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**The Comptroller General  
of the United States**

Washington, D.C. 20548

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**Decision**

**Matter of:** Lee J. Kriegsfeld

**File:** B-222865

**Date:** August 22, 1986

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**DIGEST**

1. New source selection official's reversal of predecessor's decision to award to protester is not objectionable where the official cites valid technical acceptability reasons taking issue with the predecessor's basis for selection, including the failure to consider cost in the evaluation.
2. Protester's allegation that agency evaluators failed to downgrade another firm's proposal and upgrade its own is denied where agency evaluation reasonably recognized the merits of the different approaches of the offeror.

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**DECISION**

Lee J. Kriegsfeld (Kriegsfeld) protests the proposed award of a contract to Quadel Consulting Corporation (Quadel) under request for proposals (RFP) No. DU205C869 issued by the United States Department of Housing and Urban Development (HUD) for the management and operation of the Housing Authority (HA) of the City of East St. Louis, Illinois. Kriegsfeld essentially contends that award to Quadel was not consistent with the evaluation criteria under the RFP.

We deny the protest.

The RFP solicited a cost-plus-incentive-fee contract. Offerors were to submit separate technical and cost proposals containing information specified by the RFP. The RFP provided for award to the offeror whose offer conforming to the solicitation will be most advantageous and listed the factors for evaluating proposals. The RFP identified six technical evaluation factors and the maximum number of points a proposal could receive for each factor, as follows: (1) experience in multifamily housing management, property management, construction contract management, extensive rehabilitation of multifamily units, and tenant services-15 points; (2) experience in public housing financial and operations management-15 points; (3) ability to implement successful corrective action at troubled housing authorities or similar entities-20 points; (4) ability to develop and implement training of public housing

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staff-10 points; (5) capability of the offeror's key personnel, including consultants and subcontractors, in factors 1 through 4 above-15 points; and (6) quality, explicitness and feasibility of the offeror's management plan for carrying out the work tasks-15 points. In addition, the RFP assigned five points as the maximum score a proposal could receive for the extent to which the offeror's organizational plan represents significant and meaningful opportunities for women and minorities. As to cost, the RFP provided that cost would be considered in selecting the most advantageous proposal but was secondary in importance to the technical factors.

The Source Evaluation Board (SEB) initially ranked the proposals for technical merit and reviewed the cost proposals and found three proposals, including Quadel's and Kriegsfeld's, to be within the competitive range. Each firm in the competitive range made an oral presentation to the SEB and was asked questions during the presentation. The agency then requested best and final offers from the three firms.

All three firms submitted best and final offers. The SEB reviewed the offers, rated Kriegsfeld's proposal as technically superior and recommended that award be made to Kriegsfeld. The source selection official, the Regional Administrator for HUD Region V, approved the recommendation of the SEB and selected Kriegsfeld for award on December 18, 1985. That day, however, was the last day that individual served as the Regional Administrator.

A different individual was appointed as Regional Administrator on December 23 and that individual became the source selection official for this procurement. The new selection official was briefed on the proposed procurement and, on January 28, 1986, selected Quadel for award of the contract instead of Kriegsfeld. The source selection official set forth the following reasons for the selection of Quadel's proposal as more advantageous: (1) the differential separating the Kriegsfeld and Quadel proposals in the SEB's ranking was negligible; (2) Quadel's performance at the Bridgeport (Connecticut) Housing Authority, a troubled housing authority, was excellent, according to HUD officials, and the firm's score on the evaluation factor of experience with troubled housing authorities did not take this into account; (3) the SEB did not consider the risks and uncertainties arising from the fact that Kriegsfeld submitted his proposal as an individual who intends to form a corporation while Quadel is an established corporation; (4) the SEB's concern with Quadel's failure to identify key personnel could be resolved through negotiations; and (5) although both the Kriegsfeld and Quadel proposals greatly exceeded available funds and would require extensive price negotiation, Quadel's proposal entailed the lowest cost. (Due to the necessity of conducting additional discussions, this decision was tantamount to a further narrowing the competitive range to only Quadel.) As instructed, contracting officials opened negotiations with Quadel. The contract has not yet been awarded.

