

DECISION

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

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FILE: B-218310; B-218311 **DATE:** April 4, 1985

MATTER OF: Y.T. Huang and Associates, Inc.--
Reconsideration

DIGEST:

Decision is affirmed on reconsideration because evaluation of the relative merit of the submissions of architect-engineer firms is not a GAO function. The fact protester received different scores from the same member on two Slate Selection and Screening Boards does not show arbitrariness in scoring since we would not expect a board member to score an offeror identically on two separate solicitations having different requirements.

Y.T. Huang and Associates, Inc. (Huang), requests reconsideration of our decision in Y.T. Huang and Associates, Inc., B-217122; B-217126, Feb. 21, 1985, 85-1 C.P.D. ¶ 220, in which we denied its protests concerning the General Services Administration's (GSA) selection of Roof Engineering Inc. (REI) as the firm to negotiate architect-engineer (A-E) contracts Nos. GS-07B-31429 and GS-07B-31434. These contracts are for design and preparation of bidding documents to replace the roof of warehouse No. 5 and to replace the roof and renovate section "C" of warehouse No. 1 in Fort Worth, Texas.

We denied the protests because the record showed that GSA had a reasonable basis for its evaluation and selection and our Office will not question the agency's judgment unless shown to be arbitrary. We also stated that our Office will not review a determination whether to contract under section 8(a) of the Small Business Act unless the protester presents prima facie evidence of fraud or bad faith on the part of procurement officials. In addition, we did not review several of Huang's allegations as GSA's report responded to them and Huang did not pursue the allegations further.

In its request for reconsideration, Huang argues that it did not mean to drop its pursuit of those allegations which we stated GSA had answered. The allegations were that: (1) REI did not have an office in Fort Worth, Texas, and, therefore, was not in compliance with the solicitation;

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(2) REI's brochure shows that the majority of its work consists of roofing material testing and (3) the president of REI is not a civil engineer, yet his company is allowed to perform roofing contracts for GSA. GSA's report advised that REI is located in Dallas County, Texas, in compliance with the solicitation requirement. Further, REI performs all types of roofing services, not merely testing (REI in its comments as an interested party pointed out that although one of its brochures deals with roof sample testing, this testing only accounts for 10 to 15 percent of its work). Also, the solicitation does not require the owner, partners, heads or directors of the firm to be civil engineers. Huang has not shown that any of the above responses to its allegations are incorrect nor has it shown any basis to sustain its protest on these facts.


Huang next restates its argument that the evaluation by the Slate Selection and Screening Board for the two separate contracts was improper. Huang states that not only were different weighting factors used in evaluating subcriteria for the two contracts but, also, one of the board member's gave substantially different scores to Huang on the two contracts. Thus, Huang alleges that the scoring on the two contracts was unreasonable and arbitrary.

As we stated in Huang, above, we would not expect Slate Selection and Screening Boards to reach identical results in their scoring of the same offeror on two contracts having different requirements. Even though the same individual may serve on both boards, it is not unreasonable for the individual to score an offeror differently on solicitations having different requirements. The scoring process is not a rigidly objective procedure, but must of necessity contain a measure of subjective judgment. Procurement officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by making an independent examination. R. Christopher Goodwin & Associates and GEOScience Inc., B-206520, Nov. 5, 1982, 82-2 C.P.D. ¶ 410. Likewise, the fact that slightly different weighting factors were used for the subcriteria on each contract does not show that the evaluation process was improper. Huang has not shown prejudice to it caused by the Slate Selection and Screening Board's scoring method.

Huang continues to argue that although the two solicitations were not set aside under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a)(1) (1982), the failure to give minority firms special consideration in the selection process was improper. We reiterate, however, that in the absence of a solicitation being set aside under section 8(a), a minority firm is not entitled to a preference over other firms.

Lastly, Huang now argues that REI was nonresponsive, but this allegation, first raised months after REI's selection, is untimely under our Bid Protest Regulations. 49 Fed. Reg. 49,917, 49,920 (to be codified at 4 C.F.R. § 21.2).

The prior decision is affirmed.

for 
Comptroller General
of the United States