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DECISION

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

FILE: B-182337 DATE: November 9, 1976

MATTER OF: Department of Agriculture's Use of Master Agreements

DIGEST:

Department of Agriculture's proposed use of master agreements for prequalifying firms to compete for agency consulting requirements is tentatively approved since it is not unduly restrictive of competition but may actually enhance competition in situations where small firms otherwise might not be able to compete.

The Department of Agriculture has requested an advance decision concerning the propriety of its proposed procedure for prequalifying offerors in connection with the procurement of consulting services. The current proposal reflects a modification of a previously proposed system which was adjudged by this Office to be unduly restrictive of competition in Department of Agriculture's Use of Master Agreements, 54 Comp. Gen. 606 (1975), 75-1 CPD 40.

Under the Department's original proposal, 1-year "master agreements" for consulting requirements would be entered into with the 10 firms which, based on their proposals, were found to be the most qualified in each of eight subject matter areas. Each agreement awarded would not obligate a firm to provide any particular services, but only firms having such agreements would be eligible to submit proposals to fulfill the Department's consulting needs in the particular subject matter areas. Since other firms would be ineligible to compete, the Department would be assured of receiving no more than 10 proposals for any requirement from offerors possessing the capability to perform satisfactorily. We found that the Department's "sole justification for use of the Master Agreement was administrative expediency," and that this was not a legitimate basis for restricting competition by prequalification.

The Department now proposes to modify its previous proposal in the following fashion:

1. all qualified firms in each of the desired skill areas will receive an award of a master agreement.

2. procedures will be issued which will stipulate that solicitations to qualified firms will request proposals containing only:

   a. the plan for conduct of the study

   b. the specific staff to be assigned

   c. the price and delivery terms

3. annual evaluation to assure that the procedure is accomplishing the objectives.

The Department notes that it could enter into a requirements-type contract with one or a few firms to meet all consulting needs for a period of a year. However, while competition would be maximized for the award of this contract, there would be no subsequent competition for individual project requirements. In addition, the Department states that under the present system contracting officers are under constant pressure from the program managers to take "irregular shortcuts," such as sending out a limited number of requests for proposals and allowing a very short time for return of proposals, in order to "get a job started." Although the Department says that its contracting officers are withstanding those pressures, it believes a change in the present burdensome system would enhance competition.

In this regard, the Department notes that in Department of Health, Education and Welfare's use of basic ordering type agreement procedures, 54 Comp. Gen. 1096 (1975), 75-1 CPD 392, we tentatively approved the limited use of a procedure similar to that proposed here where, based on the exigencies of the procurement situation, award might otherwise be made without any competition because we thought it likely that competition would be enhanced.

As indicated in our earlier decision in this matter, the procurement statutes and regulations require procuring agencies to obtain maximum competition consistent with the nature and extent of the services or items being procured. See 54 Comp. Gen. 606, 608, supra. However, the procuring agencies "are vested with a reasonable degree of discretion to determine the extent of competition which may be required consistent with the needs of the agency," 50 Comp. Gen. 542, 544 (1971), and we have upheld a variety of restrictions upon competition, including prequalification procedures

when their use was adequately justified so as not to impose any undue restrictions on competition. See, e.g., 36 Comp. Gen. 803 (1957); B-135504, May 2, 1958; 50 Comp. Gen. 542, supra; 54 Comp. Gen. 1096, supra. In objecting to the Department's proposal to use master agreements, we found that it would be unduly restrictive because, for reasons of administrative expediency, it "would exclude a potential offeror upon a general finding as to the relative qualification of that firm to perform," while under legitimate prequalification procedures (such as Qualified Products List and Qualified Manufacturers List) "disqualification * * * is based on a determination as to a potential offeror's ability to furnish the particular item needed by the Government * * *." 54 Comp. Gen. 607, supra.

Under the Department's proposed revised procedure, however, master agreements will be entered into with all qualified firms, not only with the 10 best qualified as originally intended. Furthermore, it appears that under the revised procedure competition will be enhanced since (1) we understand that small firms that could not compete for a large requirements-type contract would be able to compete for the individual project requirements arising during the year; (2) the costs of responding to subsequent solicitations for particular projects will be reduced; and (3) the pressures for curtailing competition because of the delays inherent in soliciting and evaluating large number of proposals for each project will be eliminated.

We believe this revised approach would not be unduly restrictive of competition. In approving the Department of Health, Education and Welfare's (HEW) proposed prequalification procedure, we noted that HEW proposed to limit the use of the procedure "to an area where in all likelihood award on a sole source basis would otherwise be made" and held that "/i/n this context HEW's prequalification procedure which will assure a source of competent offerors from whom proposals can be elicited in a short timeframe should in fact enhance competition." 54 Comp. Gen. at 1099-1100. Similarly, we believe that Agriculture's revised proposal, which appears to be fair and reasonable and, if properly administered, should enable responsible firms to qualify for master agreements without any undue difficulty, should also enhance competition.

We point out that before the proposed use of master agreements is implemented, detailed regulations and/or procedures governing the prequalification system should be developed. See 53 Comp. Gen. 209 (1973). Moreover, because the Small Business Administration (SBA) has the statutory authority to determine the capacity and

credit of small business concerns to perform a Government contract, 15 U.S.C. 637(b)(7)(1970), the procedures should provide for referral to SBA of any case involving a small business firm found not to qualify for a master agreement by reason of its lack of capacity or credit. See B-152757, July 15, 1964.

For the foregoing reasons, we will interpose no objection to the Department of Agriculture's implementation of the master agreement procedures at this time. We do, however, reserve the right to reconsider its propriety based upon review of the Department's experience.

Acting Comptroller General
of the United States