



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: KPMG LLP

File: B-292624

Date: October 27, 2003

Edward J. Tolchin, Fettmann, Tolchin & Majors, for the protester.
James J. McCullough, Esq., Deneen J. Melander, Esq., and Wendy P. Fischman, Esq.,
Fried, Frank, Harris, Shriver & Jacobson, for Deloitte & Touche LLP, the intervenor.
John A. Carlo, Esq., Social Security Administration, for the agency.
Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that vendor's quotation should have been rejected for failure to satisfy alleged solicitation requirement to provide labor rates under a specific labor category is denied where the solicitation did not contain mandatory labor categories, but rather invited vendors to determine the labor mix with which they proposed to fulfill the solicitation performance requirements.

DECISION

KPMG LLP protests the issuance under the General Services Administration (GSA) Federal Supply Schedule (FSS) of a blanket purchase agreement (BPA) to Deloitte & Touche LLP, under request for quotations (RFQ) No. SSA-RFQ-03-0290, issued by the Social Security Administration (SSA). KPMG contends that Deloitte & Touche's quotation should have been rejected as noncompliant with the solicitation requirements.

We deny the protest.

SSA issued the RFQ on March 31, 2003, for contract services to conduct reviews of SSA's financial management systems and management controls, and special studies of selected financial management functions for the agency's chief financial officer. The RFQ sought quotes by April 29, and contemplated the issuance of a BPA, under the vendor's current FSS contract, under which subsequent task orders will be issued, for a base year with 4 option years. Selection was to be made on a "best value" basis with the evaluation criteria consisting of technical acceptability and experience, which were equal in importance; past performance, which was less

important; and price which was least important, but which could be determinative if the difference in the other factors was slight in comparison to the price difference. RFQ § E(B), (C).

With respect to price, the RFQ called for quotes of prices and discounts that were consistent with the contractor's GSA schedule, and provided that price would be evaluated on the basis of the overall price for the functions required during the base year of the contract, with option year prices to be evaluated for completeness, reasonableness, balance, and consistency with the contractor's GSA schedule. RFQ § E(A)(4). The agency received quotes from KPMG and Deloitte, both of which were evaluated as warranting the maximum possible score under each of the three non-price evaluation factors, and were considered technically equal. KPMG's base year price was evaluated as [DELETED], and its total price including all option years was evaluated as [DELETED]. Deloitte's base year price was evaluated as \$2,993,487.40, and its total price including all option years was evaluated as \$18,593,467.60. Agency Report (AR), Tab E, Business Management and Cost/Price Evaluation Reports, at 5. However, the evaluators recognized that the price difference "may be a result of KPMG not applying escalation to Contract Years 2-5." Id.¹ As a result, the agency issued amendment No 6, which provided in relevant part that overall price would be evaluated on the basis of the 5-year term of the contract, rather than only the base year, called for "fixed prices" for the full 5-year contract term, and required revised quotes by June 25. RFQ amend. 6.

In response, Deloitte did not change its quote because, consistent with its FSS schedule, Deloitte's prices reflected a constant [DELETED] percent labor escalation rate for each option year; KPMG revised its quote, which had not contained any option year escalation, consistent with its FSS schedule which provides for future adjustment based on a market index.² KPMG stated that for each option year, it now "applied an escalation factor of [DELETED] to the previous year's labor category rates," and that it "understand[s] that this change will provide the Social Security Administration (SSA) with greater contract price certainty by providing firm fixed labor category rates for each labor category over the life of the contract, and an estimated firm fixed price for each contract year, based on the estimated labor hours

¹ KPMG's option year pricing tables used the base year rates and reserved the right to adjust the rates, and its cover explanation stated that the proposed option year rates represent the 2003 GSA schedule rates, and "will be adjusted in the out years (if necessary) to reflect currently published GSA rates." AR, Tab B, KPMG Quotation, Pricing Quotation Assumptions, at 9.

² It is undisputed that these different adjustments reflect the two choices available to FSS contractors for economic price adjustments under GSA's Standard Clause I-FSS-969, which calls for vendors to elect one of the two choices for price adjustments to their schedule rates on or after the first 12 months of the contract period.

detailed in your solicitation.” AR, Tab B, KPMG Revised Quotation, Cover Letter. In the revised quote, KPMG’s base year price was unchanged. However, its total price including all option years increased to [DELETED]. There were no changes to either vendor’s technical quotation. The contracting officer concluded that Deloitte’s quotation represented the best value on the basis that its quotation had the highest technical rating, which was technically equal to KPMG’s quotation, and that Deloitte quoted the lower price. AR, Tab S, Summary of Award, at 4. KPMG was advised of this determination on June 30, and a BPA was issued to Deloitte on July 3.

After filing an agency-level protest on July 7, KPMG sought a debriefing on July 8. While the SSA contracting officer advised KPMG that it was not entitled to a statutory debriefing, he met with KPMG representatives on July 17 to discuss the award “in the spirit of free and open competition,” AR at 7, and at that meeting also provided KPMG with a written denial of its agency-level protest. KPMG filed this protest with our Office on July 22, and as clarified in its subsequent submissions, alleges that the agency improperly failed to reject Deloitte’s quotation as noncompliant because of Deloitte’s alleged failure to quote prices for security analysts, which KPMG characterizes as a mandatory labor category. Supplemental Protest at 1.³ In particular, KPMG argues that the RFQ specifically requires vendors to provide pricing for security analysts, which KPMG contends are critical to contract performance, and that Deloitte failed to provide any labor rates under this category, as a result of which the agency was required to reject Deloitte’s quote.

