

DECISION

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

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FILE:

B-221746

DATE: April 7, 1986**MATTER OF:**Albert C. Martin and Associates/Daniel,
Mann, Johnson and Mendenhall**DIGEST:**

1. GAO's review of agency selection of an architect-engineer (A-E) contractor is limited to examining whether the selection is reasonable. GAO will question the agency's judgment only if it is shown to be arbitrary. Speculation that agency considered three of five A-E firms selected for interviews too small is denied as being unsupported by the evidence contained in the record.
2. Ground of protest raised for first time in comments on agency report is untimely when not raised within 10 days of when protester knew or should have known basis of protest.

Albert C. Martin and Associates/Daniel, Mann, Johnson and Mendenhall (ACMA/DMJM) protests the General Services Administration's (GSA's) selection of Welton Beckett Associates as the firm with which to negotiate an architect-engineer (A-E) contract for the design of the new Federal Courthouse and Office Building in Los Angeles, California. ACMA/DMJM contends that GSA did not obtain adequate technical competition as required by the Brooks Act, 40 U.S.C. § 541-544 (1982), which governs the procurement of A-E services, and did not follow the evaluation criteria published in the Commerce Business Daily (CBD).

We deny the protest in part and dismiss it in part.

Generally, under the selection procedures set forth in the Brooks Act and in the implementing regulations in the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 36.600-36.609 (1984), the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the

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announcement of the particular project. The board then must conduct "discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required service." 40 U.S.C. § 543. The firms selected for discussions should include "at least three of the most highly qualified firms." FAR, § 36.602-3(c). Thereafter, the board recommends to the selection official in order of preference no less than three firms deemed most highly qualified.

The selection official then must make the final selection in order of preference of the firms most qualified to perform the required work. Negotiations are held with the firm ranked first. If the agency is unable to agree with that firm as to a fair and reasonable price, negotiations are terminated and the second ranked firm is invited to submit its proposed fee.

ACMA/DMJM protests that three of the five firms selected for interviews here were dropped from final consideration because they did not have sufficient resources to adequately perform the work. Thus, according to ACMA/DMJM, only two firms were considered for award, and one was not eligible under GSA's rules for distributing work since GSA had recently awarded the firm a \$35 million prison design project. ACMA/DMJM concludes that GSA did not obtain adequate technical competition when three of the five firms selected for interviews were subsequently considered too small, while its joint venture, composed of the two largest A-E's in Los Angeles, was not considered for interviews.

GSA reports that it announced its intention to contract for these A-E services in the CBD and invited all interested qualified firms to submit standard forms 254 and 255 outlining their qualifications for the project. GSA's Regional Screening and Slate Selection Board reviewed the forms of the 18 firms which responded to the CBD announcement. Two firms were eliminated for being outside Los Angeles County and, therefore, not in the area of consideration. The regional board, using the stated evaluation criteria, scored the remaining firms and recommended the five highest ranked firms for interviews. ACMA/DMJM was not among those five firms. A National A-E Evaluation Panel, composed of individuals who had not served on the regional board, conducted interviews and selected three firms deemed most highly qualified to perform the required services. GSA chose Welton Beckett Associates as the most qualified firm and notified it by letter dated December 19, 1985. GSA also notified ACMA/DMJM that it had not been selected and provided a debriefing on January 6, 1986.

Our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. Leyendecker & Cavazos, B-194762, Sept. 24, 1979, 79-2 C.P.D. ¶ 217. In this regard, the protester bears the burden of affirmatively proving its case. Dhillon Engineers, Inc., B-209687, Mar. 16, 1983, 83-1 C.P.D. ¶ 268.

Our review of the record here shows that ACMA/DMJM's allegation that three firms were dropped from final consideration because they did not have sufficient resources to perform the work is entirely unsupported by evidence. All five firms selected for interviews were considered qualified; three of the five were recommended to GSA's Regional Administrator as most highly qualified, and the top ranked firm was selected to perform the A-E services.

Regarding ACMA/DMJM's contention that under GSA's rules for distribution of work, one of the top five ranked firms was ineligible for award because it had recently been awarded another contract, GSA responds that there is no statutory requirement or GSA policy which restricts a firm from having more than one contract at a time. We also are unaware of any such restriction. See Y. T. Huang & Associates, Inc., B-217122; B-217126, Feb. 21, 1985, 85-1 C.P.D. ¶ 220.

In its comments on the agency report, ACMA/DMJM asserts that at a January 6, 1986, debriefing, it learned GSA had not developed an opinion of the size of the design staff required for the project and had evaluated firms without considering the published requirements for an existing design production office within the geographic limitation of Los Angeles County and for a capability to perform 80 percent of all contract services. ACMA/DMJM contends that GSA was arbitrary in its selection procedure by ignoring the size of the design staff required.

Protest arguments not raised in a protester's initial submission must independently satisfy the timeliness requirements of our Bid Protest Regulations, 4 C.F.R. part 21 (1985). Radionic Hi-Tech, Inc., B-219116, Aug. 26, 1985, 85-2 C.P.D. ¶ 230. Protests based on other than alleged solicitation defects must be filed, meaning received, not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, ACMA/DMJM learned of this basis of

protest during the January 6 debriefing, but did not raise this basis until it commented on the agency report. Since we did not receive ACMA/DMJM's comments until March 14, 1986, this basis is clearly untimely and will not be considered. ABC Building Services, B-220320, Jan. 27, 1986, 86-1 C.P.D. ¶ 91.

The protest is denied in part and dismissed in part.

for *Leopoldo S. Sfor*
Harry R. Van Cleve
General Counsel