



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Minority Communications, Inc.

File: B-228230.2

Date: January 29, 1988

---

### DIGEST

General Accounting Office will not object to a solicitation clause providing for agency approval of employees proposed by contractor for key positions, where agency determines that such approval is necessary to ensure required high quality performance, and protester does not establish that the requirement exceeds agency's needs or otherwise is improper.

---

### DECISION

Minority Communications, Inc. (MCI), protests certain terms of invitation for bids (IFB) No. F41620-87-B-0019, issued by the Department of the Air Force for audiovisual services.

We deny the protest.

The IFB contemplated the award of a firm, fixed-price contract for a base period plus 2 option years. Under the contract, the contractor is to provide all labor, materials, and supervision necessary to operate the graphics, photography, audiovisual management, data, and audiovisual library functions at Reese Air Force Base, Texas. In its September 20 protest, MCI objected to several provisions in the solicitation. MCI states in its comments on the agency report, however, that the Air Force has resolved all the protest issues except MCI's contention that clause C1.2.1.6 is improper. The clause provides as follows:

"The contractor must submit resumes and samples of work performed by the prospective Graphic and Photographic Lab supervisors to the contracting officer to determine their qualifications. Unqualified personnel will not be allowed to fill positions."

041148

MCI argues that C1.2.1.6 improperly permits the government to decide who the contractor can hire. The protester states that since this is not a personal services contract, it is improper for government officials to be involved with evaluation of a contractor's employees' professional competence, and to have the power to reject candidates.

The responsibility for formulating solicitation requirements that reflect the minimum needs of the government is primarily that of the contracting agency, and such requirements are unobjectionable in the absence of a showing that they do not reflect the agency's minimum needs. Winanday Greenhouse Co., Inc., B-208876, June 7, 1983, 83-1 CPD ¶ 615. The contracting agency is most familiar with the conditions under which the supplies or services have been or will be used, and our standard of reviewing protests challenging agency requirements has been fashioned to take this fact into account.

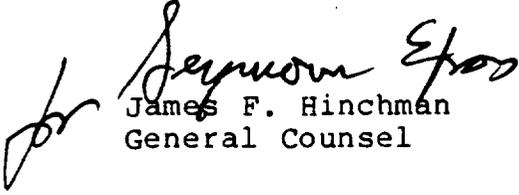
We find nothing objectionable in the agency providing for government approval of certain personnel hired to perform the contract work. The Air Force states that it merely plans to evaluate personnel proposed for the positions of graphic section supervisor and photographic section supervisor to ensure that minimum qualifications are met; it is not deciding who the contractor should employ, but is implementing a means by which the government can ensure that contract work will be performed as required. The Air Force states that previous contractors without sufficiently highly qualified personnel have been unable in some instances to produce work of the required quality. There is no general statutory or regulatory prohibition against agency approval of key employees, and provision for such approval does not have the effect of creating a proscribed personal services contract (i.e., a contract establishing an illegal employer-employee relationship between the government and contractor employees. See generally Cerberonics, Inc., B-192161, Nov. 21, 1978, 78-2 CPD ¶ 354.

Of course, this is not to say that the agency, in implementing the clause, may arbitrarily reject contractor-proposed employees; if the contractor believes this to be the case, it may pursue the matter administratively, under the terms of its contract.

The government's interest in providing for an effective method of obtaining the required level of service adequately supports the agency's determination to examine resumes and samples of work of key personnel, and MCI has not

demonstrated that the specification is unreasonable or that it does not reflect the agency's minimum needs.

The protest is denied.

A handwritten signature in cursive script, appearing to read "James F. Hinchman".

James F. Hinchman  
General Counsel