

DECISION



18264
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-200506.2

DATE: May 27, 1981

MATTER OF: Career Consultants, Inc.

06/1/83

DIGEST:

1. Army had right to delay contract award and permit apparent low bidder additional time to obtain security clearance needed to perform services. Based on review of record, additional time granted low bidder cannot be questioned. Similarly, GAO cannot conclude that Army, upon proper exclusion of initial low bidder, gave unreasonable time for next low bidder and ultimate awardee to obtain needed clearance.
2. Since there is no evidence that any actual or potential competitor had any reasonable doubt as to method of determining lowest bidder, and because all bids were submitted and evaluated based on stated method, bidding results were not invalidated even though method assumed 11-month initial award period which was later reduced.
3. Relative standing of bidders and award pursuant to standing cannot be questioned simply because protester asserts that speculative cost consideration was overlooked by agency.
4. Protest that interim performance by military personnel of guard services pending award of contract was improper is policy matter to be resolved within executive branch since only circumstance in which GAO reviews similar protests is not present in protested procurement.

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Career Consultants, Inc. (CCI), protests the award of a contract to Danguard, Inc. (Danguard), under invitation for bids (IFB) DABT39-80-B-0135, issued by the Department of the Army (Army), for limited guard services at Fort Sill, Oklahoma. 744

CCI mainly contends that the Army failed to reject those bidders, including Danguard, which did not possess a required security clearance for the services prior to the anticipated contract performance date--November 1, 1980. Related to this argument, CCI also alleges other grounds of protest. Based on our review of the record, we dismiss in part and deny in part the protest.

Background

The Army explains that the guard services requirement (for services during fiscal year 1981) was originally accepted in May 1980 by the Small Business Administration (SBA) under the "Section 8(a) program." However, SBA canceled this acceptance in early August; therefore, the Army did not initially release the subject IFB until August 12, 1980.

The initial IFB established September 12, 1980, as the bid opening date and described the contract period as extending from October 1, 1980, or date of award, whichever was later, through September 30, 1981. Paragraph C-17a of the initial IFB also informed bidders that it would take about 3 months to obtain a security clearance and that the clearance was required before "commencement of work." By amendment dated September 9, 1980, bid opening date was postponed to September 22 and the security clearance requirement stipulating clearance prior to the beginning of contract performance was deleted. Instead, the amendment provided that an "interim clearance" would be issued pending receipt of a final security clearance and that the contractor would furnish necessary information to secure the clearance after contract award. No mention was made, however, as to how long it would take to secure the interim clearance.

The Army then decided it would be impossible to award a contract for the services commencing October 1 under this IFB since there were only 8 days remaining after the scheduled bid opening date to process an award before the services were to begin; therefore, on September 20, 1980, the Army postponed bid opening. Thereafter, on September 23, the Army extended CCI's fiscal year 1980 contract for similar services through October 1980. Also, on September 27, the Army amended the IFB. The amendment extended the opening date to October 13, postponed the starting date for the services to November 1, or date of award (if later), stipulated that it would take "approximately 30 days" for completion of an interim security clearance (which was to be obtained prior to contract performance) and provided options for up to 2 additional years' service. Bidders were further informed by the September 27 IFB amendment that they had to include prices (on a monthly and yearly basis) for both the basic period and all option periods and that the lowest bidder would be determined by evaluating both basic period and option prices.

Bids were opened October 15, and the five lowest bids were as follows:

1. International Business Investments	\$ 874,225.50
2. Associated Security Systems	938,960.00
3. Quality Management & Associates	1,029,000.00
4. Danguard, Inc.	1,034,057.95
5. Career Consultants	1,035,947.11

On October 20, the apparent low bidder, International Business Investments (IBI), alleged a mistake in bid and was allowed to withdraw. On October 23, Associated Security Systems (Associated) was requested to verify its bid and did so. Apparently, at this time, the Army realized that, except for the incumbent contractor, CCI, which already possessed the required security clearance, it was impossible for any bidder to obtain

an interim clearance by the November 1 starting date. This realization was prompted by advice received from the Defense Investigative Service, Oklahoma City field office, that an interim security clearance would not be processed on any bidder until award was "pending." Obviously, award could not be considered to be pending until the identity of the apparently successful bidder had been determined after bid opening. Since the estimated processing time for a clearance was 30 days, the required processing period after bid opening would have taken, at a minimum, well past the contemplated starting date. Nevertheless, the Army was of the view that the clearance requirement had to be met before performance could start. Reviewing these circumstances, the Army decided that:

"any award to CCI [based on a November 1 starting date] would [have been] subject to challenge because the short interval between opening date and starting date effectively eliminated competition."

