

7404 *John H. ...*  
**DECISION**



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

FILE: B-191931

DATE: August 18, 1978

MATTER OF: Booz, Allen & Hamilton, Inc.

**DIGEST:**

1. DOE may require disclosure of any interest bearing on question of possible conflict as prerequisite for consideration of proposal but must do so in clear and unambiguous language.
2. Offeror could reasonably conclude that warranty of no possible conflicts of interest would satisfy solicitation provision permitting offerors to submit statement certifying to the absence of such interest. Since negotiations have been conducted with other offerors determined to be in competitive range, agency should negotiate with protester to establish whether it meets qualification criteria. Other corrective action is recommended.

Booz, Allen & Hamilton, Inc., protests the refusal by the Department of Energy (DOE) to consider its proposal to provide analytical studies and services in support of administrative management functions.

The request for proposals set forth as qualification criteria the requirements relating to organizational conflicts of interest. The Department states that it has attempted to fully implement the special statutory conflict of interest disclosure requirements applicable to DOE by establishing proper disclosure of potential conflicts of interest as a necessary prerequisite for consideration of an offeror's technical, business and cost proposal. Booz Allen's proposal was not considered on its merits because of the firm's alleged failure either to disclose, or to certify, in an unambiguous manner, that it had nothing to disclose.

The solicitation required the offeror to comply with the following:

"Disclosure Statement Regarding  
Organizational Conflicts  
of Interest

Pursuant to ERDA-PR Subpart 9-1.54, it is DOE policy to avoid situations which place an offeror in a position where its judgment may be biased because of any present or planned interest, financial or otherwise, the offeror may have which relates to the work to be performed pursuant to this solicitation, or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, 'offeror' means the proposer or any of its affiliate organizations or proposed subcontractors). Therefore:

"(1) The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible conflict of interest with respect to (a) being able to render impartial, technically sound, and objective assistance or advice, or (b) being given an unfair competitive advantage.

"(2) In the absence of any interest referred to above, the offeror shall submit a statement certifying that to its best knowledge and belief no such interest exists."

In addition, the offeror was required to accept without limitation, reservation or condition the Conflict of Interest Clause contained in the solicitation.

After proposals had been received it was determined that two offerors submitted ambiguous statements concerning these qualification criteria. Thereafter an amendment was sent to all offerors advising that definitive statements regarding both the disclosure statement and unqualified acceptance of the proposed contract's Conflict of Interest Clause were required. Booz Allen responded in pertinent part as follows:

"We would like to take this opportunity to reaffirm our Disclosure Statement as contained in Part I - CONTRACT PROPOSAL, SECTION V, of our proposal dated March 27, 1978, without further modification. Additionally, we hereby reaffirm that Booz, Allen & Hamilton Inc. will accept without limitation, reservation or condition The Conflict of Interest Clause contained in ATTACHMENT D, DRAFT CONTRACT SCHEDULE, ARTICLE 5.4 of the solicitation. In support of our Disclosure Statement we have attached an Organizational Conflicts of Interest Representation executed by an officer of our firm.

The attachment, which was signed and dated by the firm's vice president, states:

"Booz, Allen & Hamilton Inc. represents to the best of our knowledge and belief that:

"The award to him of a contract, does not involve a possible organizational conflict of interest as defined in 41 C.F.R. Section 9-1.5405(a)."

The Department believes that Booz Allen's response was inadequate. It argues that Booz Allen did not retract its prior qualified disclosure. Rather, it merely stated its conclusion that it had no possible conflict of interest while failing to disclose any

information bearing on the possibility of an organizational conflict. The Department objects to the fact that Booz Allen assumed the role of determining that no possible conflicts exist. It believes that under applicable statutes the Government is required to make this determination based on the information contained in the offeror's disclosure statement.

