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## REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

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### Circumstances Surrounding Solicitations And Contract Award To Assist Minority Businesses

#### Department of Commerce

The Department of Commerce solicited proposals for a new contract to provide technical assistance to minority businesses because of dissatisfaction with the existing contractor's performance. Before awarding a contract the Department canceled this solicitation and issued a new one. The Department later awarded the new contract to the existing contractor. GAO found

- conflicting evidence concerning the contractor's performance,
- several unintentional errors on the first solicitation which apparently resulted from inattention to prescribed procurement policies and procedures,
- no problems with the second solicitation, and
- a Department internal audit report that showed a need for improving contract administration at certain Office of Minority Business Enterprise regional offices.

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SEPT. 7, 1976



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-186116

The Honorable Joseph P. Addabbo  
Chairman, Subcommittee on SBA  
Oversight and Minority Enterprise  
House Committee on Small Business

Dear Mr. Chairman:

As requested in your March 11, 1976, letter, we have reviewed the facts and circumstances related to two requests for proposals dated May 23, 1975, and December 5, 1975, issued by the Department of Commerce. These solicitations were for technical assistance to minority businesses in the Austin, Lockhart, and San Marcos, Texas, area. Your request was based on allegations of impropriety stemming from the procedures followed on these solicitations.

Information regarding these solicitations is summarized below and details are included in appendix I.

The Office of Administrative Services and Procurement, Department of Commerce, provides administrative support to the Department's Office of Minority Business Enterprise by awarding and administering contracts to operate business development organizations. These organizations provide technical assistance to minority businesses and perform related functions aimed at getting these businesses into the economic mainstream. The Office of Minority Business Enterprise assists in this process by evaluating the technical aspects of proposals prospective contractors submit and by monitoring contract performance.

In August 1974 the Department awarded a 1-year contract to the Austin Minority Economic Development Corporation to operate Austin's Business Development Organization. Because the Office of Minority Business Enterprise was dissatisfied with the contractor's performance, it was decided not to renew the contract, and

on May 23, 1975, the Department solicited proposals for a new contract. The contractor and several other firms submitted proposals. Before a contract was awarded, the Department, for reasons with which we agree, canceled the solicitation on October 17, 1975.

The evidence concerning the contractor's performance under the prior contract is conflicting. But if its performance was deficient, the failure to tell contractor officials was contrary to good contract administrative practices.

Some of the other administrative errors made on the first solicitation for proposals follow:

- Proposals were not evaluated according to the criteria specified in the solicitation.
- Before final offers had been received, the Office of Minority Business Enterprise's Dallas Regional Director submitted a memorandum to headquarters officials recommending that the contract be awarded to the firm which received the second highest technical evaluation score.
- The Department was not candid in explaining to the offerors why the first solicitation was canceled.

In general we believe these unintentional errors were the result of inattention to prescribed procurement policies and procedures.

The Department of Commerce's Assistant Secretary for Administration, Office of Audits, issued a report dated June 24, 1976, on contract administration at selected Office of Minority Business Enterprise regional offices. This report indicated a need for improvement in (1) monitoring contractors' technical performance and (2) determining whether low performers should have their contracts renewed. According to the internal audit report, steps have been taken or planned to correct this problem. At the conclusion of our review, Department and Office of Minority Business Enterprise officials told us that

they were taking action to correct the problems identified in the internal audit report as well as those we identified pertaining to the first solicitation. The actions being taken or planned include:

- Rotating project specialists to insure greater independence.
- Reemphasizing to Office of Minority Business Enterprise regional directors the importance of keeping administrative contracting officers advised of contractors' performance.
- Instituting a formal training program for Office of Minority Business Enterprise project specialists and management personnel.
- Establishing a headquarters staff to evaluate the statistical reports contractors submit.

The Department issued a second solicitation on December 5, 1975. Proposals were received from the existing contractor and one other firm, which later withdrew its proposal. A contract valued at \$100,998 was awarded to the existing contractor effective April 1, 1976. All interested parties were given an equal opportunity to submit new proposals in response to the second solicitation; however, we noted that fewer proposals were received under the resolicitation.

