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# Decision

**Matter of:** Archimania

**File:** B-414653

**Date:** August 3, 2017

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Richard W. Arnholt, Esq., Sylvia Yi, Esq., and Bryan R. King, Esq., Bass Berry & Sims, PLC, for the protester.

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## DIGEST

1. GAO will not review a protester's challenge to another company's size status, or a decision by the Small Business Administration that a company is, or is not, a small business concern.
  2. Protest that evaluator has a personal conflict of interest which precluded an unbiased evaluation is denied where there is no evidence that evaluator had a financial, personal, or other relationship with the firm selected for negotiations.
  3. Protest that agency engaged in disparate evaluation is denied where record shows that the evaluation was consistent with the solicitation and the information provided in qualification statements.
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## DECISION

Archimania, a small business located in Memphis, Tennessee, protests the selection of Duvall Decker Architect, a small business located in Mound Bayou, Mississippi, for price negotiations in connection with solicitation No. GS-07-P-17-HH-C-0TBD, issued by the General Services Administration (GSA) for architect-engineer (A/E) services for the design of a new courthouse in Greenville, Mississippi. Archimania asserts that Duvall is not a small business, one of the evaluators had a personal conflict of interest, and the agency unreasonably evaluated its proposal.

We deny the protest.

## BACKGROUND

A/E procurements, such as the one at issue here, are conducted pursuant to special procedures established by the Brooks Act, 40 U.S.C. §§ 1101-1104, as implemented in Federal Acquisition Regulation (FAR) subpart 36.6. Under the competitive procedures established by FAR subpart 36.6, the agency publishes a synopsis inviting capable firms to submit a Standard Form (SF) 330, "Architect-Engineer Qualifications" statement. FAR § 36.603(b). The evaluation is then conducted in two stages. During stage 1, an A/E evaluation board reviews the qualifications statements and recommends at least three of the most highly qualified firms to proceed to stage 2. Id. § 36.602-1. During stage 2, the agency interviews the recommended firms which also submit additional information. Id. §§ 36.602-2, 36.602-3. Following the interviews and the evaluation of the additional information, the board prepares a selection report for the source selection authority (SSA) recommending, in order of preference, at least three firms considered to be the most highly qualified to perform the required services. Id. § 36.602-3. The SSA then makes a final selection of the most qualified firms, listing them in order of preference, and negotiations begin with the most preferred firm. FAR §§ 36.602-4, 36.606.

On November 29, 2016, GSA published, on the Federal Business Opportunities website, the current A/E synopsis for the design of a federal courthouse in Greenville, Mississippi. The synopsis, issued as a small business set-aside, invited qualified firms to submit A/E qualifications statements (SF 330), which, for stage 1, would be evaluated against the following selection criteria: (1) past performance on design; (2) philosophy and design intent; (3) lead designer profile; and (4) lead designer portfolio. Agency Report (AR), Tab 1, Synopsis, at 3.

GSA received and evaluated 29 qualifications statements during stage 1, and notified participants that three firms, including Archimania with ZGF Architects, and Eskew+Demez+Ripple (EDR) with Duvall Decker, were selected to participate in stage 2 of the competition. AR, Tab 7, Notice of Short List. The agency evaluated stage 2 submissions and interviews against the following criteria, with their associated weights in parenthesis: (1) team design performance (50%); (2) team organization and management plan (30%); (3) professional qualifications (15%); and, (4) geographic location (5%). Synopsis at 4-5. Each criterion was assigned a raw point score between 1 and 5; the raw score was then multiplied by the assigned percentage to reach a score for the criterion. Supp. AR at 4. After evaluating the stage 2 submissions and interviews, the three firms were rated as follows:

	Team Design Performance	Team Organization and Management Plan	Professional Qualifications	Geographic Location	Total	Rank
<b>Duvall Decker Architect with EDR</b>	230	138	72	21	461	1
<b>Offeror X</b>	200	108	54	21	383	2
<b>Archimania with ZGF</b>	170	90	51	15	326	3

AR, Tab 15, Scoresheet, at 10. After being notified that GSA selected Duvall Decker Architect with EDR for negotiations, Archimania submitted this protest.

