

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of: )  
ARDINGER CONSULTANTS )  
& ASSOCIATES )  
) Docket No. MSBCA 1890  
Under UMCP Bid No. )  
77598-F ADA )

July 21, 1995

Evaluation of Proposal in multi-step competitive bid.

Determination of non-qualification at first step of multi-step competitive bid process was within procurement officer's discretion. The evaluators' analysis of the quality of service offered by the bidder through review of that bidder's proposal must necessarily involve subjective impression as well as comparison of the proposal with that of the other offerors.

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Dana A. Reed  
Assistant Attorney General  
Baltimore, MD

OPINION BY BOARD MEMBER STEEL

Appellant protests the decision of the University of Maryland not to qualify its Joint Venture's Bid for consideration following the first step evaluation in the above-captioned two-step invitation for bids.

Findings of Fact

1. The contract in question is to perform an Americans with Disabilities Act Accessibility Survey at the University of Maryland College Park campus. Bidders were invited to design and perform a survey of the entire campus to determine the extent that the University is "barrier-free" as required by the Act, to recommend modifications to bring the University into full compliance with the Act, and to coordinate with the University in preparing a prioritized plan for completing the recommended modifications.

2. The Appellant in the instant appeal is denominated Ardinger Consultants and Associates ("ACA"), but the bidder was in fact a joint venture consisting of ACA, Design Construction Management Team, Inc. ("DCMT") and Accessible Design Associates ("Joint Venturer ADA").
3. Per the Invitation for Bids ("IFB"), the survey is intended to encompass 8.2 million square feet of space in approximately 240 campus buildings including residential, dining, administrative, academic, laboratory, and recreational facilities, as well as walkways, parking lots and athletic fields.
4. The Contractor will be required to present a written report of its findings, develop a computerized data base for tracking the necessary modifications within an ongoing renovation program, and to track modifications as they are completed.
5. On November 15, 1994 the IFB was advertised and a pre-bid conference was held on November 24, 1994, with answers to questions provided to prospective bidders in writing. Bids were to be submitted by December 21, 1994.
6. The bidding process used by the University was the multi-step competitive bid Process set forth at COMAR 21.05.02.17, and the IFB required bidders to submit an unpriced technical proposal accompanied by a bid price contained in a separate sealed envelope to be opened only if the Bidder's technical proposal was deemed acceptable after evaluation. Five proposals were received.
7. A five-member committee of University Employees was charged with evaluating the technical proposals submitted, including the project manager for the project, the University's ADA coordinator, a facilities, planner, and a representative of the procurement officer.
8. Criteria for evaluation at Section 00300(f) of the IFB (listed in descending order of importance) included qualifications of key personnel, experience, approach, management plan and location. Part V of the IFB included forms required to be filled out for the presentation of qualifications of key personnel and experience of their organizations. Section 00300(g) set the "passing score" as 85 out of 100 points. Bidders were also requested to submit copies of reports of prior ADA accessibility surveys and transition plans as a reflection of their (and/or their organization's) experience.
9. The evaluators first met to discuss the evaluation criteria, and then each member reviewed each of the five proposals submitted to the University. As a group, the evaluators determined that points would be allocated as follows: a

maximum of 35 points for Key Personnel Qualifications, 30 points for Experience, 20 points for Approach, 10 points for Management, and 5 points for Location. At this initial meeting the evaluators read and discussed each proposal.

10. Next, an interview was scheduled with each bidder to confirm information contained in the proposals. No new information was permitted to be submitted at the interview, and no points were allotted for the interview portion of the evaluation.
11. Following the interviews, the committee met again to score the proposals, and together assigned final scores by consensus to each proposal after full discussion.
12. Two of the five proposals received passing scores, and three did not, including that of Appellant Joint Venture. Appellant received a total of 72 as follows: 29 of 35 for Qualification of Key Personnel, 17 of 30 for Experience, 14 of 20 for Approach, 7 of 10 for Management, and 5 of 5 for Location.
13. The unsuccessful bidders were notified that the University proposed to award to Building Analytics, whose bid price was the lowest of the two successful bidders. Appellant requested and was granted a debriefing, filing a timely protest thereafter. This timely appeal followed receipt of the procurement officer's final decision.

