



Comptroller General
of the United States

Washington, D.C. 20548

Ms. McAuliffe

Decision

Matter of: Deloitte & Touche

File: B-238371

Date: May 18, 1990

Donald D. Harmata, Esq., for the protester.
William A. Roberts, III, Esq., Howrey & Simon, for KPMG Peat Marwick, an interested party.
Col. Herman A. Peguese, Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's proposed labor mix does not meet solicitation personnel education and experience requirements, and therefore agency's evaluation of awardee's proposal was unreasonable, is denied where record shows that proposed labor mix met the solicitation staff requirements.
2. Protest that awardee is ineligible for a contract because of a conflict of interest arising from its relationship with a company which could possibly be subject to audit services required under present contract is denied where agency reasonably determines that no actual conflict exists and where agency's proper administration of task orders issued under contract would provide adequate safeguards to prevent the contractor from possibly conducting a biased audit.

DECISION

Deloitte & Touche protests the award of a contract to KPMG Peat Marwick under request for proposals (RFP) No. F33600-89-R-0281. The solicitation, issued by the Department of the Air Force, is for professional, multi-disciplined, management audit and evaluation services to study the ongoing modernization programs of the Air Force Logistics Command, the Air Force Accounting and Finance Center, the Defense Logistics Agency, and the United States Army Reserve. Deloitte primarily alleges that Peat's proposed labor mix and low price indicate that the individual staff members proposed by Peat do not satisfy the experience and

C48561/191417

qualification requirements set forth in the solicitation for each required labor category. In addition to challenging the agency's evaluation of its own technical proposal, the protester also contends that Peat is ineligible for award because of an alleged organizational conflict of interest.

We deny the protest.

The RFP, issued August 13, 1989, and subsequently amended five times, solicited technical and cost proposals for an indefinite quantity, task order contract for 1 basic year of audit and evaluation services, with 4 option years. Offerors were required to propose fixed hourly rates, including profit, overhead and administrative costs for five specified labor categories of individuals, with each labor category having to meet certain minimum personnel qualifications. The RFP's statement of work and level of effort also provided, as a guide, for each labor category, the approximate percentage of the total estimated number of person hours required for each of the basic and option years.

A summary of the RFP's five labor categories, corresponding hourly percentages, and minimum personnel qualifications follows:

| <u>Labor Classification</u> | <u>Percent of Total Hours</u> | <u>*Personnel Qualifications</u> |
|-----------------------------|-------------------------------|----------------------------------|
| Project Leader | 10 | graduate; 10 years |
| Assistant Project Leader | 15 | undergraduate; 7 years |
| Senior Analyst | 40 | undergraduate; 2 years |
| Analyst | 25 | undergraduate; 2 years |
| Administrator | 10 | undergraduate; 1 year |

The RFP advised offerors that award would be made in accordance with a "lowest evaluated price technique" to the offeror with the highest total weighted score considering the following evaluation factors, listed in descending order

of importance: (1) technical merit (35 percent); (2) price (30 percent); (3) task order responses (25 percent); and (4) management capability (10 percent).

For the purpose of cost proposal evaluation, the lowest total proposed price to the government would receive the highest score, and price would be determined by multiplying the offeror's proposed hourly rate for each labor category times the estimated hours per category provided in the RFP.

Only Deloitte and Peat submitted proposals by the October 13, 1989, closing date. A clarification request regarding pricing was issued to Deloitte, and best and final offers were received from the two firms by November 21. Both firms' technical proposals were found acceptable and received similar scores. Peat's cost proposal of \$25,132,602.18 (for the basic year and 4 option years) received a substantially higher weighted score under the RFP's lowest evaluated price technique than Deloitte's cost proposal of \$31,064,589. Peat's proposal, considering technical and price scores, received a higher overall score than Deloitte's proposal. The Air Force reports that Peat's price was considered reasonable and realistic by the agency, and Peat was awarded the contract on January 4, 1990. Deloitte filed its protest with our Office on January 23, based upon information it acquired at a January 11 debriefing with the agency.

The protester first contends that Peat offered an artificially low contract price by proposing a labor mix that uses mostly lower hourly-rate personnel, and possibly outside personnel, who apparently do not meet the RFP's education and related experience requirements for the five labor categories. Deloitte specifically challenges the awardee's proposed labor mix of Peat partners (20 percent), senior managers (20 percent), and managers (60 percent), for the estimated project leader hours called for in the RFP. The protester proposed only its partners, at a substantially higher hourly rate, to meet the same requirement for project leader hours. Deloitte asserts that all "Big 6" accounting firms (including Deloitte and Peat) follow the same personnel promotion scheme under which partnership is granted to personnel with 10 years experience. Accordingly, Deloitte contends that Peat's proposed labor mix does not meet the RFP's 10-year experience requirement for project leader hours since Peat proposes to use some of its senior managers and managers for these hours instead of using only partners. Similarly, Deloitte alleges that the awardee's proposed use of consultants (who Deloitte claims would generally only have between 0 and 5 years experience under the typical "Big 6" accounting firm hierarchy) as assistant

project managers indicates that these individuals do not have the RFP's requisite 7 years experience for that labor category. The protester essentially challenges the agency's evaluation and asks our Office to review the awardee's proposal (including each resume) to determine whether or not Peat's proposed staff meets the RFP's requirements.

