a set-aside was not feasible because it had no reasonable expectation of receiving offers from a sufficient number of small business concerns to assure award. In light of the regulation we assume this means the contracting officer did not expect offers from two or more such firms, and we note that the protester has not alleged or provided any evidence that any responsible small business concerns, other than itself, were interested in competing. In addition, the record indicates that the agency's small business specialist participated in the decision not to set aside. In view of this, we do not find that the contracting officer's decision not to restrict this procurement was an abuse of discretion. Nor do we find evidence of bias in the Department of Commerce policy encouraging the assistance of firms (such as Raven) that have recently graduated from the Small Business Administration's (SBA) section 8(a) program. We therefore deny the protest on this basis.

#### Technical and Cost Evaluation

Service Ventures next questions the agency's evaluation of its proposal with respect to experience. The record reveals that the source selection board found Service

Ventures' technical proposal deficient because of (1) a lack of corporate experience and (2) its heavy reliance on two individuals proposed as key personnel. The board expressed concern regarding the ability of these two individuals, both of whom had prior experience only with a large corporation, to manage the relatively small scale operation at the Western Regional Center. In addition, the board questioned the firm's ability to perform if either of these individuals should leave during the term of the contract. Due to these perceived weaknesses, Service Ventures received only 680 out of a possible 1,200 points for the most important criterion, specialized experience and technical competency of the firm, and 630 of a possible 900 points for the second, management plan and key personnel assignments.

Service Ventures asserts that the agency erroneously concluded that it lacked corporate experience in that the company was more than a year old at the time of proposal evaluation. The protester further maintains that the agency should have considered the experience of its proposed key personnel, the related experience of the company's officers (who would be available to help these two individuals if necessary), and the fact that it proposed to employ many of the incumbent contractor's workers.

In reviewing protests against allegedly improper evaluations, our Office will not substitute its judgment for that of the contracting agency, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with listed criteria and whether there were any violations of procurement statutes and regulations. See ORI, Inc., B-215775, Mar. 4, 1985, 85-1 CPD ¶ 266.

After examining this record in its entirety, we find that NOAA's downgrading of Service Ventures' proposal was not unreasonable. First, the record shows that the protester had no direct corporate experience in performing the type of work required by the subject RFP. While Service Ventures may have been in existence for a year, it had never been awarded a comparable contract. Second, the source selection board did consider the experience of key personnel when evaluating corporate experience. While this was proper, see Energy and Resource Consultants, Inc., B-205636, Sept. 22, 1982, 82-2 CPD ¶ 258, the board determined that this experience only partially offset the firm's lack of corporate experience. Moreover, the key personnel lacked experience in working on comparable, small scale contracts. Since the second most important evaluation criterion included a subfactor specifically relating to personnel

experience in similar work, we cannot conclude that the agency's downgrading of Service Venture's proposal in the area of experience was unreasonable.

Service Ventures further maintains that the procuring activity should have referred any questions regarding its corporate experience to the SBA, which has conclusive statutory authority concerning the responsibility of small business concerns. See 15 U.S.C. § 637(b)(7) (1982). Service Ventures contends that any questions as to its experience thus could have been resolved under the certificate of competency procedures. Here, however, the procuring activity included experience among the technical evaluation criteria. Thus, experience was to be evaluated as part of proposal evaluation; it did not relate solely to offeror responsibility. Accordingly, the SBA's certificate of competency procedures were inapplicable, and referral was not required. See Wickman Spacecraft & Propulsion Co., B-219675, Dec. 20, 1985, 85-2 CPD ¶ 690.

In its comments on the agency report, Service Ventures also alleges that the changes in technical scores upon reevaluation show that the procuring activity engaged in technical leveling by disclosing certain aspects of its proposal to Raven. Since Service Ventures has not provided any evidence of the actual disclosure of its proposal, this allegation is speculative, and we conclude that the firm has not met its burden of proof with regard to it. See Domar Industries Co., Inc., B-202735, Sept. 4, 1981, 81-2 CPD ¶ 199. In any event, it is clear from the record that the relative standing of offerors--with Service Ventures third--did not change on reevaluation.