#### Decision

Appellant in its protest and in its appeal to this Board made the following arguments. First, Appellant argues that the primary Veterans Administration experience of Thomas Deniston, a principal in Joint Venturer ADA, was discounted. Secondly, Appellant

that it had performed projects of similar size and complexity such as its ADA review of Baltimore City's housing program and its needs assessment for the Louisiana Office of Community development.

According to the scores and the Agency Report, the evaluators apparently were uncertain that the Appellant's Joint Venture had the experience to handle a project of this size and complexity. The proposal was difficult to follow, with information regarding persons who had no identified role in the project, did not include a "Form B" for all of the Joint Venture firms, and did not submit a "Form C" for required individuals. The Sections entitled "Approach" and "Management Plan" were sketchy and failed to fully address the nine criteria sought by the proposal, such as Criteria 3c, 3d, 4a, and 4c. Although the areas of database and software development was critical to the evaluation committee, because an essential element of the contract was the development of a system of tracking ADA corrective work, the proposal did not contain all the required forms for the person identified as responsible for this portion of the project, and his resume reflected that he had no experience in developing databases for ADA accessibility projects. Further, the proposal suggested that the software to be used for this purpose had not yet been developed.<sup>1</sup> By contrast, the evaluators found that the proposal submitted by the lowest responsible bidder, Building Analytics, was clear, thorough, and well organized. Appellant argues that language used by Mr. Bills at the debriefing suggesting that the evaluation committee determined that it felt "comfortable" with some bidders and not others is indicative of an impermissible bias against Appellant.

Thus, with regard to the first issue, the weight given to the experience of Mr. Deniston, the Procurement Officer states:

. . . The committee did consider Mr. Deniston's

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<sup>1</sup>In its brief before the Board, the Joint Venture argues that it should have received at least an 82 rating. It is noted that while Appellant apparently believes that cutoff rating was 80, it in fact was 85 according to Section 00300, III (G), and with an 82, the Appellant still would not have qualified.

experience with the Veterans Administration with respect to his qualification as one of the key personnel for A-D-A. (Broad Criteria Area #1). In fact, Mr. Deniston was given the maximum number of points as a Barrier Analyst for A-D-A. However, and perhaps this distinction was lost at the debriefing, when evaluating the experience of Accessible Design Associates ("ADA"), the entity with which Mr. Deniston is currently associated and one of the three partners to this joint venture, the committee did not "count" Mr. Deniston's experience as an employee with the Veterans Administration as part of Accessible Design Associates' experience as a consulting entity (Broad Criteria Area #2). The solicitation made clear that the University was looking for a survey team comprised of individuals with relevant experience and an organization which had experience doing projects comparable in type and scope. For this reason, Exhibits B, C and D to the solicitation were provided for bidders to complete in order to show the relevant experience of the consulting entities and any of their subs. Thus, it was entirely appropriate and consistent with the requirements of the solicitation that the committee not consider Mr. Deniston's job experience in its evaluation of Accessible Design Associates' experiences doing surveys of the type and scope required here.

(emphasis in the original).

Respondent further argued in the Agency Report that Mr. Deniston's experience, no matter how substantive, did not demonstrate the ability of the Joint Venture to carry out the project, particularly since other members of Appellant's Joint Venture were listed as project manager and survey team leader.

As to the Appellant's argument that the evaluators did not fairly evaluate Joint Venturer ADA's experience in this type of project, citing the Baltimore City Housing project and the Louisiana barrier survey, among others, the Procurement Officer stated:

The committee gave A-D-A less than a perfect score for its experience after taking the relevant experience of each of the joint venture partners into account and valuing this experience according to comparability to the College Park project in

terms of type, size and/or complexity. In general, the evaluation committee was not satisfied with the level of detail provided in A-D-A's technical offer and the fact that the relevant experience of the venture partners, where provided at all, was scattered throughout the technical offer. Moreover, none of the projects described in A-D-A's technical offer, including the ones specifically referenced in your protest, was judged by the valuation committee to be fully comparable to this project in terms of size and/or complexity. Most of these were also not comparable types of project because they didn't involve assessing existing facilities for barrier remediation.

The Agency Report expanded on this finding by addressing the specific reports submitted by the Joint Venture in support of its bid. It noted that the Baltimore City Housing project, with a dollar value of \$257,000, was predominantly a mail and telephone survey, and did not require development of a comprehensive, software-supported, prioritized remediation plan. No report from the Louisiana project was submitted with the proposal, and nothing in the proposal indicated that the Louisiana project was in any way comparable to the College Park project.

