

DECISION



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

FILE: B-183773

DATE: Sept. 21, 1976

MATTER OF: Decision Sciences Corporation

DIGEST:

1. Protest alleging evaluation of proposals was arbitrary and reflective of bias is denied where record shows agency had reasonable basis for evaluating and ranking proposals as it did.
2. Where agency, in evaluating an offeror's prior experience, relies on ratings of offeror furnished by other firms, including actual or potential competitors of offeror, agency should consider the appropriate weight to be given such ratings in view of possibility that ratings would not be impartial.

Decision Sciences Corporation (DSC) protests the Department of Commerce's (Commerce) award under request for proposals (RFP) No. 5-36467 of a cost-plus-fixed fee contract for management and technical consultant services to minority business concerns in Commerce's Office of Minority Business Enterprise (OMBE), Region II.

DSC's main contention is that the technical evaluation by OMBE and the award by Commerce were arbitrary and reflective of a "considerable anti-Semitic bias" which permitted award at an unnecessarily higher price. Award was made to Boone, Young & Associates, Inc. (BYAI).

The protester makes several assertions in support of its contention that the evaluation of proposals was biased. For example, DSC claims that it was penalized for the very things for which BYAI received credit and that the evaluation criteria were "applied differently" for the two firms. It also asserts that some of the evaluators' conclusions with respect to the proposals were precisely the opposite of what was indicated by the proposals. In addition, DSC states that the evaluators improperly considered cost in making their technical assessments.

DSC's specific objections concern five of the eight evaluation criteria set forth in the RFP. These criteria, DSC's major assertions with respect thereto, and Commerce's comments are as follows:

Criterion #3 - "Degree of knowledge of technical and management services reasonably available to minority business communities in the Region * * *."

BYAI was awarded 6.3 evaluation points in this category while DSC received 6 points. DSC's knowledge of technical resources was described as "not very good" and it was noted that "Many of the organizations listed in the proposal no longer exist." DSC claims that it listed 150 services and resources while BYAI listed only 10 percent of the available resources. DSC further states that in fact most of the organizations it listed were in existence and were included in its proposal on the basis of information furnished by OMBE. Commerce explains that BYAI's "systematic approach to the identification, assessment and maintenance of current records /the subcriteria/ * * * was judged to be slightly (.3) better." It further explains that a listing of organizations was not required by the RFP and the inclusion or non-inclusion of such a list therefore was not reflected in the point scores.

Criterion #4 - Prior experience, "especially in the Region to be served."

BYAI received 12.3 points under this criterion, DSC received 8.5. DSC questions these ratings in light of its assertion that it has extensive experience in OMBE's Region II while BYAI had no experience of any kind in the Region. Commerce reports that DSC's experience was recognized but was not rated highly "because some of the OMBE funded organizations in the OMBE Region II which have knowledge of DSC's work did not rate it very high * * * and there are cases of minority firms complaining about the quality of DSC's work." Commerce further reports that BYAI's prior experience included "excellent" and "outstanding" performance of contracts for the Departments of Health, Education and Welfare and Housing and Urban Development in OMBE's Region II.

Criterion #5 - Quality of personnel.

BYAI received 22 points; DSC was awarded 17.8 points. DSC claims that the BYAI staff has little or no experience in

management consulting and with the Region II minority business community, while DSC's staff has "extensive experience" and "a demonstrated knowledge of the problems of the minority business community." DSC further states that it offered full-time managers, but that Commerce evaluated its proposal as offering only a part-time manager, while BYAI was not criticized by Commerce for offering a part-time project manager. Commerce reports that BYAI does have experienced personnel with demonstrated knowledge and expertise. With regard to the proposed project managers, Commerce states that both firms initially proposed project management on a part-time basis but that in BYAI's best and final offer the project coordinator was designated as spending 100 percent of his time in managing the project, while DSC's best and final offer showed the project manager devoting only 15 percent of his time to the project.

Criterion # 6 - Subcontracts and consultant selection.

BYAI received 16.2 points; DSC received 12.7 points. DSC asserts that the BYAI subcontractors have "little or no experience in management consulting" (as opposed to DSC's more experienced subcontractor staffs), and that the evaluators were improperly influenced by cost considerations in that they regarded DSC's proposed subcontractor per diem rate as too low. Commerce states that it does not agree with DSC's characterization of BYAI's subcontractors. It reports that BYAI's proposal identified the specialized area of its subcontractors and listed the educational backgrounds on some of them, and that OMBE is familiar with the quality of the work and fields of expertise of BYAI's proposed subcontractor firms. It further reports that although the technical evaluators commented on DSC's subcontractor rate (because DSC, in its best and final offer, improperly included a "Justification of Subcontractor Costs" in its technical proposal) and did regard it as too low, the technical rating was not affected thereby.