Given the view that an award to CCI based on a November 1 starting date would have been improper, the Army "elected to extend the current contract with CCI for the month of November, thereby giving Associated, the apparent low bidder, an opportunity to secure the necessary clearance." Apart from the issue of a security clearance, the contracting officer had other questions as to whether Associated was a responsible bidder. Because of these other questions, on October 24, a request was submitted to SBA under the certificate of competency (COC) procedure regarding Associated's responsibility. On the same day, CCI agreed to extend its contract until November 30. This extension for the month of November was at the same price as for October--\$38,030.75, which was \$14,554.10 higher than its monthly price for October 1, 1979, through September 30, 1980, and \$8,431.26 higher than its monthly bid price on the protested solicitation.

On November 28, SBA issued a COC to Associated; nevertheless, Associated had not received the necessary security clearance as of that date. Consequently,

and because of the prices COC charged for its services in October and November, Fort Sill "decided to exercise its contingency plan by placing military guards on duty [as of December 1, 1980] for the anticipated brief period it would take Associated to receive its interim security clearance." Additionally, we understand, the contracting officer subsequently requested the SBA to reconsider its issuance of the COC in light of new information bearing on matters other than the clearance. This new information apparently came into the contracting officer's possession after the COC had been issued.

Associated did not receive a security clearance during December 1980. Moreover, because the Army had serious doubts that SBA would issue a COC to Associated because of the new information, the Army in December "moved to secure an interim clearance * * * and a pre-award survey on the next lowest bidder, Quality Management and Associates [Quality]."

Subsequently, on January 9, 1981, the SBA declined to issue a COC to Associated based on a "comprehensive analysis of all available information"--thus removing Associated from consideration for award. Moreover, we understand that Quality was ultimately eliminated from consideration for award because it declined to apply for a COC at SBA after it received a "negative pre-award survey."

The Army subsequently requested a security clearance and preaward survey on Danguard, the next lowest bidder, on January 28, 1981. On March 3, 1981, Danguard received a security clearance. Thereafter, and since Danguard was otherwise considered eligible for award, an award was made to the company for the required services beginning on May 1, 1981. We understand that all bidders extended their initial bids during the periods in which their bids were under active consideration and that the award for the remainder of the fiscal year's services was made at the monthly price contained in Danguard's October 1980 bid.

Improper Delay of Award

CCI contends that the Army improperly delayed award of the contract rather than excluding all other bidders and awarding to CCI which was the only bidder possessing the required clearance as of November 1, 1980.

We have repeatedly held that solicitation requirements for security clearances in the performance of contracts relate not to bid responsiveness but to bidder responsibility. See, for example, Ensec Service Corporation, 55 Comp. Gen. 494 (1975), 75-2 CPD 341. Our Office has also held that an agency may allow a bidder a reasonable period within which to "cure a problem related to its responsibility" since the critical time for responsibility is not bid opening but the time the services are actually needed. Ver-Val Enterprises, Inc., B-198076, March 25, 1980, 80-1 CPD 223; B-178043, July 27, 1973 (where the Army delayed award to permit a bidder to obtain operating authority from a regulatory agency).

Therefore, under the cited precedent, the Army had a right to allow Associated, the low bidder apparently in line for award in early November 1980, a reasonable amount of time to obtain the security clearance needed even if this action delayed performance under the contract. Moreover, apart from this precedent, we agree with the Army's position that this action was permissible to avoid bidding prejudice which the Army would have otherwise been responsible for as to those bidders which did not possess clearance as of bid opening. Based on our review of the record, we cannot conclude that the Army allowed Associated more than a reasonable amount of time (November and part of December 1980) to obtain the clearance.

We are also of the view that the protester has not shown that the Army subsequently granted unreasonable amounts of time either to Quality or to Danguard, which both bid less than the protester, to obtain a security clearance after Associated was excluded from consideration for award. Therefore, we cannot question the award because of the delay involved.

