



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: University Research Corporation

File: B-228895

Date: December 29, 1987

DIGEST

1. Protest that a request for proposal contains sufficient detail to enable protester to compete intelligently and on a relatively equal basis is denied where review of RFP shows that most information has been given or is unnecessary for proposal preparation.
2. Evidence that the procuring agency accepted proposals from contractors other than the incumbent indicates that the specifications were clear, not uncertain or risky.
3. A contractor is not prohibited from enjoying a competitive advantage by reason of its own incumbency unless the advantage results from a preference or unfair action by the procuring agency.
4. The United States Department of Agriculture Graduate School may participate in competitive procurements because of its unique status as a nonappropriated fund instrumentality.

DECISION

University Research Corporation (URC) protests request for proposals (RFP) No. SSA-RFP-88-0023 issued by the Social Security Administration (SSA).

We deny the protest.

Background

This procurement envisions a 5-year contract for upgrading, maintaining and developing SSA's Systems Technical Training Program (hereinafter the Program). The Program was created in 1982 in order to train SSA's large force of technical personnel in the use of new tools and techniques in the computer data systems field. In 1982, SSA executed a 5-year interagency agreement with the United States Department of

Agriculture Graduate School (USDAGS) to administer the program.

In a 1984 decision, however, we concluded that the inter-agency agreement with USDAGS was not authorized as an interagency agreement. We stated, however, that our decision should be applied prospectively only. Department of Agriculture Graduate School, B-214810, Nov. 21, 1984.^{1/} In view of the expiration of the agreement, SSA issued a solicitation for the Program on July 15, 1987, and set August 29, as the closing date for receipt of initial proposals.

On August 10, 1987, URC requested an extension of the closing date because it found the information contained in the solicitation to be insufficient to properly respond to the RFP. SSA denied the extension.

URC has filed a protest with our Office alleging that there is insufficient detail in SSA's RFP to enable URC to compete intelligently on an equal basis. Specifically, URC requests the following information from SSA:

1. the updates through 1987 on the System Modernization Plan, which has been updated since 1982, in order to determine technical training needs and acquaint itself with the SMP.
2. fiscal year 1988 Program Information relating to courses, planned enrollees and training days;
3. information on the current contract, particularly position titles and authorized persons, so that URC may develop a staffing pattern;
4. information on vendors and their courseware in order to evaluate the quality of the current program;
5. information on the government's assessment of the Systems Technical Training Facility currently used by USDAGS for the program.

URC further alleges that SSA's refusal to provide information restricts competition and allows USDAGS an unfair competitive advantage in the procurement. As the incumbent contractor, URC argues, only USDAGS has the required

^{1/} For a more detailed explanation of our prior decision and why USDAGS is not precluded from participating in this contract, see infra pages 5 and 6.

information to submit a completely responsive proposal. URC also asserts that USDAGS' status as a subsidized quasi-governmental agency gives it an unfair competitive advantage over competing firms. USDAGS' participation, argues URC, violates governmental policy as reflected in Office of Management and Budget Circular A-76 and the Competition in Contracting Act of 1984.

In its report, SSA states that URC's request for additional information was denied because the requested data has already been substantially provided. In regard to URC's second allegation, SSA asserts that incumbents like USDAGS may properly enjoy competitive advantage in certain circumstances. Additionally, SSA contends that USDAGS may compete for the procurement in question because of its nonappropriated fund instrumentality status.

Analysis

A. Sufficiency of Information

It is a general rule that a solicitation must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., B-216461, Feb. 19, 1985, 85-1 C.P.D. ¶ 210. Specifications must be free from ambiguity; however, there is no legal requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. Analytics Inc., B-215092, Dec. 31, 1984, 85-1 C.P.D. ¶ 3. Furthermore, when a protester alleges the vagueness and generality of specifications prevent the submission of an intelligent proposal, we will analyze the specifications to determine if they adequately detail the agency's requirements, and will also consider whether other proposals were received in response to the RFP in order to determine whether the level of uncertainty and risk in the solicitation was acceptable. Id.

After reviewing the RFP and relevant documentation here, we cannot find the solicitation deficient or so lacking in information as to preclude an offeror from an opportunity to intelligently prepare a proposal on equal terms.

We shall consider each of URC's points of contention in turn. First, the most current updates of the System Modernization Plan (SMP) (i.e., 1982 through 1986) can be found in the SMP long-range strategic plan brochure. Both the brochure and the RFP refer the reader to the Systems Technical Training Manual 1985 Edition (STTM) which contains an exhaustive outline of the SMP training program. The SMP and the most current version of the STTM (October 1986) were

provided to all offerors. Thus, information regarding the status of the SMP since 1982 has been provided.

Second, SSA presents a persuasive argument for excluding FY 1988 training plans. SSA deliberately chose to use FY 1987 projections as the preliminary base guideline for proposal preparation in order to equally evaluate all competitors. FY 1988 data for future performance was not only unavailable at the time the RFP was issued but will not be necessary until 18 weeks after award. (Award is expected late in the second quarter of 1988.

