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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Eccles Associates, Inc.; Deloitte Touche Tohmatsu ILA Group Ltd.

**File:** B-260486.6; B-260486.7

**Date:** October 17, 1995

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Gary M. Winter, Esq., and Rumu Sarkar, Esq., United States Agency for International Development, for the agency.  
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protests challenging the agency's selection decisions in making multiple awards, based on an offeror's combined weighted technical and cost scores, is denied where the protesters have not challenged as unreasonable the evaluations of their own proposals or the proposals of the higher ranked offerors and the protesters have not shown that the agency failed to award contracts consistent with the solicitation.

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## **DECISION**

Eccles Associates, Inc. and Deloitte Touche Tohmatsu ILA Group Ltd. protest multiple contract awards made under request for proposals (RFP) No. OP/CC/N-94-2, issued by the United States Agency for International Development for technical assistance services to support the Privatization and Economic Restructuring Program for Europe and the New Independent States of the former Soviet Union. The protesters basically challenge the agency's multiple award selection methodology.

We deny the protests.

The RFP described privatization services to be provided over a 5-year period for the following five functional activities: (1) transactions; (2) financial sector restructuring and privatization; (3) privatization advisory and training services and support; (4) capital and financial markets to support privatization; and (5) public

information. These services will be provided on a time-and-materials, level-of-effort (LOE) task order basis.<sup>1</sup> The RFP provided that offerors could submit proposals for one or more of the functional activities, and that proposals for each activity would be separately evaluated. The RFP also permitted the submission of specialty or "niche" proposals, i.e., proposals for less than one functional activity.

The RFP stated that the government would award 25 or more contracts, and that multiple awards were contemplated under each functional activity. The RFP stated that for each functional activity, awards would be made on the basis of an unrestricted competition; at least one award would be made under a small business set-aside; and at least one award would be negotiated pursuant to the Small Business Administration's 8(a) program procedures. The RFP stated that the exact number and mix of awards was not currently known, but assuming an adequate number of satisfactory proposals, the number of contracts awarded would depend on the overall requirement for technical assistance known at the time, the availability of funds, and the advantages and disadvantages to the government in making a particular number of awards.

In addition, for each functional activity, the RFP required offerors to propose an LOE (defined in terms of a number of person days per year) within an offeror's capacity. The RFP advised, however, that an award would not necessarily result in a contract for the LOE proposed, i.e., the LOE awarded could be less than the LOE proposed. The RFP stated that the actual LOE for each functional activity could vary based on need, available funding, and the success or failure of tasks performed under the contract. The RFP estimated that for each functional activity, the LOE would be in the range of 1,000 to 10,000 person days per year and would be within the offeror's capacity, based on the agency's requirements .

The RFP provided that awards would be made to those responsible offerors whose combined technical and cost scores were highest and therefore represented the greatest values to the government. In this regard, the RFP stated that technical evaluation factors would receive a weight of 60 percent and cost would receive a weight of 40 percent.

Technical proposals for each functional activity, evaluated by the agency's technical evaluation committee, could receive a maximum of 1,000 raw points. Technical proposals would be generally evaluated for corporate capability, central administration, country-by-country management and local staff, and small business and small disadvantaged business enterprise utilization (200 total raw points) and

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<sup>1</sup>The basic contract obligates \$10,000 to cover a minimum LOE. The initial obligation will be applied to the first task order. Following the initial obligation, funds will be obligated to cover individual task orders.

specifically evaluated for experience, comparative advantages, understanding the statement of work, sample task, and personnel (800 total raw points). An offeror's total raw technical score would be multiplied by .6 (the weight for the technical evaluation) to arrive at the offeror's total weighted technical score for the functional activity.

Cost proposals for each functional activity, evaluated on the basis of mathematical calculations, also could receive a maximum of 1,000 raw points based on an offeror's fixed daily rate for United States expatriate personnel and an offeror's multiplier for locally hired national professionals . The RFP provided that the offeror proposing the lowest fixed daily rate would receive 900 raw points, and the offeror proposing the lowest multiplier would receive 100 raw points. The fixed daily rates and multipliers of the higher cost offerors would receive proportionally lower scores. An offeror's total raw cost score would be multiplied by .4 (the weight for cost) to arrive at the offeror's total weighted cost score for the functional activity.