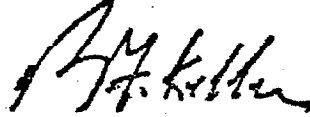
Your letter enclosed a memorandum prepared by Subcommittee Counsel which, among other things, indicated concern over the fact that the weights assigned to evaluation factors changed between the first and second solicitations. This change was made to emphasize successful past performance in assisting minority businesses. A change of this nature is within the administrative discretion of an agency. In the absence of any evidence to the contrary, it appears that the Department acted responsibly with regard to this change.

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B-186116

As you requested, the Department of Commerce has not asked to formally comment on this report; however, we have discussed it with Department and Office of Minority Business Enterprise officials and recognized their comments where appropriate.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "A. J. Keller".

ACTING Comptroller General  
of the United States

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## ABBREVIATIONS

AMEDC	Austin Minority Economic Development Corporation
BDO	business development organization
NEDA	National Economic Development Association
OAS&P	Office of Administrative Services and Procurement
OMBE	Office of Minority Business Enterprise
RFP	request for proposal

CIRCUMSTANCES SURROUNDING SOLICITATIONS AND  
CONTRACT AWARD TO ASSIST MINORITY BUSINESSES .

BACKGROUND

The Department of Commerce's Office of Administrative Services and Procurement (OAS&P) provides administrative support to the Office of Minority Business Enterprise (OMBE) by awarding contracts to operate business development organizations (BDO). BDOs provide various types of technical assistance to minority businesses and perform related functions aimed at getting minority businesses into the economic mainstream. OMBE assists in this process by evaluating the technical aspects of proposals prospective BDO contractors submit and by monitoring contract performance. On competitive BDO contracts, OAS&P considers OMBE's technical evaluation along with proposed price and other factors to identify offerors within a competitive range with whom negotiations are to be conducted.

Contract requirements are established by OMBE to portray the kind of organization needed, the performance expected, and the conditions under which a contractor must perform. Typically, requirements are stated in terms of a scope of work, the level of effort, geographic location, coordination requirements, time/performance requirements, staffing parameters, and reporting requirements. These requirements provided the basis for requests for proposals (RFPs), contract awards, and later performance evaluations.

OMBE instructions provide that proposals received in response to RFPs for BDO services are evaluated by OMBE regional offices as to how well the proposals respond to project requirements and how achievable, manageable, and beneficial the proposals are. These technical evaluations are done by panels consisting of senior-level regional technical personnel. An ad hoc panel is established for each RFP.

In August 1974 the Austin Minority Economic Development Corporation (AMEDC) was awarded a 1-year cost reimbursement contract to operate a BDO in Austin, Texas, to serve the Austin, Lockhart, and San Marcos, Texas, area. The objectives of this BDO were to (1) increase the number of new minority businesses, (2) strengthen existing minority business enterprises, and (3) improve opportunities for

socially or economically disadvantaged persons to own successful businesses. Specific functions cited in the contract included: structuring an outreach effort to make the BDO's programs known to qualified and qualifiable business candidates; providing potential business candidates with a preliminary evaluation of their business opportunities; collecting and disseminating business information; providing business packaging assistance, including screening and counseling, feasibility studies, and financing; and providing management services and technical assistance. The previous contract for this BDO was held by a predecessor contractor organization to AMEDC.

The August 1974 contract was awarded by an OAS&P contracting officer. A field employee of the Program Development Directory, Department of Commerce, located in OMBE's Dallas regional office was assigned as administrative contracting officer, and the Director of OMBE's Dallas regional office was assigned as the contracting officer's technical representative. The functions and responsibilities of these officials are prescribed in Department of Commerce/OMBE written instructions and procedures.

The administrative contracting officer has overall responsibility for managing and coordinating all facets of contracts to insure that the contractor's performance is in accordance with contractual commitments and that the obligations of the Government are fulfilled.