The Air Force found that the awardee's technical proposal properly used the multi-disciplined skills of Peat personnel under each of the five labor categories. The agency emphasizes that the RFP did not require that firms propose only their partners as project leaders, as Deloitte chose to do, but rather that all project leader hours, as well as the hours to be filled by the other labor categories, be performed by individuals possessing the requisite education or equivalent training and the required experience. Air Force evaluators found that Peat's proposed staff met the RFP's requirements and, in most instances, exceeded the minimum personnel qualifications required, regardless of each individual's in-house Peat title.

Since Deloitte questions the Air Force's evaluation of Peat's proposal for technical merit and personnel capability, namely the qualifications and experience of its proposed staff, the question for our Office is whether the agency's assessment and scoring of these factors was reasonable, in accord with stated criteria, and complied with applicable statutes and regulations. See, e.g., Consulting and Program Management, 66 Comp. Gen. 289 (1987), 87-1 CPD ¶ 229. Based upon our review of the awardee's proposal, we find that the Air Force's evaluation of Peat's proposal meets these standards and thus find no reason to question either the evaluation or the award.

As noted above, the RFP listed technical merit and management capability as technical evaluation factors. In other sections of the solicitation, offerors were instructed to submit personnel resumes to ensure that its proposed staff met the specific experience requirements for each labor category, which we regard as material to the technical evaluation. Our review of Peat's proposal, its personnel qualification matrix, and all resumes it submitted for its proposed "core teams" indicates that, regardless of in-house Peat title, each individual specifically proposed by Peat for each labor category meets the education (or equivalent training) and related experience requirements for that category. The RFP specifically allowed offerors to propose a labor mix using multi-disciplined skills for each labor category and advised offerors to submit a composite labor rate for each of the five labor categories that reflected the proposed

labor mix. Thus, we find Peat's approach in proposing a labor mix to be in accordance with the RFP's instructions and, further, find that Peat's proposed labor mix meets the requisite minimum personnel qualifications. We also note that the RFP provides that the contractor must furnish a resume for approval by the contracting officer for each employee within 1 week of that employee's performance under the contract. Thus, through the RFP's terms and the agency's administration of the contract, there will be consistent review of Peat staff qualifications throughout the term of the contract. We find no reason to question the reasonableness of the agency's evaluation of Peat's proposal.

Deloitte additionally contends that the awardee's alleged use of less experienced staff also indicates that Peat's proposal fails to satisfy the requirement for proper supervision of audits which is set forth in the Government Auditing Standards, 1988 edition, issued by the General Accounting Office and referenced in the RFP. The protester, in questioning Peat's use of its program analysts at a "very low hourly rate of \$16.46" without charging overhead or administrative fees, also claims that Peat may be proposing to use an excessive number of untrained outside personnel in violation of the Government Auditing Standards.

The agency claims Deloitte's concerns regarding the awardee's compliance with the Government Auditing Standards are unfounded because Peat's proposal indicates that all auditing services will be properly supervised by qualified personnel and that Peat, which documented its past compliance with the standards through submission of a required peer review by an independent certified public accountant, also certified compliance with the standards in its proposal. As for Deloitte's suggestion that the low hourly rate proposed for Peat program analysts indicates excessive use of outside untrained personnel, the agency states that Deloitte is factually incorrect because Peat has not proposed the use of any outside personnel, and each of Peat's proposed in-house program analysts, for which Peat will absorb overhead and administrative fees, meets the RFP's required personnel qualifications.

We find reasonable the Air Force's determination of Peat's compliance with the Government Auditing Standards since Peat's proposal not only certifies compliance, but also shows appropriate personnel qualifications to ensure proper supervision and performance of the audit services. Further, Peat's proposal documents, through a certified peer review by Arthur Young and Company, the firm's general practice of compliance, and exhibits substantial previous

experience conducting audits of federal agencies in accordance with the referenced standards. Additionally, the proposal indicates that one member of Peat's proposed staff participated on the Auditing Standards Advisory Council which developed the 1988 Government Auditing Standards, while another member is the chairperson of the American Institute of Certified Public Accountants. We find no reason to question that the Air Force's determination of Peat's compliance with the referenced Government Auditing Standards was other than reasonable.

