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DECISION



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

FILE: B-186205

DATE: October 7, 1976

MATTER OF: Urbach, Kahn, Werlin, P.C.

DIGEST:

1. Where solicitation did not require that offeror's office and proposed personnel be located within geographical region to be audited, offeror that proposed to perform audit work from office and with personnel located near region was unreasonably penalized entire amount of points for these categories since record does not show that work may not be performed from offeror's proposed location.
2. Where offeror, in responding to agency's request for proposals to perform overall audit examinations of grantee programs, including whether grantees are carrying out their responsibilities in economical and efficient manner, submits proposal to perform only a financial management audit and not a program compliance audit, proposal was properly rejected because of offeror's failure to demonstrate thorough understanding of work.
3. Protester's contention that agency penalized smaller auditing firms in evaluating proposals for auditing services by not considering that proposals from national accounting firms were prepared in central office by individuals who will not actually perform work is without merit where agency reports that it did consider only the qualifications of the individuals who would be performing the work. Fact that proposals by larger firms may have been prepared in centralized office does not form basis for objection.
4. Protest regarding failure of RFP to advise offerors of relative importance of cost is untimely since alleged defect was apparent from solicitation but protest was first filed after closing date for receipt of proposals.

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Urbach, Kahn & Werlin, P.C. (UKW) protests the rejection of its technical proposal as outside the competitive range by the Environmental Protection Agency (EPA), under request for proposals (RFP) WA76-E112, calling for audit services of EPA contracts and grants within EPA Regional Area I (Massachusetts, Connecticut, Maine, New Hampshire, Vermont and Rhode Island). Award was made on May 21, 1976, to Peat, Marwick and Company, while the protest was pending.

The EPA technical committee established to evaluate the 30 proposals received in response to the subject RFP determined that UKW was not among the six offerors within the competitive range for purposes of negotiations. On March 25, 1976, a debriefing was held with UKW, and following this debriefing UKW filed a protest with our Office. Essentially, UKW contends that its proposal met the requirements of the solicitation and that EPA's evaluation of the proposal was not consistent with the evaluation factors set forth therein.

The solicitation set forth the following criteria of evaluation and selection:

"Technical Proposal Evaluation: The one-hundred point scale shown below will be used and the Contractors will be rated in the technical categories listed. Then, a determination of technical acceptability will be arrived at by using the actual array of scores from the technical evaluation. The second phase of the total evaluation will involve a comparison between the offerors within the competitive range in regard to technical merit and cost position. * * *

<u>Technical Categories</u>	<u>Point Allocation</u>
Understanding of the Work to be Performed	50
Experience Auditing Government and Construction Activities	20
Qualifications of Audit Staff	20
Location and Staffing of Offices	10"

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The record shows that the 30 technical proposals ranged in score from 94 points to 8.8 points. The top six proposals (scoring from 94 to 79 points) were considered technically acceptable, while the remaining 24 proposals (from 65 points to 8.8 points) were considered unacceptable. UKW received 36.7 points consisting of 20 points (out of 50) for "Understanding of the Work" and 16.7 points (out of 20) for "Experience". It received no points for the last two categories (Qualifications of Audit Staff and Location and Staffing of Offices - total of 30 points) because its offices and personnel were to be located outside EPA Region I.

Concerning the last two categories, UKW contends that its proposal should have received points for the qualification of its audit staff since only the education and experience of the individual supervisory staff members were relevant to that particular area of evaluation and there was no indication in the RFP that staff personnel be physically located within EPA Region I. We think there is merit to this contention.

In this regard, the RFP stated in part as follows:

"(d) Information indicating qualifications of the staff members at 'in-charge accountant' and 'supervisors' or 'manager' levels as defined in Section 301.04 of the American Institute of Certified Public Accountants Handbook (1975 Management of an Accounting Practice) who are contemplated for assignment to these audits. Data should include, as a minimum, their educational levels and years and types of relevant experience. Offerors should not, however, submit resumes for in excess of 10 'in-charge accountants' and 5 'supervisors' or 'managers.' (Information on the numbers and office location of these and other qualified 'in-charge accountants' and 'supervisors' or 'managers' should, however, be reported - see (e) below);

"(e) Information of the location and staffing of the offeror's office in the respective EPA Regional area. For each office where qualified 'in-charge accountant(s)' and 'supervisors' or 'manager(s)' (reference (4) above) are or will be regularly (but not necessarily exclusively) assigned for performing audits under

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this contract, indicate numbers of such personnel at 'in-charge accountant' and 'supervisor' or 'manager' levels. Unless qualified by explanations of limiting factors, it will be assumed (a) that personnel at 'staff accountant' level and regularly assigned at named offices will be available in sufficient numbers as required for EPA audits; and (b) that these 'staff accountants' and the indicated number of 'in-charge accountants' and 'supervisors' or 'managers' will be available for performing assignments under this Contract at all locations within the EPA Region whether within or outside of the local travel or commuting area of the named office(s)."

EPA acknowledges that paragraph 1(d), quoted above, does not literally require that the offeror's supervisory personnel be permanently located within Region I. Therefore, EPA agrees with the protester that its proposal should not have been penalized the full points for this category merely because UKW's supervisory personnel are not permanently located within Region I.

