Subject: ACTION: Program Guidance Letter 91-9

From: Manager, Grants-in-Aid Division, APP-500

To: PGL Distribution List


Recently there have been instances where sponsors have requested cost or pricing information to be submitted with proposals for professional services. This is to clarify sponsor requirements when requesting proposals to provide such services in conjunction with an Airport Improvement Program (AIP) grant.

Section 511(a)(16) of the Airport and Airway Improvement Act of 1982, as amended, states:

"(16) each contract or subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, or related services will be awarded in the same manner as a contract for architectural and engineering services is negotiated under title IX of the Federal Property Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport;"

Paragraph 802(b) of FAA Order 5100.38A, the AIP Handbook, states, "A price quotation may accompany the initial submittal by the contractor provided it is in a separate sealed envelope which may not be opened until actual negotiations by the sponsor have begun with that contractor." (This issue was addressed in Program Guidance Letter 90-4, which deleted the "sealed envelope" option (copy attached as attachment 1)). It has been pointed out that the "sealed envelope" option conflicts with previous General Accounting Office (GAO) decisions. Copies of 64 Comp. Gen. 772 and 65 Comp. Gen. 476 are attached for your information as attachment 2.
GAO indicated that even though the evaluation board did not have knowledge or access to the cost proposals, requesting such information is improper since the Brooks Act only provided for cost proposal consideration after final ranking of the firms.

Some sponsors, however, have continued to request cost information. Therefore, to avoid any conflict with section 511(a)(16) of the AAIA, Airports offices should advise sponsors that no grant recipient may request any cost information (such as total cost, cost per chargeable hour, man-hours, etc.) for the services listed above until after a determination of the most highly qualified firm. After discussions with the most highly qualified firm to define the scope of work, that firm would then be requested to submit cost information to commence fee negotiations. The process would be repeated with the next "highly qualified firm" only if negotiations with the first firm are unsuccessful. This prohibition includes both formal requests under a Request for Proposals and informal requests made during discussions with firms to determine the most highly qualified firm.

Sponsors should be advised to delete any requirement for submittal of cost or pricing information in the submittal of qualifications. If a sponsor chooses to request such information, it should be advised that this method is contrary to Section 511(a)(16) of the AAIA and 49 C.F.R 18.36(t) and we would not be able to provide Federal aid for the resulting professional services contract. This guidance is applicable to airport and planning agency sponsors, including states.

This guidance has been coordinated with AAS-1. Changes to Advisory Circular 150/5100-14 and the AIP Handbook will be forthcoming.

Lowell H. Johnson

Attachments
Memorandum

U.S. Department of Transportation
Federal Aviation Administration

Subject: Program Guidance Letter 90-4

From: Manager, Grants-in-Aid Division, APP-500

To: PGL Distribution List

Reply to: All. of

Date: 2 JUL 1990

90-4.1 Index of Current Items. Attachment 1 contains a new index of current items in Program Guidance Letters. Updates will be dated and may be retained for quick reference to PGL subject areas.

90-4.2 Grant Agreement Form - Mark Beisse (267-8826). Attachment 2 contains another version of page 3 in the standard grant agreement form which should replace that in Order 5100.38A and your supply of FAA Form 5100-37. This will improve the readability of grant agreements until we formally change the handbook and reprint the forms. Grants issued on the forms replaced by this PGL should be left unchanged.

90-4.3 Auditing 5 Percent of AIP Grants - Dick Angle (267-8825). The guidance furnished by PGL 89-5.2 and subsequently deferred in PGL 90-1.3 is hereby cancelled. The OMB agreed with the OIG position that we should not require these audits. (Attachment 3 is a copy of the OMB response.) We are revising the OMB "Compliance Supplement" to provide additional guidance for the Single Audit Act auditors to use. Attachment 4 is a copy of what was sent to OST. We also encourage you to request audit assistance from the OIG whenever you believe there may be a significant problem.

90-4.4 Procurement Methods - Dick Angle (267-8825). Please line through the sentence in FAA Order 5100.38A, paragraph 802b(2) that states "A price quotation may ** have begun with that contractor." This statement is inconsistent with Advisory circular 150/5100-14A and Section 511 of the Airport and Airway Improvement Act of 1982, as amended. This sentence will be removed by the next change to 5100.38A.