Kriegsfeld first argues that the selection by the original official was binding and the replacement source selection official could not supersede that selection. We do not agree. It is not legally objectionable per se for a new source selection official to overrule the decision of a predecessor in that position if that decision has not yet been implemented through the award of a contract. The award occurs only if there has been an acceptance of the offer, and what binds the government is that acceptance, which must be communicated and must be clear, unequivocal and unconditional. See Master Security, Inc., B-221831, May 9, 1986, 86-1 CPD ¶ 447. As Kriegsfeld acknowledges, HUD never notified him of its decision to award him the contract and therefore acceptance could not have occurred. Furthermore, since a selection official has wide discretion in determining the merits of proposals, it is proper for a selection official to overrule a predecessor's choice as long as the selection of a different firm by the new source selection official is reasonable and consistent with the evaluation criteria. See Bank St. College of Educ., 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607; Vibra-Tech Eng'rs Inc., B-209541.2, May 23, 1983, 83-1 CPD ¶ 550.

Kriegsfeld further challenges each of the bases provided by the source selection official as justification for narrowing the competitive range to only Quadel. The thrust of Kriegsfeld's protest in this regard is that the source selection official's decision to exclude it from the competitive range lacked a reasonable basis because the decision was not consistent with the stated evaluation factors. We disagree with Kriegsfeld and find that the elimination of Kriegsfeld from the competitive range was reasonable and in accord with the stated evaluation factors.

As a general rule, the competitive range in a negotiated procurement consists of all proposals that have a reasonable chance of being selected for award, including deficient proposals that are reasonably susceptible of being made acceptable through discussions. Fairchild Weston Sys., Inc., B-218470, July 11, 1985, 85-2 CPD ¶ 39. However, even if a proposal is technically acceptable or capable of being made so, it need not be included in the competitive range when the agency determines that it has no reasonable chance of being selected for award. JDR Sys. Corp., B-214639, Sept. 19, 1984, 84-2 CPD ¶ 325.

Moreover, there is nothing improper in an agency's making more than one competitive range determination. Rather, the essential question in cases such as this is not whether a second competitive range determination is proper, but whether the agency was ultimately justified in excluding the firm in question from further consideration. Information Sys. & Networks Corp., B-220661, Jan. 13, 1986, 86-1 CPD ¶ 30.

First, Kriegsfeld argues that Quadel's performance at Bridgeport was not excellent, because although the situation there may have been better than in the past, there was little improvement in major problem areas. He further asserts that Quadel's experience at Bridgeport was not comparable to the situation in East St. Louis because the Bridgeport HA did not have problems such as high vacancy rates and the lack of a governing board which are present in East St. Louis.

The SEB had rated Quadel as good for its ability to implement successful action at troubled housing authorities instead of excellent because the SEB did not feel it was in a position to judge Quadel's performance at Bridgeport. The RFP specifically stated that HUD could contact previous employers listed in an offeror's proposal, however, and the source selection official checked with the HUD officials who monitored and evaluated Quadel's performance at Bridgeport. Those officials stated that Quadel's performance at a HA with financial and operational problems was excellent. This additional information, we think, provided the selection official with a reasonable basis for upgrading Quadel on this factor.

Second, Kriegsfeld questions what risks the source selection official believed would be incurred by contracting with Kriegsfeld. He asserts that the proposed creation of a single purpose entity is a common way of doing business with HUD and that he designated a team of qualified specialists to perform this contract.

The selection official did not detail the risks about which he was concerned. The selection of a contractor, however, frequently involves a choice between different approaches and the level of risk associated with each. Kriegsfeld's approach, to form a corporation composed of a group of specialists supporting him as the executive director, obviously could give rise to some valid concern since Kriegsfeld's proposed organization has no track record of performance and it is not known how well the proposed individuals will work together as a unit. In short, the selection official could reasonably be concerned about the potential risk inherent in Kriegsfeld's approach.

