

Pietrovito



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Smith Bright Associates  
**File:** B-240317  
**Date:** November 9, 1990

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Yvette Smiley Smith for the protester.  
Lt. Col. William J. Holland, Department of the Air Force, for  
the agency.  
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

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## DIGEST

Procuring agency reasonably determined that the protester's  
proposal was technically unacceptable and not in the  
competitive range in a procurement for utility rate expert  
services, where the protester's proposal did not indicate that  
it had the required utility services experience or that it had  
available personnel to perform the contract.

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## DECISION

Smith Bright Associates protests the exclusion of its  
proposal from the competitive range under request for  
proposals (RFP) No. F08637-90-R0005, issued by the Department  
of the Air Force for utility rate expert services.

We deny the protest.

The RFP, issued as a total small business set-aside,  
contemplated the award of a requirements contract for utility  
rate expert services to assist the Air Force in its purchases  
of utility services, such as electricity, natural and  
manufactured gas, water, sewerage and thermal energy. The  
utility rate expert contractor will assist the agency in  
interventions before state utility commissions and the Federal  
Energy Regulatory Commission, in conducting special studies  
covering all facets of utility services with emphasis on the  
solution of planning, engineering, and economic problems which  
affect the acquisition and management of utility services, and  
in negotiating utility service contracts.

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The RFP provided that the contractor must be capable of supporting up to 10 interventions, 10 special studies, and 10 utility negotiations simultaneously. The RFP also limited subcontracting by providing that the contractor must perform at least 50 percent of the cost of contract performance with its own employees.

Offerors were informed that contract award would be made, based on an integrated assessment of technical and cost proposals, to the responsible offeror submitting the most advantageous proposal, price and technical factors considered. The RFP set forth the following technical evaluation factors, in descending order of importance: (1) samples or examples of work; (2) management plan; (3) client experience; (4) personnel qualifications; and (5) organizational capability. The RFP provided that cost would not be separately rated or scored but would be evaluated for reasonableness, realism, completeness and continuity.

The Air Force received five timely proposals, including those of Smith Bright and Exeter Associates, Inc. The Air Force determined that the protester's proposal was technically - unacceptable and not in the competitive range because: (1) the protester's proposed personnel had limited experience representing federal executive agencies, the Department of Defense (DOD), the Air Force or large industrial clients; (2) its proposed personnel did not have experience in sewer negotiations and had limited water negotiation experience; (3) the protester had not demonstrated its ability to simultaneously handle up to 10 interventions, 10 negotiations and 10 special studies; and (4) the protester could not satisfy the RFP requirement to perform 50 percent of the cost of contract performance with its own employees.

The protester initially protested to the Air Force the evaluation of its proposal and exclusion from the competitive range. Prior to a decision on its agency-level protest, Smith Bright was notified that the Air Force had made award to Exeter Associates.<sup>1/</sup> The protester protested to our Office on July 5, 1990, within 10 calendar days of the award. Performance of the contract has been suspended pending our decision in this matter.

Smith Bright argues that the Air Force improperly evaluated its proposal since its proposed personnel have all the necessary experience and expertise to perform the RFP work,

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<sup>1/</sup> The Air Force determined that Exeter Associates offered the best overall value to the agency. Smith Bright's proposed price was significantly higher than Exeter's initial and final proposed price.

including the performance of up to 10 interventions, 10 negotiations, and 10 special studies, simultaneously.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range are matters within the discretion of the contracting activity, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. In reviewing an agency's evaluation, we will not reevaluate the technical proposals but instead will examine the agency's evaluation to ensure that it was reasonable and in accordance with the RFP criteria. Id.

Regarding Smith Bright's experience, the Air Force found that Smith Bright had not proposed personnel with utility services experience representing federal executive agencies, DOD, the Air Force, or other large industrial clients, and that its proposed personnel had no sewerage negotiation and limited water negotiation experience. The agency contends that experience with bulk rate users, such as federal agencies or large industrial clients, and experience in the areas of utility services specified in the RFP are necessary to ensure that the contractor can adequately perform the contract. The protester does not dispute that it is lacking the experience identified by the agency but argues, nonetheless, that the agency's evaluation of its experience was discriminatory, since it is a minority-owned business.

The RFP provided that the offeror's experience and qualifications in representing federal executive agencies, DOD, the Air Force, or large industrial clients and the offeror's experience and qualifications in negotiating with water, sewer, electric, and natural gas suppliers would be evaluated. In light of the stated evaluation criteria, the agency reasonably determined that Smith Bright's failure to have the requisite experience was a significant deficiency.<sup>2/</sup>

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<sup>2/</sup> To the extent that Smith Bright contends that the experience requirements are unduly restrictive of competition or that the experience required exceeds the agency's minimum needs, its protest is untimely and will not be considered. Our Bid Protest Regulations require protests of alleged solicitation improprieties to be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a) (1990).

Although Smith Bright argues that the agency's evaluation of its proposal was biased and discriminatory, it has produced no evidence to support its contention; we will not attribute bias in the evaluation of proposals on the basis of inference or supposition. See IDG Architects, B-235487; B-235487.2, Sept. 18, 1989, 69 Comp. Gen. \_\_\_\_, 89-2 CPD ¶ 236.

The Air Force also determined that Smith Bright had not shown that it could simultaneously perform 10 interventions, 10 negotiations, and 10 special studies with its proposed personnel. Smith Bright disagrees with the agency's determination but does not state how it would perform the required work simultaneously, other than to state that it has 2 certified public accountants, 3 Ph.D. economists, 4 senior professionals, and 10 staff analysts available to work on the contract. This, however, does not show that the protester is capable of simultaneously performing the required interventions, negotiations, and special studies. Thus, we find the agency's determination to be reasonable.

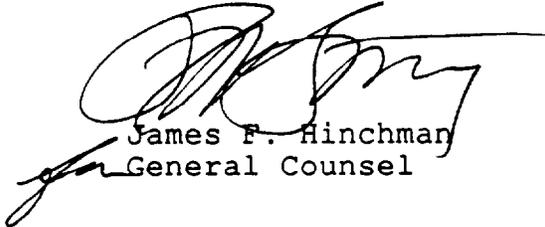
The agency also concluded that Smith Bright could not perform at least 50 percent of the cost of contract performance with its own employees as required by the RFP. Of the professional staff members identified by Smith Bright as available to perform the RFP work, only two individuals were identified as employees of the protester. The remainder of the professional staff are employees of Smith Bright's subcontractor.

Smith Bright argues that the Air Force improperly did not consider an unnamed consulting engineer listed on Smith Bright's organizational chart and failed to consider that Smith Bright might have other unnamed associates available to work on the contract. The protester also argues that it currently has no long-term contract obligations and therefore Smith Bright could devote all of its time to this contract. Other than the unnamed consulting engineer, this information was not presented in Smith Bright's proposal. Since the agency must necessarily limit its evaluation to the information presented in Smith Bright's proposal, see The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597, the Air Force reasonably determined that the protester's subcontractor would likely perform the bulk of the contract work and that Smith Bright could not perform in accordance with the subcontracting limitation.

Based on our review of Smith Bright's proposal, the technical evaluation thereof, and the protester's submissions, we find that the agency reasonably concluded that the

protester did not have the required experience and available personnel to perform the contract work. Accordingly, we find reasonable the Air Force's evaluation of Smith Bright's proposal as technically unacceptable and its exclusion from the competitive range.

The protest is denied.



James F. Hinchman  
General Counsel