## DISCUSSION

Archimania challenges the selection of Duvall Decker for price negotiations on the basis that it is other than small because it is affiliated with EDR, a large business. In addition, Archimania argues that there was a personal conflict of interest with one of the evaluation board members, which created bias in favor of Duvall Decker. Archimania also argues that the agency unequally evaluated Duvall Decker and the protester. Although we do not address every protest allegation raised, we have reviewed each allegation and find that none provide a basis to sustain the protest.

### Small Business Status

Archimania notes that EDR is a large and Duvall Decker a small business. Archimania protests that when GSA notified participants of the three firms selected to proceed to stage 2, it listed EDR with Duvall Decker. However, after the stage 2 evaluations, when the agency notified Archimania of the firm selected for price negotiations, it switched the order of the names, and listed the most qualified firm as Duvall Decker with EDR. Archimania asserts that as this procurement was set aside for small business concerns, the name of Duvall Decker, the small business, should have been listed first in both instances. According to Archimania, the agency switched the order of names so that it could make an award to Duvall Decker. Archimania speculates that the change in the order of names indicates that EDR is an ostensible subcontractor which would disqualify Duvall Decker as a small business for this project.<sup>1</sup>

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<sup>1</sup> An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract, rather than the prime contractor, or a subcontractor upon which the prime contractor is unusually reliant. 13 C.F.R. § 121.103(h)(4). A contractor (continued...)

The agency explains that for stage 1, the solicitation requested the identification of the lead designer. Contracting Officer's Statement (COS) at 6; Solicitation at 3. Duvall Decker listed the name EDR with Duvall Decker on the front page of its submittal and then demonstrated that an individual from each firm would serve as **[DELETED]**. COS at 6. In its letter notifying participants of the three firms selected for stage 2, the agency listed the teams as identified on the coversheets by the firms. Id. The agency explains that for stage 2, the solicitation requested a management plan delineating the team structure and here, Duvall Decker listed the name Duvall Decker with EDR on the front coversheet and further demonstrated that Duvall Decker would be the prime contractor and EDR would serve as a consultant.

Further, the agency explains that Archimania filed a protest with the Small Business Administration, challenging the size status of Duvall Decker and arguing--as the protester does here--that Duvall Decker is affiliated with EDR, a large business, due to the ostensible subcontractor rule and that the change in the order of names on the agency's notices supports its allegations. In its size determination, the SBA specifically reviewed the allegation concerning the ostensible subcontractor rule and determined that Duvall Decker is a small business for this procurement. SBA Size Determination, 3-2017-036, May 17, 2017. The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, the conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21(b)(1) (2017); Mark Dunning Indus., Inc., B-405417.2, Nov. 19, 2013, 2013 CPD ¶ 267 at 5. We therefore will not review a protester's challenge to another company's size status, or a decision by the SBA that a company is, or is not, a small business. Id.

#### Conflict of Interest

One of the five evaluators here was a private sector practitioner and the chief executive officer (CEO) of the American Institute of Architects (AIA). Archimania protests that this evaluator has a relationship with Duvall Decker, which resulted in a personal conflict of interest and a biased selection decision. Specifically, Archimania complains that this evaluator was the keynote speaker at the AIA national conference, during which there was a screening of a marketing video, which was produced to promote a yearly AIA film challenge. The film exclusively features the work of Duvall Decker in its home city in Mississippi. According to Archimania, this evaluator's role as the CEO of AIA and the keynote speaker at the convention, combined with the film which featured the work of Duvall Decker exclusively, demonstrates a conflict of interest on the part of this evaluator.

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and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. Id.

Personal conflicts of interest may arise in the context of individuals who assist the government during procurements. See FAR §§ 3.101-1, 3.1101; Savannah River Alliance, LLC, B-311126 et al., Apr. 25, 2008, 2008 CPD ¶ 88 at 23. A personal conflict of interest results from a “situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract.” FAR § 3.1101. Contracting agencies, as a general matter, are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure impartiality in the evaluation and to preserve the integrity of the procurement process. Phacil Inc., B-406628, July 5, 2012, 2012 CPD ¶ 202 at 5. Where a protester alleges that an individual is biased because of his or her past experiences or relationships, we focus on whether the individual involved exerted improper influence on the procurement on behalf of the awardee, or against the protester. Id.; Advanced Sys. Tech., Inc.; Eng’g and Prof’l Servs., Inc., B-241530, B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153 at 15.

