

DECISION

DIGEST - L - Cont.

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

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FILE: B-185266

DATE: August 4, 1976

MATTER OF: South Bronx Overall Economic Development
Corporation**DIGEST:**

1. Protester has burden of affirmatively proving case. Where protest consists only of mere allegation and conjecture as to collusion, conflict of interest and unfair and prejudicial handling of offers such burden has not been met.
2. Best and final offer received after time and date established for receipt of offers was properly excluded under terms of request for best and final offers.

South Bronx Overall Economic Development Corporation (SBOEDC) has protested the making of an award to South Bronx Puerto Rican Development Company (SBPRDC) under request for proposals (RFP) No. 6-36516, issued by the Department of Commerce. The procurement was for technical assistance to minority businesses within the South Bronx area of New York City.

Four firms submitted technical proposals on September 5, 1975. The proposals were forwarded to the Office of Minority Business Enterprise (OMBE) for evaluation. The scores of the four offerors, together with the respective total estimated costs, were as follows:

	<u>Score</u>	<u>Cost</u>
National Puerto Rican Business and Marketing Association, Inc. (NPRBMA)	88	\$107,684
SBPRDC	87	108,716
SBOEDC	72	135,260
International Council for Business Opportunity (ICBO)	62	115,312

Initially, only NPRBMA and SBPRDC were found to be within the competitive range. The other two offerors, SBOEDC and ICBO, were advised that further negotiations were not contemplated with their companies. On November 3, 1975, SBOEDC protested the evaluation procedures.

Upon further consideration, the contracting officer decided to hold negotiations with all offerors, including the two offerors who were not previously included in the competitive range. Negotiations were conducted with NPRBMA on December 2 and, with SBPRDC and SBOEDC on December 3, 1975. ICBO withdrew its proposal prior to the negotiations. Subsequent to the negotiations, revised proposals were submitted by the three offerors and all technical information was reevaluated by OMBE, resulting in the following:

	Revised Score	Evaluation Cost
SBPRDC	89.6	\$105,371.
NPRBMA	88	107,794
SBOEDC	80.6	123.658

Best and final offers were requested from all three offerors on December 31, 1975. Only SBPRDC responded by the closing time/date of 5:00 p.m., January 7, 1976. The best and final offer submitted by SBOEDC was determined to be untimely as it was not received until January 8, 1976. NPRBMA did not submit a best and final offer.

SBOEDC challenges the award to SBPRDC by advancing three contentions:

1. Collusion between offerors.
2. Conflict of interest on the part of two of the three technical evaluators at OMBE.
3. Pattern of unfair and prejudicial handling of the offers.

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The fact that the proposals of SBPRDC and NPRBMC were close in price to each other and the organizations have interchangeable directors and board members is contended as evidence of collusion between the offerors. In this regard, the record does reflect the price difference between SBPRDC and NPRBMC was approximately \$1,000 on the initial proposals and \$2,000 on the revised proposals. The record also indicates that the proposals of NPRBMC and SBPRDC were initially about \$27,000 lower than SBOEDC and after revision still \$16,000 to \$18,000 lower. We do not believe the closeness in price of the two low offerors is sufficient to support the charge of collusion. With regard to the charge concerning the interchangeability between the directors and board members, the agency advises that it was aware of this interrelationship. However, it is the agency's position that this situation is not unusual for nonprofit organizations doing the kind of work involved here. It is reported that it is necessary for an organization to have a minority and community base to be effective, and that this is accomplished by having prominent community individuals serve on the board of directors of more than one organization. Also, it is reported that as a rule the board members are not compensated and neither participate nor are privy to the negotiations. Finally, it is reported by the agency that there is no evidence of collusion in this case. In these circumstances, we would not be justified in concluding that there was collusion.

The second contention--that a conflict of interest existed with regard to two of the three technical evaluators--is based upon the contention that one evaluator is a personal and political friend of an individual associated with two of the offerors and the latter individual has also been promoting the career of the Regional OMBE Director who hired the other evaluator.

We have examined the evaluation sheets of the three evaluators and find no evidence of any impropriety. As a matter of fact, on the initial evaluation, the protester received its highest score from one of the named evaluators, and the other's scoring of the protester was only 2 points below the third evaluator. On the reevaluation, the protester received higher scores from both evaluators. Further, the scoring of the other offerors' proposals reveal no prejudice in their favor.

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Finally, SBOEDC complains of unfair and prejudicial handling of the offers. With regard to the first allegation, as noted above, SBOEDC and ICBO were initially excluded from the competitive range. However, subsequently both offerors were allowed to submit a revised proposal and SBOEDC was afforded an opportunity to submit a best and final offer.

Concerning the second point in this regard, by message dated December 31, 1975, the contracting officer requested SBOEDC to submit its best and final offer and advised that "Failure to respond by Wednesday, January 7, 1976, 5:00 P.M. Washington, D.C. time, may be considered a desire on your part not to be considered for award of a contract." The time of receipt of SBOEDC's best and final offer as shown by the time/date stamp of the procurement office on the proposal was: 12:44 p.m., January 8, 1976. Accordingly, SBOEDC's best and final offer was properly excluded from consideration because of its receipt after the closing date.

A timely best and final offer was submitted by SBPRDC which did not make any changes or revisions to its proposal previously submitted. NPRBMA did not submit a best and final offer. On January 14, 1976, the contract was awarded to SBPRDC on the basis of the evaluations performed on the proposals previously submitted by the three offerors.

From a review of the record before this Office, we find no merit to any of the protesters' allegations. Accordingly, the protest is denied.

R. F. K. 11-11-76
Deputy Comptroller General
of the United States