Kriegsfeld also contends that Quadel should not receive the contract because it did not identify all of its key personnel in its proposal and will have problems finding qualified personnel. The SEB rated Kriegsfeld higher than Quadel in the factor of capability of key personnel because his proposal clearly indicated his on-site staff, while Quadel's proposal did not. The SEB did feel, however, that Quadel's failure to identify its on-site staff was balanced in part by the strength of the firm's central organization. The source selection official recognized this deficiency in Quadel's proposal but felt it was minor, presumably because of the firm's strong organization, and could be resolved during further discussions. Such discussions are proper with a firm in the competitive range.

Kriegsfeld next contends that cost improperly displaced the technical evaluation factors as the basis for award and that it was improper to reverse the SEB's recommendation for cost considerations prior to price negotiation. We note that the solicitation provided that cost was to be considered in the evaluation. However, despite this, the SEB recommended Kriegsfeld without any apparent consideration of the relative closeness of the technical scores (less the five percent) and the 8.5 percent cost advantage represented by the Quadel proposal. Given this, and our conclusion above that the selection official reasonably upgraded the Quadel technical proposal due to its prior experience and key personnel,

we find that the record provides a rational basis for the determination that Quadel's proposal was technically superior and offered greater savings and that Kriegsfeld's proposal did not have a reasonable chance for award.

Kriegsfeld also challenges the evaluation by the SEB. He asserts that Quadel should have been scored lower on the factors of management plan, key personnel and experience with troubled housing authorities and that Kriegsfeld was improperly assigned a low score for training.

Kriegsfeld states that a management plan, such as that proposed by Quadel, where policy decisions are made by an executive board which is not located in East St. Louis and daily operations are handled by on-site staff, have failed in the past because such firms are less responsive and timely and it is difficult to formulate policy from long distance. Kriegsfeld contends that his management plan--which offered on-site management featuring a single individual as the chief executive officer supported by a team of specialists, all of whom are familiar with local conditions--would be much more effective. He concludes that his plan is of higher quality, more explicit and more feasible than Quadel's.

The SEB recognized the difference in approaches offered by Quadel and Kriegsfeld but determined that each approach had merit. It found that Kriegsfeld offered the most intensive on-site effort, while Quadel provided an explicit plan with timeframes for each task. The SEB rated the plans equal on balance. The Board did downgrade Quadel on the personnel factor for its failure to identify key personnel and on the experience factor. Although the protester obviously believes that the evaluation results should have been different in these areas, we simply see no basis for finding that the SEB could not reasonably reach the conclusions it did in this case.

With regard to Kriegsfeld's rating under the evaluation factor for training, he claims that he has taught a college class in property management for several years, he has a well-trained staff and his maintenance consultant has an outstanding record in training personnel.

The SEB acknowledged that Kriegsfeld's staff is well-trained but noted that his proposal provided few details on past training programs at his current position or future training programs. Our review of his proposal confirms this. Although Kriegsfeld may have had success in staff development, the SEB correctly concluded on the basis of the proposal that Kriegsfeld has no experience as a training organization and did not propose any training programs.

Finally, Kriegsfeld has suggested that HUD was biased against him because he is not a large national firm with an ongoing contractual relationship with HUD. The protester has a heavy burden of proving bias on the part of evaluators or the selection official, and unfair or prejudicial motives will not be attributed to those individuals on the basis of

inference or supposition. Kelsey-Seybold Clinic, P.A., B-217246, July 26, 1985, 85-2 CPD ¶ 90. Kriegsfeld suggests bias based primarily upon questions asked at his oral presentation. We do not find any merit in his speculation in this regard. We have found that all of the agency's actions were reasonable and consistent with the evaluation criteria.

The protest is denied.

*for*   
Harry R. Van Cleve  
General Counsel