GSA explains that the AIA, a professional organization for architects in the United States, is made up of approximately 90,000 dues paying member architects throughout the country. COS at 8. GSA noted that in his role as CEO of the organization, this evaluator is reasonably familiar with all firms that submitted statements of interest. Id. However, the evaluator has no personal or financial interest in Duvall Decker. Id.; see also AR, Tab 22, Decl. of Evaluator, ¶¶ 1, 2. Further, the evaluator did not participate in the production of the film, or the selection of the subject, and did not know that the film existed until after Duvall Decker was selected as the most highly qualified firm during the current procurement. Id.; AR, Tab 22, Decl. of Evaluator, ¶¶ 3, 4. In addition, he signed a conflict of interest form before participating in the evaluations stating he had no conflicts of interest. AR, Tab 4, Conflict of Interest Form.

Based on these facts we find no support for the protester’s contention that a conflict of interest impaired the evaluator’s ability to evaluate proposals in an unbiased matter.<sup>2</sup> We thus find no basis to sustain the protest here.

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<sup>2</sup> Archimania also protests that the agency improperly discriminated against it because it is not located in Mississippi, while Duvall Decker is located in the state. The agency acknowledges that it improperly downgraded Archimania under the geographic location criterion because it is not located in Mississippi, but asserts that Archimania was not prejudiced by the error. We agree. If Archimania’s geographic location raw score was increased from the 3 out of 5 raw points it was assigned, which resulted in an evaluated score of 15, to the maximum raw score of 5, which would result in an evaluated score of 25, its total score would increase by 10 to 336 points. Since the other two firms had total scores of 383 and 461, Archimania would still be ranked third by a significant margin. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a

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## Unequal Evaluation

Archimania protests that in conducting the evaluation, the agency awarded strengths to Duvall Decker, while ignoring similar strengths in the proposal of Archimania.

Archimania specifically complains that the consensus evaluation praises Duvall Decker and its partner EDR for numerous awards, specifically mentioning EDR's AIA 2014 Architecture Firm Award and a 2015 Committee on the Environment (COTE) award for a highly sustainable facility. In contrast, complains Archimania, the evaluators did not mention that Archimania's partner (ZGF) received a 2015 COTE Top Ten Plus Award, that Archimania has won more AIA awards than any other firm in Tennessee, that it is ranked among the 20 best design architects by Architectural Digest, and that ZGF is currently the top-ranked architectural firm by Architectural Digest.<sup>3</sup>

In reviewing a protest of an agency's selection of a contractor for A/E services, our Office will not substitute its judgment for that of the agency evaluators. OLBN Architectural Serv., B-402444.4, B-402444.5, Oct. 4, 2010, 2011 CPD ¶ 55 at 4. Rather, the evaluation of a firm's qualifications statement is within the discretion of the agency, and our review examines whether the agency's selection was reasonable and in accordance with the published criteria. AMEL Techs., Inc., B-412611, Apr. 1, 2016, 2016 CPD ¶ 103 at 5. A protester's disagreement with the agency's evaluation, without more, does not show that it is unreasonable. Id.

Here, we find no evidence that the agency treated Archimania and Duvall Decker disparately. As the agency explains, both firms were assigned strengths for their identified awards. Archimania's stage 2 proposal was assigned two strengths for its numerous design awards and very good credential for the lead design team, while Duvall Decker received a strength for numerous architectural awards from peers. AR, Tab 16, Final Evaluation, at 7. Archimania was also credited with receiving recognition for being "very good designers," and ZGF for having a national reputation for being a talented and creative firm. Id. at 5. While the agency mentioned EDR's COTE and AIA awards, but not ZGF's, the agency asserts, and Archimania does not dispute, that these

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substantial chance of receiving the award. Geonex Corp., B-274390.2, June 13, 1997, 97-1 CPD ¶ 225 at 4.

<sup>3</sup> Archimania also complains that the evaluators assigned Duvall Decker a strength because its courthouse planning consultant had federal courthouse experience, while assigning Archimania a weakness because its courthouse programmer did not have federal courthouse experience. Given that the solicitation was seeking an A/E firm to design a courthouse, we find that this evaluation was reasonable, and not evidence of unequal treatment.

awards were not listed in Archimania's qualifications or stage 2 submissions. These facts do not demonstrate that the agency treated Archimania and Duvall Decker disparately.

The protest is denied.

Susan A. Poling  
General Counsel