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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: System-Analytics Group Corporation
File: B-244394
Date: October 3, 1991

Lee S. Mairs for the protester.
Wray Smith for Harris-Smith Research, Inc., an interested party.
Eileen P. Manley, Esq., Department of the Treasury, for the agency.
Jennifer Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester is not an interested party to object to agency's failure to notify unsuccessful offerors under a small business set-aside of the successful offeror's identity prior to award where it would not be next in line for award even if its protest were sustained.

DECISION

System-Analytics Group Corporation (SAG) protests the award of a contract to Harris-Smith Research, Inc. under request for proposals (RFP) No. A-91-6, issued as a total small business set-aside by the Department of the Treasury for performance of a study to assess the impact of System 90 (a payroll processing automation project) on the processing and productivity of Treasury's seven regional financial centers. SAG contends that, contrary to the requirement of Federal Acquisition Regulation (FAR) § 15.1001(b)(2), the agency made the award without first informing the unsuccessful offerors of the name and location of the apparent successful offeror, thereby precluding other offerors from protesting the prospective awardee's size status on a timely basis.

We dismiss the protest since SAG, which would not be in line for award even if its protest were sustained and the award to Harris-Smith were terminated, does not have a direct economic interest in the award and is therefore not an interested party to protest to our Office.

The RFP, which contemplated the award of a time-and-materials contract, provided for award to the technically acceptable,

responsible offeror whose proposal was most advantageous to the government, price and other factors considered. The solicitation indicated that in the evaluation of proposals, technical factors would be considered more important than price, but that if two or more proposals were determined to be technically acceptable, the total evaluated price might be the deciding factor for selection, depending on whether the most highly rated technical proposal was determined to be worth any price differential.

Eight offers were received in response to the RFP, five of which were included in the competitive range. After submission of best and final offers, the contracting officer determined that one of the five should be excluded from the competitive range and that the remaining four, which had received technical scores ranging from 72 to 79, should be considered technically equivalent.^{1/} He therefore determined that award to the lowest priced of the four, Harris-Smith, would be in the government's best interest and awarded a contract to Harris-Smith on May 31, 1991. Upon notification of the award to Harris-Smith, SAG protested to our Office.^{2/} On June 21, the Acting Deputy Assistant Secretary for Administration, Department of the Treasury, notified our Office that he had authorized performance of the contract notwithstanding SAG's protest based on his determination that

^{1/} The technical rankings and prices of the four offerors were as follows:

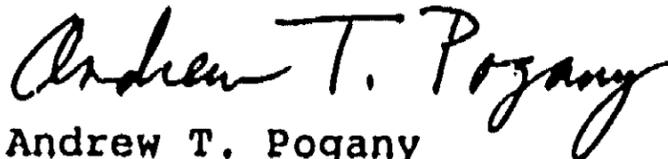
<u>Offeror</u>	<u>Price</u>	<u>Technical Score</u>
Harris-Smith	\$165,612	75
Dymond	\$187,927	72
SAG	\$194,194	76
KAG	\$207,882	79

^{2/} On June 10, the same date as it protested to our Office, SAG protested Harris-Smith's size status to the contracting officer. By letter dated June 14, the contracting officer referred the matter to the Philadelphia regional office of the Small Business Administration (SBA). On August 2, the SBA regional office determined that Harris-Smith was not in compliance with the requirements of 15 U.S.C. § 644(o)(1) (1988), which provides that in order to qualify as a small business concern under a solicitation for services, a concern must agree that at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the prime contractor. See also FAR § 52.219-14. By decision dated September 4, SBA's Office of Hearings and Appeals affirmed the regional office's determination.

continued performance would be in the government's best interest.

It is apparent from the above that even if SAG's protest were sustained and the contract with Harris-Smith terminated, SAG would not be next in line for award since Dymond, which submitted a proposal that was considered technically equivalent to SAG's, proposed a price lower than SAG's. SAG has not challenged the agency's determination of technical equivalency of the four offerors in the competitive range. We therefore find that SAG lacks the "direct economic interest" that is necessary to make it an interested party under our Bid Protest Regulations. 4 C.F.R. § 21.0(a) (1991); see Data Com. Sys. Corp., B-227212, June 11, 1987, 87-1 CPD ¶ 587; see also XMCO, Inc., B-228357, Jan. 26, 1988, 88-1 CPD ¶ 75.

The protest is dismissed.



Andrew T. Pogany
Acting Assistant General Counsel