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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Abt Associates, Inc.

File: B-294130

Date: August 11, 2004

Robert Sonenthal, Esq., Sonenthal and Overall, for the protester.
Kenneth A. Martin, Esq., Martin & Associates, for TCG International, LLC, an intervenor.
Diane A. Perone, Esq. and John Alumbaugh, Esq., Agency for International Development, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Post-closing time protest that awardee has an impermissible organizational conflict of interest (OCI) is untimely where (1) solicitation was issued on an unrestricted basis and included document on which the OCI allegation is based, (2) protester knew awardee was participating in the procurement, and (3) in response to protester's inquiry, agency specifically informed protester that it did not believe awardee had an impermissible OCI.

DECISION

Abt Associates, Inc. protests the award of a contract to TCG International, LLC under request for proposals (RFP) No. 386-04-001, issued by the Agency for International Development (AID) to procure technical assistance to India for Phase III of the Financial Institutions Reform and Expansion (Debt Market) (FIRE-D III) program. Abt asserts that TCGI was ineligible for award due to an organizational conflict of interest based on its previous preparation of a project evaluation and design document for the agency, which, Abt alleges, was incorporated into the statement of work for the FIRE-D III solicitation.¹ We dismiss the protest as untimely.

¹ Abt has also filed a protest (B-294130.2) in which it argues that the agency did not properly evaluate cost realism. We are currently developing the record in that protest and will decide it by separate decision.

The FIRE-D program was established pursuant to a grant from AID to the Government of India's Department of Economic Affairs, Ministry of Finance. Two 5-year contracts were previously awarded for technical assistance under the FIRE-D program, one in 1994 (FIRE-D I) and one in 1999 (FIRE-D II). Prior to issuing the current solicitation for FIRE-D III, AID awarded a task order to TGCI to conduct an assessment and analysis on Urban Water-Sanitation Delivery Status and Resource Mobilization & Allocation for Urban Local Bodies in India.

The agency issued the FIRE-D III solicitation on October 15, 2003, with a December 1 closing date for receipt of proposals. The assessment prepared by TGCI was included in the RFP as an attachment. Agency Report at 23. Prior to December 1, a representative of Abt contacted the AID [DELETED] to inquire whether TGCI had an OCI by virtue of its preparation of the assessment. Declaration of [DELETED], [DELETED]. The [DELETED] informed Abt that the agency did not believe that TGCI had an OCI and that the firm would be permitted to compete for the contract award. *Id.* Subsequently, Abt again raised the issue of the alleged OCI with the [DELETED], who again informed Abt, prior to December 22, that no OCI existed. *Id.* Abt participated in the procurement, and filed this protest raising the OCI issue after TGCI was selected for award. According to Abt, the assessment performed by TGCI formed a substantial part of the statement of work, and thus created an OCI that precludes TGCI from receiving the award.

As a general rule, a protester is not required to protest that another firm has an impermissible OCI until that firm has been selected for award. REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. A different rule applies, however, where a solicitation is issued on an unrestricted basis, the protester is aware that a potential offeror has participated in developing the project and is participating in the competition, and the protester has been advised by the agency that it considers the potential offeror eligible for award. International Sci. and Tech. Inst., Inc., B-259648, Jan. 12, 1995, 95-1 CPD ¶ 16 at 3-4; see CDR Enters., Inc., B-293557, Mar. 26, 2004, 2004 CPD ¶ 46 at 3 n.1. In such cases, the protester cannot wait until an award has been made to file its protest, but instead must protest before the closing date for receipt of proposals. International Sci. and Tech. Inst., Inc., *supra*.

Here, the assessment prepared by TCGI—which clearly showed the extent of the firm's prior involvement in the program—was included in the solicitation. Further, it is clear that Abt knew both that TCGI was participating in the procurement and that the agency did not consider TCGI to have an OCI that precluded it from receiving the award. Under these circumstances, Abt's protest is untimely because it was not filed prior to the closing date for receipt of proposals. International Sci. and Tech. Inst., Inc., *supra*.

Abt maintains that our International Sci. and Tech. Inst., Inc. decision is not controlling because, unlike here, the solicitation in that case specifically indicated

that firms that had performed other work related to the procurement were not viewed as having an impermissible OCI. The distinction Abt makes is unpersuasive. While Abt is correct that the solicitation here did not expressly address a possible OCI on TCGI's part, the fact is that Abt was on express notice of the agency's position regarding the alleged OCI. It was this express notice to the protester, not the form of the notice, that was the operative consideration in International Sci. and Tech. Inst., Inc. Since the express notice placed Abt in the same position as the protester in International Sci. and Tech. Inst., Inc., it is our view that the same rule applies.

The protest is dismissed.

Anthony H. Gamboa
General Counsel