DECISION

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

FILE: B-211575 **DATE:** July 14, 1983

MATTER OF: Acumenics Research and Technology, Inc.

DIGEST:

1. Responsibility for determining whether a firm has a conflict of interest if the firm is awarded a particular contract and to what extent the firm should be excluded from competition rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable.

2. Elimination from competition of firm which would be in position of evaluating and refining adequacy and applicability of specifications firm developed under prior contracts is reasonable where agency demonstrates that objectivity in assessment of prior work is of paramount importance.

Acumenics Research and Technology, Inc. (ARTI), protests an amendment to a request for proposals (RFP) No. RFP-WASO-83-04, issued by the United States Department of the Interior's (Interior) National Park Service (NPS) for the development, implementation and operation of NPS's new Financial Accounting and Cost Tracking System (FACTS). The contract constitutes the third and final phase of development of FACTS. Acumenics performed the first two phases of the FACTS development program.

We deny the protest.

On February 24, 1983, NPS issued the RFP for the third phase. By amendment dated March 24, 1983, the RFP was modified to include the following:

"SECTION E - SPECIAL PROVISIONS

Item 20 - Contractors are prohibited from participating either as a prime or subcontractor in competitive procurements for which they were

> instrumental in developing data systems specifications which will become part of the Mandatory Specifications, Mandatory Support Requirements or Desirable Features section of a Request for Proposal. This is to implement Interior Departmental Policy as prescribed by 306 DM 43G."

At a preproposal conference on April 11, 1983, NPS officials advised ARTI that that it was ineligible to submit a proposal under this RFP.

ARTI contends that NPS's determination of ineligibility is improper. ARTI argues there would be no conflict of interest resulting from an award to ARTI due to its performance of the phase I and II contracts. In addition, ARTI points out it did not receive notice in the two prior NPS contracts of a prohibition against competing on the phase III implementation procurement. Also, ARTI advises that NPS indicated that NPS was satisfied with ARTI's performance under the prior contracts, and that ARTI would be awarded the phase III contract.

NPS asserts that a conflict of interest will result due to ARTI's performance of the earlier phases. NPS points out that ARTI produced all FACTS documents identified in the definition and design stages and which are listed in the RFP. NPS states that these documents are material to the completion and operation of FACTS. NPS further advises that because NPS determined that the ARTI program specifications were only 85 percent complete under the earlier phases, the remaining 15 percent of each document should be completed as a product of the next contract. NPS points out that the follow-on contract requires review, analysis and refinement of the deficient ARTI deliverables. NPS refers to task I of this RFP which specifies that the contractor must analyze and refine existing FACTS design and programming specifications. Since the phase III contract involves evaluation, testing and approval of ARTI's products under the prior contracts, NPS concluded that a conflict of interest did exist, and that the restrictive provision was justified. NPS also points out that although the restriction was not included in the prior contracts, this restriction has been contained in the Department of the Interior manual since 1977, and that ARTI had actual notice of the restriction by its inclusion in this RFP.

The responsibility for determining whether a firm has a conflict of interest and to what extent the firm should be excluded from competition rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable. N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110; Tymshare, Inc., B-198020, October 10, 1980, 80-2 CPD 267. In Columbia Research Corporation, B-185843, July 1, 1976, 76-2 CPD 2, which we find controlling here, we upheld the contracting agency's decision to exclude a firm from competition for a contract that included evaluation of a reliability standard the firm had developed. Essentially, we found that it was reasonable for a contracting agency to refuse to permit a firm to review its previous work in the follow-on assessment, because of the need for complete objectivity. See also Cardiocare, a division of Medtronic, Inc., B-195827, March 31, 1980, 80-1 CPD 237. The same situation is present in this case. Under the RFP, the contractor is asked to analyze and refine existing design and program specifications. Thus, ARTI would be reviewing the usefulness of its own work. For example, specifically under the RFP, the contractor must evaluate the detail design specifications to ensure consistency and correctness, to assure compliance with Federal guidance concerning FACTS and to modify FACTS documentation as necessary "to remedy any * * * noted deficiencies."

Although, under the RFP, NPS has final approval of the modified specifications, the contractor, not NPS, must objectively perform analysis, review, and refinement of the specifications as needed and make the decisions as to the content of the package presented to NPS. Under these circumstances, the contractor here would provide more than technical assistance, a task which we have held does not create a conflict of interest. See Tymshare, Inc., supra.

ARTI also alleges that NPS acted improperly by failing to give notice of Interior's conflict of interest policy in the prior contracts and by not publishing the policy in the Federal Register as a regulation in accordance with Federal rulemaking procedures.

It is well settled that a contracting agency may impose a variety of restrictions, not explicitly provided for in applicable procurement regulations, when the needs of the agency or the nature of the procurement dictates the use of

such restrictions. We have previously ruled against the protest issue of prior notice raised here in Gould, Inc., Advanced Technology Group, B-181448, October 15, 1974, 74-2 CPD 205. Thus, where, as here, an agency properly and adequately justifies a restriction, we have upheld the validity of such a requirement, including a restriction such as this one which has the effect of disqualifying particular firms from receiving an award because of a conflict of interest. Cf. PRC Computer Center, Inc., et al., 55 Comp. Gen. 60, (1975), 75-2 CPD 35; 51 Comp. Gen. 397 (1972).

We deny the protest.

for Harry R. Van Cleve
Comptroller General
of the United States