

DOCUMENT RESUME

02711 - [A1852888]

[Alleged Improper Evaluation of Proposal]. B-187375. June 24, 1977. 7 pp.

Decision re: QUAD Corp.; by Robert F. Koller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: A. T. Kearney, Inc.; Food and Nutrition Service.

Authority: 56 Comp. Gen. 62. 55 Comp. Gen. 60. 55 Comp. Gen. 911. 54 Comp. Gen. 421. B-182844 (1975).

The protester alleged that its proposal was improperly evaluated vis-a-vis its competitor's and that its competitor proposed to employ the services of food procurement personnel who had a conflict of interest. Examination of the record did not reveal grounds to conclude that the agency acted arbitrarily or unreasonably in its evaluation of the proposals. The contention that the protester should have been selected because of being more qualified than the awardee was without merit. Since no provision of statute, regulation, or the request for proposals prohibited the award because of the possible conflict of interest on the part of contractor personnel, there was no basis to conclude that the award was improper. The protest was denied. (Author/SC)

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*J. G. H.*

**DECISION**



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

*Boyle  
D.L.I.*

**FILE:** B-187375

**DATE:** June 24, 1977

**MATTER OF:** QUAD Corporation

**DIGEST:**

1. Protester concludes, based on telephone conversations before and after award between successful offeror and itself, in which the possibility of protester working with successful offeror on project was discussed, that successful offeror was not completely staffed and should have been found unacceptable. Examination of record does not reveal grounds to conclude that agency acted arbitrarily or unreasonably in evaluation of proposal since during negotiations successful offeror properly filled staff requirements from other firms.
2. Protester contends that it should have been selected for award because of being more qualified than awardee and its initial price was lower than awardee's initial price. When examination of record provides no grounds to conclude that agency's determination was arbitrary or in violation of law and when award was made at price lower than protester's initial price, contention is without merit.
3. Protester argues that successful offeror should have been disqualified because of an alleged conflict of interest arising from the proposed use of three consultants from food service industry to study the National School Lunch and School Breakfast Programs and to develop a model for school food procurement. Since successful offeror discussed matter in proposal, agency recognized and considered possible conflict of interest before award, and no provision of statute, regulation or the RFP prohibited award in the circumstances, there is no basis to conclude that the award was improper.

QUAD Corporation protests the award of a contract to A. T. Kearney, Inc. (Kearney), under request for proposals (RFP) No. 11-FNS-76, issued by the Food and Nutrition Service (FNS), Department of Agriculture, to provide an in-depth economic and management study of alternate school food procurement systems in connection with the National School Lunch and School Breakfast Programs and to develop a model setting management guidelines for

improving individual school's food procurement system. QUAD essentially contends that its offer was improperly evaluated vis-a-vis Kearney's and that Kearney proposed to employ the services of food procurement personnel who have a conflict of interest because they are employees of institutional food suppliers and food management services.

Alleged Improper Evaluation

The basis for QUAD's contention of improper proposal evaluation rests on two telephone conversations between the president of QUAD and representatives of Kearney. The first telephone call occurred during negotiations. Kearney contacted QUAD in an attempt to supplement its staff. QUAD advised that it was also under consideration for award and such an arrangement was impossible. After award QUAD participated in a second telephone conversation, during which Kearney again mentioned the possibility of QUAD working with Kearney on the project.

Based on the conversations QUAD concludes that Kearney could not have submitted with its proposal a full list of proposed staff members and their qualifications if even after award Kearney was still recruiting additional staff. And QUAD concludes that it was more qualified to perform the required work than Kearney, especially since its initially proposed price was lower than Kearney's.

Kearney explains that, as a result of technical negotiations, it was advised of the necessity to strengthen its proposed staffing through the addition of consultants with specialized skills. QUAD was contacted in an effort to obtain the specialized skills of its president in the area of fresh meats and perishables. A 10 man-day effort was contemplated. When it was learned that QUAD was also competing for the FNS contract, the conversation concerning that project was terminated. After award Kearney again discussed QUAD's possible involvement with the project as a consultant.

