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

FILE: B-186333

DATE: December 21, 1976

## MATTER OF:

Communication Products Company; Swinson and  
Clinton; May, Zuma and Co.; Alder S. Harpart;  
Altenburg and Co.; C. E. Pagan Associates, Inc.

## DIGEST:

1. Protests by offerors alleging deficiencies in the evaluation of proposals upon which awards on initial proposals were based are denied where record indicates that evaluation was conducted in accordance with specific evaluative point system set forth in request for proposals which gave due weight to the technical and price merits of the proposals submitted.
2. Even though incumbent contractor may have enjoyed competitive advantage, where record fails to show that advantage resulted from Government prejudice or unfair action, there is no basis to object.
3. Contention that awards were made to offerors who did not have business office in area for 1 year prior to issuance of solicitation as required by solicitation has no merit in view of evidence upon which agency found that awardees had complied with requirement.

The present decision involves protests by six firms against awards made by the Small Business Administration (SBA) under request for proposals (RFP) SBA-7(1)-MA-76-1.

The RFP requested proposals for providing management and technical assistance in 42 specified geographic areas to eligible individuals or enterprises under sections 7(i) and (j) of the Small Business Act. The procurement was a total small business set-aside.

The RFP provided that "Proposals will be evaluated on a point system pursuant to the following factors. \* \* \*

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Maximum Points

- "1. Quality, experience and capability of staff offeror intends to assign to this project.....40
- "2. Previous experience and effectiveness in performing services, indicated by prior work and demonstrated by ability to deal effectively with individuals and enterprises eligible to be served.....40
- "3. Man-Day Pricing (not to include travel and per diem).....20

100"

Awards were to be made to those responsible offerors whose offers conforming to the RFP would be most advantageous to the Government.

The proposals received were evaluated from technical and price standpoints. Awards were made without negotiations on the basis of initial proposals as provided for in the RFP to those responsible firms submitting the highest evaluated proposals after determination that acceptance of those initial proposals would result in fair and reasonable prices.

Both Communication Products Company (CPC) and Swinson and Clinton (Swinson) protested against the award to Donald Clark Associates (Donald Clark) for area 38. CPC believed that its proposal should have been evaluated higher than the proposal submitted by Donald Clark. Swinson pointed out that its performance as the incumbent contractor had been outstanding and that its price was \$7,766 lower than Clark's price.

The record indicates that Donald Clark, the highest offeror technically, received the highest total evaluated score of 72.5, while CPC received a score of 63.2, which was third highest, and Swinson was fourth highest with a score of 62.5.

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Regarding technical evaluations, it is the position of this Office that procuring agencies are vested with a reasonable range of discretion in evaluating and determining the relative merits of competing proposals and such determinations will not be questioned unless they are clearly arbitrary, unreasonable, or in violation of procurement statutes and regulations. Decision Sciences Corporation, B-183773, September 21, 1976, 76-2 CPD 260, and cases cited therein; Donald N. Humphries & Associates; Master Tax, Inc.; Innocent, Inc., B-183292, November 4, 1975, 75-2 CPD 275, and cases cited therein. Further, it is well established in negotiated procurements that awards are not required to be made solely on the basis of the lowest price. See Donald N. Humphries Associates, supra; Stephen J. Hall & Associates; Thomas E. Anderson, Jr.; Cunningham, Short, Berryman and Associates, Inc., B-180440; B-132740, July 10, 1974, 74-2 CPD 17, and cases cited therein.

Swinson alleges that the inclusion of two employees of the SBA's San Francisco Regional Office on the evaluation committee could result in a conflict of interest. However, the record is void of any evidence that the evaluation was not conducted in accordance with the evaluation scheme set forth in the RFP upon which the award was made, or was based on anything other than the reasoned judgment of the evaluators. As for Donald Clark's proposal being \$7,766 higher than Swinson's proposal, the evaluation point scores on price showed that Donald Clark's higher price received a lower score on that basis than the proposal of Swinson.

Swinson also alleged that at the time of award Donald Clark did not have a permanent staff to perform at least 50 percent of the work under the contract as required by the RFP. The RFP does authorize the contractor to subcontract up to 50 percent of the total man-days for skills and expertise not available in the permanent staff of the firm. We were advised by the SBA that prior to award it was determined that Donald Clark did have adequate staff personnel qualified and capable of doing 50 percent of the work in-house and that Donald Clark was also performing other contracts with SBA for similar services.

Also, Swinson alleged the following:

- "C. There have been and are conditions within the District and Regional offices here which may

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have caused adverse or negative information to have been used to our detriment.

"D. There have been serious acts of impropriety perpetrated by certain employees of the U.S. Small Business Administration against us who favor the winning contractor."