Criterion # 7 - Time-phased plan.

BYAI was given 4 points; DSC received 1.5 points. DSC originally proposed a 6-week start-up time. OMBE regarded that as too long, and DSC offered a 1 week start-up time in its best and final offer. The evaluators believed this was an insufficient period for the many tasks that had to be completed, and that

4 weeks would have been a more appropriate period. DSC asserts that BYAI offered only a 2-week period and questions why Commerce regarded that as highly acceptable. DSC also questions findings of other weaknesses in its time-phased plan. Commerce reports that BYAI offered a 4-week, not a 2-week start-up time, even though BYAI had already developed the necessary forms and systems required by the contract in connection with performance of a New York Region contract and therefore could have proposed a 2-week period. Commerce further states that DSC's plan was considered weak because it showed the subcontractor phase beginning on the sixth week of the contract and the business evaluation summary phase starting in the third month, even though the RFP required the business summaries be performed prior to subcontractor assignments.

On this record, we are unable to conclude that the evaluation was arbitrary or biased. For each technical criterion discussed above, our review of the record, including the evaluators' narrative comments, and proposals submitted, indicates that OMBE had a reasonable basis for regarding BYAI's proposal as superior to DSC's proposal. Although it is clear that DSC does not agree with OMBE's evaluation of proposals and would not have evaluated BYAI's proposal as OMBE did, that fact alone does not render the evaluation invalid or improper. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404. Procuring agencies are vested with a reasonable range of discretion in evaluating and determining the relative merits of competing proposals and such determinations will not be questioned unless they are clearly arbitrary, unreasonable, or in violation of procurement statutes and regulations. Riggins & Williamson Machine Company, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 168; Field Maintenance Services Corporation, B-185339, May 28, 1976, 76-1 CPD 350; Decision Sciences Corporation, B-182558, March 24, 1975, 75-1 CPD 175; Training Corporation of America, B-181539, December 13, 1974, 74-2 CPD 337. Here, despite DSC's numerous contentions, we are unable to find any evidence that the evaluation was not conducted in accordance with applicable requirements or was based on anything other than the reasoned judgment of the evaluators.

For example, while the evaluators did refer to the non-existence of certain firms listed by DSC, the record affords us no basis for disputing Commerce's statement that this was not reflected in the criterion #3 point scores or that BYAI's "Systematic approach" was slightly better than DSC's approach.


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Neither do we find any basis for finding that OMBE's evaluation of proposed contractor personnel and subcontractor firms was unreasonable. With regard to the full-time management of the project, our review shows that BYAI's best and final offer designated a part-time "manager" and an essentially full-time "coordinator" who would, in effect, be managing the project, while DSC proposed a part-time (15 percent) project manager with two full-time personnel devoting their efforts to specific functions (business evaluation and subcontractor assignment and administration) rather than to overall management. Thus, we cannot object to OMBE's evaluation of criteria #5 and #6.

In one area--prior experience--the record is not entirely clear as to whether DSC's rating reflected OMBE's knowledge of DSC's prior experience or only what OMBE was told about DSC by other firms. We think that when an offeror's prior experience is to be evaluated, the evaluation should be based on the Government's prior experience with that offeror when such experience exists. If proposal evaluators are to consider how other firms (including actual or potential competitors of the offeror) rate the offeror's prior work, we think the Government must consider what weight, if any, should be given to those ratings in view of the obvious possibilities that the ratings could be less than totally impartial. OMBE states that its funded organizations within Region II "did not rate DSC very high," but does not indicate whether OMBE had reason to agree with that assessment or whether OMBE merely accepted the ratings at face value without independently verifying the validity of those ratings. If the latter is the case, we would regard OMBE's reliance on the views of other firms to be inappropriate.

Overall, however, we find the relative evaluation to have been reasonable. We note that even if DSC had received the maximum possible score for prior experience, it would not have displaced BYAI as the highest rated offeror. We further note that it also would not have displaced Inter-America as the second highest rated offeror, and that Inter-America's proposed cost was lower than DSC's. Accordingly, we are unable to conclude either that DSC should have received the award or that BYAI should not have been selected.

For the foregoing reasons, the protest is denied.

Acting  Comptroller General
of the United States