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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Nations, Inc.

**File:** B-272455

**Date:** November 5, 1996

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William H. Butterfield, Esq., Kilcullen, Wilson and Kilcullen, for the protester.  
Nicholas P. Retson, Esq., Marvin Kent Gibbs, Esq., and Kim K. Judd, Esq.,  
Department of the Army, for the agency.  
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Protest that solicitation covers "advisory and assistance" services, and thus improperly provides for award of a single requirements contract, is sustained; professional technical services in support of battlefield simulation training fall within statutory and regulatory definitions of advisory and assistance services, and such services must be procured under multiple award, indefinite delivery, indefinite quantity-type contracts where, as here, contract price will exceed \$10 million and contract term exceeds 3 years.

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## DECISION

Nations, Inc. protests the terms of request for proposals (RFP) No. DABT65-96-R-0001, issued by the Department of the Army for services in support of various computer simulation training facilities. Nations principally maintains that the RFP improperly contemplates the award of a single requirements type contract rather than multiple indefinite delivery, indefinite quantity (IDIQ) type contracts.

We sustain the protest.

As part of their training, Army officers participate in interactive, "event driven" computer simulation exercises employing scenarios that realistically model the capabilities of the Army, allied forces and selected opposing forces. These exercises are conducted at numerous facilities throughout the United States by the Army's Training and Doctrine Command (TRADOC). The RFP calls for contractor personnel to provide an array of support services in connection with TRADOC's simulation training program. These services include technical preparation for and assistance in executing the exercises (loading the appropriate data or scenarios into the simulation computers, participating as "interactors" and providing data during post-exercise review sessions conducted by the agency's personnel), evaluation of

government-supplied enhancements to the simulators, drafting descriptive software change requests generated by the agency, and recommending computer hardware for system upgrades.

The RFP contemplates the award of a single task order contract--a combination fixed-price, lump-sum (for performance of work at Fort Leavenworth, Kansas), and requirements contract (for performance of additional work at Fort Leavenworth, and at numerous other Army schools). The RFP provides for a phase-in period, a base year and three 1-year options. If all of the estimated requirements quantities are ordered, the value of the contract will exceed \$10 million.

The protester maintains that the services under the requirements portion of the RFP are "advisory and assistance" services, and that Federal Acquisition Regulation (FAR) § 16.503(d) (FAC 90-41) precludes the use of a requirements type contract for the purchase of such services where, as here, the agency has not made a written determination that the services in question are so unique or highly specialized that it is not practicable to make multiple IDIQ contract awards. Nations concludes that the RFP should be amended accordingly.

The agency does not dispute that the contract will exceed the duration and dollar value thresholds, but maintains that the services in question do not fall within the definition of advisory and assistance services, and that an IDIQ contract thus is not required. The Army maintains that the FAR definition of advisory and assistance services encompasses only management-type advice and assistance, and asserts that this solicitation is outside that definition because it is only for the acquisition of training support services. According to the Army, the contractor's employees will not provide advice and assistance to the agency in terms of how to manage this training program, will not participate in any management-level decision making, and will not otherwise assist the agency in meeting its policy development or program management responsibilities relating to the computer simulation training program.

The Federal Acquisition Streamlining Act of 1994 (FASA), 10 U.S.C. § 2304b(e) (1994), provides that, in obtaining advisory and assistance services using task order type contracts (where the anticipated value is more than \$10 million and the duration is more than 3 years), the solicitation must specifically provide for multiple awards unless the head of the agency concerned determines in writing that the services in question are so unique or highly specialized that it is not practicable to award more than one contract. This provision essentially requires that agencies

award multiple task order contracts for advisory and assistance services for high value, long term contracts unless the determination relating to the nature of the services has been executed. FAR § 16.503(d); see also S. Rep. No. 103-258, 103d Cong., 2d Sess. 15-16 (1994).<sup>1</sup>

FASA, 31 U.S.C. § 1105(g)(1) (1994), defines advisory and assistance services in terms of three categories:

". . . the term 'advisory and assistance services' means the following services:

- (i) Management and professional support services.
- (ii) Studies, analyses and evaluations.
- (iii) Engineering and technical services."<sup>2</sup>

FAR § 37.201 (FAC 90-41) further defines advisory and assistance services as including services to support or improve organizational policy development, decision making, management and administration, program and/or project management and administration, or research and development activities; it further states that outputs may include training and the day-to-day aid of support personnel needed for the successful support of ongoing federal operations. In addition, FAR § 37.201 provides three definitional subdivisions that mirror the statutory definition, namely, Management and Professional Support Services, Studies, Analyses and Evaluations, and Engineering and Technical Services. For purposes of this protest, the description of Management and Professional Support services is relevant; it provides:

"Management and professional support services, i.e., contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for [research and development] activities) or systems. These services are normally closely related to the basic responsibilities or mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved

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<sup>1</sup> For contracts that are below the \$10 million/3-year threshold, or are for requirements other than advisory and assistance services, the FAR merely expresses a preference for multiple award task order contracting. 10 U.S.C. §§ 2304a(d)(3); FAR 16.504(c)(1), (2).