These allegations or accusations are uncorroborated and appear to be no more than speculation or conjecture. Therefore, we do not believe a discussion of their merits is warranted.

For the above reasons, the protests of CPC and Swinson are denied.

May, Zima and Company (MZC) protested the award of a contract for area 13 to Rickman, Libby, Thomas and Braxton (Bickman) because that firm, by virtue of being the incumbent contractor, had an automatic advantage in the evaluation of proposals. MZC alleged that, not only was its proposal price lower than Bickman's price, it was at least as well qualified as Bickman to perform the contract.

The record indicates that Bickman received a total evaluated point score of 79.5, which was fourth highest, while MZC's proposal was fifth highest with a total evaluated point score of 77.9. The three offerors whose proposals received the three highest evaluations were determined not to be in compliance with other mandatory requirements of the RFP. Our discussion above on the conduct of agency evaluation upon which awards in negotiated procurements are based is applicable here. Moreover, we have long recognized that firms may enjoy a competitive advantage by virtue of contract incumbency. Where, as here, the record fails to show that the competitive advantage enjoyed by Bickman was the result of Government preference or unfair action, there is no basis for us to object. See Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. As the above denial of the Swinson protest shows, incumbents like any other firms must still justify the highest total ranking for award under the ground rules of the procurement.

Accordingly, the protest by MZC is denied.

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Alden S. Halpert (Halpert) protested the award of a contract for area 19 to Fifth Ann Arbor Corporation on the basis that Halpert submitted the lowest-priced, highest-ranked technical proposal, which has been confirmed by SBA. However, we were further advised that Halpert had performed a prior contract for the same services in an unsatisfactory manner and was, therefore, determined to be nonresponsible for award of the contract. Subsequent to the receipt by our Office of SBA's report responding to the above-mentioned protests, we were advised that a copy of the report had been furnished to Halpert. We sent a letter to Halpert requesting either comments on the report or a written statement requesting us to consider the protest on the basis of the existing record. Since we received no response from Halpert, we assumed that Halpert was no longer interested in having our Office consider the protest. Therefore, we did not attempt to obtain additional information concerning SBA's non-responsibility determination, and we will not rule on Halpert's protest.

The protesters Altenburg and C. E. Pagan contend that the successful offerors in their respective areas did not maintain an office within the geographical areas for at least 1 year prior to the date of issuance of the proposal as required by the following provision from page 6 of the RFP:

"The geographic areas in which services are required are set forth explicitly in this offering on pages 24-84. Offerors who wish to submit a proposal for a particular area must have an office which is physically located within the geographical boundary described for that area. Proposals will not be accepted from offerors unless the office within the geographic boundary described has been a Business of Record under the same ownership and management for at least one calendar year prior to the date of issuance of this proposal. The Office must have been actively engaged in the provision of services similar to those required by this solicitation. Full-time staff personnel must have been based in or have operated from this office during the required time period. Offerors who meet the geographic requirements as specified above and wish to bid on more than one area must respond to each by a separate proposal."

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In the case of Altenburg's protest, the successful offeror for area 1, Tramco, Inc., was the incumbent contractor for the prior geographical area, which included all six New England States. However, the geographical area for the present procurement was split into two areas, area 1 consisting of Maine, New Hampshire and Vermont and area 2 consisting of Massachusetts, Rhode Island, and Connecticut. Tramco has a permanent office in Cambridge, Massachusetts, and claims to have established an office in New Hampshire to service area 1. The evidence of record indicates that in the fall of 1973 an individual entered into an agreement to work for Tramco on a part-time basis out of an office in his new home in Laconia, New Hampshire. In October 1974, the individual rented a post office box at the Lakesport Substation of the Laconia Post Office for the benefit of Tramco. Also, in October 1974, Tramco entered into a sublease agreement with a certified public accountant for the use of space in his office located in Laconia. The individual claims to have worked for Tramco an average of 40 hours per week for at least the year preceding June 1976. (The RFP was issued on January 9, 1976.) SBA concluded that Tramco was in compliance with the above-quoted provision of the RFP, a conclusion with which we cannot disagree.

Regarding C. E. Pagan's protest, the record indicates that the successful offeror, Decision Sciences Corporation (DSC), was the incumbent contractor for similar services to be performed in SBA region III (comprising the States of Virginia, West Virginia, Maryland, Delaware, and Pennsylvania and the city of Washington) and has two offices in the Baltimore area. One of these offices is a private residence while the other office is part of the space occupied by a law firm in a commercial building. It appears that DSC occupied both of these offices for at least 1 year prior to issuance of the solicitation. SBA concluded that DSC was in compliance with the above-quoted provision of the RFP. We are unable to disagree with this conclusion.

For the above reasons, the protests by Altenburg and C. E. Pagan are denied.

  
Deputy Comptroller General  
of the United States