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**DECISION**

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

*J. Broome  
Proctor*

**FILE: B-187830**

**DATE: March 10, 1977**

**MATTER OF: Free State Contractors Association, Inc.**

**DIGEST:**

1. Allegation that evaluation factors do not properly reflect purpose of procurement, filed after closing date for receipt of final proposals, is untimely.
2. Downgrading of proposal under 10 evaluation factors was reasonable in all instances except one, where factor gauged minority representation on board of directors and protester's proposal evidenced minority representation which seems to fulfill criterion.
3. Although decision to include only one proposer within competitive range is subject to close scrutiny, agency determination is upheld where despite questionable evaluation under one factor, question of overall acceptability was not close, deficiencies were not easily correctable and great disparity existed between successful proposal and protester's proposal.
4. Determination of whether proposal is acceptable is matter of administrative judgment reserved to procuring activity which will not be disturbed absent showing that activity acted arbitrarily or unreasonably.

Free State Contractors Association, Inc. (Free State) protests the determination by the Department of Commerce (Commerce) that its proposal submitted in response to request for proposals (RFP) 7-36404 was technically unacceptable.

The RFP, issued on July 29, 1976, called for the award of a cost-plus-fixed-fee-type contract to provide management and technical assistance through a Local Business Development Organization (LBDO) and Construction Contractors Assistance Center (CCAC) to socially and economically disadvantaged persons interested in becoming owners of business and to minority businessmen within Southern Maryland and Maryland's Eastern Shore Area. The LBDO portion of the scope of work under the RFP concerns assistance to local nonconstruction minority business while that portion under the CCAC program pertains to assistance for minority construction

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enterprises. On the August 30, 1976 closing date proposals were received from Free State and Community Enterprise Development Association, Inc. (Community).

The technical evaluation of the two proposals resulted in Community receiving a score of 82.6 while Free State scored 43. Based on this evaluation Free State's proposal was determined to be technically unacceptable and outside the competitive range. At the request of Free State a debriefing was held on October 18; as a result of that debriefing, Free State filed its protest with this Office. Notwithstanding the pending protest, Commerce determined that the assistance to be provided under this program was urgently needed and the contract was awarded to Community at an estimated cost of \$251,965.

Free State believes that it submitted a technically acceptable proposal and that the findings of Commerce's evaluation panel are incorrect. Free State insists that if Commerce had any doubts concerning the meaning of its proposal it should have conducted further negotiations. The protester also argues that the evaluation criteria are inconsistent with the goals of the project. Finally, the protester asserts that Community has, in the past, exhibited a lack of understanding of and sensitivity to the needs of minority contractors and therefore it is not qualified to receive the award.

Free State's contention that the evaluation scheme set forth in the RFP is defective in that it is "inconsistent with the goals" of the project will not be considered because this complaint was raised after the submission of initial proposals and our Bid Protest Procedures (4 CFR, Part 20 (1976)) provide at section 20.2(b)(1) that protests based upon alleged improprieties in any type of solicitation shall be filed prior to the closing date for receipt of initial proposals.

Regarding the rejection of Free State's proposal, we have held that the determination of whether a proposal is within the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion. This determination will not be disturbed by our Office absent a clear showing that the determination lacked a reasonable basis. Donald N. Humphries & Associates et al., 55 Comp. Gen. 432 (1975), 75-2 CPD 275. However, the decision by Commerce to include only Community in the competitive range must be closely scrutinized by our Office. As we stated in Comten-Comress, E-183379, June 30, 1975, 75-1 CPD 400:

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**"Determinations by contracting agencies that leave only one proposal within the competitive range are closely scrutinized by our Office. If there is a close question of acceptability; if there is an opportunity for significant cost savings; if the inadequacies of the solicitation contributed to the technical deficiency of the proposal; if the informational deficiency could be reasonably corrected by relatively limited discussions, then inclusion of the proposal in the competitive range and discussions are in order \* \* \*."**

The record indicates that the evaluation panel found that Free State's proposal evidenced deficiencies under each of the 10 evaluation factors listed in the RFP.