The contracting officer's technical representative is responsible for monitoring all technical aspects of the contract from the point of award to formal closeout and for keeping the contracting officer advised of the contractor's current performance. Specifically, the technical representative:

1. Monitors contractor's performance to insure compliance with the technical specifications or scope-of-work requirements of the contract. To accomplish this, the technical representative must:

- Continually inspect the progress and quality of the contractor's performance in relation to the technical requirements. Before approval of partial, progress, or final reports and associated invoices under cost reimbursement contracts, the technical representative must be satisfied of



meaningful progress commensurate with cost incurred to insure successful completion of the contract within the stated delivery schedule and dollar amount.

--Call upon the contractor to remedy any defects or deficiencies, which are observed during performance that fall within the scope of work or technical specifications of the contract.

2. Prepares and certifies as accurate and timely reports of the contractor's performance to the contracting officer or his designee. Such reports are to describe the contractor's performance as satisfactory or unsatisfactory in relation to the requirements of the contract, enabling the contracting officer to decide what action, if any, should be taken. In the event of unsatisfactory performance, the technical representative is supposed to notify the contracting officer immediately in writing, setting forth in detail the steps he has taken informally to remedy the situation, the causes or circumstances of the unsatisfactory performance, and other relevant information to enable the contracting officer to make a decision on the action(s) to be taken.

3. Maintain detailed records of all contacts with the contractor, copies of pertinent correspondence, and other related documents. A copy of all pertinent correspondence is to be sent to a contracting officer for incorporation into the official contract file.

The day-to-day management of the AMEDC contract was assigned to a project specialist located in San Antonio, Texas. The project specialist is supposed to keep the technical representative advised about the contractor's performance. The project specialist monitors the contractor's performance from reports the contractor submits and through periodic site visits.

For each assigned contract the project specialist also prepares a preliminary evaluation-refunding report about 5 months before the scheduled expiration of the contract. This report discusses, among other things, (1) the impact of the program on the minority business community, (2) the contractor's past performance, (3) whether the needs of the minority community warrant continuance of the program, (4) whether the existing contract should be renewed, and (5) a recommended course of action. This report is used

by an OMBE regional office review panel, of which the project specialist is a member, to evaluate the contractor's performance and to prepare a recommendation to the OMBE Regional Director as to the course of action to be taken.

EVENTS LEADING UP TO RFP 6-36609

OMBE procedures provide that BDO services generally will be provided on a competitive basis when there is more than one prospective offeror with a demonstrable and documented capability to perform as a program contractor. However, OMBE procurement policies provide that BDO contracts can, under certain conditions, be renewed from year to year on a noncompetitive basis if contract performance has been satisfactory.

On March 20, 1975, about 5 months before the scheduled expiration of AMEDC's contract, a review panel met in OMBE's Dallas regional office to consider whether the contract with AMEDC should be renewed. The seven-member panel unanimously recommended to the Dallas Regional Director that (1) AMEDC's contract not be renewed due to poor performance and (2) an RFP be issued to solicit competitive proposals for a new contract.

In a March 31, 1975, memorandum, OMBE's Dallas Regional Director advised OMBE headquarters that AMEDC had not been providing sufficient services to minority clients to justify renewing their contract. The memorandum stated there were other organizations in the area that could perform as well or better than AMEDC and that a new contract should be awarded on a competitive basis. RFP No. 6-36609 dated May 23, 1975, was subsequently issued to solicit proposals for the Austin BDO.

Evidence concerning AMEDC's performance is conflicting

We found conflicting evidence concerning AMEDC's performance under the contract awarded in August 1974. The recommendations of the review panel and the Regional Director's memorandum discussed the above conflict with information provided to the contractor and also documentation contained in the project files maintained by OMBE. We were told by AMEDC officials that they were not advised of poor performance, but to the contrary, had been advised by OMBE on various occasions that they were doing a good job.