Nevertheless, it is regrettable that the solicitation was issued under these circumstances where the IFB did not even permit a 30-day period between the date of bid opening and the anticipated performance date. Indeed, the Department has informed us that it is acting to prevent a repetition of this circumstance by directing that no future solicitation which requires a security clearance be issued without insuring that minimally adequate time exists for the apparently successful bidder to obtain a clearance by the time performance will be required. However, it is apparent that there were unusual circumstances here--a series of unanticipated delays relating to the ultimate rejection of the three lowest bidders--which could not reasonably be anticipated in deciding on a reasonable period to process a security clearance.

Bid Evaluation Scheme

CCI argues that the award delay should be viewed as invalidating the IFB's evaluation scheme because the scheme was partially based on the assumption that there would be 11 full months of performance in fiscal year 1981. On this point, CCI cites International Technical Services Corporation, B-198314, January 13, 1981, 81-1 CPD 18, where we could not question an agency's decision to award to the lowest bidder for the stated evaluation period (31 months) even though, because of an unanticipated award delay, performance would be only for 30 months. ✓

We so concluded, even though another bidder would have been lower in price if a 30-month rather than a 31-month evaluation period had been used, primarily because there was "no reasonable doubt among potential or actual competitors as to the actual basis for evaluation and award" and all bidders actually competed on that basis. Here, there is no evidence that any actual or potential competitors had any reasonable doubts that bids were to be submitted and the lowest bidder determined based on the clearly stated 11-month evaluation period, notwithstanding the security clearance requirement. In fact, all bids received were submitted on the stated period involved. Moreover, unlike the cited case, the relative standing ✓

of bidders is not changed because of the delayed performance date. Here, Danguard's low monthly price for the 5 months remaining in fiscal year 1981, plus the company's prices for the option years, is still lower than CCI's bid prices for the comparable period. Thus, the IFB's bid evaluation scheme was not invalidated because of the delayed award.

Related to this ground of protest, CCI alleges that the events surrounding the extension of its contract in October and November 1980 should also be seen as calling into question the relative standing of bidders. Specifically, CCI alleges that during those months, the Army paid CCI its cost for full employee vacation benefits for the entire fiscal year 1981 and that Danguard's bid still contained the cost of 1981 vacation benefits for its own employees when the award was made. Since the Army has paid 1981 vacation costs already, CCI contends that its bid should be adjusted downward by the amount of this cost--thereby making CCI the low bidder. Alternatively, CCI argues that the Army should deduct the amount of any vacation costs included in the Danguard bid for fiscal year 1981 on the theory that the Army has already paid for these costs.

Assuming the accuracy of CCI's contentions concerning these costs, the fact remains that it would be improper to adjust CCI's bid for these costs under the present IFB which does not provide for this adjustment. Moreover, there is no way of knowing the exact amount of Danguard's vacation costs which may, in any event, have been absorbed by the company as a bidding strategy. Further, any attempt now by CCI to offer a price reduction on its present bid must be considered a late bid modification which may not be accepted. For all these reasons, this consideration must be viewed as speculative and not affecting the propriety of the Danguard award.

Interim Services

CCI also contends the Army used its own personnel for the guard services during the interim period prior

to the Danquard award in violation of Office of Management and Budget Circular No. A-76. Generally, we regard a dispute over an agency decision to perform work in-house rather than to contract out work as one involving a policy matter to be resolved within the executive branch and not by our Office. Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 OMB 38. The only exception to this general position is that we will review a cost comparison between performing work in-house and contracting the work out when the cost comparison is involved in a competitive solicitation issued to determine the cost of contracting. See Crown Laundry and Dry Cleaners, Inc., above. The exception does not apply to the circumstances here because the IFB was not issued to determine the cost of contracting the services out. Therefore, we dismiss this basis of protest and CCI's related complaint that this in-house performance unnecessarily added to the cost of the required services during this period.

Accordingly, the protest is dismissed in part and denied in part.

Milton J. Azoula

Acting Comptroller General
of the United States

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WASHINGTON, D.C. 20548

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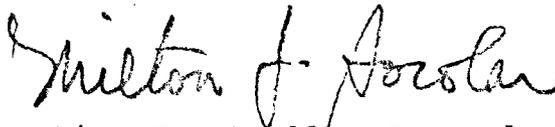
The Honorable Charles McC. Mathias, Jr.
United States Senate

Dear Senator Mathias:

We refer to your expression of interest concerning the protest of Career Consultants, Inc., under invitation for bids DABT39-80-B-0135, issued by the Procurement Division, Fort Sill, Oklahoma.

Enclosed is a copy of our decision of today denying the protest.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure