

Proc. II

DECISION



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

9425

FILE: B-192504

DATE: March 14, 1979

MATTER OF: Golden State Business League, Inc.

DL6-01176

[Protest Alleging Evaluation Criteria Not Fairly and Impartially Applied to Proposal]
DIGEST:

Objections concerning fairness and impartiality of agency's evaluation of technical proposal are denied where record shows that proposal evaluation was reasonable and consistent with evaluation criteria and that erroneous information in winning proposal was not relied upon by agency.

ABC 00074

Golden State Business League, Inc. protests that the Department of Commerce has not fairly and impartially applied the evaluation criteria to its proposal to provide business management and technical assistance to disadvantaged persons in specified California counties. However, we find the rejection of Golden State's proposal in favor of the one submitted by Western Economic Development Corporation (WEDCO) was consistent with the evaluation factors in the solicitation, No. RO-A01-78-5353 and was not unreasonable.

DL601177

Proposals were evaluated and numerically scored by Commerce's Office of Minority Business Enterprise (OMBE) both initially and after receipt of revised offers following negotiations during which deficiencies in proposals were pointed out. WEDCO's proposal was scored 70.8 initially and 69.25 after receipt of best and final offers. Golden State received an initial score of 48 but a significantly improved final score of 60.25. Award was made to WEDCO because its proposal was considered superior. (Its estimated cost was \$467,450 as compared with Golden State's estimated cost of \$492,048.)

Golden State takes exception to virtually every aspect of the technical evaluation. It argues that its proposal was better than the evaluators gave it credit for and that it was entitled to a higher score in each evaluation category. The firm also believes that WEDCO's proposal contained obsolete data and false information for which it was not downgraded in the evaluation.

0-04076

Under the first evaluation factor, the agency considered whether the proposal demonstrated an understanding of the "needs and complexities" for developing a minority business enterprise in the geographic area specified and an awareness of the area's socio-economic conditions which would affect the success of minority business to be assisted. Golden State provided demographic information with detailed industry trends and presented statistical data more current than the 1970 census data used in the winning proposal. However, the agency was less concerned with the data produced than with the discussion of the conditions' effects upon the success of minority businesses to be assisted. Golden State's initial proposal restricted this discussion primarily to the City of Oakland rather than to the entire area covered. This deficiency was discussed during negotiations, but the firm's final offer was viewed as addressing the problem superficially because it did not describe how the socio-economic conditions cited would affect minority development. Golden State takes exception to that conclusion, claiming that it provided "greater in-depth discussion" than did WEDCO, and challenging the basis for WEDCO's higher score in light of that offeror's use of the less current 1970 census data.

Even though the winning proposal furnished 8 year-old data from the last official census, the record supports OMBE's conclusion that the proposal demonstrated "a good understanding of the dynamics involved in conceptualizing, designing and implementing a minority business program." It is true that Golden State's best and final offer contained extensive socio-economic and demographic data which may have been more detailed than that contained in the winning proposal. However, WEDCO's explanation of the effect on minority development of socio-economic conditions was viewed more favorably than the protester's discussion. From our review of the record, including the proposals submitted by WEDCO and the protester, we are satisfied that OMBE reasonably could have concluded that WEDCO was more aware and had a better understanding of the relationship of social and political forces and other conditions to minority business development for the area. We do not think that conclusion was foreclosed merely because WEDCO used older data than what was used by the protester.

Golden State also argues that the agency failed to give sufficient credit to its past performance and particularly to its experience as a Construction Contractors' Assistance Center. The protester believes that its experience is superior to that of the selected firm because it has provided a greater volume of assistance and because it believes the winner had no experience in assisting minority construction contractors.

In this connection WEDCO listed in its proposal its principal clients and the assistance received, among which were clients in the construction industry. The protester on the other hand did not identify its principal clients as required by the solicitation and therefore was given a lower score than WEDCO under this evaluation criterion. We think the agency acted reasonably on the basis of the information contained in the proposals.

