

DECISION



12544 PL-11
Ms. Martin
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-196915

DATE: January 15, 1980

MATTER OF: Cornell University DLG 03629

DIGEST:

University's protest of fixed-price solicitation on basis that educational institutions generally will accept only cost-reimbursement type contracts lacking "punitive" provisions such as those permitting suspension of work or termination for default is denied since agency is not required to compromise beneficial method of procurement to accommodate contracting policies of potential competitors.

Cornell University protests award of a fixed-price contract for the evaluation of water quality data under solicitation No. SCS-2-NETSC-79 by the Soil Conservation Service, Department of Agriculture. Cornell's bid on No. SCS-1-NETSC-79, an earlier solicitation for the same requirement, was rejected as nonresponsive because of exceptions taken by Cornell to certain terms and conditions. Cornell states the solicitation invites bids from educational institutions which generally accept only cost-reimbursement type contracts for research and development. Asserting that it is not permitted to receive a profit or fee to build reserves for the potential liabilities inherent in such clauses as Suspension of Work and Termination for Default, Cornell requests our Office to direct the agency to use a cost-reimbursement type contract which omits such "punitive" provisions. AEC 00337

We have long recognized fixed-price contracts are inherently more advantageous to the Government than cost-reimbursement type contracts, Marine Management Systems, Inc., B-185860, September 14, 1976, 76-2 CPD 241, and this Office will not disturb an agency's determination of the procurement method to be used in accommodating its minimum needs unless it is shown clearly to be

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unreasonable. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Further, an agency is not required to compromise a method of procurement which it believes to be beneficial to the Government in order to accommodate the contracting policies of a potential competitor. See, e.g., General Telephone Company of California, B-190142, February 22, 1978, 78-1 CPD 148.

We do not believe, as Cornell asserts, that the Government must negotiate a cost-reimbursement type contract for these services, omitting the provisions to which Cornell objects. While Federal Procurement Regulations (FPR) § 1-3.205 provides that contracts for services with educational institutions may be negotiated without formal advertising, there is no requirement that such procurements be conducted only by negotiation or that such contracts be awarded only on a cost reimbursement basis. FPR § 1-15.301, which Cornell cites, pertains to research and development contracts with educational institutions and not to contracts for services which this procurement involves. Moreover, although FPR § 1-15.301 provides cost principles for research and development contracts with educational institutions, FPR § 1-15.301-3 also provides the principles should be used as a guide in the pricing of fixed-price contracts. For fixed-priced supply contracts, whether entered into by formal advertising or by negotiation, FPR § 1-8.700.2(b)(1) requires use of the default clause in FPR § 1-8.707.

We agree with Cornell that FPR specifically provides a "Suspension of Work" clause only for construction contracts. FPR § 1-7.602-32. However, we know of no basis for objecting to inclusion of such a clause in contracts for services since use of the clause does not reduce competition or increase the probable cost to the Government. See 42 Comp. Gen. 1 (1962). The Department of Agriculture has prescribed use of its Form 377 for all contracts for services. 41 C.F.R. 4-16.500. Among the

general provisions in this form are "Default" and "Suspension of Work" clauses which properly applied to this procurement.

Although Cornell has alleged it and possibly other educational institutions may be unable to accept fixed-price contracts, we have been informed by the agency that of the five universities which submitted bids, all but Cornell took no exception to the solicitation.

Since it is clear from Cornell's submission that its contentions are without legal merit, we have not requested an agency report and the protest is summarily denied. See, e.g., Environmental Tectonics Corporation, B-195882, September 19, 1979, 79-2 CPD 204.



For The Comptroller General
of the United States