The project files maintained by OMBE did not contain any evidence of unsatisfactory performance by AMEDC before the March 20 review panel meeting. As noted above, procedures applicable to these contracts require the technical representative to (1) notify the administrative contracting officer in writing in the event of unsatisfactory performance by a contractor and (2) call upon the contractor to remedy any defects or deficiencies found. To the contrary, the project files contain correspondence to AMEDC indicating to them that their performance was satisfactory. The administrative contracting officer for this contract told us that at no time was he advised of unsatisfactory performance by AMEDC. He said that, based on AMEDC's quarterly reports and comments by OMBE officials in the Dallas regional office, he had concluded AMEDC was performing satisfactorily.

Reports prepared by the OMBE project specialist before the March 20 panel meeting show that AMEDC's performance was satisfactory. For example, a March 18, 1975, evaluation report stated that:

"AMEDC has by far exceeded the goals as were specified in their time phase plan submitted to OMBE. Additionally, they have been able to provide much needed management assistance to help the minority entrepreneurs stay in business\*\*\*."

\* \* \* \* \*

"AMEDC\*\*\*has made significant progress in bringing the minority businessmen into the main economic mainstream. \*\*\* In the area of procurement, minority contractors are being more successful in acquiring bids and contracts from both the public and private sector. The Contractor's efforts in creating this awareness for the minorities in these areas are very commendable \*\*\*." (Underscoring supplied.)

But then there was a sudden change in the evaluation reports. A report prepared by the same evaluator on March 20, 2 days later, stated that:

"AMEDC has not exceeded the goals as were specified in their time phase plan as submitted to OMBE. Additionally, they have been unable to provide the much needed management assistance to help the minority entrepreneurs stay in business \*\*\*."

\* \* \* \* \*

"AMEDC\*\*\*has not made significant progress in bringing the minority businessmen into the economic mainstream. \*\*\* In the area of procurement, minority contractors are not being as successful in acquiring bids and contracts from both the public and private sector. The contractor's efforts in creating this awareness for the minorities in these areas is very weak\*\*\*." (Underscoring supplied.)

The reason for this sudden and dramatic change is not clear. The project specialist who wrote the reports told us that he simply had not been factual concerning AMEDC's performance in preparing the March 18, 1975, evaluation report. He said he wrote the March 18 report to reflect what he believed to be the opinion of OMBE's Dallas Regional Director concerning this contractor. He said he wrote the March 20 report criticizing AMEDC's performance after a discussion with the Dallas Regional Director. He said that during this discussion he became aware the Regional Director was also dissatisfied with AMEDC's performance and believed as he did that AMEDC's contract should not be renewed.

However, the project specialist later changed his mind and told us he wrote the March 20 report to be consistent with the results of the review panel which unanimously recommended that AMEDC's contract not be renewed because of poor performance. He said that he made an oral presentation to the panel and expressed his dissatisfaction with the performance of AMEDC, which, in fact, was his true belief. He said that the panel made its recommendation on the basis of his oral presentation and questionable production statistics submitted by AMEDC. The project specialist said he believed that AMEDC could not successfully compete with other known contractors in the area and thus would be replaced as the Austin BDO contractor.

There was no evidence indicating that OMBE ever considered terminating the contract with AMEDC because of poor performance.

AMEDC officials were apparently led to believe that OMBE was generally satisfied with their performance and were told that a new OMBE policy requiring greater use of competition in BDO contracting was the reason the existing contract was not being renewed. OMBE's Dallas Regional Director said that several months before the March 20 panel meeting they had advised AMEDC by telephone of problems with their performance, particularly OMBE's concern over AMEDC's close association with another federally funded organization, but there was no record of this conversation in the files.

PROPOSALS NOT EVALUATED IN ACCORDANCE  
WITH RFP CRITERIA

OMBE did not evaluate the proposals received in response to RFP 6-36609 according to the evaluation criteria cited in the RFP. In July 1975, OAS&P forwarded five contractor proposals to the OMBE Dallas regional office for review and evaluation. The Dallas regional office was instructed to evaluate the proposals according to the RFP so that negotiations could be held with all offerors submitting proposals within a competitive range.