90-4.5 Special Condition for Pavement Quality Control - Ed Williams (267-8809). Based on comments from the field we have revised certain portions of the special condition required by PGL 90-2.1. Please delete suggested paragraph c under item 1 and
Matter of: Mounts Engineering; Department of the Interior
Request for Advance Decision, August 16, 1985:

Mounts Engineering (Mounts) protests the Department of Interior (Interior), Bureau of Mines' award of architect-engineer (A-E) contract No. S0156015 to Potomac Engineering and Survey (Potomac). Mounts challenges the agency's determination that Potomac was the firm most highly qualified to perform the required A-E services, the collection of mine subsidence data, and alleges the agency failed to comply with the requirements set forth under the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which governs the procurement of A-E services.

Although Interior contests most of Mount's allegations, it proceeds that contracting officials failed to conduct discussions with at least three A-E firms as required under 40 U.S.C. § 543. Actively, the agency proposes to reevaluate the qualifications of the A-E firms which originally offered to satisfy the agency's requirement, this time conducting the required discussions with A-E firms. Interior requests an advance decision from our Office of Hearings, 31 U.S.C. § 3529 (1982), as to the propriety of its proposed corrective action.

We sustain Mounts' protests and make no objection to Interior's proposed corrective action.

Generally, under the selection procedures set forth in the Brooks Act and in the implementing regulations in the Federal Acquisition Regulation (FAR), subpart 36.6, 48 C.F.R. §§ 36.500-36.502 (1984), the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statement qualifications already on file, as well as those submitted in response to the announcement of the particular project. The agency then must conduct "discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services," 40 U.S.C. § 543. The firms selected for discussions should include the three most highly qualified firms. Interior requests that the three A-E firms initially evaluated as most highly qualified be reevaluated in accordance with the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which governs the procurement of A-E services.

The selection official then must make the final selection of preference no less than three firms deemed most highly qualified. Generally, under the selection procedures set forth in the Brooks Act and in the implementing regulations in the Federal Acquisition Regulation (FAR), subpart 36.6, 48 C.F.R. §§ 36.500-36.502 (1984), the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statement qualifications already on file, as well as those submitted in response to the announcement of the particular project. The agency then must conduct "discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services," 40 U.S.C. § 543. The firms selected for discussions should include the three most highly qualified firms. Interior requests that the three A-E firms initially evaluated as most highly qualified be reevaluated in accordance with the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which governs the procurement of A-E services.

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We sustain Mounts' protests and make no objection to Interior's proposed corrective action.
were improper, alleging that (1) the evaluation
lies required were not properly evaluated, and (2) that the
evaluation was conducted in bad faith and lacked the
expertise required to properly evaluate the qualifications for
this type of work.

After the evaluation, the Board of Contracting Offici-
ers determined that Potomac was the highest-ranked
firm, with a score of 930 points, while Mounts received
915 points. The next-highest point score was 890 points,
with Mounts receiving 880 points. The evaluation board
then recommended awarding the contract to Potomac.

Mounts' Allegations

Mounts contests both the procedures used in evaluating
qualifications and the ultimate determination that Potomac
was the most qualified firm. Mounts argues that the procedures used
to evaluate qualifications for this type of project were
improper, alleging that (1) the evaluation was
conducted in bad faith and lacked the expertise required
properly evaluate the qualifications for this type of project;
(2) the board failed to conduct discussions with
three of the most highly qualified firms regarding antici-
pations and the relative utility of alternative methods of
estimating costs; and (3) that the agency should not have requested
cost proposals before selecting the most preferred firm. Mounts also
questions both the procedures used in evaluating qualifications
and the ultimate determination that Potomac was the most qualified
firm, alleging (1) that there was no indication that Potomac could
meet the requirements set forth in the CBD announcement for
"surveyor(s)," since the SF's 254 and 255 initially submitted by
Potomac, although indicating that the firm employed "Surv-
er(s)," did not indicate that its surveyors were "registered," (2) that
firms listed in Potomac's SF 255 as key personnel for the project
either lacked surveying experience or were not employees of
the firm, (3) that Potomac lacked experience in subsidence mining
(4) that Potomac's "capacity" to perform was less than that of
Mounts, (5) that the board gave Potomac credit in the eval-
uation for its allegedly superior knowledge of project
and site conditions, and (6) that the reevaluation of quali-
fications included the resume of a registered surveyor with the
other key personnel.

Interior’s Response and Proposed Corrective Act

While Interior contests most of Mounts’ allegations,
that the board failed to conduct the required discussions
with three of the most highly qualified firms. The agency
decided that the SF's 254 and 255 submitted by Potomac
were up-to-date, although it maintains that it is not unus-
usual for SF's 254 and 255 submitted by A-E firms to be "out-of-
order that the Brooks Act and FAR only require that firms
be required to submit them on an annual basis.

