



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Diversified Contract Services, Inc.
File: B-234660
Date: June 22, 1989

DIGEST

In two-step sealed bid procurement, agency's inclusion of bonding requirements in the step-two rather than the step-one solicitation is not improper and does not give rise to claim against the government by firm that allegedly would not have competed had it known in advance that bonding would be required.

DECISION

Diversified Contract Services, Inc. (DCS), protests the bonding requirement in invitation for bids (IFB) No. F08650-89-R-0033, the second step of a two-step sealed bid procurement set aside for small, disadvantaged businesses, for the acquisition of full food services at Patrick Air Force Base, Florida.

We deny the protest.

DSC contends that the bonding requirement should have been included in the step-one solicitation so that prospective offerors would be on notice that a bond would be required before having to undertake the effort and expense of competing. DCS states that it would not have competed had it known of the requirement and argues that the Air Force thus should reimburse the firm for its proposal and other costs.

Under the two-step sealed bidding procedure, step one consists of the request for, submission, evaluation, and (if necessary) discussion of technical proposals; no price or cost information is involved. The objective at this stage is solely to determine the acceptability of the supplies or service offered. Federal Acquisition Regulation (FAR) § 14.501. After evaluation, those offerors submitting acceptable technical proposals are permitted to continue in

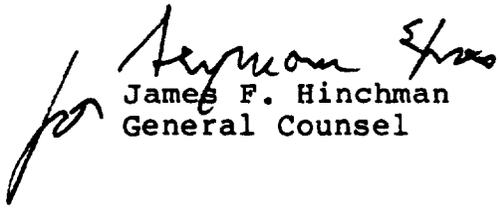
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step two of the competition, under which sealed bidding procedures are followed.

The regulation, FAR § 14.503-1, sets forth all elements that must be included in the step-one solicitation, including a description of the services or supplies required, technical proposal requirements, and the evaluation factors. Nothing in the regulation requires that bonding provisions be included in the step-one solicitation; indeed, inclusion of bonding provisions at this juncture would seem somewhat inconsistent with the technical focus of this stage of the procurement. The regulation, FAR § 14.503(b), does recognize that information concerning "delivery or performance requirements" may be helpful to firms in deciding whether to compete, but provides only that this information "may be included" in the step-one solicitation. As we are aware of no other statutory or regulatory requirement that the agency's intent to require bonding be disclosed in the step-one solicitation, the Air Force's failure to do so was legally unobjectionable.

We share the view reflected in the FAR that notifying potential offerors--whether or not in the solicitation itself--of the agency's intent to impose bonding requirements at as early a stage as possible will allow firms to opt out of the competition before incurring needless expense if they will not be able to obtain bonding; doing so would appear to impose little or no burden on the agency. It remains, however, that setting forth a bonding requirement at some later stage, as here, is not improper and does not give rise to a claim against the government for proposal costs.

The protest is denied.


James F. Hinchman
General Counsel