<sup>2</sup>The definition of advisory and assistance services includes a number of specific exclusions that are not relevant here.

organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative/technical support for conferences and training programs." (Emphasis supplied.)

It is clear that, insofar as training services are concerned, the statutory and regulatory definitions include administrative or technical services of a professional nature that support the agency's training personnel in discharging their central mission-related obligations. The services at issue here provide critical, professional support to TRADOC's training personnel that enables them to effectively discharge their central mission of training brigade and battalion level officers. The contractor employees are required to be highly-skilled professionals--specifically, former Army officers with brigade and battalion level warfighting experience--and the services they provide--operation of the simulators, acting as 'interactors' for the trainees, and providing post-exercise data used by TRADOC's personnel in their critique of the exercise--are necessary for TRADOC's personnel to effectively perform their mission.

We are unpersuaded by the Army's position that contracts for management-related services are the only type contemplated by the statutory and FAR definitions of advisory and assistance services, or that training support services of the type being acquired here are outside of the applicable definitions. While the Army's position appears generally correct under the earlier version of this regulation, see FAR part 37.2 (FAC 90-16), the current FAR definition of advisory and assistance services describes management and professional support services and engineering and technical services in a manner somewhat broader than only management-related services. As quoted above, the last sentence of that portion of the advisory and assistance services definition that describes management and professional support services includes ". . . efforts that support or contribute to improved . . . administrative/technical support for conferences and training programs." FAR, § 37.201(a) (FAC 90-41). This category of services--administrative/technical support for conferences and training--was not included in the earlier definition of management and professional support services. FAR § 37.203(c)(2) (FAC 90-16).

We note that the prior definition of advisory and assistance services found in the FAR specifically excluded training necessary to maintain skills necessary for normal operations, FAR § 37.203 (FAC 90-16), and this exclusion does not appear in the current FAR definition. When read together with the revised FAR description of management and professional support services, the elimination of this exception supports the conclusion that services in support of training necessary to maintain

skills for normal operations, such as the training contemplated under this RFP, are now included within the revised definition of advisory and assistance services.<sup>3</sup>

Finally, the umbrella-type task order contract to be awarded under this RFP appears to be the kind of contract targeted by Congress under FASA; the solicitation contemplates the award of a single contract for virtually all of the Army's requirements for support of computer simulation training at a large number of facilities throughout the United States. The Senate report regarding the relevant statutory provisions expressed a concern that:

". . . the indiscriminate use of task order contracts for broad categories of ill-defined services necessarily diminishes competition and results in the waste of taxpayer dollars. In many cases, this problem can be effectively addressed . . . by awarding multiple task order contracts for the same or similar services. . . ."

S. Rep. No. 103-258, 103d. Cong., 2d Sess. 15 (1994).

We conclude that the services under the RFP are encompassed by the FAR definition of advisory and assistance services, and that, due to the duration and dollar value of the contract, the Army was required to execute a determination and finding before proceeding on a requirements contract basis. Because it did not do so, the RFP is defective.<sup>4</sup>

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<sup>3</sup>The Army relies on the terms of Department of Defense Directive No. 4205.2 and Army Regulation No. 5-14 in support of its argument that the services at issue are not advisory and assistance services; both provisions specifically except from the definition of advisory and assistance services "training obtained for individual professional development." These provisions, which were promulgated prior to the passage of FASA in 1994 and the issuance of the new FAR provisions in 1995, have been superseded by the revised description of management and professional support services included in the current definition of advisory and assistance services.

<sup>4</sup>Nations also contends that the RFP violates the Antideficiency Act, 31 U.S.C. § 1341 (1994), because the agency does not currently have funds appropriated for this requirement. However, the RFP includes the clause at FAR § 52.232-18, which is specifically designed for situations where an agency issues a solicitation contemplating the award of a contract for which funds have not yet been appropriated. The clause explains to offerors that funds are not yet available for the requirement, and that no government liability will arise for any payment until

(continued...)

In view of the foregoing, we are recommending by separate letter of today to the Secretary of the Army that the agency either amend the solicitation to provide for the award of multiple IDIQ type contracts, or execute the necessary written determination that the services at issue are so unique or of a highly specialized nature that it is not practicable to make multiple awards. We also recommend that Nations be paid the costs of filing and pursuing its protest, including reasonable attorneys' fees. Nations should submit its certified claim, detailing the time expended and the costs incurred, directly to the Army within 60 days of its receipt of this decision. 4 C.F.R. § 21.8(f)(1) (1996).

The protest is sustained.

Comptroller General  
of the United States

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<sup>4</sup>(...continued)

the contractor receives written notice from the contracting officer of the availability of funding. This allegation therefore is without merit.