The chairman of the panel, which evaluated the proposals, stated that the panel did not receive a copy of the RFP. He said that since the panel members were very familiar with the standard requirements for a BDO, they went ahead with the evaluation without requesting a copy of the RFP. He told us that the evaluation criteria used were the criteria recommended by the Dallas regional office. He said that since they had not received a copy of the RFP they were not aware that the weights assigned to the criteria in the RFP were different from those they had recommended. OAS&P officials said that they used a standard criteria for BDO contracts in the RFP, rather than the criteria recommended by the Dallas regional office, because they considered the standard criteria to be more appropriate.

We were told by the cognizant contracting officer that normally a copy of each RFP is forwarded to the responsible OMBE regional office at the time it is initially issued. The contracting officer could not state positively whether a copy of RFP 6-36609 was sent to the Dallas regional office, but the procurement files contained a standard form letter indicating that a copy was sent.

The administrative contracting officer also observed that the Dallas regional office should have requested a copy if it did not have one.

The weights assigned to the evaluation criteria in the RFP and those used in evaluating the proposals were as follows.

<u>Evaluation criteria</u>	<u>Weights assigned by RFP</u>	<u>Weights actually used by evaluators</u>
Prior experience, either organizationally or individually, in successfully furnishing business assistance or business development services to minority businesses in the area to be served or elsewhere.	15	20
Proposed staffing patterns and qualifications of staff members in providing the required services to minority businesses.	20	20
Community base particularly in the minority business community in the area to be served, determined through the composition of the board of directors.	20	10
Techniques and methods of soliciting, selecting, assisting, monitoring, and terminating clients.	20	20

<u>Evaluation criteria</u>	<u>Weights assigned by RFP</u>	<u>Weights actually used by evaluators</u>
Awareness and understanding of current problems facing the minority business community in the area to be served and awareness of the cultural, socio-economic, and civic (not political) activities of the community as they may affect the success of individual ventures of minority enterprise in general.	10	10
Understanding the work to be done as reflected through the time-phased plan.	15	20

Based on the above facts we believe OMBE's failure to evaluate the proposals according to the RFP was inadvertent and the result of inattention by the persons in the Dallas regional office who served on the evaluation panel. Although they acknowledged that an error was made, OMBE regional office and OAS&P officials believe that the contractor proposals were evaluated fairly. They noted that the error did not affect the relative ranking of the proposals. OAS&P officials said they did not detect this error because some of their personnel were inexperienced and because there was a heavy procurement workload.

Failure to use proper criteria  
had no effect on technical ranking

We found that this error had almost no effect on the technical scores given the proposals because of the relatively minor differences in the two sets of criteria. For example, AMEDC received a technical score of 81 whereas their score would have been 83 if the correct criteria had been used. We also found that the technical ranking of the proposals would have been the same under either criteria.

RECOMMENDATION THAT OFFEROR RECEIVING  
SECOND HIGHEST TECHNICAL SCORE BE  
AWARDED CONTRACT

The scores resulting from the technical evaluation are shown below.

<u>Contractor</u>	<u>Score</u>
Austin Minority Economic Development Corporation	81
American G. I. Forum	74
National Economic Development Association	65
Business Development, Inc.	63
MANTEK, Inc.	51

The OMBE Dallas Regional Director directed preparation of a memorandum, dated July 23, 1975, reporting to OAS&P the above results of the technical evaluation. The memorandum strongly recommended that the contract be awarded to the second highest rated offeror, American G.I. Forum, because: (1) the extremely poor performance of AMEDC was not a part of the proposal evaluation and consequently was not reflected in the this firm's score and (2) American G. I. Forum was currently a contractor in the Dallas region with a much higher productivity record in their first-year funding. The memorandum also stated that the major weakness of American G. I. Forum reflected in the evaluation could be resolved in direct negotiations with the contractor. The memorandum requested compliance with the recommendation to get the best service to the minorities in the geographic area the contract would cover.

