

W. Ashen



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Pacific Architects and Engineers Incorporated
File: B-240310
Date: November 2, 1990

David R. Johnson, Esq., Gibson, Dunn & Crutcher, for the protester.
Joseph P. Duenas, Esq., Department of the Navy, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not object to the exclusion from competition of offeror whose employees lacked the top secret security clearance required for access to intelligence information and would be unable to obtain the clearance in time for contract performance.

DECISION

Pacific Architects and Engineers Incorporated (PAE) protests its exclusion by the Department of the Navy from competition under request for proposals (RFP) No. 90-R-5847, for the operation and maintenance of two buildings at the Naval Research Laboratory in Washington, D.C. PAE contends that it "substantially meets" the security requirements imposed by the Navy as a prerequisite to participation in the procurement and therefore should be allowed to compete.

We deny the protest.

The Navy reports that contractor personnel will require unescorted access to the facilities at the Naval Research Laboratory, which houses various intelligence activities, in order to perform the statement of work, which requires the contractor to: (1) furnish janitorial services; (2) operate, maintain and repair the heating, ventilation and air conditioning systems; (3) install, maintain and repair electrical systems; and (4) perform other building maintenance. Since intelligence activities are involved, the agency determined that contractor personnel must possess top secret clearances based upon special background

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investigations--covering a period extending back 15 years--and adjudicated to the standards established by the Director of Central Intelligence Directive 1/14 (DCID 1/14), for access to Sensitive Compartmented Information. Further, although the Navy prepared an unclassified draft of the statement of work, it concluded that potential offerors would need additional, classified information concerning the activities being performed in the buildings in order to ensure that they fully understood the required work. The agency therefore restricted access to the RFP and participation in the procurement to individuals possessing the security clearance specified for contract performance. When PAE was unable to establish to the Navy's satisfaction that its personnel possessed the requisite security clearances, it was denied the opportunity to participate further in the procurement. PAE thereupon filed an agency level protest, and then filed this protest with our Office.

PAE essentially contends that it "substantially meets" the Navy's claimed security requirements based on the fact that numerous PAE personnel possess top secret clearances issued by the Department of State. PAE concedes that these clearances were based upon background investigations extending back only 7 years or to the applicant's 18th birthday, whichever was most recent; it argues, however, that since PAE's workforce is relatively young and a 15-year investigation would extend no further back than the applicant's 18th birthday, there would be little practical difference in this instance between 7-year and 15-year investigations. PAE also concedes that the State Department clearances were not adjudicated to the standards of DCID 1/14, but instead were adjudicated to a standard that, unlike DCID 1/14, does not generally prohibit the clearance of an applicant married to an alien. PAE argues that this latter difference also would present no practical problem for the agency since any PAE employee falling within the scope of the prohibition could easily be removed from consideration for employment on the contract.

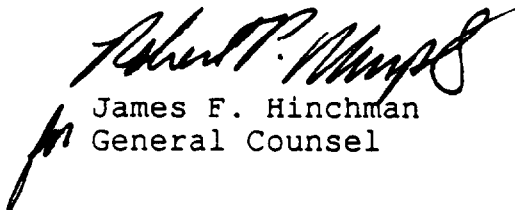
The Navy responds that existing security guidelines preclude the agency from honoring top secret clearances issued by other, non-Department of Defense agencies, or granting access to intelligence information where, as here, the issuing agency refuses to certify that the clearance was adjudicated pursuant to the standards of DCID 1/14. See generally OPNAV Instruction 5510.14 (April 29, 1988) §§ 21-2 and 21-7. According to the Navy, in the absence of such certification, the agency is required to conduct an independent investigation for each employee proposed for access to intelligence information. The agency reports that the requisite independent, 15-year special background investigations routinely require 9 to 12 months, or longer, to complete, and

thus could not have been concluded prior to the September 30 expiration date of the current contract for operation and maintenance.

We find the Navy's security clearance requirements unobjectionable. The record does not support PAE's contention that the top secret clearances issued by the State Department essentially are the equivalent of the top secret clearances required by the Navy for access to intelligence information and facilities. The State Department has refused to certify that PAE's employees meet DCID 1/14 eligibility standards and, further, we agree with the Navy that background investigations extending back no more than 7 years would not be equivalent in all instances to 15-year background investigations. In any case, it is our view that the degree to which classified information must be protected by the use of certain security clearances is a matter within the discretion of the cognizant agency and is not for review by our Office under our bid protest function. See generally Lucas Aul, Inc., B-234842, June 16, 1989, 89-1 CPD ¶ 569; Hollander Assocs., B-237164, Feb. 1, 1990, 90-1 CPD ¶ 135.

Since PAE employees lacked the requisite security clearances, and would be unable to obtain them in time for contract performance, we find no basis for questioning PAE's exclusion from the competition.

The protest is denied.


James F. Hinchman
General Counsel