In view of the failure to conduct the required discussions
or propose any corrective measures. In
the agency proposes (1) to obtain updated SF's 254 and the
three firms previously rated most highly qualified point a new evaluation board, comprised of qualified
from outside the Bureau of Mines, to conduct discussions
and reevaluate the qualifications of the three firms, and (2) to
request, based upon the results of the above, whether to con-
act with Potomac or to terminate it and make a contract
with another firm.
Moreover, in setting forth the criteria which evaluation could use in ranking A-E firms, neither the Act nor the implementing regulations include cost as a consideration. 40 U.S.C. §§ 36.602-1 and 36.602-3. On the contrary, the Act for the consideration of cost during negotiations, i.e., after ranking firms, 40 U.S.C. § 544, while the regulations provide for consideration of fees during discussions, FAR, § 36.602-3(1). Therefore, we question the propriety of requesting cost proposals from A-E firms prior to selecting the most highly qualified A-E.

This reflects the congressional intent to continue the traditional method of procuring A-E services by first ranking the order of their qualifications and only then negotiating for the selection of the firm to lower their proposed fees, which in turn would affect the quality of the design by favoring the selection of the "least skilled, and those willing to provide a lower effort." H.R. Rep. No. 92-1188, pp. 2-4; S. Rep. No. 1165, p. 8.

Accordingly, it believed that:

In no circumstances should the criteria developed by any agency in their evaluation of the qualifications of A-E firms be based upon the fee to be paid to the firm, either directly or indirectly.


We recognize that we have previously held that where, in making the selection of the firm to lower their proposed fees, then he may properly consider "other factors which are rationally related to a selection decision for the particular procurement," even though the Act requires the selection of the A-E firm which is most highly qualified in order to rank A-E firms without reference to compensatory factors.

Mounts objects to the use of cost as a factor in ranking A-E firms.

Accordingly, we see no reason to question Interior's decision to conduct discussions with the three firms ranked in the initial evaluations and to reevaluate their qualifications if the protest is sustained.

Mounts' Objections to Interior's Proposed Corrective Action

Mounts also objects to some portions of Interior's proposed corrective action. Mounts questions Interior's intention to update SF's 254 and 255, believing that this would give certain employees hired as a result of the experience gained competitive advantage as a result of the experience gained.
whether contracting officials can be trusted to undertake the reevaluation. In any case, it argues that the proposed determination does not address all of the allegations that it previously held that the details of implementing one of the reevaluations is within the sound discretion of the contracting agency. General Electric Information Services Company, B-190632, Sept. 21, 1979, 79-2 C.P.D. 1. We believe that the agency possesses a similar discretion here, it decides on its own to implement corrective action. We have not demonstrated that Interior abused this discretion, nor has Potomac's original SF's 254 and 255 accurately represented Potomac's qualifications at that time. Moreover, we do not believe it is unreasonable for Interior to seek to assure itself that Potomac is the best qualified firm to undertake the current contract, as opposed to past, capability which is not to the quality of the work the government can receive. Cf. Beacon Winch Company—Request for Reconsideration, B-204787.2, Aug. 15, 1983, 83-2 C.P.D. ¶ 205 (responsible bidder has the apparent ability and capacity to continue contract requirements, should be based on the most responsible bidder). Also, it is feasible to preclude Interior in a reevaluation from considering past, capability, here. Interior has proposed selection of a new evaluation board comprised of qualified personnel from outside the current contract, finding of urgent and compelling circumstances. Since qualifications are now academic. See Sunbelt Investment Services Company, B-214414, July 20, 1984, 84-2 C.P.D. ¶ 66.

Recommendation

Mounts' initial protest to our Office was filed 8 days after the award to Potomac. Although we notified the protest on the same day it was filed, Interior permitted continuation of contract performance, finding that it was in the “best interest of the Government” to direct Potomac to continue contract performance. The bid protest provisions of the Competition in Contracting Act of 1984 § 2741(a), 31 U.S.C.A. §§ 3551-3556 (West Supp. 1986) require a federal agency to direct a contractor to cease and desist where the contracting agency receives notice of a protest on the same day it is filed, Interior permits continuation contract performance, finding that it is in the “best interest of the Government” and that it is in the best interests of the United States which do not prevail for a decision. 31 U.S.C. § 3553(d). Where the agency determines upon reevaluation that Potomac is the best qualified firm, the agency may terminate the contract with Potomac and award to that firm. 41 U.S.C. § 3554(b).

