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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, 20548**

FILE: E-188454

DATE: December 21, 1977

MATTER OF: Decision Sciences Corporation--Request for
Reconsideration

DIGEST:

1. Information submitted by offeror clearly stated that offeror's Baltimore office during relevant period in 1976 was at Fayette Street location only. Offeror now contends that another Baltimore office was at Slade Avenue location. Written evidence provided by offeror showed that Slade Avenue location had not been operating during relevant period. Therefore, prior decision is affirmed since contracting officer's determination of non-responsibility for inability to meet definitive criterion was reasonable.
2. Prior decision, based on facts presented in numerous submissions by protester, its counsel, and several agency reports during thorough development of issue, is affirmed. "Complete" information in existence at time of prior decision but not provided to GAO now submitted by protester does not demonstrate any error of fact or law in prior decision.

Decision Sciences Corporation (DSC) requests reconsideration of portions of our decision, Decision Sciences Corporation, B-188454, September 14, 1977, 77-2 CPD 188, which denied DSC's protest against the award of contracts for providing management and technical assistance services to eligible businesses in the Pittsburgh, Pennsylvania, Baltimore, Maryland, and Washington, D.C., areas under request for proposals (RFP) No. SBA-7(1)-MA-77-1 issued by the Small Business Administration (SBA) on November 15, 1976. DSC's request for reconsideration relates to the Baltimore and Washington area contracts.

As stated in the September 14, 1977, decision, the RFP provided that proposals received for each of the geographic areas would be evaluated on a point system with respect to the experience and capability of each offeror's staff, the previous experience and effectiveness of each offeror's firm, and each offeror's man-day pricing. In each area award was to be made to the responsible offeror who submitted the highest evaluated proposal. DSC,

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the incumbent in each of the three areas, received the highest evaluated proposal in each area and was generally found to be responsible by SBA except for DSC's ability to meet the RFP's "office" requirement, which follows:

"Offerors must have an office (as defined below) in each geographic area for which he desires to submit a proposal. For the purpose of this solicitation, an OFFICE shall be defined as:

* * * * *

"3. Offeror must be able to provide evidence showing that at least one full-time (minimum 35 hour work week) staff member has been performing services similar in nature to those required by this solicitation since at least November 15, 1975. This staff member must have devoted at least 50% of his professional time to the performance of such consulting services through this location.

* * * * *

"5. Offeror must possess written evidence of ownership, rental lease or other arrangement indicating that this location has been operating since at least November 15, 1975.

"Offeror must be prepared to substantiate and document all of the above provisions in writing upon request by the Contracting Officer."

After determining that DSC submitted the highest evaluated proposals in the three areas, SBA requested field reports from its area offices to determine whether DSC could comply with the RFP's definition of office. Each SBA field office reported that DSC failed to meet one or more of the requirements. Subsequently, award in each area was made to the offeror submitting the next highest evaluated proposal and meeting the RFP's office requirement.

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Our decision recognized the following principles. The determination of a prospective contractor's responsibility is primarily the function of the contracting officer and is necessarily a matter of judgment involving a considerable degree of discretion. Therefore, this Office will not disturb a determination of nonresponsibility when the record provides a reasonable basis for such determination. Where a contracting officer's negative determination of responsibility relies on information contained in official agency reports, it is not unreasonable. When conflicting information relative to responsibility of a prospective contractor is a matter of record, a contracting officer has the duty to resolve inconsistencies and uncertainties before making a reasoned judgment of responsibility.

With those principles in mind, the decision considered DSC's bases for protest in each geographic area to ascertain: (1) whether there were material inconsistencies in the information before the contracting officer; and (2) if so, whether additional information could have resolved the doubt in favor of DSC.

With regard to the Baltimore area, SBA determined in part that DSC failed to meet the office requirement because DSC did not have "written evidence of ownership, rental or lease or other arrangement" indicating that its office had been operating since at least November 15, 1975. When SBA made its determination it had a letter dated February 24, 1977, from DSC which stated as follows:

"DSC has maintained office locations in the Baltimore District area at the following locations on the dates shown.

