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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Signal Corporation

File: B-245376

Date: September 10, 1991

Robert D. White for the protester.
Catherine M. Evans, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest alleging that solicitation's organizational conflict of interest provision unduly restricts competition is dismissed for failure to state a valid basis where the provision appears properly to address potential conflict, and protester does not explain why the restriction is not necessary to address the conflict.
2. Protest of agency's failure to include evaluation preference for small disadvantaged business concerns in solicitation is dismissed; requirement for evaluation preference does not apply to procurements where award is not based solely on price or price related factors.

DECISION

Signal Corporation protests the terms of request for proposals (RFP) No. N66604-91-R-2505, issued by the Department of the Navy for engineering services related to submarine sonar systems. Signal alleges that the RFP's organizational conflict of interest provision unduly restricts competition, and that the agency improperly failed to include in the RFP an evaluation preference for small disadvantaged business (SDB) concerns.

We dismiss the protest.

According to Signal, the RFP contains an organizational conflict of interest provision stating that "the contractor agrees not to be . . . a subcontract supplier or a consultant to a supplier of any system or subsystem which is the subject of work under this contract." In a letter denying Signal's agency-level protest of the provision, the Navy stated that it "will not permit the successful offeror under this solicitation to have other contractual relations with sonar manufacturers." Signal asserts that the number of suppliers

covered by the provision is so large that competition is effectively restricted to firms that perform work only for the federal government.

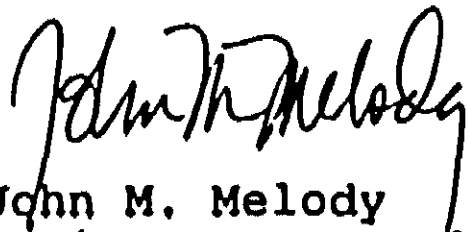
We find nothing improper about the provision. Federal Acquisition Regulation (FAR) § 9.501 provides that an organizational conflict of interest exists when, because of other activities or relationships with other persons, a firm is unable or potentially unable to render impartial assistance or advice to the government. Contracting agencies have broad discretion in dealing with conflicts; agencies may impose a variety of restrictions as dictated by the needs of the agency and the nature of the procurement, even restrictions that effectively may disqualify a firm from receiving an award. See R. W. Beck & Assocs., B-218457, July 19, 1985, 85-2 CPD ¶ 60. Here, we think the agency reasonably concluded that if an offeror was a supplier or consultant to a manufacturer of one of the systems under the contract, the offeror's impartiality in performing the work under the contract could be impaired. See ICF Inc., B-241372, Feb. 6, 1991, 91-1 CPD ¶ 124. Thus, on its face, the restrictive provision included in the solicitation to avoid this perceived conflict is unobjectionable. Even if the protester is correct that the provision restricts competition to those firms that do business only with the federal government, Signal has not explained why the restriction is not necessary to avoid the obvious potential for improper bias.

Signal also objects to the solicitation's failure to provide for an SDB evaluation preference. The Department of Defense FAR Supplement (DFARS) requires that an SDB evaluation preference be applied only in acquisitions "where award is based on price and price related factors." DFARS § 219.7000(a). Here, the RFP provides that cost is less important than technical factors in the award decision. Thus, award is based primarily on technical merit, not on price and price related factors, and the agency is not required to apply an evaluation preference. See generally Commercial Energies, Inc., B-231993, Nov. 4, 1988, 88-2 CPD ¶ 442 (agency was required to apply preference where award was based on low-priced, technically acceptable proposal rather than on relative technical merit).

Signal argues that the award decision here is based in large part on price related factors because the personnel factor is the second most important technical factor, and an offeror's price is directly related to the quality of its proposed personnel. This argument is untenable. The price related factors referred to in the DFARS provision are enumerated in FAR § 14.201-8; these include administrative considerations such as taxes, transportation costs, and costs to the government of making more than one award. FAR § 14.201-8.

They do not include technical evaluation factors. Signal also notes that the solicitation provides that the importance of the cost factor will increase with the degree of technical equality. While price thus could become relatively important in the evaluation, the fact remains that the basis for award here is price and relative technical merit, not price and price related factors; the agency therefore need not apply an evaluation preference.

The protest is dismissed.



John M. Melody
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