

Petrovito



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Price Brothers Company
File: B-235473
Date: June 9, 1989

DIGEST

Protest that potential offeror under request for proposals has an organizational conflict of interest that renders it ineligible to compete is dismissed as premature where agency has made no determination regarding the status or eligibility of the offeror.

DECISION

Price Brothers Company protests the participation of Systems Research Laboratories, Inc. (SRL), under request for proposals (RFP) No. F33615-89-R-0671, issued by the Department of the Air Force for the construction of 4 Survivable Collective Protection Systems-Medical (SCPS-M) units in Korea. Price contends that the agency should exclude SRL from the competition because of an alleged organizational conflict of interest arising from SRL's earlier contract with the Air Force to design, develop, fabricate, install and test the SCPS-M.

We dismiss the protest as premature.

Price states that SRL performed Air Force contract No. F33615-86-C-0650 for the design, development, fabrication, installation and testing of the SCPS-M. The protester argues that SRL, as the developmental contractor for the SCPS-M, has acquired an unfair advantage because of its familiarity with the technical data package. Furthermore, the protester states that SRL is currently providing technical consulting services to the Navy on contract No. N62474-88-C-4253 for an SCPS on Adak Island. Because Price is a subcontractor on the Navy contract, SRL has had access to proprietary information of Price. The protester argues that SRL's role as the developmental contractor for the Air Force's SCPS-M and its access to proprietary data as

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a consultant to the Navy's Adak Island contract constitutes an organizational conflict of interest which renders SRL ineligible to participate in the competition under the RFP.

The Air Force states that the closing date for receipt of technical proposals under the RFP is July 5, and that it has not yet received any proposals under the RFP. The agency states that it has not made any determination regarding SRL's status or eligibility to compete and, accordingly, that the protest is premature.

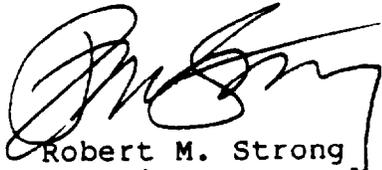
Price argues that its protest is not premature because SRL's conflict of interest is an apparent solicitation impropriety which must be raised prior to the closing date for receipt of proposals and that, in any event, the resolution of SRL's eligibility to compete under the RFP would enhance competition by encouraging other offerors to compete.

We find no merit to the protester's contention that SRL's alleged organizational conflict of interest is an apparent solicitation impropriety. The issue of whether SRL has an organizational conflict of interest concerns SRL's eligibility to compete and to receive award and not a provision of the solicitation.

The Federal Acquisition Regulation (FAR) requires contracting officials to avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR § 9.5 (FAC 84-12). In considering an allegation of organizational conflict of interest, we note that the responsibility for determining whether a firm has a conflict of interest if it is awarded a particular contract, and to what extent a firm should be excluded from competing, rests with the procuring agency and we will not overturn such a determination unless it is shown to be unreasonable. Bendix Field Engineering Corp., B-232501, Dec. 30, 1988, 88-2 CPD ¶ 642. The procuring agency bears the responsibility for balancing the competing interest between preventing bias in the performance of certain contracts which would result in a conflict of interest and awarding a contract that will best serve the government's needs to the most qualified firm. Battelle Memorial Inst., B-218538, June 26, 1985, 85-1 CPD ¶ 726. In this regard, the FAR provides that any general rule or procedure of FAR § 9.5 may be waived where its application in a particular situation would not be in the government's best interest. See FAR § 9.503.

We conclude that the protest is premature. There has not been an agency determination concerning SRL's alleged organizational conflict of interest or its eligibility to compete and receive award. Furthermore, we note that even if the Air Force were to conclude that SRL has an organizational conflict of interest, the agency could find that exclusion from the competition was not required or could waive SRL's conflict of interest under the authority of FAR § 9.503. Under the circumstances, there is simply no agency action for us to review and, accordingly, we find the protest premature.

The protest is dismissed.



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