The OMBE Dallas Regional Director said the above memorandum was prepared because the RFP evaluation criteria did not give adequate consideration to past performance. He said he hand-carried the memorandum to Washington, D.C., and copies were given to OMBE headquarters and an advance copy was given to the contract negotiator in OAS&P. He said that 1 day later, after returning to Dallas, he received a telephone call from an OMBE headquarters official who expressed concern over comments contained in the memorandum. It was agreed that the official would prepare another memorandum for OAS&P deleting the recommendations and comments mentioned above. He said that



after discussing this matter with the official he recognized that he had made a procedural error and quickly tried to rectify the error by withdrawing his recommendation and by trying to have all copies of the memorandum destroyed. He said he recognized that the comments and recommendation in his memorandum were inappropriate because he should have waited until best and final offers were received and evaluated. He told us that his efforts to have all copies of the memorandum destroyed were unsuccessful because a copy apparently had been given to someone outside the Department of Commerce.

SOLICITATION OF BEST AND FINAL OFFERS  
RFP 6-36609

Department of Commerce procurement officials stated that with respect to competitive RFPs their normal procedure was to solicit best and final offers from each offeror who submitted a proposal within a competitive range, considering both price and technical acceptability. They pointed out that these procedures were in accordance with Federal procurement regulations.

On negotiated contracts Federal procurement regulations require, with certain exceptions, that (1) after receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors who submitted proposals within a competitive range, price and other factors considered and (2) responsible offerors shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations (41 CFR 1-3.805). OAS&P refers to this process as obtaining best and final offers.

We found no evidence to indicate that OAS&P failed to comply with their normal procedures or of applicable Federal procurement regulations with respect to solicitation of best and final offers.

OAS&P officials told us that best and final offers were solicited via telephone from each of the five offerors who had submitted proposals. Four offerors were contacted by telephone on August 8, 1975, by the contract negotiator. Efforts to contact the fifth offeror were not successful until August 11, 1975, at which time they were contacted by the contract negotiator's supervisor (the contract negotiator was on leave). These telephone contacts were confirmed by telegraphic message dated August 14, 1975, and the offerors were instructed to respond by August 19, 1975. Three of the five (see p. 10 ) submitted best and final offers. The other two, AMEDC and National Economic

Development Association (NEDA) said that their original proposals were to be considered as their best and final offers. These telegraphic messages did not indicate why a best and final offer was not made by these two contractors nor did they indicate any problem with respect to the solicitation.

We contacted officials of AMEDC and NEDA to determine why they did not submit best and final offers and to identify any problems they might have experienced with respect to the solicitation. The former Senior Vice-President of Operations for NEDA told us that he was the person contacted by OAS&P. He told us the OAS&P official was clear and precise in soliciting the best and final offer and he had no problem at all with the solicitation. He pointed out that the information required was clearly set out in the RFP and that NEDA's initial proposal was its best and final offer.

AMEDC officials told us they were confused by the request for a best and final offer and did not fully understand why another proposal was necessary. They also said that the OAS&P official was very vague and did not identify specific problems or weaknesses in their initial proposal. They said they had sufficient time to prepare a best and final offer but chose not to do so because they felt they had made their best offer in their initial proposal.

We discussed this matter with the OAS&P official who solicited a best and final offer from AMEDC. He said all offerors were provided a summary of comments by the evaluation panel when they were contacted by telephone to solicit their best and final offer. He said he was very careful to pass along to each offeror only the summarized comments of the panel pertinent to their offer, and for this reason he may have appeared vague to the AMEDC official contacted. OAS&P officials pointed out that if AMEDC had questions concerning the solicitation, they could have asked for clarification. The files contained a copy of the summarized comments which OAS&P officials say were discussed by telephone, but there was no other documentation pertaining to these contacts.

#### Changes in composition of evaluation team

Two of the five persons who evaluated the initial proposals were replaced when the best and final offers were evaluated.

OMBE Dallas regional office officials responsible for selecting the evaluation panel told us that the two persons were replaced because they were either on leave, travel status, or otherwise not available to participate in the best and final offer evaluation, but they could not recall the specific reason. They said the persons who replaced them were equally qualified to evaluate the proposal.