Golden State believes its proposed staff has more advanced degrees and professional experience than WEDCO notwithstanding the protester's lower evaluation score under this criterion. The agency has compared the staffs proposed by Golden State and WEDCO for each position. It appears that advanced degrees held by Golden State's staff were not always sufficiently relevant to count toward the minimum qualifications of the solicitation. For example, Golden State's candidate for executive director did not have the required bachelor's degree in business administration with an emphasis in finance, marketing or procurement. Rather, this individual had a bachelor's degree in political science and an advanced degree in public health administration. Both offerors were considered equal in terms of relevant advanced degrees. However, the experience of WEDCO's staff was considered superior to Golden State's in the areas of construction services, marketing and financial services. We find no basis to disagree with this analysis.

The protester argues that it was downgraded because it relied on recommendations received during negotiations which induced it to revise the time allocated in its initial proposal for procurement activity. It appears, however, that through negotiations the Government requested a clarification of the realism and

adequacy of the loan packaging time and the procurement marketing time because Golden State did not present attainable goals. The information obtained revealed that the time available for proposed procurement assistance was inadequate to achieve the goals and that the number of loan packages was disproportionate to the available staff time. In our opinion the negotiations attempted to correct a deficiency inherent in the proposal and should not have caused Golden State to submit a defective proposal. Golden State's revisions were insufficient to correct the problem discussed during negotiation and we find no evidence that it was instructed to submit staffing patterns, time allocations and level of staff effort which in the final analysis would be judged less than satisfactory.

In evaluating proposed staffing the Government also considered WEDCO's offer of a full time executive director as preferable to the protester's offer of an executive director who would devote 90 percent of his time to the contract. Even though "part-time" directors are employed and adequately perform under similar existing contracts, as alleged by the protester, the Government's preference for a full time director in this case was reasonable and was not inconsistent with the solicitation.

Golden State believes that its proposed methodology for providing assistance in finance and procurement and for management services and technical assistance should have been given a higher rating because of its successful past performance. However, the agency did not consider past performance to be relevant to the methodology proposed under this contract. We agree that a firm's past performance is not necessarily related to the sufficiency of the methodology proposed for a new and somewhat different procurement.

Golden State questions whether the winning offeror in fact had access to minority and majority business community resources and had the ability to mobilize these resources to support performance goals. The protester claims that three community resource groups listed in the winning proposal do not exist and therefore the evaluation score given to that proposal was unjustified.

The winning proposal, as initially submitted, was viewed as deficient because it did not reflect access to other than Spanish speaking groups. This deficiency was discussed during negotiations and the firm listed additional community groups in its final offer. However, the agency was not impressed with this revision and it did not increase the firm's evaluation score because the mere listing of Black and Asian groups did not adequately demonstrate access to these groups. Thus, the evaluation score given the winning proposal under this evaluation criterion was based on WEDCO's initial proposal, which the protester does not question. The agency subsequently discussed this matter with the contractor and it appears that some of the groups listed in the final offer have become inactive and the contractor, in fact, did not have a current working relationship with these groups. WEDCO has explained that the groups listed in its final offer were taken from an outdated list of organizations which it had worked with in the past. Apparently, the firm did not bother to update the list so that its revised proposal would reflect accurate information. Because the Government's evaluation under this criterion was not affected by the erroneous information, we think the protester was not prejudiced.

Several other general arguments are raised by the protester, the most serious being the bias of the regional OMBE office in "deliberately going out of its way to discredit" Golden State and to damage its reputation within the minority business community. Specifically, the protester refers to a letter it received from the OMBE regional director which contains an evaluation of its performance on another contract. Although the protester questions the validity of certain facts stated regarding its prior performance, this contract-monitoring effort does not establish bias or an improper attempt to discredit the firm within the minority business community. There is no evidence that the inquiries made of Golden State's clients were for other than fact finding purposes.

We therefore must conclude that the evaluation of Golden State's proposal was consistent with the

evaluation factors in the solicitation and that the selection of WEDCO was not unreasonable. Cf. Group Operations, Incorporated, 55 Comp. Gen. 1315 (1976), 76-2 CPD 79.

R. F. Katten

Deputy Comptroller General
of the United States