The protester also contends that the agency failed to evaluate its proposal in accordance with the terms of the RFP and improperly downgraded its proposal on technical merit and task order responses for what the evaluators found to be overstaffing and front-loading of manhours. Deloitte basically contends that since the Government Auditing Standards emphasize the need for adequate planning of audit work, the evaluators improperly penalized Deloitte for providing conscientious up-front planning of its task responses. Deloitte also states that it is the incumbent of these services, and that its prior proposal and performance have never been questioned about overloading manhours, and thus, the present evaluators must have erred in their determination. We note, however, that since Deloitte's proposed price of \$31,064,589 received an evaluation score of only 24.27 points, (where Peat's proposed price of \$25,132,602.18 received the full 30 points available), and since there is nothing in the record that calls into question the agency's determination that Peat's price was realistic and reasonable, even if Deloitte received perfect scores under each of the remaining three technical evaluation factors, its total weighted score still would not displace Peat as the apparent awardee under the RFP's lowest evaluated price plan. Since Deloitte would not be in line for award even if it succeeded on this protest basis, we do not see how the protester was prejudiced by the technical evaluation of its proposal. See Employment Perspective, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279.

Finally, Deloitte argues that Peat is ineligible for award because of a conflict of interest arising from Peat's alleged business relationship with Integrated Microcomputer Services, Inc. (IMS), which apparently provided computer software systems to the Air Force Logistics Command. Deloitte suggests that since IMS was earlier named by Peat as a possible source for certain time sharing services required under an unrelated contract held by Peat with the General Services Administration for software re-engineering services, an impermissible organizational conflict of

interest is present, since IMS could possibly be subject to the audit and evaluation services procured by the Air Force under the present contract with Peat. Deloitte suggests that such a business relationship may prevent Peat from objectively and independently auditing the four modernization programs, at least to the extent that IMS might be involved in such an audit, and that Peat should have been precluded from competing for the award. Deloitte specifically references clause H-902 of the RFP which excludes the successful contractor from participating as a future contractor or subcontractor in the procurement of any phase of the four named modernization programs. Deloitte also points out that the RFP's cover letter warned that "contractors with past or present acquisition, development, or installation involvement in the above named programs will be eliminated due to conflict of interest." Deloitte intimates that Peat's prior relationship with IMS, although unrelated to the four modernization programs, gives Peat an impermissible interest in work that may have to be evaluated.

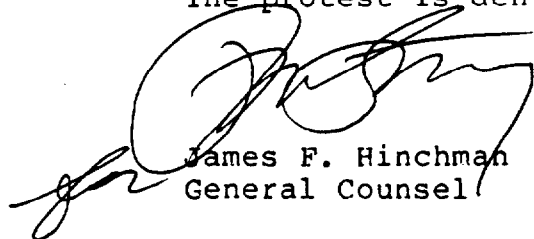
The Air Force reports that no conflict of interest exists because the prohibition here only precludes the contractor from participating in any contracts relating to the programs to be audited under this contract and no one has alleged that Peat has or will be involved in such a prohibited contract. As to the relationship between IMS and Peat under the GSA contract, Peat asserts that not a single task order has been issued by GSA to Peat and that Peat has not ordered any services from IMS. Peat certified in its proposal that it did not have any conflict of interest related to the work to be performed under the RFP and further states that it has no vested interest in IMS that could impede its objectivity.

The responsibility for determining whether an actual or apparent conflict of interest will arise if a firm is awarded a particular contract, and to what extent the firm should be excluded from the competition, rests with the contracting agency. We will not overturn the agency's determination in this regard except where it is shown to be unreasonable. D. K. Shifflet & Assocs., Ltd., B-234251, May 2, 1989, 89-1 CPD ¶ 419.

Here, we find that the agency reasonably determined the award to Peat was proper, and we do not find that the tenuous nature of the alleged business relationship between Peat and IMS constitutes an impermissible organizational conflict of interest to warrant upsetting the present award. The RFP only prohibited the contractor from business relationships in the four named programs subject to the contract. Peat certified its independence from any conflict

and no evidence presented shows otherwise. Further, performance under the audit and evaluation contract is on a task order basis, and as a result, the agency can exercise care and directly control the scope of Peat's work through proper contract administration which we believe would provide adequate safeguards to prevent Peat from possibly conducting a biased evaluation, even if IMS is subjected to an audit under the contract. In our view, the remote relationship between these firms and our expectations of close and proper contract administration of any task order issued, especially one that involves IMS, will adequately prevent Peat's objectivity from being impaired, and are sufficient to confirm that, despite the claim of a conflict of interest with IMS, the agency's determination to award to Peat was reasonable and proper.

The protest is denied.



James F. Hinchman
General Counsel