Documentation provided by FNS, including evaluators' comments on initial proposals, letters to offerors pointing out weaknesses in offers, initial and best and final offers, and evaluators' comments on best and final offers, shows that Kearney's initial offer was weak because its proposed staff was considered to have an inadequate food procurement and nutritional background. To strengthen its offer, Kearney added three consultants with the desired expertise. Subsequently, the FNS Board of Contract Awards (Board) considered Kearney's revised offer to be technically acceptable.

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QUAD's initial proposal was determined to be within the competitive range but it contained two weaknesses. The principal reason for QUAD's failure to participate further in the negotiations was that, in the evaluators' view, QUAD furnished little information concerning its proposed approaches for the food procurement model and guides. During the negotiations QUAD was advised of the deficiency and was requested to provide specific information on its proposed approach for the food procurement model and guides. QUAD then submitted additional information and additional discussions between FNS evaluators and QUAD were held. After that the evaluators presented their findings to the Board and the Board concluded that QUAD's proposal was still deficient in providing the requested information and should receive no further consideration.

QUAD disagrees with FNS and contends that it provided sufficient explanation of its proposed food procurement model and guides. QUAD requests that our Office review FNS's rationale for award of the contract to Kearney.

It is not the function of our Office to evaluate proposals of unsuccessful offerors to determine which could have been selected for award. That function is the responsibility of the contracting agency, since it must bear the burden of any difficulties resulting from a defective evaluation. Thus, procurement officials enjoy a reasonable degree of discretion in the evaluation of proposals. Their determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of procurement statutes or regulations. Tracor, Inc., 56 Comp. Gen. 62 (1976), 76-2 CPD 386. After examining (1) QUAD's proposal and all revisions; (2) the RFP's statement of work and evaluation factors; (3) the evaluators' comments; and (4) the Board's decision, we cannot conclude the FNS's determination concerning QUAD's proposal was arbitrary or in violation of procurement statutes or regulations.

QUAD also objects to the evaluation of its proposal because it initially offered a price lower than Kearney's. The RFP's evaluation scheme, not protested by QUAD, provided that proposals would first be evaluated and rated on disclosed nonprice criteria and then price. The record shows that after nonprice negotiations Kearney submitted the only acceptable proposal and following price negotiations, the contract was awarded to Kearney at a price lower than QUAD's initial and only price. We find no basis here to object to the award to Kearney.

Alleged Conflict of Interest

Kearney proposed using personnel employed by institutional food suppliers and food management services. QUAD contends that each of those companies has a vested interest in seeing that school buyers do not become stronger and more knowledgeable but that they become more dependent on institutional food suppliers and food management services. QUAD states that Kearney's selection of those advisors indicates at best a lack of understanding and, at worst, a cynical disregard of the objectives of the project. QUAD concludes that if FNS knew before award who the advisors were to be, then FNS either did not follow its intentions to obtain an objective study or did not appreciate the effect of having sellers establish buying guidelines.

The RFP required each offeror to provide a resume for each professional to be assigned to the project. Each member of an offeror's firm and consultants were to be clearly identified and the tasks or functions of each and the man-days required were to be stated. The RFP further required that the organizational structure of the proposed project team, the personnel to be assigned to each element, and the function of each element were to be disclosed. Finally, the Government reserved the right to remove any employee from the project if required for any reason and to approve replacement employees.

Our examination of Kearney's offer, including all modifications, shows that Kearney complied with all relevant requirements of the RFP regarding disclosure of identity, employee, and function of proposed employees and consultants, including the three persons QUAD alleges have a conflict of interest. Moreover, during the negotiations Kearney was aware of the possible appearance of a conflict of interest and specifically brought it to the attention of FNS. Kearney stated as follows:

"As described verbally in our meeting this morning, we intend to utilize the services of the following individuals from the food service industry:  
[List of three names, titles, and affiliations]

\* \* \* \* \*

"The above named individuals will each be involved in this project to the extent of approximately 20 man-days. The nature of their involvement will be as active members of the study team. For example, we expect them to participate actively in the field study, analyzing the alternative procurement systems and building the procurement models. We will utilize their technical expertise in developing the School System Food Procurement Guide, which is one of the tangible outputs from this study. We believe it is worth noting that each one of these individuals is responsible for the development and effective use in their respective field organizations of food procurement guides so that the practicality of their inputs to this phase of our work can be assured. The nature of the involvement of our food procurement specialists is such that we believe there will be ample opportunity for Food and Nutrition Service personnel to be exposed to their thinking during the course of the study.