The best and final offers were evaluated on either August 28 or 29, 1975, in Dallas. Leave records and travel vouchers show that one of those replaced was on leave on these dates; the other one was neither on leave or in travel status but we could not determine whether he was unavailable for other reasons.

A cursory review of their qualifications indicated that the two replacements were equally qualified to serve on the evaluation panel. Also, we found no evidence to suggest that this change was an effort to stack the panel to influence the evaluation outcome. For example, had this change been an attempt to prejudice either of the two offerors with the highest technical scores on the initial proposals (i.e., AMEDC and American G. I. Forum) to the benefit of the other, then logically the two evaluators who had given one or the other the highest technical score (depending on which offeror was to benefit) would have been the ones replaced. We found, however, that one of those replaced had ranked AMEDC the highest (90) on the initial proposal, and the other had ranked American G. I. Forum the highest (90). Thus, replacing these two panel members had a canceling or nullifying effect with regard to the two top offerors.

The OMBE Dallas Regional Director said that at the time he did not consider the change as being questionable or unusual but after questions were raised about the change he could see how it might appear irregular. He said a special effort was now being made to retain the same panel members throughout the evaluation process.

#### CANCELLATION OF RFP 6-36609

In a letter dated October 17, 1975, OAS&P advised offerors that RFP 6-36609 had been canceled because of major changes to the work requirements and effort contained in the solicitation. The letter stated the solicitation would be reissued when the requirements were redefined. However, we compared the work requirements and effort in

RFP 6-36609 with the new RFP and found that they were the same. OAS&P officials said that changes in the work requirements and effort were proposed during a meeting of OMBE and Department procurement and legal officials. They said that the above letter was prepared based on proposals presented in this meeting, but the changes never materialized.

OAS&P received a congressional inquiry, dated September 9, 1975, asking that they look into the manner in which this RFP had been handled. This inquiry prompted a review by the Department's Office of Investigations and Security, after which OAS&P concluded that the best interest of the Government would be served by canceling this request and issuing a new one.

We were advised by OAS&P officials that while other reasons may have been offered on different occasions for canceling RFP 6-36609, it was, in fact, canceled because procurement information may have been improperly made available to persons outside the Department of Commerce. They concluded that this information, if received and used, would present one offeror an unfair advantage over competing proposals and would be in violation of 41 CFR 1-3.805-1(b). The cited regulation provides, in part, that:

"\*\*\*after receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge."

Consequently, it was decided to cancel the solicitation to preserve the integrity of the competitive system.

The enclosure to the March 11, 1976, letter requesting that we review this matter indicates that OMBE advised the subcommittee staff that RFP 6-36609 was being canceled to "avoid the appearance of impropriety" and because "there were complaints and allegations about the objectivity of the five person review panel studying the proposals\*\*\*." This statement obviously conflicts with what the offerors were told in the October 17 letter discussed above.

We believe OAS&P's failure to be consistent and completely candid in stating at various times to different parties why this RFP was canceled may have helped cloud this RFP and create the appearance of impropriety. However, we concur with OAS&P's reasons for cancelling the RFP.

## Internal audit findings

The Department of Commerce's Assistant Secretary for Administration, Office of Audits, indicated in a June 24, 1976, internal audit report that problems similar to the one discussed above were not uncommon. In essence, the report stated that there was a need for OAS&P and OMBE to improve further their communicative and administrative practices in (1) monitoring technical performance of contractors and (2) determining whether low performers should be given renewal contracts. The report contained recommendations to correct these problems. The Directors of OAS&P and OMBE generally concurred in the report recommendations and the report cited corrective actions which were taken or planned.

## RFP 6-36622

In December 1975 RFP 6-36622 was issued to replace RFP 6-36609. The new RFP was for the same services RFP 6-36609 solicited. A total of 23 sources were solicited but only 2 proposals were received, 1 from AMEDC and the other from a group called Capital Area Economic Development Corporation. American G.I. Forum submitted a late proposal which could not be considered. Capital Area Economic Development later withdrew its proposal leaving only AMEDC seeking the contract. A new 12-month contract, effective April 1, 1976, was negotiated with AMEDC on the basis of their best and final offer submitted March 31, 1976.

