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DECISION



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

FILE: B-186049

DATE: November 11, 1976

MATTER OF: 701st Personnel Services Company

DIGEST:

1. Advance knowledge of proposed procurement given to member of Army Reserve unit afforded him unfair competitive advantage over other prospective offerors. However, since no other proposals were submitted and agency proposes steps to prevent recurrence of advance knowledge, no further action is required.
2. Where member of military reserve unit participates in preparation of specifications for contract to be awarded by unit, conflict of interest arises where member is allowed to compete for contract. Situation is similar to that described in Appendix G of ASPR concerning organizational conflict of interest.
3. Geographical restriction in specification is not shown to be unduly restrictive of competition in absence of evidence to indicate that requirement fails to represent actual needs of procuring agency.

An enlisted member of the 701st Personnel Services Company (PSC), U.S. Army Reserve, Ada, Oklahoma, questions the propriety of the award of contract DABT39-76-C-3047, for automated data processing services for the 701st PSC, to the Computer Utility Corporation (CUC) by the Procurement Division, U.S. Army Field Artillery Center, Fort Sill, Oklahoma. It is contended that the award to CUC constitutes a conflict of interest because the owner of CUC, who is an enlisted reservist in the 701st PSC, participated in the development of the specifications. The protester also contends that the specifications were unduly restrictive of competition as a result of a requirement that the contractor's data processing facility be within a 50 mile radius of the 701st (PSC) unit. While the Army points out that these issues may not have been raised by an interested party under our Bid Protest Procedures, 4 C.F.R. 20.1(a) (1975), the Army deems these issues to be "worthy of consideration" since the integrity of its procurement process has been challenged by a member of the reserve unit involved.

The Army has noted in its report that paragraphs 1-5 and 4-2a(3) of Army Regulation 600-50 (April 15, 1972, as amended) prohibit the release of advance information regarding proposed procurements to any individual or any individual business concern. The report states:

"While we have stated that the 'Standards of Conduct' did not [apply to CUC's owner because of] his capacity as an enlisted reservist, it is our view that [this individual] did secure advance information which gave him and his firm a discriminatory advantage over other potential bidders. * * *The CO, 701st PSC clearly shows that [this individual] as an enlisted reservist in training, performed a study to determine the feasibility of contracting a training program with a civilian computer company and otherwise made an important contribution to the development of a workable program. Armed with such information, [this individual's] firm, CUC, certainly had an advantage over other potential bidders."

This advance knowledge is a direct result of the contractor's participation in the preparation of the specifications. However, the effects of this advance information do not appear to be significant in the instant case because there were no other bidders whose competitive positions could have been adversely affected by the information obtained by CUC's owner. Moreover, the Army advises us that in the future:

"* * * when a purchase request involves the furnishing of supplies or services to a reserve unit we will consider the feasibility of having the procurement personnel inquire whether any advance procurement information has been released to members of the reserve unit before there has been a release to general public in order to determine whether members of the reserve unit may be in a position to utilize such advance information in preparing a bid to be submitted by a private firm with which they may be associated in a civilian capacity."

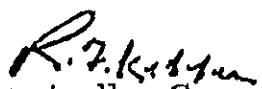
We agree with the remedial action which will be taken by the Army. Furthermore, we believe the more basic problem here lies in the fact that the reservist acted in a fiduciary capacity in establishing the requirement and subsequently became involved in a competing financial relationship as contractor. This, in essence, is not unlike the conflict prohibited by Appendix G of the Armed Services Procurement

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Regulation concerning contractors paid to develop a specification for nondevelopmental items and subsequently precluded from competing for the resulting hardware contract. In our opinion the same policy considerations appear to require a similar prohibition in the case of a reservist who directly participates in formulating a requirement for services for which he may have a competing financial interest in his civilian capacity. We recommend appropriate action to avoid creation of such inherent conflicts of interest. In this way the Government can be assured of getting unbiased advice as to the content of its specifications and can avoid allegations of favoritism in the award of contracts for required services and products.

Finally, the protester contends that the specifications were unduly restrictive of competition because of the requirement that the contractors' data processing facility be within a 50 mile radius of the 701st (PSC) unit. Our Office has held that geographic restrictions need not be regarded as unduly restrictive where they represent the actual needs of the procuring agency. B-157053, August 2, 1965. We have also stated that determinations as to the Agency's needs will not be questioned by our Office in the absence of demonstrated fraud or clearly capricious action. 49 Comp. Gen. 857, 862 (1970). In the instant case, we are advised that the 50 mile limitation was included in the specifications because it represented the maximum reasonable commuting distance for which training funds were available. In view of the fact that this appears to be a reasonable justification for the requirement and the fact that, notwithstanding this requirement, competition was anticipated from at least one firm, we cannot agree that the specifications were written so as to unduly restrict competition.

Deputy


Comptroller General
of the United States