

13858 PL-II



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Protest of Agency Decision to Cancel IFB and Resolicit]

FILE: B-197177

DATE: May 29, 1980

MATTER OF: Transco Security, Inc. of Ohio

CNG01813

DIGEST:

IFB for guard services which specified duties, some of which could be performed by guards classified by Department of Labor wage determination as "B" and some by higher paid class A guards, and also stated that "Class A Guards are applicable to this solicitation" is ambiguous. Since four lowest bidders based bids on using both Class A and B guards and agency intended that only Class A guards be used, ambiguity affected competition and IFB was properly canceled.

Transco Security, Inc. of Ohio (Transco) protests the cancellation of IFB CI-79-E068 and the resolicitation of the requirement by the Environmental Protection Agency (EPA). For the reasons set forth below the protest is denied.

The IFB called for bids for security services to be provided at the Environmental Research Center, Cincinnati, Ohio. The solicitation incorporated U.S. Department of Labor Wage Determination No. 68-556 (Rev. 12) dated December 1, 1978, which set forth two classes of guards to be paid differing minimum wages:

"Guard A

"Enforces regulations designed to prevent breaches of security. Exercises judgment and uses discretion in dealing with emergencies and security violations encountered. Determines whether first response should be to intervene directly (asking for assistance when deemed necessary and time allows) to keep situation under surveillance or to report situation so that it can be handled by appropriate authority.

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Duties require specialized training in methods and techniques of protecting security areas. Commonly, the guard is required to demonstrate continuing physical fitness and proficiency with firearms or other special weapons.

"Guard B

"Carries out instructions primarily oriented toward insuring that emergencies and security violations are readily discovered and reported to appropriate authority. Intervenes directly only in situations which require minimal action to safeguard property or persons. Duties require minimal training. Commonly, the guard is not required to demonstrate continuing physical fitness. May be armed, but generally is not required to demonstrate proficiency in the use of firearms or special weapons."

The solicitation required three types of guards: supervisory guards, direct-line guards and a guard-receptionist. Differing duties for each type of guard were described in the portion of the specifications entitled "Work to be Performed." For example, the supervisor is to carry a gun while the guard-receptionist is unarmed. Since some bidders inquired whether class A or class B guards would be required to perform these various services an amendment was issued which, in addition to changes not relevant here, stated "Class A Guards are applicable to this solicitation."

Career Consultants, Inc. (Career) submitted the lowest of the 17 bids received at \$11,351.51 per month. During discussions with Career regarding its taking over performance from the incumbent contractor, EPA learned that Career had bid on the basis of class B guards at \$4.18 per hour for all classifications

other than supervisory guards which were bid on class A rates of \$5.77 per hour. Since it was EPA's intention to have all the services performed by class A guards and since EPA suspected that other bidders may have misinterpreted the solicitation, the agency requested that the remaining bidders confirm their bids. In response, the next three lowest bidders indicated that they, too, had based their bids solely on the use of class A guards as supervisors while seven of the remaining bidders, including Transco, indicated that they intended to use class A guards in all three categories. Transco's bid of \$12,837.02 per month was the lowest bid received from a firm which based its bid on the use of class A guards for all functions. Since the four lowest bidders indicated that they bid on the use of both class A and class B guards, EPA reviewed the amended solicitation, determined that it was ambiguous in that it did not clearly explain that only class A guards were acceptable, and canceled it.

Transco argues that the solicitation, as amended, clearly states that all tasks must be performed by class A guards. In this regard, Transco cites portions of the solicitation which require that guards operate and enforce a personnel identification system, operate elevators in emergency situations, wear firearms, etc. as support for the position that the security duties called for require the specialized training and physical fitness which only class A guards possess. Therefore, Transco maintains, there was no "ambiguity" in the solicitation which would warrant its cancellation.

We recognize that the rejection of bids after opening tends to discourage competition. However, when the agency learns after bid opening that the solicitation requirements are defective because they are subject to more than one reasonable interpretation it is proper for the agency to reject all bids and resolicit on the basis of revised specifications. Federal Procurement Regulations (FPR) § 1-2.404-1 (1964 ed.); Ingersoll-Rand Company, B-192279, October 6, 1978, 78-2 CPD 258. We have permitted award

under a defective specification, however, when it appears that the following conditions are met: (1) the agency would be getting what it wanted under the contract, and (2) competition would not be adversely affected. Ingersoll-Rand Company, supra.

The general description in the IFB of the work to be performed by the contractor such as the monitoring and operation of the building fire alarm system and electronic security systems, performing all services needed to insure safety and protection of building personnel and Government property, operating and enforcing a personnel identification system, processing and controlling visitors to the building, etc. does, as Transco argues, include tasks which require the skills of class A guards, but it also includes tasks that require less skill. For example, the solicitation provides that the processing and controlling of visitors is to be accomplished by an unarmed non-uniformed guard: this person would not appear to need the skills required of a class A guard. The solicitation also provides for a guard supervisor, which position seems to call for the skills of a class A guard. The statement in the amendment that "Class A Guards are applicable to this solicitation" does not clearly convey EPA's intent that all guards must be class A no matter the complexity of the individual's duties. Rather, since the solicitation indicates that there are to be three categories of guards, at least one of which (receptionist-guard), performs duties which seem to be in line with the skills listed for class B guards, the amendment could be reasonably interpreted as a reminder to bidders that they must pay the higher class A wages to those whose jobs require class A skills. Consequently, we agree with EPA that the solicitation was ambiguous.

It seems that the agency would be getting what it wanted under the contract if award were made to Transco. However, since the four lowest bidders appear to have been misled by the solicitation, we cannot conclude that EPA acted improperly in canceling the IFB.



For the Comptroller General
of the United States