Additionally, Service Ventures contends that the award of the contract to Raven violated the FAR, 48 C.F.R. § 15.903(b) and (d), because the awardee's price included fees in excess of the limits specified therein. The cited regulation sets forth maximum allowable fees for various types of cost-plus-fixed-fee contracts. The regulation is not applicable here, because the contract was awarded on a fixed-price basis. Service Ventures makes other general allegations as to the unreasonableness of the awardee's price, particularly the amounts included for general and administrative expenses and fees. Raven, however, has submitted a copy of its proposed budget which shows that these fees are significantly less than the amounts alleged by the protester. This basis of protest is therefore without merit.

### Selection

Service Ventures also contends that it should have been selected for award because it submitted the lowest-priced, technically acceptable offer. The agency's award of the contract to Raven, Service Ventures maintains, violated numerous provisions of the FAR. In negotiated procurements, however, unless the solicitation so specifies, there is no requirement that award be made on the basis of lowest price. Rather, the procuring activity has discretion to select a higher-rated, higher cost technical proposal if doing so is consistent with the evaluation scheme of the solicitation and is deemed worth the difference in cost. See Litton Systems, Inc., Electron Tube Division, 63 Comp. Gen. 385 (1984), 84-2 CPD ¶ 317.

Here, the source selection official concurred with the source selection board that Raven's initial proposal was superior, technical and cost factors considered, for both Tasks I and II or, on the basis of reevaluated proposals, for Tasks I, II, and III. Since the basis of this determination was the overall point scores received by the offerors, which were calculated in accord with the formula set forth in the solicitation, which gave considerably greater weight to technical considerations than to cost (apparently because the agency's needs involve the operation and maintenance of a facility that includes complex systems and equipment), we also deny the protest on this basis.

### Retention of Work In-House

Service Ventures' final basis of protest is that it was entitled to award for Task III, warehouse management and transportation services, because its proposed price for this work was less than the cost of performing in-house. The protester maintains that the agency's decision to retain the work itself violated OMB Circular A-76.

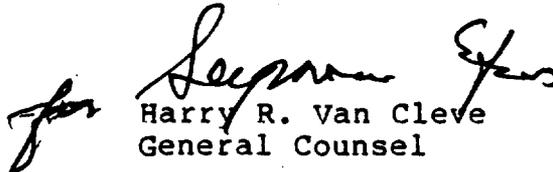
Initially, we note that the cost comparison procedures prescribed by the Circular A-76 are not applicable here, because the work requires only three full time equivalent employees. See OMB Circular A-76 (Revised), Performance of Commercial Activities, Pt. 1, Ch. 2 ¶ A (Aug. 1983). Under the evaluation scheme outlined in the solicitation, Service Ventures, whose overall point score made it the third ranked offeror, would not have been in line for award of Task III, regardless of the fact that its proposed price for the warehouse and transportation services was less than the cost of performing in-house. Moreover, the original RFP provided that award would be made on an all or none basis, showing

that the agency did not intend to award two separate contracts. In our opinion, only Raven would be in a position to challenge the fact that it was not awarded Task III, as well as Tasks I and II. Although Raven has submitted comments to our Office, it has not raised this issue.

Since Service Ventures therefore was not in line for award, we conclude that Service Ventures is not an interested party for purposes of protesting NOAA's decision to retain the work in-house. See 4 C.F.R. § 21.1(a) (1985).

We believe that NOAA's letter requesting proposals for Task III, which in effect amended the solicitation, was deficient in that it did not advise offerors that proposals for this work would be used for cost comparison purposes and that the government might continue to perform the services in-house. A solicitation must clearly state the basis on which offerors will be evaluated, see A to Z Typewriter Co., et al., B-215830 et al., Feb. 4, 1985, 85-1 CPD ¶ 198, and NOAA's initial statement that award would be on an all or none basis could have been construed as also applying to Task III. Service Ventures, however, has not alleged that if it had known of the cost comparison, it would have changed its technical or cost proposal for Tasks I and II. The firm, therefore, was not prejudiced by NOAA's failure to make clear its purpose in seeking proposals for Task III, and we have no legal basis to object to the decision to retain Task III in-house.

We deny the protest.

  
Harry R. Van Cleve  
General Counsel