By separate letter to Interior, we are therefore recommending that if Interior determines upon reevaluation that Potomac is the best qualified firm, the agency may terminate the contract with Potomac and award to that firm. 适合的、双方均能满意地合同可以被谈判 winding up to FAR, § 36.606.

Since qualifications are to be reevaluated with mutually satisfactory contract can be negotiated without the need for pursuing the protests, cf. Federal Reserve Bank of St. Louis, B-218192.2, May 7, 1985, 85-1 C.P.D. ¶ 5 321(e) to the CBD announcement of the opportunity to compete for an award under a contract, and of responding to the CBD announcement of the opportunity to compete for an award under a contract.
DECISIONS OF THE COMPTROLLER GENERAL

ARCHITECT, ENGINEERING, ETC. SERVICES—EVALUATION OF COMPETITORS—


In procurements conducted pursuant to the Brooks Act, 40 U.S.C. 541-544 (1982), a contracting agency is required to consider the location of an architect-engineer (A-E) firm and the knowledge of the locality of the project—unless application of the term would not leave an appropriate number of qualified firms. Higher evaluation for location closer to project is reasonable.


Protest that the architect-engineer (A-E) firm selected as the most highly qualified firm did not comply with state licensing laws is denied where the contractor selected a licensed firm to perform work only required the use of a registered surveyor, and a state investigation indicated that the awardee proposed to use a licensed surveyor.


Protest that the contracting agency did not act unreasonably when it failed to inform the protesting A-E firm of the results of an evaluation is denied where the A-E firm did not ask for the results of the evaluation, and the protest is untimely.


Mounts Engineering (MOUNTS) protests the selection of Mine Technology Services (MTS) as the highest qualified firm to collect mine subsidence data at the Mounts Technology Services (MOTS) site in Barbour County, West Virginia. The selection was made after a reevaluation of qualifications and pursuant to our decision in Mounts Engineering: Department of Energy—Request for Advance Decision, B-195685, et al., Apr. 18, 1985, 64 Comp. Gen. 772, 85-2 C.P.D. ¶ 181. We deny the protest.

Generally, under the selection procedures governing the procurement of A-E services as set forth in the Brooks Act,
The contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the announcement of the particular project. The board is to conduct "discussions with no less than three firms representing concepts and the relative utility of alternative approaches for furnishing the required services." Upon completion of discussions, the firms selected for discussions should include "at least one of the highly qualified firms." FAR, 48 C.F.R. § 36.602-3(c). Thereafter, the board recommends to the selection official in order of preference no less than three firms deemed most highly qualified.

The selection official then must make the final selection in accordance with the requirements of the A-E performance data and the qualifications of the three firms deemed most highly qualified. If the agency is unable to agree with that firm as to a fair and reasonable evaluation of the required services, it is held responsible for the final selection. If the agency is unable to agree with that firm as to a fair and reasonable evaluation of the required services, the agency must publicly announce its reasons for the final selection.

In this case, the agency evaluated Potomac's qualifications and awarded a score of 930 points. Potomac subsequently requested that the agency reevaluate its qualifications and award a score of 915 points. The agency then requested Potomac, Mounts, and L. Robert Kimball & Associates (Kimball) to submit proposed fees.

In response, Interior admitted that it had failed to conduct required discussions. It also acknowledged that the SF's 254 and 255 submitted by Potomac for purposes of evaluation were "not up-to-date." Accordingly, the agency proposed to (1) obtain updated SF's 254 and 255 from the three firms previously rated most qualified; (2) appoint a new evaluation board, comprised of personnel from outside the Bureau of Mines, to conduct evaluations with and reevaluate the qualifications of the three firms; (3) determine, based upon the results of the above, whether to continue the contract with Potomac or to terminate it and award to another firm.