"130 Slade Avenue (Years 1974 and 1975)
Baltimore, Md.
(1974--1975)

"303 E. Fayette St. (Year 1975 to present)
Suite 711
Baltimore, Md."

The contracting officer concluded that DSC did not have a Baltimore office at Fayette Street at all times but only upon request during the period between January 8 and May 1, 1976, and, therefore, DSC did not comply with the RFP's office requirement. Our decision concluded that the contracting officer's determination was not unreasonable.

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DSC now contends that we failed to note that the SBA was informed in the February 24, 1977, letter that a written agreement existed making the Baltimore office of Decision Sciences Corporation at 130 Slade Avenue.

We believe that the contracting officer's interpretation of DSC's February 24 letter--that during the relevant period DSC's Baltimore office was only at the Fayette Street location and not also at the Slade Avenue location--was reasonable. If DSC had two Baltimore offices during the relevant period, its February 24 letter did not so advise the SBA contracting officer.

Accordingly, our September 14 decision with respect to the Baltimore area is affirmed.

With regard to the Washington area, the contracting officer concluded, based on an SBA field office report, that the local project director for DSC under the then current SBA management assistance contract was not a salaried employee of DSC and did not devote a minimum of 35 hours per week to DSC's work. DSC advised the contracting officer that its local project director devoted an average of 35 hours a week to DSC work and DSC provided three more names of DSC staff members who satisfied the work-hours-per-week requirement in the Washington area. In addition, DSC provided some records of earnings for each person and records of participation for two of the four in prior SBA management assistance contracts. DSC also offered to provide additional records to establish work hours per week of each employee. The SBA field office report did not address whether the three other DSC staff members devoted 35 hours per week to DSC through its Washington office.

The September 14 decision concurred with the contracting officer's conclusion that information provided by DSC before award failed to establish that either the local project director or the company comptroller satisfied the requirement. With respect to the other two DSC staff members, since the SBA field office report was silent and since DSC showed that significant work was performed through the Washington office on the two FAA contracts, we believed that sufficient doubt existed to require the contracting officer to seek additional information from the SBA field office or directly from DSC before making the responsibility determination. However, in the course of developing the record in the September 14 decision DSC had the opportunity to submit evidence in possession to establish compliance with the requirement. DSC presented records concerning the four staff members' work through the Washington office for our

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consideration. After thoroughly examining those records we concluded that DSC again failed to show that any of the four staff members worked at least 50 percent through the Washington office since November 15, 1975. Accordingly, we held that DSC was not prejudiced by SBA's negative responsibility determination in the Washington area and because of that conclusion there was no need to consider SRA's third basis for finding DSC nonresponsible in the Washington area.

DSC now contends that both SBA and our Office were only provided a sample of DSC's timesheets and records to demonstrate that at least one staff member met the work-hours-per-week requirement. DSC has now provided "complete" time records for three staff members to establish that it can satisfy the requirement.

The decision, based on facts presented in numerous submissions by DSC and its counsel as well as several reports from SBA, was correct when made. DSC has not attempted to show that we misunderstood or misapplied the relevant facts before us then to the applicable provisions of law. DSC's request for reconsideration rests on then existing information that DSC failed to provide to our Office. As stated in the earlier decision, "DSC correctly interpreted the RFP's requirement;" therefore, DSC had but did not avail itself of the opportunity after filing the protest here in February 1977 to present the "complete" information. We find no compelling reason to consider DSC's request that we disturb the 1-year contract more than 9 months after award because it failed to present the "complete" information during the initial consideration of the matter. Accordingly, the September 14, 1977, decision is affirmed because DSC has not presented any evidence demonstrating any error of fact or law in that decision. See, e.g., ABC Duplicators, Reconsideration (Second), B-187604, June 30, 1977, 77-1 CPD 464; Data Pathing, Inc.--Reconsideration, B-188234, July 11, 1977, 77-2 CPD 14.

Deputy


Comptroller General
of the United States