³ KPMG also complains that it was unfairly disadvantaged by Amendment No. 6 because it permitted price changes only, as a result of which Deloitte allegedly had been given an unfair advantage in structuring its staff mix and, which “force[d] KPMG to bid capped rates and not actual fixed rates.” Protester’s Supplemental Comments, Oct. 3, 2003, at 4. This allegation is an untimely protest of an alleged apparent solicitation impropriety which, under our Bid Protest Regulations, was required to be protested before the closing time for receipt of proposals after the allegedly defective amendment. 4 C.F.R. § 21.2(a)(1) (2003). KPMG asserts that the impropriety was not apparent until it learned that Deloitte was its competitor. However, the alleged impact of the amendment on KPMG’s proposed labor structure and pricing was obvious from the amendment, and KPMG knew or should have known that it could face competition from an FSS competitor, such as Deloitte, that had chosen the fixed price escalation option available under the FSS schedule; accordingly, the alleged impropriety was obvious on the face of the amendment and KPMG’s protest of the effect of the amendment, first filed after notice of the selection of Deloitte to receive the BPA, is untimely and not for consideration on the merits.

Where, as here, an agency treats the selection of vendors under the FSS as a competition in a negotiated procurement, and a protest is filed challenging the outcome of the competition, we will review the agency's actions to ensure that the evaluation and selection determination was fair, reasonable and consistent with the terms of the solicitation. Garner Multimedia, Inc., B-291651, Feb. 11, 2003, 2003 CPD ¶ 35 at 3. While KPMG's argument is based on the premise that Deloitte's quote failed to satisfy the RFQ requirement to provide pricing for security analysts, the RFQ does not contain such a requirement. Rather, the RFQ calls for contractors to furnish the necessary personnel to perform the specified reviews, including the security review component, and explicitly permits the vendor to "specify the [l]abor [m]ix, estimated hours for each category and rates." RFQ at 4. The RFQ does contain a pricing table which lists a number of positions, including "security analyst," as well as a line permitting the entry of "additional positions ([c]ontractor to [l]ist.)" RFQ at 5. However, nowhere in the RFQ is there a requirement that vendors quote or price any particular labor category. Further, there is no requirement that any particular number of hours be specified for any of the labor categories. The agency explains that the flexibility afforded to the vendors to provide a labor mix and the fact that no specific labor categories were required by the RFQ reflect the agency's intent to have the pricing table simply provide representative descriptions of positions, which did not correlate directly with the labor categories contained in either KPMG's or Deloitte's GSA FSS contracts for these services. Supplemental Agency Report at 5.

In response to the RFQ, Deloitte submitted a pricing table that included most, but not all, of the listed categories and certain additional categories, but which did not include hours or pricing for a security analyst category. KPMG's price list included pricing for all of the labor categories, and certain additional categories as well. KPMG argues that by failing to provide pricing for the security analyst category, Deloitte failed to satisfy a solicitation requirement to provide these analysts. We disagree.

As described above, the RFQ explicitly requested the vendors to ascertain their labor mix, and did not require any of the listed labor categories. The fact that no set or minimum number of hours were called for in the pricing sheet confirms that the categories were not requirements since an entry of "zero" would be completely consistent with the table format. Further, the RFQ sought quotes based on the vendors' extant FSS schedules, which did not contain these precise labor categories. Thus, while KPMG entered prices next to the listed labor categories in the pricing table, it specifically stated with respect to these prices that "[h]ourly rates are based on KPMG's GSA Financial and Business Solutions Schedule 2003 Rates [and] . . . represent a blend of GSA Labor Categories." AR, Tab B, KPMG Quotation, Pricing Table. Further, while KPMG asserts that the security analyst was a critical labor category, it added a labor category "junior security analyst," which contained the majority of the hours proposed for the security analyst position. The agency reasonably determined that Deloitte's quotation, including its project

management plan (PMP) and resumes of the proposed individuals identified by Deloitte, made clear that the security review work sought under these categories was proposed to be performed by Deloitte's FSS labor categories of senior staff financial management services, senior staff auditing services, and experienced consultant financial management services, which were priced in the hours proposed by Deloitte under the listed representative labor categories of senior financial management analyst, senior financial management analyst II, and senior systems analyst.

In short, the record reflects that both vendors proposed pricing consistent with the labor categories contained in their FSS schedules, and the agency reasonably evaluated both quotations as satisfying the representative labor categories listed in the RFQ. There is no basis for eliminating Deloitte's quotation as technically noncompliant with a labor category pricing line which did not constitute a requirement, and with respect to which KPMG's quotation reflects a substantially similar approach, that is, a blend of its actual FSS labor categories.

KPMG also argues that Deloitte's quotation should have been downgraded under the technical acceptability criterion because of the relatively lesser experience reflected by the proposed staffing. Protest at 6. Again KPMG misconstrues the RFQ, which provides that the evaluation of technical acceptability would consist of a feasibility assessment of the vendor's "PMP to determine whether the contractor has a viable management plan, necessary resources (personnel and facilities) to execute the plan, and sufficient resources applied to each level of review to meet required reporting timelines." RFQ § E(A). There is simply no requirement in the RFQ for an evaluation of the relative experience of the proposed staff (although we note that Deloitte's quotation was actually evaluated as providing relatively more senior staffing); further, we note that the RFQ experience and past performance evaluation criteria explicitly call for evaluation of the vendor, not of its proposed staff. The record reflects that the agency performed the evaluation of the technical acceptability of Deloitte's quotation in a manner that was consistent with the evaluation criteria; KPMG's objection reflects a misreading of the evaluation criteria, and provides no basis to object to this evaluation.

The protest is denied.

Anthony H. Gamboa
General Counsel