For each functional activity, following the evaluation of initial technical and cost proposals and the determination of which proposals to include in the competitive range, discussions were conducted with each competitive range offeror concerning technical and cost matters. Subsequently, these offerors submitted best and final offers (BAFO). For each functional activity, offerors were ranked based on the sum total of the offeror's weighted technical and cost scores. With respect to Eccles, an 8(a) firm which submitted a proposal for each functional activity, and Deloitte Touche, a large business which submitted a proposal for activities (A), (B), and (D), their respective final rankings for the relevant activities and their positions vis-a-vis the awardees (firms which were awarded contracts based on available funding and the agency's estimated total LOE) in each activity were as follows:

(A) Out of 15 firms, Deloitte Touche was ranked ninth, and Eccles was ranked thirteenth. Five awards were made to large businesses (firms ranked first, second, fourth, fifth, and sixth); two awards were made to small businesses (firms ranked third and eleventh); and two awards were made to 8(a) firms (firms ranked seventh and twelfth).

(B) Out of 18 firms, Deloitte Touche was ranked eighth, and Eccles was ranked seventeenth. Five awards were made to large businesses (firms ranked first, second, fourth, fifth, and sixth); two awards were made to small businesses (firms ranked third and ninth); and three awards were made to 8(a) firms (firms ranked tenth, thirteenth, and fifteenth).

(C) Out of 23 firms, Eccles was ranked sixteenth. Four awards were made to large businesses (firms ranked first, second, third, and seventh); three awards were made to small businesses (firms ranked fifth, thirteenth, and fourteenth); and one award was made to an 8(a) firm (firm ranked sixth).

(D) Out of 18 firms, Deloitte Touche was ranked eighth, and Eccles was ranked seventeenth. Five awards were made to large businesses (firms ranked second, third, fourth, sixth, and seventh); three awards were made to small businesses (firms ranked first, fifth, and eleventh); and one award was made to an 8(a) firm (firm ranked fifteenth).

(E) Out of 16 firms, Eccles was ranked fourteenth. Four awards were made to large businesses (firms ranked third, fourth, sixth, and ninth); two awards were made to small businesses (firms ranked second and seventh); and two awards were made to 8(a) firms (firms ranked first and eighth).<sup>2</sup>

Eccles and Deloitte Touche argue that the agency's selection methodology, under which 8(a) firms, small businesses, and large businesses, respectively, were selected for award, was not consistent with the terms of the RFP. Eccles argues that the RFP required the agency to conduct an initial competition where all firms, regardless of size or minority status, would be eligible for award, followed by a competition between small businesses, regardless of a firm's minority status, and finally a competition among 8(a) firms. Eccles, a significantly lower ranked 8(a) firm, maintains that if this sequence had been followed, it would have received an award. In addition, Deloitte Touche, a large business ranked lower than other large businesses, and even some small businesses and 8(a) firms, complains that the agency did not award in the proper sequence, as described above, and that the agency inexplicably made awards to small businesses and 8(a) firms which were ranked lower than Deloitte Touche.

The record shows that the sequence followed by the agency in making awards did not affect the protesters because of their lower rankings and the fact that they do not challenge the evaluations of their own proposals or the proposals of higher ranked offerors. In this regard, the record shows that the agency made more awards than contemplated by the RFP without awarding a contract to either Eccles or Deloitte Touche. With respect to Deloitte Touche, for functional activities (A), (B), and (D), at least five large businesses were ranked higher than Deloitte Touche. The agency could have made from three to five awards to the highest ranked large

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<sup>2</sup>The agency made 46 awards for the five functional activities. For functional activity (C), the agency also made two awards to non-profit organizations.

businesses in each functional activity, thus satisfying, and even exceeding, the minimum number of awards contemplated by the RFP, without making an award to the protester, a lower ranked large business. With respect to Eccles, for functional activities (A), (B), (C), and (E),<sup>3</sup> the agency would not have been required to award it a contract since it could (and generally did) award at least two contracts to higher ranked small businesses and at least two contracts to higher ranked 8(a) firms, thus not only satisfying, but also exceeding, the minimum number of awards contemplated by the RFP concerning awards to small businesses and 8(a) firms.<sup>4</sup> We conclude that Deloitte Touche and Eccles, lower ranked offerors which have not challenged the evaluations of their own proposals or the proposals of the higher ranked offerors, have not established that the overall rankings were not properly determined and, as a result, that they were improperly denied awards.<sup>5</sup>

Deloitte Touche also generally argues that the qualifications and capabilities of the awardees were not evaluated and that the agency failed to evaluate whether these firms could perform at their respective proposed costs. We conclude that the protester's concerns are not supported by the record.

Specifically, the record contains narrative documentation listing the strengths and weaknesses of each offeror's technical proposal for general corporate capabilities and for capabilities related to the specific technical evaluation factors for the functional activities for which an offeror submitted a proposal. Deloitte Touche does not challenge any part of these evaluations.<sup>6</sup> Deloitte Touche also complains that the agency only evaluated an offeror's total price, but did not consider whether the offeror could actually perform at that price. To the contrary, the record shows

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<sup>3</sup>In its supplemental comments to the agency's supplemental report, Eccles withdrew its argument with respect to functional activity (D).

