

Lieberman

3/188

DECISION



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

FILE: B-216084.2

DATE: May 10, 1985

MATTER OF: Iris International, Inc.

DIGEST:

1. Responsibility for determining whether a firm has a conflict of interest under a contract and whether the firm should be excluded from competition rests with the contracting agency and GAO will not overturn such a determination unless it is shown to be unreasonable.
2. Protest that procuring agency improperly terminated contract because it determined that awardee was a manufacturer of systems for which it would be in a position to recommend or develop specifications and, therefore, would be in a position to promote its own equipment is denied. Agency determination is reasonable since protester would be in a position to further its own interests regardless of whether it was considered a manufacturer of systems, or merely a supplier of systems and a manufacturer of software, as the protester contends.

Iris International, Inc. (Iris), protests the action of the Agency for International Development (AID) in terminating its contract No. PDC-1406-1-00-4114-00, Project Design and Evaluation--Remote Sensing. AID determined, after a protest by a competing firm, that Iris had an impermissible conflict of interest because it was the manufacturer of equipment systems for which it could have promoted specifications which favored Iris' products. Iris contends that the conflict of interest prohibition clause under the solicitation related only to manufacturers of systems and, since Iris is not a manufacturer, the agency determination was improper.

We find the protest without merit.

032037

The contract in question required the contractor to advise less developed countries in the design, development, and implementation of natural resources inventories using remote sensing technology. The solicitation contained the following clause:

"In design of inventory projects, the contractor must provide technical, unbiased recommendations regarding procedures, equipment, and technical experts. Although the contractor would not be automatically excluded from later bidding or being awarded the contract to implement the project, he should be careful not to promote or recommend specific equipment, either by name or that which he knows can be furnished by only one equipment manufacturer. The IOC contractor should not be in the equipment manufacturing business."

In response to an inquiry from Iris, prior to award, concerning the definition of "equipment manufacturing business," the contracting officer advised that:

". . . An organization would be considered a manufacturer if it processed or assembled components resulting in a commercially recognized new commodity that is substantially different in basic characteristic, or in purpose or utility from its components. Assembling computer equipment into a remote sensing system is considered manufacturing."

Subsequently, Iris represented to AID that it is fully responsive to the terms of the solicitation and is not a manufacturer as defined by AID regulations. On June 15, 1984, AID awarded the contract to Iris. On August 10, 1985, Resource Development Associates (RDA), another offeror, protested to our Office that Iris was in the equipment manufacturing business and was the exclusive sales agent and distributor for Earth Resources Data Analysis Systems (ERDAS), a manufacturer of image processing systems of the type that would be used in designs developed under the contract. RDA alleged that Iris' relationship with ERDAS would result in a conflict of interest which would prevent Iris from providing unbiased recommendations regarding procedures, equipment and technical experts, as required under the terms of the contract.

RDA submitted with its protest a copy of an Iris publication which describes Iris' services and states, in part, that:

"Iris develops and sells image processing and analysis systems, data base and Geographic Information Systems, and other hardware and software useful in the general field of resource management. What makes IRIS unique is that we offer systems developed in-house and by a number of suppliers and frequently recommend hybrid systems, selecting the best for the application or organization."

After reviewing the protest, AID determined that Iris was in the manufacturing business and, therefore, violated the RFP requirement. Accordingly, AID terminated the Iris contract. AID points out that the purpose of the clause in question was to avoid a conflict of interest by excluding manufacturers of equipment. In particular, it was concerned that AID would want the contractor to recommend or develop equipment for AID projects, in which case it did not want a contractor who had a vested interest in one or more pieces of equipment to be in a position to promote its own equipment or otherwise be in a position of possible conflict of interest, or the appearance of conflict of interest.

Iris has presented detailed information regarding the scope of its operations to support its position that it is not a manufacturer within the meaning of the solicitation clause. In addition, it argues that while it is an exclusive sales agent for ERDAS, this is not relevant since dealers were not excluded from competing for the contract, and that Iris' agreement with ERDAS exempts overseas sales. Iris argues that it should more properly be considered a developer of software and a dealer in integrated systems of hardware components, not an "integration contractor," as AID concludes.

We have consistently held that the responsibility for determining whether a firm has a conflict of interest and to what extent a 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. LW Planning Group, B-215539, Nov. 14, 1984, 84-2 C.P.D. ¶ 531; Acumenics Research and Technology, Inc., B-211575, July 14, 1983, 83-2 C.P.D. ¶ 94.

AID concluded that for the purpose of this contract, there was no distinction between the assembly of small electronic components into a microcomputer for image processing and the assembly of separate equipment into a production system. It intended to bar both types of assembly manufacturers from consideration, in order to prevent the possibility that the contractor would have a vested interest in promoting equipment which it would then provide. Because of this concern, AID concluded that since Iris promotes itself as a company which develops and sells image processing systems and offers systems which are developed in-house, Iris was precisely the kind of manufacturer which it intended to exclude from competition in order to preclude a possible conflict of interest. It viewed Iris' relationship with ERDAS as its exclusive sales agent as similarly violative of the conflict of interest proscription because it might have precluded Iris from providing the agency with unbiased recommendations. We find these concerns reasonable and sufficient to support AID's determination that Iris has an impermissible conflict of interest under this solicitation.

Accordingly, we deny the protest.

Harry R. Van Cleve
 Harry R. Van Cleve
 General Counsel