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DECISION



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

FILE: A-139251

DATE: October 19, 1977

MATTER OF: George A. Aretakis & Associates

DIGEST:

EPA solicitation calling for auditing services of Certified Public Accountants is not ambiguous and is not unnecessarily restrictive of competition.

George A. Aretakis (Aretakis) protests the award of a contract to any other offeror under request for proposals (RFP) No. WA 77-B302 issued by the Environmental Protection Agency (EPA) on March 15, 1977, for auditing services in six regions (I, III, V, VI, VIII and X). The issues presented by this protest are whether the RFP limited the category of qualified offerors to Certified Public Accountants (CPA's) and, if so, whether such a requirement is unnecessarily restrictive of competition. In addition, Aretakis, who is an experienced accountant, but not a CPA, complains that under the laws of the State of Connecticut he was unfairly denied credit for the two parts of the CPA examination which he has passed.

With respect to Aretakis' contention on the first issue, it is true that the RFP does not explicitly set forth a requirement that offerors be licensed as CPA's. There is, however, considerable support for the position of the EPA that such a requirement is implicit if the RFP and the document which is incorporated by reference are considered together. The document that is incorporated by reference in the RFP is a pamphlet by the Comptroller General of the United States entitled "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" (1974 Reprint) and is referenced both in the Statement of Work section and on page 3 of the RFP. Appendix I of the "Standards" pamphlet states: "When outside auditors are employed for assignment requiring the expression of an opinion on financial reports of Government organizations, only fully qualified public accountants should be employed." (Emphasis added.) Since the RFP Statement of Work section states that "audits will result in audit reports containing opinions on the financial transactions and business practices of the government units or business firms involved," it is clear that the RFP sought offers only from fully qualified public accountants. It is not disputed that the term "fully qualified public accountants" refers only to licensed CPA's and those "public accountants" who were licensed on or before December 31, 1970. Since Mr. Aretakis is not one of the relatively few "public accountants" licensed on or before December 31, 1970, this category of accountants will not be further discussed.

Aretakis also points to a section of the RFP entitled "Extracts of Selected Working Papers" as evidence that the auditing services contemplated under the contract would not require auditors to provide a

financial opinion. Although the "Extracts" section does not set forth a requirement for a financial opinion, it is apparent that this section was not intended as a description of the auditing services required under the contract. The "Extracts" section was essentially a test of offerors' auditing skills. According to EPA, "prior audits were reviewed for specific problem areas and [offerors] were asked to comment on these problem areas. These comments provide the technical evaluators with one of several tools in the evaluation of the [offeror's] understanding of the work to be performed."

We believe that nothing in the "Extracts" section supports Aretakis' position that CPA's were not required under the terms of the RFP. Although it is our conclusion that the specifications for auditing services contained in the RFP are not ambiguous and do not constitute a basis for a successful protest, they could have been presented more concisely. We recommend that in future RFP's the specifications state with precision the kind of professional qualifications that may be required.

The second issue raised by this protest is whether the CPA requirement is unnecessarily restrictive. Aretakis contends that a number of auditing functions described in the RFP do not require a CPA's "opinion of a financial condition." It is pointed out that according to the RFP's Statement of Work section, an "audit will generally consist of an examination of financial and compliance matters and a review of efficiency and economy in carrying out project or contract responsibilities." The thrust of Aretakis' argument is that the economy/efficiency portion of the audit should be submitted for bid separate from that aspect of the audit which requires an opinion of a financial condition. In theory, this would allow otherwise qualified accountants who are not CPA's to bid on a portion of the auditing work and thus would allow greater competition. EPA, however, strongly opposes the suggested segregation of auditing functions:

"It is highly impractical to separate economy/efficiency reviews from financial/compliance examinations in audits of EPA grants and contracts. Both aspects are interrelated, requiring a knowledge of the audited activities, organizations, policies and procedures, and often an examination of the same records and other evidential materials. Contracting with separate firms to make economy/efficiency reviews, as well as financial/compliance examinations of the same grantee/contractor, would involve unnecessary duplication of effort. This would result in unnecessary expenditure of costs due to the additional cost of personnel, travel, and per diem. Equally distasteful would be the

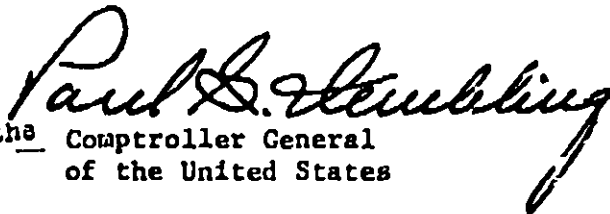
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additional burden placed on the financial staffs of the grantee/contractor in preparing for dual audits. Finally, audit findings would be significantly delayed awaiting the results of the partial audits and the combining of the individual audits at completion. The use of separate auditors to perform economy/efficiency and financial/compliance oriented audits can only be described as uneconomical and inefficient."

It is well established that contracting agency officials are accorded a broad range of discretion in making determinations of minimum needs and their judgment will not be challenged by our Office unless it is shown to be unreasonable. Winslow Associates, 33 Comp. Gen. 478 (1974), 74-1 CPP 15. Since EPA's judgment on its auditing needs appears to be rational, we conclude that the specifications are not unnecessarily restrictive of competition.

With respect to Aretakis' complaint that the laws of Connecticut unfairly denied him credit for the two parts of the CPA examination which he has passed, our Office has no authority to question State legislation except where there may be a conflict between State and Federal law. Since Aretakis' complaint does not suggest that such a conflict exists, and no conflict is indicated by the record, we have no basis to consider the merits of Aretakis' allegation.

Accordingly, the protest is denied.


For the Comptroller General
of the United States



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

OCT 19 1977

B-189251

The Honorable Douglas M. Costle
Administrator, Environmental Protection
Agency

Dear Mr. Costle:

Reference is made to a letter to our Office dated September 13, 1977, and prior correspondence, from Mr. E. T. Whelan, Deputy Assistant Administrator for Administration (PA-211), Office of Planning and Management, which reported on the protest of Mr. George A. Arstakin concerning the award of a contract under request for proposals No. WA 77-B302.

Enclosed is a copy of our decision of today. While the protest is denied, we wish to call your attention to that portion of the decision which recommends that in future solicitations for professional services, the specifications state with precision the kind of professional qualifications that may be required.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States

Enclosure

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

OCT 19 1977

R-139251

The Honorable Stewart B. McKinney
House of Representatives

Dear Mr. McKinney:

We refer to your letters to our office dated June 23 and September 23, 1977, in regard to the protest of Mr. George A. Aretakis concerning the award of a contract for auditing services under request for proposals No. W-77-3302 issued by the Environmental Protection Agency.

By decision of today, copy enclosed, we have denied the protest.

Sincerely yours,

Paul G. Hembling

For the Comptroller General
of the United States

Enclosure

YAM