

15 333 J. Cohen

DECISION



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

[Protest of Army Contract Award]

FILE: B-198971

DATE: November 5, 1980

MATTER OF: Central Texas College

DIGEST:

1. Protest that Army IFB for teaching services did not advise bidders that IFB was issued pursuant to Army internal regulation concerning general education of Army members is denied where it cannot be shown that alleged failure had any adverse effect on competition.
2. Submission of statement of bidder's qualifications is matter of responsibility and thus may be accomplished after bid opening.

Central Texas College (CTC) protests the proposed award of a contract by the Department of the Army to Pikes Peak Community College under invitation for bids (IFB) DAKF-2380-B-0077 for a "Basic Skills Education Program II" (BSEP II) at Fort Campbell, Kentucky. BSEP II is intended to provide foundation instruction to raise the general educational competency of Army personnel.

CTC protests that the solicitation improperly failed to clearly advise prospective bidders of the applicability of two Army Regulations, AR 621-5 and AR 621-45, which implement BSEP II. The former establishes policies and authorizes the use of funds for the general academic and vocational educational development of Army personnel; prescribes a system of coordinated continuing career developmental education and counseling; and provides guidance for establishing educational program management systems. AR 621-45 sets responsibilities and outlines procedures for implementing BSEP II.

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CTC further contends that in conducting the procurement the Army did not comply with those regulations in two respects: (1) it failed to restrict the contract award to accredited educational institutions, which CTC argues was required by paragraph 1-10(d) of AR 621-45; and (2) the IFB requires the contractor to provide counseling services as part of BSEP II, which CTC protests is precluded by paragraph 3-2 of AR 621-5. Paragraph 1-10(d) of AR 621-45 provides that BSEP II "will be contracted with accredited educational institutions * * *. Exceptions will be provided only at MACOM [a major command] or higher level." Paragraph 3-2 of AR 621-5 states that counseling for Army members in connection with participation in the Army's General Education Development program, which includes BSEP II, "will be performed by professionally qualified, full time DAC [Army civilian] counseling personnel."

CTC also protests that the IFB allowed bidders to submit statements regarding their qualifications after bid opening. CTC argues that the submission of these statements is a matter of responsiveness and that the statements therefore should have been required with the bid.

We find no legal merit to the protest.

With respect to CTC's position that the AR's in issue were applicable here we note that the Army not only advises that the "requirement" in paragraph 1-10(d) of AR 621-45 had been waived for this procurement, but that Pikes Peak Community College, the proposed awardee, in fact is an accredited institution. Also, the Army asserts that the counseling services required under the IFB merely "are incidental to the BSEP II instruction * * * and inherent in providing appropriate instruction. The counseling is not intended to duplicate counseling provided by * * * DAC counselors." Thus we cannot say that counseling by the contractor here necessarily was precluded by AR 621-5.

Moreover, since all bidders were bidding to the same requirements, and because we do not see how knowledge of the cited provisions in AR 621-45 and AR 621-5 could have affected bid prices, we cannot perceive of how any bidder could have been prejudiced in the competition by the Army's failure to specifically advise of the existence or applicability of the subject AR's. See generally 43 Comp. Gen. 209 (1963).

Finally we view CTC's assertions that the IFB improperly allowed the submission of qualification statements after bid opening because of the firm's view that the statements involve bid responsiveness to be without legal merit. "Responsiveness" concerns whether a bidder has unequivocally offered to provide the requested items or services in conformance with the terms and specifications of the invitation, while "responsibility" refers to a proposed contractor's ability to meet a contract's requirements. J. Baranello & Sons, 58 Comp. Gen. 509, 513 (1979), 79-1 CPD 322. A statement of a bidder's qualifications involves the firm's responsibility, since its purpose is to aid the contracting officer in evaluating the bidder's capability to perform, and thus properly is a matter for submission after bid opening. See Dubie-Clark Company, Patterson Pump Division, B-189642, February 28, 1978, 78-1 CPD 161.

The protest is denied.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

For the Comptroller General
of the United States