In our prior decision, we concluded that the failure to conduct the required discussions could have prevented a meaningful and fair evaluation of the firms' qualifications and could have deprived Mounts of the opportunity to compete. We also indicated that the evaluations were open to question on other grounds as well. We pointed out that while SF 255 was current as of the time of the particular project, Interior had noted that Potomac's SF 254 and 255 were "not up-to-date," and found Interior's request that firms submit cost proposals for an "unknown" project to be improper since the Brooks Act only provided for the collection of cost during negotiations—i.e., after the final rankings. 40 U.S.C. § 544—and the regulations prohibit the calculation of fees during discussions. FAR, 48 C.F.R. § 36.602-3 therefore sustained Mounts' protest and concluded that the reason to question Interior's decision to conduct discussions with only three firms ranked highest in the initial evaluations and evaluate their qualifications

Interior subsequently requested Potomac, Mounts and Kimball to submit proposed fees.
A new evaluation board reviewed the up­
the evaluation criteria provided to the board, the firms
are evaluated on the basis of (1) professional qualifications
for satisfactory performance (25 percent), (2) "[l]ocation
and geographical area of the project and knowledge of the
project" (25 percent), (3) specialized experience and
competence in the type of work required (20 percent), (4)
to accomplish work in the required time (15 percent), and
performance (15 percent).

The firm was found to be the most qualified firm under these cri­
Mounts received 951 points, while Kimball was ranked third at 808
points. Therefore, Mounts thereupon filed this protest.

DISCUSSIONS

questions both the timing and content of the discussions
with the three firms.

first contends that the evaluation board acted improperly
by conducting discussions "prior to the re-evaluation." FAR, 48 C.F.R. § 36.602-3(d), provides that the evalua­tion board shall:

1. selection report for the agency head or other designated selection au­

2. description of the discussions and evaluation conducted by the board;

3. selection of the most highly qualified firm should take

4. the content of the discussions, Mounts points out that one
evaluators inquired into the cost of the equipment which
proposed to utilize for this project. Mounts suggests that
the cost of its equipment "directly influences" the fee it must
charge the agency. In addition, Mounts argues that
the evaluation board acted improperly when it questioned the firm
on the design of a theoretical subsidence program.

Second, Mounts contends that the evaluation board acted improper­
ly when it questioned the firm about the design of a theoretical
subsid­

The evaluation board considered the cost in the evaluation. The
evaluation maintains that the questions about the design of a theoretical
subsid­

phobic, "conceptual," or "ideological" aspects of the project, and indicates that the answers "revealed much about a
firm's professional qualifications to perform the project.

Mounts has not demonstrated that the evaluator's inquiry
the cost of certain equipment was an inappropriate concern. In fact, nothing in the record indicates that Mounts suffered
prejudice as a result of the questions and its answers. Mounts
made no showing that the cost of the equipment—as opposed
to the cost of its personnel—was such that it would be a substantial
in determining the fee Mounts was likely to propose. Mounts
did nothing in the record indicates that the evaluation board
considered the cost of the equipment in evaluating Mounts'.

In addition, we conclude that Mounts has not shown that
the questions about the design of a theoretical subsidence program
were not reasonably related to a consideration of alternative
approaches or to the evaluation of Mounts' professional qualifications.

LOCATION AND KNOWLEDGE OF THE LOCALITY

As indicated above, an evaluation criterion for "[l]ocation
and geographical area of the project" was assigned 25 percent of the total points
for location and knowledge of the locality; 241.66 points for location and knowledge of the locality, 25 percent
points that the 212.66 points assigned to Mounts under this

Although Mounts alleged during its prior protest that it maintained an
office in West Virginia, approximately 60 miles from Barbour County, West Virginia,
the project site is located.
pointed out that the chairman of the evaluation board, in his report of the evaluation results—a report which included in its submission—that since all three firms were within 100 miles of the project site, location should not be an evaluation factor. The chairman indicated that Potomac received a score of 277. The average scores here for the location criterion, and therefore the total evaluation scores, reflected the conclusion of the three evaluators that Potomac's location 30–35 miles closer to the project site justified a higher score under the location criterion.

Mounts has failed to demonstrate that the overall judgment of the evaluation board in this regard lacked a reasonable basis.

PROFESSIONAL QUALIFICATIONS

The CBD notice stated that the project "requires a registered surveyor(s) to conduct the survey," while the Statement of Work indicated that "registered surveyor(s) and crew(s) shall conduct survey(s)." In the SF 255 submitted in response to Interior's request for updated SF's 254 and 255, Potomac listed 6 "Surveying/Activities," as currently employed by the firm and provided a brief resume of one land surveyor—registered in West Virginia, Maryland, and Ohio—whose services it anticipated utilizing for the project.

