

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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PLI

FILE: B-195503

DATE: November 6, 1979

MATTER OF:

Arix Corporation

DLG032581

## DIGEST:

*[Protest Alleging Evaluation Criteria Were Arbitrarily Applied]*

1. Where Congressman promptly protested to Secretary of Agriculture on protester's behalf, but doubt exists as to when Congressman received Secretary of Agriculture's reply which was initial adverse agency action, timeliness of subsequent protest to GAO is resolved in favor of protester.
2. Architect-engineer (A/E) evaluation board rated protester slightly higher than second-ranked firm and recommended selection of protester for contract negotiation. Subsequently, protester notified agency of corporate reorganization through which protester became independent of firm of which protester had been division at time of original evaluation by A/E evaluation board. Based on new information, A/E evaluation board changed evaluation and recommended selection of formerly second-ranked firm. Since change in recommendation does not appear to have been arbitrary and is reasonably supported by record, protest is denied.

Arix Corporation (Arix), formerly the Colorado Division of C-E Maguire, Inc., protests the selection by the Science and Education Administration (SEA), Department of Agriculture, of another architect-engineer (A/E) firm for negotiation of a contract for design and preparation of plans and specifications for the Arthropod-borne Animal Disease Laboratory at Fort Collins, Colorado. Arix contends that the evaluation criteria were applied arbitrarily so as to deprive Arix of selection in spite of the top ranking given Arix by the A/E evaluation board.

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A threshold question presented in this case concerns the timeliness of Arix's protest to our Office. The Department of Agriculture argues that the protest is untimely because Arix was notified of the selection of Naramore, Bain, Brady & Johanson (NBBJ) by the contracting officer on May 2, 1979, but did not file a protest with our Office until July 20, 1979. In reaching this conclusion, it appears that the Department of Agriculture is relying on section 20.2(b)(2) of our Bid Protest Procedures which requires that a protest "be filed not later than 10 days after the basis for protest is known." 4 C.F.R. § 20.2(b)(2) (1979). AGC00042  
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We do not agree with Agriculture's argument and find Arix's protest to be timely for the following reasons. Under section 20.2(a) of our Bid Protest Procedures, protesters are urged to seek resolution of their complaints initially with the contracting agency and we will consider any protest filed with our Office within 10 days of the initial adverse agency action on the protest to the agency. 4 C.F.R. § 20.2(a) (1979). We consider the letter from Arix's Congressman to the Secretary of Agriculture, dated May 7, 1979, to have been a protest filed with Agriculture by the Congressman on behalf of Arix. Such filing was timely because less than 10 days had elapsed since Arix learned that NBBJ had been selected. The Secretary of Agriculture did not respond to the Congressman's protest letter until June 27, 1979. We consider receipt of the Secretary of Agriculture's letter by the Congressman on behalf of Arix to have been the initial adverse agency action on Arix's protest with Agriculture. If the Congressman received notice of the adverse protest decision before July 6, then Arix's protest filed with us on July 20 would be untimely. However, we cannot tell when the Congressman received the June 27 letter from the Secretary of Agriculture. Where doubt exists as to when a protester knew or should have known the basis for protest, we resolve that doubt in favor of the protester. See, for example, Dictaphone Corporation, B-193614, June 13, 1979, 79-1 CPD 416. Therefore, we consider Arix's protest to be for consideration on the merits.

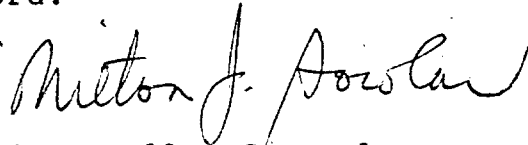
Our review on the merits is limited to examining whether the selection of an A/E contractor is reasonable. We will question the contracting agency's judgment only if it is known to be arbitrary. Boyle Engineering Corporation, B-183355, June 10, 1975, 75-1 CPD 354. After carefully reviewing the record in light of Arix's contention, we are denying the protest since we do not conclude that SEA's selection of NBBJ was arbitrary.

The record shows that the A/E evaluation board members interviewed representatives of seven A/E firms. After each company made its presentation, held discussions with the board members and had an opportunity to submit literature on its qualifications, the board members applied the evaluation criteria pertaining to the procurement. Each board member independently evaluated each offeror and reduced his judgment to a numerical score.

When the scores of all five A/E evaluation board members were totaled, it was apparent that C-E Maguire was the top-rated offeror. However, NBBJ was rated a close second. Accordingly, the evaluation board recommended that the Regional Administrator select C-E Maguire. However, after learning that the Colorado Division of C-E Maguire had been organized into a new, independent firm, three of the five evaluation board members expressed a preference for NBBJ over Arix. Although the evaluators' subjective opinions were not quantified again after the formation of Arix, several reasons for the change in preference from Arix to NBBJ have been given. Primarily, the evaluators who switched to NBBJ did so because they felt that key project members were remaining with C-E Maguire and would have to be used by Arix on a consultant basis. The in-house capability which had contributed to a high rating for C-E Maguire now became a "more arms length relationship between Arix and its consultants." Another reason for the change in preference resulted from the fact that C-E Maguire had been highly rated as the result of its experience and demonstrated performance on relevant projects. This high rating was attributed to C-E Maguire's nationwide firm and not solely to the record compiled by C-E Maguire's Colorado Division. The C-E

Maguire record was not considered available to give Arix the same high rating. Another factor which concerned at least one evaluator was C-E Maguire's failure to inform the evaluation board before reorganization that it was about to occur. As a result, the evaluator questioned the credibility of Arix.

Since the evaluations were based 45 percent on experience and 15 percent on organization and since the original evaluations of C-E Maguire and NBBJ were close in total score, the change in information could affect the standings. Though the evaluators' opinions were not quantified, the change in recommendation does not appear to have been arbitrary. The preference change, from C-E Maguire to NBBJ, is reasonably supported by the record.



For the Comptroller General  
of the United States