Booz Allen argues there is no meaningful distinction between its disclosure statement that award does not involve a possible organizational conflict of interest and a statement, which apparently would be acceptable to DOE, that the firm had no present or planned interest relating to the work to be performed and bearing on whether it had a possible conflict of interest. The protester argues that even under the latter certification an offeror would have to decide what interests might give rise to a conflict of interest. The protester states that as long as an offeror is permitted to self-certify, the offeror must have discretion to determine what interests must be disclosed. Alternatively, Booz Allen contends that it complied with a reasonable interpretation of the solicitation's disclosure statement provision.

It is clear that Booz Allen's understanding of DOE's disclosure provisions did not conform with the requirement intended by DOE, a requirement which we think is reasonable. It is possible, we think, to have an interest which bears on the question of possible conflict and which should be disclosed even though an offeror might believe that such interest does not result in a possible conflict. Thus, a certification of no possible conflict would not satisfy a requirement for a certification of no interests to disclose.

In prior procurements DOE permitted offerors to submit information as to their present or intended interests subsequent to the closing date for submission of initial proposals. However, DOE has experienced serious difficulties in prior procurements where it did not establish disclosure requirements as qualification criteria. Specifically, DOE has

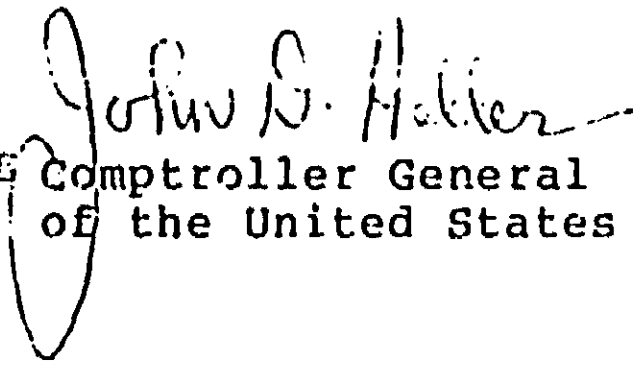
been faced with numerous exceptions apparently intended to preserve the offeror's freedom to secure future DOE work without regard to the required conflict restrictions. DOE believes this has seriously hindered the comparative evaluation of proposals.

In the circumstances we do not object to DOE's insistence that disclosure requirements be treated as qualification criteria which, if not met, would require proposal rejection. In the subject procurement, however, we think the solicitation does not clearly express DOE's requirement. The solicitation permits offerors to "submit a statement certifying that to its best knowledge and belief no such interest exists" and we believe an offeror could conclude that the term "such interest" referred to possible conflicts of interest and that a warranty of no possible conflicts would suffice.

In our opinion it would be unfair to reject Booz Allen's proposal without further inquiry. Because of the ambiguity and the fact that DOE has negotiated with other offerors who were determined to be in the competitive range, DOE should afford Booz Allen an opportunity to satisfy its disclosure requirements.

We have noted that DOE found other deficiencies in Booz Allen's certification but we think these deficiencies are subordinate to this offeror's basic misunderstanding of what DOE desired. If Booz, Allen agrees to make a disclosure or warrant that it has nothing to disclose, as intended by DOE, these other deficiencies, as well, may be cured.

Accordingly, the protest is sustained. We also are recommending to the Secretary of Energy that future solicitations provide a clearer statement of its disclosure requirements.

  
Acting Comptroller General  
of the United States



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

*James R. Schlesinger*  
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B-191931

August 18, 1978

The Honorable James R. Schlesinger  
The Secretary of Energy

Dear Mr. Secretary:

Enclosed is a copy of our decision of today sustaining the protest by Booz, Allen and Hamilton, Inc. under Request for Proposals EQ-78-R-01-6212.

The decision concludes that your Department should negotiate with Booz Allen to permit the firm to satisfy the qualification criteria relating to the disclosure of possible conflicts. We also recommend that such qualification requirements be clarified in future procurements.

It is requested that we be advised of the action taken pursuant to our recommendations.

Sincerely yours,

*John D. Miller*  
Acting Comptroller General  
of the United States

Enclosure