Finally, the Appellant argues that language used by Mr. Bills in the debriefing (describing the evaluation committee as feeling "comfortable" with the potential awardee's proposal) as indicating bias or prejudice against the Appellant minority Joint Venture.

The Agency Report argues that the language used was intended by Mr. Bills to communicate in a neutral, non-threatening manner that Appellant's proposal was not effective in convincing the evaluators that the Joint Venture could adequately perform the contract. After reviewing the proposal, and the proposal of Building Analytics, this Board finds that this argument is consistent with the evidence presented with the Agency Report, and that no evidence to the contrary exists to persuade the Board that Appellant's proposal was found to be unqualified for any reason other than a review of the bidding documents submitted. Bias will not be attributed to procurement officials based solely on inference or supposition. Transit Casualty Company, MSBCA 1260, 2

MSBCA ¶119 at p. 43 (1985). The record herein fails to support Appellant's allegation that the failure to "pass" Appellant's bid to the second stage was a result of bias or prejudice on the part of the procurement officials.

The procurement officer's decision as to the acceptability of a technical proposal in a multi-step procurement as well as the determination of responsibility of an offeror are matters left to the discretion of the procurement officer. We may only overturn the procurement officer's decision if the Appellant bears its burden of proof that the decision was unreasonable, arbitrary, an abuse of discretion, or contrary to law. See, e.g., Neoplan USA Corp., MSBCA 1186, 1 MSBCA ¶76 (1984); United Communities Against Poverty, Inc., MSBCA 1312, 2 MSBCA ¶144 (1987); AGS Genasys Corporation, MSBCA 1326, 2 MSBCA ¶158 (1987); Environmental Controls, Inc., MSBCA 1356, 2 MSBCA ¶168 (1987); R&E Consolidation Services, Inc., MSBCA 1375, 2 MSBCA ¶187 (1988); Four Seasons and Seven Winds Travel, Inc. MSBCA 1372, 2 MSBCA ¶186 (1988); N.B.R., Incorporated, MSBCA 1830, 4 MSBCA ¶\_\_\_ (1994). As stated in Baltimore Industrial Medical Center, Inc., MSBCA 1815, 4 MSBCA ¶\_\_\_ (1994), an evaluator's analysis of the quality of a product or service through review of the offeror's written proposal may be expected to reflect or involve a degree of subjective impression as well as comparison of that offeror's proposal with that of other offerors. Appellant has failed in its burden to show that the decision was unreasonable, arbitrary, an abuse of discretion, or contrary to law.

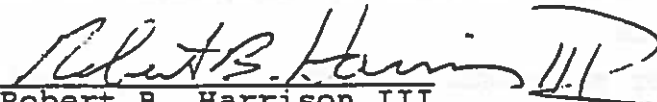
The Board declines to disturb the finding of the procurement officer in this case.

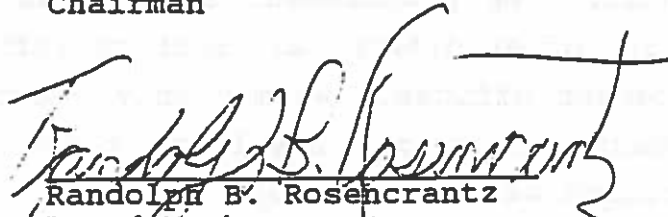
Therefore, it is Ordered this 20<sup>th</sup> day of July, 1995 that the appeal is denied.

Dated: 7/20/95

Candida Steel  
Candida S. Steel  
Board Member

I concur:

  
Robert B. Harrison III  
Chairman

  
Randolph B. Rosenkrantz  
Board Member

Certification

**COMAR 21.10.01.02 Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

**Annotated Code of MD Rule 7-203 Time for Filing Action.**

(a) **Generally.** - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) **Petition by Other Party.** - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA Docket No. 1890, the appeal of Ardinger Consultants & Associates Under University of Maryland at College Park Bid No. 77598-F ADA.

Dated: *July 21 1995*

*Mary F. Priscilla*  
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Mary F. Priscilla  
Recorder



1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for ensuring the integrity of the financial data and for facilitating audits.

2. The second part of the document outlines the various methods used to collect and analyze data. It includes a detailed description of the sampling techniques employed and the statistical models used to interpret the results.

3. The final part of the document provides a comprehensive summary of the findings and conclusions drawn from the study. It highlights the key insights and offers recommendations for future research and practice.