Third, from our review, the RFP contains extensive and adequate information on all essential staff positions. Furthermore, the staffing plan, according to SSA, must be determined according to each offeror's own technical plan, not on the current operation.

Fourth, the RFP does not require any offeror to assess and compare the quality of the current program. Again, the offeror's own plan is to be assessed on its innovativeness, not on a duplication of the current program. The RFP specifically designates particular core courses to be used in the preparation of proposals since "current needs" analyses are irrelevant until 12 weeks after award of the contract.

Fifth, information pertaining to USDAGS's facility is provided in the solicitation, which specifies the number of square feet, classrooms and students per classroom. The RFP goes on to state: "This [information] should simply be used as a guideline. Actual space requirements for the contract life must be based on valid projections according to actual forecast needs."

We note that SSA accepted proposals from three vendors other than the incumbent. One of these competitors states with respect to this issue that it finds the specification to be "quite clear and complete in the detail presented . . . our approach and understanding of the administrations requirements was in no way hampered by the adequacy of the solicitation requirement." Thus, other offerors do not seem to view the procurement as uncertain or risky, for they have submitted proposals. See Memorex Corp., B-212660, Feb. 7, 1984, 84-1 C.P.D. ¶ 153; contrast University Research Corp., B-216461, supra (protest sustained where specifications were so vague and uncertain that there were no offerors other than the incumbent).

Therefore, we find the offerors were provided sufficient information to intelligently propose on the RFP on a relatively equal basis.

B. USDAGS Competitive Advantage

We have long recognized that a certain firm may enjoy a competitive advantage by its own incumbency. Aerospace Engineering Services, Corp., B-184850, Mar. 9, 1976, 76-1 C.P.D. ¶ 164; see, also, Holmes and Narver Services, Inc., B-208652, June 6, 1983, 83-1 C.P.D. ¶ 605. Furthermore, the government has no duty to equalize the position of competitors unless the competitive advantage results from a preference or unfair action by the government. John Morris Equipment and Supply, Co., B-218592, Aug. 5, 1985, 85-2 C.P.D. ¶ 128; Holmes and Narver Services, Inc., B-208652, supra.

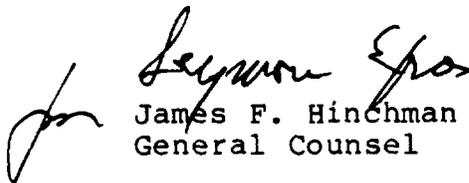
We find no evidence that SSA is engaging in any unfair action or granting preferences to USDAGS. As we held in our 1984 decision, USDAGS is a nonappropriated fund instrumentality (NAFI), not a government agency. Department of Agriculture Graduate School, B-214810, supra. NAFIs are generally recognized as being associated and generally supervised by their respective government entities, here, the Department of Agriculture. NAFIs, however, operate without appropriated funds and are not part of a government agency. USDAGS, for example, is not part of the Department of Agriculture or any other federal agency and it is funded through proceeds derived from its training services and student tuition. In that case, we also concluded that obtaining services from USDAGS was "tantamount to obtaining services from non-government commercial sources." Consequently, we determined that the appropriate procedure was for agency-NAFI contracts to use regular purchase orders and award sole-source contracts if the required justification exists. If no sole source justification exists, NAFI may submit a proposal on competitive procurements. Id.

URC argues that this decision should be reconsidered in light of several factors. First, URC claims OMB Circular A-76 prohibits government competition in the private sector. This is inaccurate. The circular does not prohibit government participation, but mandates review and evaluation of in-house activities on cost and other bases.^{2/} In any case, the circular relates to in-house commercial activities not agency orders from a NAFI, which is a considerably different matter.

^{2/} In its answer to the agency report, URC considerably softens its language and states that the circular merely requires no unfair advantage be given to a government agency for commercial work.

URC also states that policy changes found in the Competition in Contracting Act (CICA) compel a reexamination of our 1984 decision. We disagree. UDC fails to point to any specific provision of CICA which is being violated except to state that SSA must provide maximum competition. Under CICA, SSA must provide "full and open" competitive procedures. 41 U.S.C. § 252(a)(1) (Supp. III 1985). Congress established the "full and open" standard so that competitive procurements would be open to all capable contractors. See Colleague, Inc.--Request for Reconsideration, B-220200.2, Apr. 15, 1986, 86-1 C.P.D. ¶ 363. This would include NAFIs which we have recognized as being tantamount to regular nongovernment commercial sources, B-214810, supra; in fact, after the enactment of CICA in 1984, an exclusion of USDAGS/NAFI may be interpreted as not allowing the "full and open competition" required by the statute.

The protest is denied.


James F. Hinchman
General Counsel