Mounts, however, points out that by letter of June 5, 1985, the State Board of Examiners of Land Surveyors in West Virginia—where Potomac is located and where Potomac maintains an office—notified Potomac that the Board of Examiners received a complaint filed by Mounts and that it appeared that the owner of Potomac was "not in full compliance" with West Virginia law "... [the owner of Potomac] is not a licensed land surveyor." While Potomac allegedly failed to respond to this letter, the Board of Examiners, by letter of August 26, informed the firm that "in view of the information provided by Mounts Engineering regarding your surveying/activities, you are requested to cease and desist practice in the State of West Virginia."

A contracting agency may require an offeror to comply with specific known state or local licensing requirements as a prerequisite to award. See Olson & Assocs., Inc., B-216862, Jan. 21, 1985, 85-1 C.P.D. ¶ 129.

The statement of work here did not require the proposed contractor itself to possess a license as a prerequisite to award. Rather, it merely required that the contractor use a registered surveyor and crew to conduct the survey; a requirement which Potomac proper to meet through utilization of the services of a registered land surveyor. Cf. Mounts Engineering, B-218102.3, May 31, 1985, 85-1 C.P.D. ¶ 622 aff'd, Mounts Engineering—Reconsideration, B-218102.4, July 24, 1985, 85-2 C.P.D. ¶ 77 (offeror took no exception to requirement for registered surveyor).
case, we note that the West Virginia Board of Examiners
8 requested the Attorney General of West Virginia to
relevant state law, noting that Potomac is a "sole pro-
" which "hires persons licensed and/or registered in
engineering and Surveying fields to certify the work or
provided." Further, we also note that the contracting of-
ies that he will take "[a]ppropriate action" once the
General clarifies state law. See Lewis & Michael, Inc.;
Lines of Columbus, Inc.—Reconsideration, B-215134.2,
June 26, 1984, 84-1 C.P.D. §673 (if contractor is not in
with state or local law and, as a result of enforcement
the state or locality, chooses not to perform the contract
bided from doing so, the contract may be terminated for

PRIOR PERFORMANCE

listed its current work under a contract for mine subsid-
the Blacksville project in Pennsylvania and West Vir-
the sections of its updated SF's 254 and 255 in which it
asked to provide examples of projects undertaken in the
area (SF 254) and projects best illustrating the firm's cur-
fications for providing the required services (SF 255). 3

we note that the evaluation board was provided with the
siderable performance of the Blacksville contract for
_surveyor whom the firm indicated was supervising the Black-
et in fact "never certified nor sealed any plans, docu-
ents or reports relative to this project." Interior therefore re-
quested Potomac to furnish the agency with "evidence of the
individual providing these services" so as to assure the age
"full compliance" with the requirements of the contract.

Interior informs us that the "licensing matter is in qu-
pending further information from the state Board of Profes-
ng Potomac’s practice in Pennsylvania are pending in state. Interior therefore argues that since the matter is still "un-
olved," it was not for consideration by the evaluation board.

We note that the evaluation board was provided with the in-
ed SF's 254 and 255 by letter of October 25, 1985, and that
chairman of the board reported the evaluation results by let-
November 15. Since Interior viewed the licensing concerns as
resolved," we do not consider that it was unreasonable for
agency to refrain from reporting these concerns to the eval-
85-2 C.P.D. §342 (protestor failed to demonstrate that a
lacked a reasonable basis for characterization of potential con-
tor's performance on other contracts).

The protest is denied.

Compensation—Periodic Step Increases—Upon Reconven-
to General Schedule—After Erroneous Conversion to Mer-
Pay—Propriety of Agency Action

When an agency assigns employees to the merit pay system and then re-
them back to the General Schedule system, those employees are not entitled
tive pay and within-grade waiting time credit equal to what they would
if they had remained in the General Schedule system, unless admin-
error occurred. An agency that properly converted an employee to merit pay
and then reconverted him to the General Schedule upon its prospective ado-
new standard of employee coverage under the merit pay system, and prop-
ed the employee to comparable pay levels, acted in conformity with the re-
statutes and regulations and did not commit administrative error. Therefore,
employee is not entitled to additional pay and within-grade waiting time
based on his claim that he was improperly assigned to the merit pay system.

Matter of: John R. MacDonald, April 14, 1986:

We have been asked to review a settlement of our Claims Case
by denying the claim of Environmental Protection Agency (EPA)
ployee John R. MacDonald for backpay and within-grade step
crease waiting time credit arising out of his assignment to the

Pay system. In light of the facts presented, and the app-
ble provisions of statute and regulation, we deny Mr. MacDonald's
claim and sustain our Claims Group's settlement in the matter.

Background

The Civil Service Reform Act of 1978 established a r