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**DECISION**



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

**FILE:** B-219746

**DATE:** August 28, 1985

**MATTER OF:** IBI Security Service, Inc.

**DIGEST:**

1. Protester's contention that invitation for bids (IFB) is ambiguous is patently without merit where IFB clearly addresses each alleged ambiguity raised by the protester.
2. Protester's contention that procurement should have been set aside for small business is untimely where not raised before bid opening.
3. Where contracting agency advised bidders before bid opening that a protest had been filed and inquired whether any bidder agreed with protester's contention that IFB was ambiguous, there is no merit to protester's contention that agency also should have contacted all firms which requested the bid package, since agency was under no obligation to contact any actual or potential bidder before proceeding with bid opening and sole purpose of agency's action was to determine whether there was any justification for delaying bid opening.

IBI Security Service, Inc. protests the award of any contract under invitation for bids (IFB) No. DLS-2-86, issued by the Immigration and Naturalization Service for guard services at the Port Isabel Service Processing Center, Texas. IBI's principal contention is that the IFB is ambiguous in several respects. We deny the protest.

The IFB calls for unarmed security guard services in the detention areas at the Port Isabel Processing Center. IBI contends that the IFB is unclear regarding whether the contractor is required to: (1) provide boots and uniforms for each employee; (2) base the amount of vacation pay on

an employee's service with the previous contractor; (3) provide health and welfare benefits; (4) provide holiday pay for all employees or only those working on the holidays; (5) pay employees for all training time; and (6) pay for overtime work. We find that the protester's contentions are patently without merit.

A simple reading of the IFB reveals that each alleged ambiguity raised by IBI is addressed by a provision in the IFB. First, paragraph 5.b on page 24 of the IFB states that the contractor must furnish complete uniforms for all of its security personnel assigned under the contract and specifies each item which comprises the uniform, including boots.

Second, pursuant to the Service Contract Act, 41 U.S.C. §§ 351 et seq. (1982), the IFB includes a wage determination by the Department of Labor (attachment 1 to the IFB) which specifies the minimum hourly wage and the amount of health and welfare fringe benefits to be paid by the contractor. With regard to vacation pay, the wage determination states that an employee's length of service for purposes of calculating his vacation time is to be based on the length of both the employee's continuous service with the contractor and with any predecessor contractors in performing similar work at the same facility. Further, with regard to holiday pay, the wage determination states that all employees are entitled to seven paid holidays.

With regard to training, paragraph I.1.k on page 23 of the IFB calls for the government to provide 16 hours of training for the contractor's employees at no cost to the contractor. Paragraph J.7 on page 26 requires the contractor to provide 31 hours of training; paragraph M.b describes in detail the training classes to be provided by the contractor and at page 29 states that "any remuneration due the employee for attendance at the training is the responsibility of the contractor."

Finally, with regard to overtime, the IFB incorporates Federal Acquisition Regulation § 52.222-4, which provides that employees are to be paid at the rate of 1-1/2 times their basic rate of pay for any work in excess of 8 hours a day or 40 hours a week. This clause implements the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-333 (1982), which applies to contracts such as this one involving guard services. See 40 U.S.C. § 329(a); 29 C.F.R. § 4.181(b) (1984).

Since the IFB clearly addresses each alleged ambiguity raised by IBI, IBI has failed to show that the IFB lacked sufficient clarity to permit bidding on an intelligent and equal basis. See IBI Security Service, Inc., B-217446, June 27, 1985, 85-1 CPD ¶ 732. Further, we think that IBI should have raised these matters with the contracting officer prior to filing its protest with our Office. The answers to IBI's questions here were all in the solicitation and the contracting officer could have easily pointed them out.

In its comments on the agency report, IBI for the first time argues that the procurement should have been set aside for small business. This allegation is untimely, since it concerns an alleged defect apparent on the face of the IFB which was required to be raised before bid opening. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985). Here, bid opening was held on July 31; IBI's comments on the agency report were filed on August 21. In any event, we would not review the protest on this basis because the decision whether to set aside a particular procurement is essentially within the discretion of the contracting officer, and, with certain exceptions not applicable here, nothing in the Small Business Act or the procurement regulations requires that any particular procurement be set aside for small business. Adams & Associates Travel, Inc., et al., B-216673.2, et al., Feb. 1, 1985, 85-1 CPD ¶ 124.

Finally, the record shows that the contracting activity received its copy of the protest on July 30, a day after it was filed and a day before the scheduled bid opening. On July 31, before opening the bids, the contracting activity called each of the firms which had submitted bids to notify them that a protest had been filed and that bid opening might be delayed as a result, and to inquire whether any of the firms agreed with the protester's contention that the IFB was ambiguous.

IBI now maintains that the agency should have contacted all the firms which had requested the bid package even if they had not submitted bids. We disagree, since the agency was under no obligation to contact any of the actual or potential bidders before proceeding with bid opening. Moreover, there is no merit to IBI's contention that the agency's action adversely affected the competition. On the contrary, the agency merely was trying to determine whether there was any justification for delaying bid opening, and there is no indication that the agency made any improper disclosures to the bidders who were called.

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The protest is denied.

  
for Harry R. Van Cleve  
General Counsel