In our opinion, not only does paragraph 1(d) not require permanent location of supervisory personnel in Region I, but there is no indication in paragraph 1(e), "Location and Staffing of Offices", that the offeror must locate some of its personnel within the EPA region in order to receive any of the full 10 points for this category. In fact, the protester proposed to locate its offices and staff in Albany, New York, approximately 35 miles from the boundaries of EPA's Region I. Based on the record, we cannot say that EPA's evaluation of the protester's proposal for the last two categories was reasonable.

However, as EPA points out, its rejection of UKW's technical proposal was based primarily on the low rating of UKW's "Understanding of the Work". In EPA's judgment, a technical proposal should have received at least 75 points to be considered acceptable. Therefore, EPA insists that UKW's proposal was not acceptable based solely on its rating of 20 points (out of 50 points) in the "Understanding of the Work" category.

As explained by EPA, UKW's proposal was determined to be technically unacceptable in this category because the proposal set forth only a cost or financial audit approach rather than the overall audit approach, including a program compliance audit, contemplated by EPA. Moreover, EPA states that UKW failed

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to discuss how it intended to fulfill EPA's audit objectives or to spell out in any detail how each audit would be conducted; UKW only indicated that its examination would be " * * * in accordance with generally accepted auditing standards * * *" and that the audits themselves would be " * * * conducted and reports written in accordance with EPA Audit Guides * * *."

UKW argues, however, that the RFP's "Statement of Work" and the four EPA audit guides incorporated by reference therein contemplated audits pertaining only to cost incurrence and compliance with applicable financial management requirements, and not an evaluation audit of the technical performance of the project being audited. Therefore, says UKW, EPA's penalization of its proposal in the evaluation area of "Understanding of the Work to be Performed" for failing to offer a more extensive audit dealing with matters not required by the solicitation was improper and should not have been viewed as rendering its proposal unacceptable. Furthermore, UKW contends that its proposal furnished the necessary information on how its audit would be conducted, namely a "brief description" of the audit team's makeup, nature of the overall supervision contemplated and an estimate of the number of audit hours necessary to complete the audit procurement.

The RFP's "Statement of Work" provides in part as follows:

"C. An audit shall generally consist of an examination of financial and compliance matters and a review of efficiency and economy in carrying out project or contract responsibilities. * * * The financial and compliance examination shall be primarily concerned with determining * * * [cost matters] and that the grantee or contractor is complying with the requirements of the grant agreement or contract and EPA regulations. The review of efficiency and economy shall include inquiry into whether the grantee or contractor is giving due consideration to conservation of resources and minimum expenditure of effort. * * *"

We believe the Statement of Work, in requiring that the audit examination consist in part of a review of the grantee's efficiency and economy in carrying out the project or contract responsibility, including an inquiry into whether the grantee/contractor is giving "due consideration to conservation of resources and minimum expenditure of effort," clearly contemplated more than just a cost or financial audit to ascertain the propriety and magnitude

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of project expenditures. It appears to us that EPA envisioned an "overall" audit program to ascertain not only the propriety and magnitude of project expenditures, but also whether grantees were properly carrying out their contract responsibilities in the most economical and efficient manner and in accordance with contractual terms and conditions and applicable regulations. UKW did not offer this type of comprehensive audit nor did it indicate in any detail how it would perform the audits. Accordingly, we cannot say that EPA's determination that UKW's proposal was technically deficient in the area of "Understanding of the Work to be Performed" was not reasonable or not in accordance with this evaluation criteria.

UKW also argues that all of the "finalists" were national accounting firms leading it to suspect that similar proposals for other EPA regions were prepared by the same office of those firms and therefore the particular Region I office which would actually perform the audit may not, as of proposal submission, have any understanding of the work to be performed or experience in auditing the areas required by the subject solicitation. If this be the case, UKW asserts that it would be unfair to the independent firms to be penalized for a lack of understanding of the work in favor of the larger firms with centralized proposal preparation. UKW also asserts that the experience of these national firms in performing work of this nature must be evaluated on the basis of the experience of the personnel in the office located within Region I, who will actually perform the audit, and not based on the personnel qualifications of the entire company.

EPA states that in its evaluation of the experience of the national firms, it considered only the qualifications of the personnel located in Region I. Therefore, we have no basis to conclude that the individuals in these firms who would be doing the actual work might not be qualified because the proposal was prepared in a centralized office of the national firm by individuals who would not be responsible for the work. Insofar as UKW suggests that centralized proposal preparation may offer an unfair advantage to the larger firms over the smaller firms, we see no merit in such a contention. We have recognized that while the resources of competing offerors may vary widely, the Government is not required to equalize competition on a particular procurement by discounting competitive advantages accruing to firms by reasons of their own particular circumstances. There is no reason for the Government to penalize a firm because of its size or resources nor is the Government required to take these circumstances into consideration when evaluating the proposals of smaller competing firms in order to equalize the competition. Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404.

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Next, UKW contends that the RFP was defective in that offerors were not advised of the relative importance of cost. However, under our Bid Protest Procedures, protests involving alleged improprieties contained in a solicitation apparent upon the face of the RFP must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 20.2(b)(1)(1976). In the instant protest, UKW raised this allegation after the closing date for receipt of proposals; therefore, this allegation is untimely and will not be considered on the merits.

For the above reasons, the protest of UKW is denied.

R. J. K... ..
Deputy Comptroller General
of the United States