

Case
PHI



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Spectrum Analysis & Frequency Engineering, Inc.

File: B-222554

Date: August 1, 1986

DIGEST

Protest that awardee should not have been awarded a contract because of an organizational conflict of interest is denied where the facts do not demonstrate the existence of circumstances that would preclude the awardee from being objective in performing the contract.

DECISION

Spectrum Analysis & Frequency Engineering, Inc. (SAFE), protests the award of a contract to the Associated Public Safety Communications Officers, Inc. (APCO), under Federal Emergency Management Agency (FEMA) request for proposals (RFP) No. EMW-86-R-2273.

We deny the protest.

BACKGROUND

Section "J" of the National Plan of Action on Emergency Mobilization Preparedness (the Plan) requires the development of a national telecommunications system and plan for use during a national disaster. Under section J-10 of the Plan, FEMA is responsible for preparing a plan for the integrated use of the telecommunications resources of federal, state and local governments. FEMA issued the current RFP in connection with this responsibility. This protest is concerned with task "A" of the RFP, which requires the successful contractor to review the Federal Communications Commission (FCC) nongovernment master file database. This database contains information on the radio licenses of all government and commercial licensees other than the federal government. The information includes the licensee's name, location, frequency number, call sign, power output and method of transmission.

The RFP was issued on January 9, 1986. After reviewing the proposals it received, FEMA requested SAFE and APCO to submit best and final offers. FEMA subsequently eliminated SAFE from the competitive range because the firm's final price was 47 percent higher than the government estimate.

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FEMA continued to negotiate with APCO and subsequently awarded the contract to the firm.

SAFE filed its protest with this Office on May 7. SAFE alleged that the award to APCO was improper because (1) APCO was a nonprofit organization and, thus, had an unfair cost advantage; (2) APCO had an organizational conflict of interest because it assisted FEMA in developing the RFP's statement of work; and (3) APCO had an organizational conflict of interest because it is an FCC frequency coordinator and, in performing the present contract, it will be reviewing its own performance as a frequency coordinator. FEMA responded to SAFE's protest in a report to our Office denying all three allegations. In reply, SAFE did not rebut FEMA's denial of the first two bases of protest. We therefore consider these issues abandoned and we will not consider them on the merits. See Hamilton Sorter Co., Inc., B-220253, Nov. 22, 1985, 85-2 C.P.D. ¶ 592.

Concerning the remaining issue, SAFE points out that as an FCC frequency coordinator, APCO is responsible for filing with the FCC radio license applications for members of the public-safety sector. SAFE contends that in this role, APCO is required to review license applications for accuracy and completeness before it submits them to the FCC and notes that once the applicant is granted a license, the information on the application is put into the FCC's database. SAFE also points out that APCO has been an FCC frequency coordinator for many years, and that under new rules promulgated by the FCC, APCO is now the exclusive frequency coordinator for certain segments of the public-safety sector. SAFE reasons that under task "A" of the present contract, the information APCO will be reviewing for accuracy is information which APCO contributed to the FCC database as a frequency coordinator. SAFE concludes that the contract award to APCO therefore was improper.

In response, FEMA disputes that APCO has a conflict of interest that would preclude a contract award to the firm. FEMA refers to a database that APCO created from the FCC nongovernment master file for its own use and asserts that this database is independent of the database that will be validated in performing the contract. As noted by SAFE, however, the protest does not concern APCO's private database, but instead involves the database that APCO has contributed to as a frequency coordinator and which APCO allegedly will be required to validate under the present RFP. We have reviewed the entire record, including the current RFP and APCO's role as a frequency coordinator. Based on our review, we cannot conclude that APCO has a conflict of interest that would preclude a contract award to the firm.

The federal government's policy is to allow all interested qualified firms an opportunity to participate in its procurements. Therefore, unless there is a clearly supportable reason for excluding a prospective

contractor, this Office has held that a firm cannot be precluded from receiving a contract award on the basis of a potential or theoretical organizational conflict of interest. John J. McMullen Associates, Inc., B-188703, Oct. 5, 1977, 77-2 C.P.D. ¶ 270. Further, neither a prior or current contractual relationship, nor the fact that a firm will review some of its own completed work, automatically results in a conclusion that a firm has an organizational conflict of interest that precludes the firm from receiving a contract award. See Power Line Models, Inc., B-220381, Feb. 28, 1986, 86-1 C.P.D. ¶ 208. Rather, to find the existence of an organizational conflict of interest, there must be facts demonstrating that the firm is incapable of objectively performing the contract. See Battelle Memorial Institute, B-218538, June 26, 1985, 85-1 C.P.D. ¶ 726; Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.501 (1985).

In the present case, the record does not support a finding that FEMA has acted improperly in awarding a contract to APCO. SAFE argues that because under the new FCC rules APCO is the exclusive frequency coordinator for certain frequencies in the public-safety sector, the database to be reviewed largely would consist of APCO's own input. These rules, however, were released on April 15, 1986, and do not become effective until 6 months after they are published in the Federal Register. Under the protested RFP, task "A" is to be completed within 4 months after June 16, the date the contract was awarded. Since task "A" thus is to be completed before or at about the same time that APCO becomes the exclusive frequency coordinator, this role, in our view, does not provide a basis to find the existence of conflict of interest that would preclude APCO from performing the contract objectively.

Nor do we believe that APCO's role as a frequency coordinator under the old FCC rules precluded APCO from receiving the contract award. The purpose of the present contract is to establish what frequencies are being used and by whom, not to evaluate APCO's or any other contractor's prior performance as a frequency coordinator. Further, under the prior FCC rules, there often was more than one frequency coordinator per service, and individuals desiring licenses could even submit their applications directly to the FCC instead of through a frequency coordinator. When an application was submitted to a frequency coordinator, the coordinator's role was only to recommend the most efficient frequency--the coordinator was not responsible for reviewing the accuracy of the data on the application. Thus, APCO will not be reviewing only its contributions to the database and is not responsible for validating data that it was required to review in its role as frequency coordinator. Finally, we note that in explaining why its new rules were necessary, the FCC itself recognized that much of the data in its database was inaccurate and out of date.

Given these factors, there does not appear to be any advantage that APCO would gain by not providing an accurate and objective analysis of the FCC database. Consequently, we cannot conclude that APCO has a conflict of interest that required the firm to be excluded from the competition. The protest is denied.

for 
Harry R. Van Cleve
General Counsel