

DECISION

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

FILE: B-216148 **DATE:** January 23, 1985
MATTER OF: Saxon Corp.

DIGEST:

Air Force may negotiate the procurement of base vehicle operations and maintenance services where it requires high level of technical and management competence that cannot be defined adequately in specifications.

Saxon Corp. protests the Air Force's failure to apply formal advertising procedures to the procurement under solicitation No. F08606-84-R-0005, which instead requests proposals under negotiated procedures to provide vehicle operations and maintenance services at Patrick Air Force Base, Florida. Those services currently are being performed by government employees, and the solicitation's stated purpose is to provide a basis for determining whether to retain the services in-house or to award a contract for them.

We deny the protest.

The statement of work basically concerns the operation and maintenance of the Base's motor pool and on-base transit system, plus the maintenance and repair of other vehicles necessary to the Base's functions. The solicitation provides that any award will be made on the basis of the overall lowest price among those proposals found acceptable as to the stated technical and management evaluation criteria. Offerors are to submit a firm, fixed price for a base year plus prices for each of two option years, which will form the basis of the Air Force's price evaluation and cost comparison.

The contracting officer issued a determination and findings justifying the use of negotiation because the statement of work purportedly is not sufficiently detailed to permit advertised bidding and because projected workload estimates are incomplete and diffused among the various offices on the Base requiring vehicle support

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services. In addition, internal Air Force documents supplied by the agency indicate that the Air Force concluded it needs the opportunity to conduct discussions with potential contractors, particularly in order to assure that they understand and can fulfill the agency's personnel requirements.

The protester argues that the Air Force could evaluate offerors' technical and managerial competence through a preaward survey, in conjunction with a responsibility determination. In support of its argument, the protester points out that other Air Force bases have formally advertised their procurements of vehicle operations and maintenance services. In responding to the protest, the Air Force indicates that its basic position is that it must have the opportunity for discussions with offerors in order to adequately define the requirements for technical and managerial competence against which offerors will be competing.^{1/}

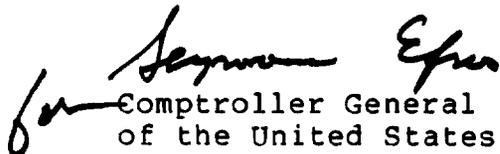
While there exists a statutory preference for formal advertising, negotiation is authorized where formal advertising is not feasible and practicable and where one of several circumstances is present. See 10 U.S.C. § 2304(a) (1982). One circumstance, pertinent to this case, is where the procurement involves property or services for which it is impracticable to obtain competition by formal advertising because specifications adequately expressing the agency's needs cannot be drafted. See 10 U.S.C. § 2304(a)(1); Federal Acquisition Regulation (FAR), § 15.210, 48 Fed. Reg. 42,102, 42,189 (1983). We have recognized that where an agency requires a high level of technical and management competence to satisfy its needs for a basic service, it may be impossible to draft adequate specifications. See W.B. Jolley, B-209933, June 6, 1983, 83-1 C.P.D. ¶ 609 (the operation and maintenance of an air-to-ground gunnery range); see also Interstate Court Reporters, B-212564, Dec. 13, 1983, 83-2 C.P.D. ¶ 679 (stenographic services where management capability was considered critical).

^{1/} The fact that this reason was not expressly stated in the determination and findings justifying the use of negotiation procedures is not significant, since our concern is whether the Air Force's decision to negotiate has a legally supportable basis and not with whether the decision is properly supported or documented. See Aero Turbine, B-200151, Mar. 18, 1981, 81-1 C.P.D. ¶ 208.

We reject the protester's argument concerning the use of a preaward survey as a substitute for negotiations, since a preaward survey conducted after or aside from the actual competition would not accomplish the Air Force's purpose. A preaward survey, as part of the agency's investigation of an offeror's responsibility, focuses on the firm's ability to perform as required and involves matters like financial resources, experience, facilities, and performance record, FAR, §§ 9.104-1, 9.106, but does not include negotiation of the terms of the contract to be executed. In contrast, the focus of the negotiation process is to develop, through discussions if necessary, the contractual terms themselves, such as a promised method of supervision and management. Thus, where, as here, an agency cannot define its needs adequately without recourse to discussions, negotiation procedures are necessary.

Furthermore, the protester's reference to other Air Force bases' procurements is not persuasive since there is no showing that the circumstances of those procurements bear a significant similarity to those of this procurement. We note that this is the first time that Patrick Air Force Base has attempted to solicit offers for its vehicle operations and maintenance requirements, and there is no showing that it could have developed specifications adequately defining the necessary level of technical and managerial competence.

The protest is denied.


Comptroller General
of the United States