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United States General Accounting Office
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Office of
General Counsel

In Reply
Refer to:

B-199385

OCT 17 1980

William J. Maraist
Assistant Administrator for Regulations
Office of Federal Procurement Policy
Office of Management and Budget
Executive Office of the President

Do not make available to public reading room

Dear Mr. Maraist:

You have requested our comments on a draft segment of the Federal Acquisition Regulation (FAR). The draft segment covers Subpart 9.5 - Organizational Conflicts of Interest.

On August 19, 1980, the Comptroller General testified before the Senate Committee on Governmental Affairs on S. 2930, the Consultant Reform Act of 1980. Section 205 of that bill requires all contractors bidding on Federal contracts to disclose all relevant facts relating to an existing or potential organizational conflict and requires agencies to take certain steps to protect the Government's best interest before and after the contract is awarded.

We supported enactment of section 205 for a 2-year period at selected agencies. We indicated that a test period was necessary due to the uncertain impact this section would have on the Government's ability to obtain private sector expertise. We also recommended that the Office of Management and Budget monitor the agencies' experience, and, at the end of the test period, prepare a report to the Congress on whether the legislation should be applied Government-wide. Additionally, we recommended that the scope of the disclosure requirement be changed from all contracts for goods and services to just those categories of contracts where the potential for conflict is the greatest, such as consulting services and management support contracts.



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Although it is our view that legislation on organizational conflicts is appropriate, we offer the following comments on the draft regulation which should improve its application.

Section 9.505 states that contracting officers should seek information concerning contractors' interests and relationships from within the Government first and then, if necessary, contractors should be asked to supply this information. For the four categories of contracts identified in section 9.502, where the potential for a conflict is the greatest, we believe contractors should be required by solicitations to submit information regarding potential conflicts of interest when they submit their offers. At the same time, contracting officers could seek additional information from sources within the Government.

We believe this change will emphasize the contractor's responsibility for appropriate disclosure. Furthermore, the contractor has the best information on its relationships with private clients and the resulting potential for conflict. Other information available from within the Government could act as a control over the accuracy of data provided by the contractor.

We do not believe this change would result in excessive paperwork or a significant slowing down of the procurement process. The great majority of Federal contracts, where the potential for conflict is practically non-existent, would not be affected since they fall outside of the four categories of contracts identified in section 9.502.

Additionally, section 9.506(b) states that refusal of the contractor to supply information to identify and resolve an organizational conflict of interest may be grounds for denial of contract award. We believe the regulation should be revised to provide that refusal shall constitute grounds for denial of award unless the agency determines that immediate award is necessary and the services or supplies cannot be obtained from another source.

Furthermore, the regulation does not provide for disclosure of possible conflicts which arise after the initial contract award. We believe that a disclosure requirement

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for this situation is necessary to insure contractor objectivity. This is of particular importance when the Federal contract involves drafting regulations that will impact on a regulated industry.

As with B. 2880, we are uncertain as to the impact that this regulation will have on the Government's ability to obtain private sector expertise. Accordingly, we recommend that agencies be required to closely monitor implementation of the proposed regulation and report to the Office of Management and Budget on problems and possible improvements.

We have no further comments to offer.

Sincerely yours,

MILTON J. SOCOLAR

Hilton J. Socolar
General Counsel