

DECISION

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

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FILE: B-189725

DATE: March 30, 1978

MATTER OF: Macmillan Oil Company--reconsideration

DIGEST:

1. Protester contends that earlier decision should have reviewed merits of agency's affirmative responsibility determination because solicitation contained definitive criterion of responsibility--only most qualified offeror could be considered for award--which was ignored by agency. While agency explains that (1) such criterion was statement of how awardee would be chosen, and (2) most qualified offeror was selected, for purpose of reconsideration, GAO need only point out that solicitation contained no definitive responsibility criteria.
2. Contentions--that (1) awardee was not qualified and (2) evaluators entertained improper and erroneous information concerning awardee--are based on matters fully considered in earlier decision. Since no additional facts or legal arguments regarding these contentions are advanced, request for reconsideration is declined.
3. Contentions--that (1) evaluators did not follow agency regulations and Armed Services Procurement Regulation in evaluation process; (2) protester was most qualified; and (3) solicitation was inaccurate, materially omission, and ambiguous as construed by agency--are based on information furnished to protester in agency report dated October 21, 1977. Since contentions were first raised in connection with request for reconsideration of January 17, 1978, decision, they are untimely under GAO Bid Protest Procedures and will not be considered.

Macmillan Oil Company (Macmillan) requests reconsideration of our decision in the matter of Macmillan Oil Company, B-189725, January 17, 1978, which denied its protest against the award of a lease

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for the Sayorville Marina concession to Mr. Vernon W. Eden under invitation for Proposals No. DACW22-9-77-2066 issued by the Rock Island District, Corps of Engineers, Department of the Army.

In the January 17, 1978, decision, there were considered Macmillan's contentions that: (1) the successful offeror's proposal was improperly evaluated with regard to financial and experience factors; (2) one evaluator improperly influenced other evaluators during the selection process; and (3) the agency should have withheld award when advised that Macmillan would protest. The decision concluded that: (1) the agency's evaluation of proposals was not arbitrary or in violation of procurement statutes or regulations; (2) we would not consider the protest, as it related to Mr. Eden's responsibility, on the merits because we could not conclude that the agency official's conduct even remotely constituted fraud or bad faith; (3) one evaluator's comment did not improperly influence the other evaluators during the selection process; and (4) in view of the above conclusions, consideration of whether the agency should have withheld award was unnecessary.

(54 Comp. Gen. 499)
Macmillan now contends, citing Data Test Corporation, B-181199, December 20, 1974, 74-2 CPD 365, and Atlantic Maintenance Company, B-181519, February 24, 1975, 75-1 CPD 108, that the January 17, 1978, decision should have reviewed the merits of the agency's affirmative responsibility determination because the solicitation contained a definitive criterion of responsibility--only the most qualified offeror could be considered for award--which was ignored by the agency in selecting Mr. Eden. *54 Comp. Gen. 686*

As stated in the earlier decision, the solicitation contained a requirement that award of the lease be made to the offeror who was determined, by virtue of experience, character and otherwise, to be capable of providing the most satisfactory facilities and services determined necessary by the District Engineer. The agency viewed this provision of the solicitation as outlining the criteria under which the awardee would be selected and not as establishing definitive criteria of responsibility.

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While, in any event, it is the agency's position that the most qualified offeror--by virtue of experience, character and otherwise--was selected, for the purpose of reconsideration of our initial decision, we need only point out that the solicitation contained no definitive responsibility criteria. For an example of a solicitation containing definitive criteria of responsibility, see Decision Sciences Corporation, B-188454, September 14, 1977, 77-2 CPD 188.

Also, in the request for reconsideration, Macmillan again contends that: (1) Mr. Eden was a nonqualified offeror and (2) the evaluators entertained improper and erroneous information concerning Mr. Eden. These contentions are based on matters fully considered in the January 17, 1978, decision and do not advance any additional facts or legal arguments which show that the earlier decision was erroneous. Accordingly, we decline to reconsider our decision regarding those contentions.

In addition, Macmillan now contends that: (1) the evaluators did not follow agency regulations and the Armed Services Procurement Regulation in the evaluation process; (2) Macmillan was the most qualified offeror; and (3) the solicitation was inaccurate, materially omission, and ambiguous as construed by the agency. These contentions are based on information furnished to Macmillan in the agency report dated October 21, 1977. Our Bid Protest Procedures require that bid protests shall be filed here not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2)(1977). Since these contentions were first raised in connection with Macmillan's request for reconsideration of the January 17, 1978, decision, they are untimely and will not be considered.

Accordingly, our January 17, 1978, decision is affirmed.

R.F.K.114
Deputy Comptroller General
of the United States