

14938 R. Martin

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**DECISION**



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

*[Protest Contending That RFP Should Not Have Been Negotiated]*

FILE: B-197244.2

DATE: September 19, 1980

MATTER OF: Chameleon Company, Incorporated --  
Reconsideration

**DIGEST:**

GAO affirms its prior decision interposing no legal objection to agency's use of negotiation to obtain construction services on a time and materials basis, because required level of management and technical expertise could not be assured through formal advertising.

Chameleon Company, Incorporated (Chameleon) has requested reconsideration of our decision in Chameleon Company, Incorporated, B-197244, July 22, 1980, 80-2 CPD 59, denying Chameleon's protest. Chameleon asserts that request for proposals (RFP) No. 263-80-P(92)-0057 issued by the Department of Health and Human Services should have been formally advertised rather than negotiated. The solicitation called for general contracting services, on a time and materials basis, to accomplish specific tasks as ordered for renovating and maintaining existing facilities at the National Institutes of Health (NIH) in Bethesda, Maryland. We held that the agency's decision to use negotiation procedures, in lieu of small business restricted advertising, was not legally objectionable because the record indicated the agency was purchasing management and technical competence along with labor and could not draft adequate specifications with respect to management capability.

Chameleon contends that our decision is inconsistent with Nationwide Building Maintenance, Inc., 55 Comp. Gen. 693 (1976), 76-1 CPD 71 and Tidewater Protective Services, Inc., and Others -- Reconsideration, 56 Comp. Gen. 649 (1977), 77-1 CPD 361. According to Chameleon, we held in both cases that an agency may not use negotiation in lieu

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of formal advertising to obtain a desired higher level of quality of services and in Tidewater that an agency's professed need for management services of the type considered in this case would not support the use of negotiation.

We do not agree with Chameleon. We did not hold in Nationwide and Tidewater that an agency may not negotiate for quality. We held that "Congress did not intend to allow agencies to negotiate contracts in order to obtain a particular quality of supplies or services when a lesser level of quality would satisfy the Government's needs \* \* \*." 56 Comp. Gen. at 654. (Emphasis added.) In this case we found that the Department's minimum needs reasonably required a level of management and technical expertise which it could not obtain through formal advertising. Moreover, while in the cited Tidewater case we did state that "any assertion by a procuring agency that it must purchase management services apart from the basic services sought must be subject to close scrutiny," we held there that the agency had reasonably shown its minimum needs could be satisfied only by the best available services which depended extensively on management techniques and approaches which could not be described in sufficient detail to permit formal advertising. Similarly, in our prior decision in this case, we found that, in light of the time and materials type of contract to be awarded, the agency's minimum needs required a high level of management services that also could not be adequately described in a specification, but had to be ascertained and evaluated relative to cost through evaluation of competing technical proposals. We did not and do not view these management services in this case as the same as those routine elements of management discussed in Tidewater which would normally be an indirect aspect of contract performance and considered in connection with a responsibility determination. See 56 Comp. Gen. at 653.

The prior decision is affirmed.



For the Comptroller General  
of the United States