## Change in evaluation criteria

The new RFP had slightly different evaluation criteria as shown below. These changes were recommended by the OMBE Dallas regional office to place more emphasis on successful past performance in furnishing assistance to minority businesses.

<u>Evaluation criteria</u>	<u>Weights assigned</u>	
	<u>RFP 6-36609</u>	<u>RFP 6-36622</u>
Prior experience, either organizationally or individually in successfully furnishing business assistance or development services to minority businesses in the area to be served or elsewhere. Provide data relevant to any past accomplishments involving minority businesses. (Note a.)	15	25
Proposed staffing patterns and qualifications of staff members in providing the required services to minority businesses.	20	20
Community base, particularly in the minority business community in the area to be served, determined through the composition of the board of directors.	20	15
Techniques and methods of soliciting, selecting, assisting, monitoring, and terminating clients.	20	20
Awareness and understanding of current problems facing minority business community in the area to be served and awareness of the cultural, socio-economic, and civic (not political) activities of the community as they may affect the success of individual ventures or minority enterprise in general.	10	10
Understanding of the work to be done as reflected through the time-phased plan.	15	10

a/ The addition of this sentence is the only change made in the evaluation criteria.

OMBE regional office officials contend that the evaluation criteria and assigned weights were not structured to the advantage or disadvantage of any one offeror, and that the proposals were evaluated fairly in accordance with the cited criteria.

A change of the above nature is within the administrative discretion of the agency. Of course, the change should be advantageous to the Government and must be applied uniformly to all offerors. Past performance in providing BDO-type services to minority business obviously would be a very important consideration in evaluating the qualifications of those seeking to provide such service under a new contract. Therefore, it seems to us that a convincing argument could be made that it was advantageous to the Government in this case to increase the weight assigned to this evaluation criteria. Further, we found no evidence that the evaluation criteria was not applied uniformly to the two proposals received.

We also noted that the new criteria had no significant effect on the technical scores given the two proposals. AMEDC was given a technical score of 81 under the revised criteria whereas they would have received a score of 80 had the same weights as in the first RFP been used. Capital Area Economic Development received a technical score of 66; their score would have been 66 using the same weights in the first RFP. Therefore, the relative ranking would have not changed regardless of which criteria was used.

The OAS&P contract negotiator said that the technical scores of both offerors were considered acceptable and that negotiations would have been conducted with both had one not withdrawn its proposal.

In the absence of any evidence to the contrary it appears that OAS&P acted responsibly in changing the weights on the evaluation criteria and in other matters pertaining to the issuance and administration of this RFP.

#### EXTENSIONS TO PRIOR AMEDC CONTRACT

The performance period of AMEDC's prior contract was extended from August 14, 1975, to March 31, 1976. This was done to continue the service of a BDO to the

active clients in the community and to allow OAS&P time to complete the award of a competitive contract. OMBE officials told us that AMEDC's performance improved during the extension period.

CURRENT ATTITUDE OF OMBE CONCERNING  
AMEDC'S PERFORMANCE

The OMBE Dallas Regional Director stated that after he and other staff members made a field visit to AMEDC in November 1975, they recognized for the first time the high caliber of AMEDC's board of directors and their sincere commitment to the BDO program. He told us that OMBE was presently satisfied with AMEDC's performance as the Austin BDO contractor.

DISCUSSIONS WITH AGENCY OFFICIALS

We discussed the above matters with Department and OMBE officials who told us that they were taking action to correct the problems identified in the internal audit report as well as those we identified pertaining the first solicitation. The actions being taken or planned include:

- Rotating project specialists to insure greater independence,
- Reemphasizing to OMBE regional directors the importance of keeping administrative contracting officers advised of contractors' performance.
- Instituting a formal training program for OMBE project specialists and management personnel.
- Establishing a headquarters staff to evaluate the statistical reports contractors submit.