



August 26, 2011

Mr. Kevin C. Dwyer
Jenner and Block LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412

Re: Supplier Disagreement Resolution Case No. SDR11SR-05
Solicitation No. 2A-10-A-0009

Dear Mr. Dwyer:

This responds to your supplier disagreement regarding US Postal Service solicitation 2A-10-A-0009, Enterprise Project Management Office (EPMO) Contract. The referenced solicitation was issued on November 5, 2010.

In your disagreement, you raise two reasons why you believe Deloitte Consulting LLP (Deloitte) was ineligible for award of the contract. The first reason concerns possible organizational conflicts of interest, and the second concerns the key personnel required by the solicitation. I will address these concerns in that order.

Organizational Conflicts of Interest

You assert that the current contract of Deloitte & Touche LLP (an affiliate of Deloitte Consulting) with the Postal Service for Sarbanes-Oxley (SOX) consulting services creates an organizational conflict of interest (OCI) that cannot be adequately mitigated or neutralized, and that therefore the award to Deloitte should be vacated.

The existence of a potential or apparent OCI does not necessarily make an offeror ineligible for a contract award. The contracting officer (CO) must, as part of purchase planning, and with the assistance of the purchase/SCM team and assigned counsel, attempt to identify OCIs so that they may be avoided, neutralized, or mitigated. If OCIs become apparent after receipt of proposals, the CO may take actions necessary and in the interest of the Postal Service and the offerors to avoid, neutralize, or mitigate the potential or apparent conflict. If the CO decides to neutralize or mitigate a potential or apparent OCI, he or she should include a written analysis of the decision and the chosen course of action in the contract file. Further, Clause 1-7, revised as necessary with assistance of assigned counsel, should be included in all contracts when the CO determines that a real or potential OCI exists.

Here, the CO did address OCIs during purchase planning. Because of potential OCIs, the CO determined that certain suppliers would not be solicited. He also prohibited certain suppliers from subcontracting with the eventual EP MO contract award winner. The CO also included Clause 1-7 in the solicitation. That clause requires an offeror/supplier to warrant that it does not have an OCI that would affect its work under the contract and places restrictions on the supplier post award. None of the terms of Clause 1-7 have been violated. Deloitte did raise the OCI issue in its proposal where it stated that it will take actions should a conflict arise. Additionally, and as discussed in the CO's response to the initial disagreement, the CO took steps before contract award to ensure that an award to Deloitte would not cause a potential conflict. Further, Deloitte has instituted processes to identify any potential OCIs and alert both the CO and the CO's representative of the matter as required under Clause 1-7. If a potential OCI arises during contract performance, the parties will work to agree on a conflict avoidance or mitigation strategy. A mitigation strategy is, of course, one of the avenues the CO may take in response to a potential OCI.

The actions taken by the CO are sufficient to avoid, mitigate, or neutralize potential OCIs. They will also address any possible overlap between the services provided by Deloitte and Deloitte & Touche LLP – indeed, that is why the actions were taken.

Lastly in this area, I would like to address the OCI-avoidance proposal you provided the CO and subsequently sent to me by _____ for my review, suggesting a mechanism the CO could use if an OCI does arise. Specifically, you proposed that Booz Allen Hamilton be awarded a contract to perform the required services in such a situation. If an OCI arises that cannot be adequately avoided, mitigated, or neutralized, I hereby direct the CO to solicit offers for the required services.

Key Personnel

You assert that Deloitte's proposal did not fully respond to the solicitation requirements regarding key personnel, specifically, that individuals proposed as key personnel did not meet the certification requirements included in the solicitation.

Section 2.2.10 Key Personnel of the solicitation states, in part: "The Supplier's manager of this contract (and any replacement) will have PMP certifications from PMI and must have a PgMP certification from PMI. At this time, for the purposes of this Statement of Work, USPS is designating that all positions the supplier proposes for the Enterprise Program Management Office (Task 1) are Key Personnel positions. In addition, USPS is designating that the Supplier's senior account or engagement manager that is primarily accountable and responsible from a corporate perspective for the performance of this contract as a Key Personnel position."

Statement of Work Section B – EP MO Labor Categories then details the labor categories for the contract and enumerates the Minimum/General Experience, Functional Responsibility, Minimum Education, and any certifications required or recommended for each category. PMP and PgMP certifications are required for both the "Enterprise PMO Director" and "Program Manager 3" labor categories. However, there are no labor categories listed for the "Supplier's manager of this contract" or "senior account or engagement manager" positions referenced in section 2.2.10.

A review of Deloitte's proposal shows that _____ was proposed as the "Enterprise PMO Director – Key", and _____ was proposed as the "Program Manager 3". Both _____ and _____ have the PgMP and PMP certifications required

by the solicitation for the "Enterprise PMO Director" and "Program Manager 3" labor categories. As you note in your disagreement, _____ who was named in Deloitte's proposal as a "Senior Account Manager—Key", does not appear to have PgMP and PMP certifications.

However, _____ was not proposed as the Enterprise PMO Director or the Program Manager 3. Further, he was not proposed as the "Supplier's manager of this contract" position referenced in section 2.2.10 as requiring PMP and PgMP certifications. I note that a "Senior Account Manager—Key" position is not one of the labor categories delineated in the solicitation. Moreover, there is no certification requirement listed for the "senior account or engagement manager" position referenced in section 2.2.10. Therefore, _____'s certification, or lack thereof, is immaterial and is not grounds for vacating the award to Deloitte.

I have discussed with the CO your assertion that the certified individuals are not the individuals actually performing the work under the contract. The CO has assured me that _____ is serving as the Enterprise PMO Director and "Supplier's manager of this contract", while _____ is serving as the Program Manager 3. He has also assured me that, as noted above, _____ and _____ do have the required certifications. I have also reviewed invoices from Deloitte, and none show any billing for _____'s services.

The record does not support your contention that Deloitte has substituted lesser-qualified individuals after being awarded the contract. In light of the above, Deloitte has met the requirements of the solicitation, and the contract award should not be vacated on the grounds that it did not.

Conclusion

After review of the contract, discussions with the contracting personnel and _____, consideration of the points raised in Booz Allen Hamilton's disagreement, and consideration of Booz Allen Hamilton's proposed mechanism to handle a potential OCI, and based on the findings above, I find the CO's award to Deloitte to be in the Postal Service's best interests. Therefore, your disagreement is denied.

In accordance with 39 CFR § 601.108(g), this is my final decision.

Sincerely,



Trent K. Ensley
USPS Supplier Disagreement Resolution Official