<sup>4</sup>For functional activity (C), the agency awarded three contracts to small businesses and one contract to an 8(a) firm. However, the record shows that there was an 8(a) firm ranked higher than Eccles which could have received an award before Eccles.

<sup>5</sup>We note that the agency made no award to a large business which was ranked lower than Deloitte Touche. Moreover, the RFP did not restrict the agency from making awards to small businesses and 8(a) firms ranked lower than large businesses such as the protester.

<sup>6</sup>Because of the number of awardees, Deloitte Touche and the agency agreed that the agency would provide the BAFOs of the two lowest ranked large business awardees in functional activities (A), (B), and (D). The protester does not challenge the evaluation of these proposals in any regard.

that the agency considered, among other things, the reasonableness of an offeror's proposed fixed daily rate and multiplier, making sure that all required cost elements were included. The agency further considered the capacity of offerors to deliver and manage proposed LOEs; the capacity of small businesses and 8(a) firms to provide at least 50 percent of the LOE; the capability of offerors to finance the contract effort; and subcontractors' commitments regarding staffing. In addition, the record shows that technical and cost issues were raised during discussions.<sup>7</sup> On this record, we have no basis to object to the agency's evaluation of offeror qualifications and capabilities and offeror ability to perform at proposed costs.<sup>8</sup>

With respect to functional activity (D),<sup>9</sup> Deloitte Touche also argues that the agency improperly normalized technical scores on the basis of "disparate scoring ranges." The record shows in this regard that the agency normalized the technical scores by multiplying the highest score (958) by the percentage necessary to increase it to 1,000 points, and then multiplying all other offerors' scores by the same percentage. The protester maintains that, because the cost scoring range was greater than the technical scoring range, normalization had the effect of reducing technical weight below the 60 percent specified in the RFP; it claims it would have been in line for an award had the proper weighting been applied.

While normalization was not required by the RFP, we note that there is nothing inherently improper in normalizing technical scores as the agency did here. See Tracor Applied Sciences, Inc., B-253732, Oct. 19, 1993, 93-2 CPD ¶ 238. We find

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<sup>7</sup>To the extent these matters concern responsibility issues, challenges of the agency's affirmative determinations of responsibility are not reviewed by our Office absent a showing of possible fraud or bad faith on the part of procurement officials, or that definitive responsibility criteria in the RFP may have been misapplied. 4 C.F.R. § 21.3(m)(5); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. Here, Deloitte Touche has not made the required showing. In addition, in making its responsibility determinations, the agency conducted pre-award surveys to ensure, among other things, that offerors had satisfactory performance records, acceptable accounting systems, and adequate financial capacity to perform.

<sup>8</sup>The agency states in its report that since future task orders would be issued on an "as needed" basis, an offeror's ability to perform individual tasks would be evaluated on an "as needed" basis when each task order is issued. The fact that the agency intended to further consider firms' qualifications when specific task orders were issued does not change the fact that the agency adequately considered offerors' qualifications and capabilities in the evaluation.

<sup>9</sup>In its comments to the agency's report, the protester withdrew this argument with respect to functional activities (A) and (B).

nothing improper in the agency's scoring approach. First, while the technical and cost scoring ranges were different, this difference was the result, solely, of the divergence of the offered costs and the relative closeness of the technical proposals, and would have existed even had the technical scores not been normalized. The normalization process, while resulting in increases in offerors' raw technical scores, maintained the percentage differences between the technical scores, and in no way affected the relative technical standing of the proposals. Since the agency multiplied the normalized scores by .6, the agency's approach gave technical scores a proper 60 percent weighting. The alternate normalization approach suggested by the protester changes the technical standing of proposals and results in a re-ranking of offerors. Since there has been no challenge of the underlying evaluation, we think the agency did nothing wrong in using an approach which maintained the rankings resulting from the evaluation.

Finally, Deloitte Touche questions the agency's lack of a formal acquisition plan, including source selection procedures, for this particular procurement. In response, the agency references its negotiation memorandum for each functional activity and basically states that in conducting this procurement, it followed its own internal regulations which address source selection procedures and the detailed evaluation requirements described in the RFP. Source selection plans are internal agency instructions and as such, do not give outside parties any rights. Antenna Prods. Corp., B-236933, Jan. 22, 1990, 90-1 CPD ¶ 82. It is the evaluation scheme in the RFP, not internal documents, to which the agency is required to adhere in evaluating proposals and in making the source selection. Pan Am World Servs., Inc., B-235976, Sept. 28, 1989, 89-2 CPD ¶ 283. We believe, and Deloitte Touche has not shown otherwise, that the evaluation of proposals was consistent with the RFP's evaluation scheme and that the agency did act in accordance with the minimum award criteria described in the RFP.

Accordingly, the protests are denied.

Comptroller General  
of the United States