In connection with the first evaluation factor, "Qualifications of proposed personnel in minority business development as demonstrated by experience in successfully furnishing business assistance to minority businesses in the specified geographical area (including resumes)" the panel found that Free State submitted only four resumes for the 10 professional staff positions at the firm proposed. Accordingly, Free State received an average score of 7.7 of a possible 20. The protester argues that it should not have been downgraded as its proposal clearly shows that it plans to hire qualified persons to work on all portions of the project. In this regard Free State notes that its proposal contains detailed descriptions of professional positions and personnel assignments which cover all the tasks called for in the RFP and further the protester notes that its proposal indicates that it has available to it four additional qualified personnel whose resumes could not be submitted because they are presently employed elsewhere.

Commerce indicates that the fact that only four resumes were submitted did not alone result in Free State's low rating. The agency indicates that Free State failed to include any specific information on the four professionals it intended to hire other than the opinion that they will be "qualified." In addition the agency notes that no performance standards were included in Free State's position descriptions.

In view of the RFP requirement that proposals "include all information essential for judging the quality and competence of the contractor's staff \* \* \*" we do not believe the agency acted unreasonably in downgrading Free State for failing to submit specific information on more than 4 of 10 professional staff positions. Further, we do not regard as unreasonable the agency's view that although position

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descriptions may be helpful in the evaluation of a contractor's staff they do not constitute an adequate substitute for a description of the actual qualification of specific staff members as required by the RFP.

Free State received an average score of 4.6 out of a possible 15 under the second criterion:

"Awareness and understanding of current unique problems facing the minority business community and the socio-economic and civic (not political) activities of the target area and communities as they may affect the success of individual ventures of minority enterprise in general."

The record indicates that the evaluation panel considered Free State's treatment of this subject as not addressing a sufficient number of problems and not comprehensive. In this connection the agency notes that Free State devoted only one half page to this subject which encompasses 15 percent of the total evaluation scheme. Free State argues that the evaluation does not show that its proposal evidenced a lack of understanding of the problems affecting minority business nor does the agency point to specific problems or areas not covered.

We have reviewed Free State's narrative which consists of three short paragraphs which essentially state that minority businesses must be run on the same basis as all other businesses. Accordingly, we do not believe that the agency acted unreasonably in concluding that Free State had not shown a sufficient awareness and understanding of the problems facing minority businesses.

In connection with the next factor, "Understanding of the work to be done as reflected through projection of realistic goals and schedules on the Time-Phased Plan and Staff Time Allocation for execution of the Scope of Work and addendum [including] narratives for justification of the Scope of Work, Time-Phased Plan and Staff Time Allocation", the evaluation panel awarded Free State an average score of 5.7 out of a possible 15. The panel found Free State's proposal deficient in that its Time-Phased Plan (TPP) merely repeats the level of effort set forth in the RFP and contains no narrative justification of the goals proposed.

Free State argues that since that portion of the RFP which described the submission of the TPP did not specifically require a narrative explanation of the goals, the absence of such a narrative should not have caused its proposal to be downgraded. In this connection, Free State argues that the portion of the RFP containing the

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evaluation factors is for information only and does not constitute a requirement for the submission of specific materials.

We believe that the agency acted reasonably in determining that the lack of a narrative explanation along with Free State's TPP constituted a deficiency. Free State's position that it could ignore clear requirements contained in the evaluation criteria is unreasonable. There is no question but that the RFP must be considered as an entity and logic dictates that if an evaluation factor indicates that narratives in justification of proposed goals will be evaluated then the failure to submit such narratives will result in the downgrading of that proposal.

Free State received an average score of 6.6 out of a possible 12 under the fourth evaluation factor which provides: "Representation of minority business community by Board of Directors." The evaluation panel justified its scoring of Free State under this factor by stating that Free State failed to specifically identify its minority board members. Free State counters that the RFP contains no requirement for the identification of board members' race and insists that its proposal listed the board members and indicated that it was composed of "minority client-type managers."

Although it is true that Free State's proposal does not contain a list identifying the racial composition of its board it is also true that the RFP did not specifically require such a list. It appears that the minority status of Free State's board is reasonably established by the narrative on page 25 of its proposal which describes the board members as "minority client-type managers" and "\* \* \* the Board of Managers must be so structured that the controlling votes should be vested in the minority business community \* \* \*." Thus, we conclude that the agency's classification of Free State's proposal as deficient in this category is questionable.

Under the next factor, "Prior experience in minority business development and in successfully furnishing business assistance to minority business in the Southern Maryland's Eastern Shore area", Free State received an average score of 5 of a possible 10. In this connection the evaluation panel indicates that Free State failed to explain how it was going to overcome its lack of experience in LBDO operations. Further, it was noted that even though experienced in the construction industry Free State was behind during the first six months of its present CCAC contract.