"In order to avoid the appearance of any possibility of conflict of interest, we have organized our approach so that both the structuring of the procurement models and the corollary School Food Procurement Guide will be developed based on the broad experience of multiple representatives from each phase of the food service industry and not just from the three food procurement specialists alone. In this regard it should be reiterated that [Kearney] is responsible for this project in its entirety and that steps will be taken to assure complete objectivity by assuring that the food procurement specialists' input are limited to their unique areas of expertise."

After consideration of Kearney's modified offer, including the consultants from the food service industry, the Board considered Kearney's proposal to be acceptable and price negotiations were then conducted resulting in the award.

Recently, our Office has considered allegations of conflict of interest in substantially similar situations. In PRC Computer Center, Inc., 55 Comp. Gen. 60 (1975), 75-2 CPD 35, an unsuccessful offeror

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contended that because the awardee's chairman of the Board of Directors held interests in the oil and gas industry, his firm should have been disqualified since the awardee would be in possession of sensitive proprietary data necessary for regulating the petroleum industry. There the procuring agency was informed of that fact. In the absence of a statutory or regulatory prohibition or a condition in that RFP excluding offerors with no connection to the oil and gas industry, we found no basis to exclude the awardee from participation.

In Planning Research Corporation Public Management Services, Inc., 55 Comp. Gen. 911 (1976), 76-1 CPD 202, relying on the PRC Computer Center, Inc., decision, we stated that it is the primary responsibility of the procurement agency to balance the general policy of the Federal Government to allow all interested qualified firms an opportunity to participate in its procurements in order to maximize competition against the legitimate interest of preventing bias in study contracts.

In VAST, Inc., B-182844, January 31, 1975, 75-1 CPD 71, an unsuccessful offeror contended that the successful offeror should have been excluded from consideration for award because the successful offeror was to perform preproduction sample testing and engineering testing of underwater listening devices while simultaneously analyzing the results of its own tests to determine compliance with the test procedures the successful offeror assisted in writing under separate contracts. Although the procuring activity failed to refute that contention, we denied the protest because our review of the statements of work of both contracts revealed no specific instance where a conflict of interest would result and the protester provided nothing more than mere allegations in this regard.

In Exotech Systems, Inc., 54 Comp. Gen. 421 (1974), 74-2 CPD 281, the protester argued that award of a contract for maintaining and improving a national special education information center to the National Association of State Directors of Special Education should be prohibited because the National Association would be evaluating the work of its own members. Although the procuring activity contended that the contract contemplated no evaluation responsibilities, our examination of the RFP revealed that evaluation of special education services offered by state agencies was required. Further, the procuring agency's evaluators were acutely aware of the

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appearance of a conflict of interest and they questioned the National Association closely on that point. As a result the National Association developed procedures to be followed in the event of an actual or potential conflict of interest. Moreover, the agency's legal counsel reviewed the matter and approved the National Association's proposed procedures. Since (1) the potential conflict of interest was recognized and considered before award, (2) no statutory or regulatory provisions prohibited the National Association's participation in the procurement, and (3) no condition of the RFP excluded the National Association, we were unable to conclude that award to the National Association would be illegal.

With these principles in mind, we have examined the record before us and we reach the following conclusions: (1) any potential conflict of interest arising from the association of the three consultants was clearly recognized and thoroughly considered by FNS before award; (2) no condition of the RFP prohibited the association of consultants from the food service industry; and (3) such association violated no statute or regulation. In reaching these conclusions we have noted the relatively minor role of each consultant (20 man-days) in comparison to the projected total effort (about 400 man-days), Kearney's safeguards to minimize the appearance of the possibility of any conflict of interest, and FNS's contractual right to remove any member of Kearney's project staff if required for any reason and approve all replacements.

Accordingly, QUAD's protest is denied.

  
Deputy Comptroller General  
of the United States