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Free State argues that although it does not possess experience in LBDO work all that the RFP requires is experience in "similar or related work" and that its experience in the construction industry under its previous CACC contracts qualifies it to perform both the CACC and the LBDO portions of the requirement. In this connection Free State sets forth alleged similarities between the skills needed for CACC and LBDO work. Finally Free State contends that any delays under its previous CACC contract were the fault of the agency.

Despite Free State's claims it is clear that the agency in exercising its judgment in this area simply determined that Free State's experience, limited as it is only to construction, did not justify a high rating under this factor. In view of the fact that two types of work must be performed under a contract awarded pursuant to the subject RFP we do not believe that the agency acted arbitrarily in failing to assign the highest possible score to Free State, which possesses experience in only one of the two areas covered by the RFP.

Free State received an average score of 4 out of a possible 10 under the factor which measures the "relation between the quality and level of proposed effort and realistic accomplishments." The evaluation panel found that since Free State's proposal failed to include a narrative explanation with its TPP the proposal contained no showing that the level of effort proposed was realistic in relation to the proposed accomplishments. Free State insists as it did in connection with the prior factor involving its TPP that no narrative was required. As stated before concerning the TPP requirements, the RFP indicates that narratives would be evaluated in connection with the TPP. Accordingly, we do not believe the agency acted arbitrarily in downgrading Free State's proposal because narrative explanations of its TPP were not submitted.

Free State does not dispute its rating under the next factor which gauges "knowledge of; accessibility to; working relationship with; and support from the Southern Maryland and Maryland's Eastern Shore minority and majority business communities."

The protester does dispute its average rating of 2.3 out of a possible 5 under each of the final two factors which measure offerors' systems for client management and project management. In this regard the evaluation panel indicates that neither system was adequately developed in the proposal. Free State insists that its client service system and project management system are developed in great detail in its position descriptions included in its proposal.

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We are unable to conclude that the agency's determination that position descriptions in Free State's proposal do not adequately describe the "comprehensive, practical systems" for client service and project management is not supported by the record.

Under each of the factors discussed above except for the factor dealing with Free State's prior experience it appears that the deficiencies in the proposal were not technical in nature, but rather were informational in character. Further, it appears that of the 9 factors which contain informational deficiencies only the one dealing with the minority status of the board of directors appears to be related to an inadequacy in the RFP or in the evaluation. Although the majority of the deficiencies were informational it is clear in view of the extreme disparity between Free State's score of 43 and Community's score of 82.6 (the disparity remains significant even if we assume that Free State should have received 6 additional points for a maximum score under the factor measuring the minority composition of its board of directors) that Free State would have had to submit extensive revisions under 8 of 10 evaluation factors to make its proposal acceptable. Further, it is unlikely that any additional information would alter the agency's view of Free State's experience. Accordingly, since there is a considerable disparity between the Free State's proposal and the second ranked proposal of Community, and since it is highly unlikely that Free State's proposal could be made acceptable except through extensive discussions and revisions, we do not believe the agency acted improperly in excluding Free State's proposal from the competitive range. Dynalectron Corporation, B-185027, September 22, 1976, 76-2 CPD 267.

Free State further argues that Community is not qualified to receive the award because of its insensitivity, lack of understanding, and hostility towards the minority business community. In support of this position Free State cites several instances which are intended to illustrate that Community lacks the qualities needed to perform this contract.

The record indicates that the agency evaluated Community's proposal in accordance with the evaluation factors contained in the RFP and found that Community "shows perception and sensitivity to, and awareness and understanding of, the current unique socio-economic problems facing the minority business community." Further, it was determined that Community "has excellent prior experience in minority business development and has successfully rendered business assistance in the area to be served." The agency has determined

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that Community's proposal demonstrates that it possesses the qualities needed to perform the services required by the RFP. Since the determination of whether a proposal is acceptable is a matter of administrative judgment reserved to the procuring activity we will not disturb a finding of acceptability absent a clear showing that the agency acted arbitrarily or unreasonably. 52 Comp. Gen. 382 (1972). The record does not show that the above-cited determination regarding acceptability was without a reasonable basis.

The protest is denied.

*R. F. Kutt*  
Acting Comptroller General  
of the United States