



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Paige's Security Services, Inc.

File: B-235254

Date: August 9, 1989

DIGEST

1. Protest that agency's failure to provide historical data for staffing levels to meet performance work statement requirements, under Office of Management and Budget Circular A-76 cost comparison, was prejudicial to the protester is denied where record shows that information furnished in the invitation for bids along with site visit and pre-bid conference were sufficient to allow bidders to submit competitive bids.

2. Allegation that, as the incumbent contractor, procuring agency enjoys an unfair labor cost advantage through the use of military personnel whose pay is lower than that required for a contractor's employees is denied since the government and commercial bidders are subject to different legal obligations. There is no requirement that an A-76 cost comparison include a factor to equalize any such inherent disparities.

3. The submission and acceptance of below cost offers are not legally objectionable. Whether lower priced bidders can meet contract requirements in light of their bid prices concerns the agency's affirmative responsibility determination which the General Accounting Office generally does not review.

DECISION

Paige's Security Services, Inc., protests certain deficiencies it perceives in invitation for bids (IFB) No. DTCG23-89-B-60005 issued by the United States Coast Guard for purposes of a cost comparison under Office of Management and Budget (OMB) Circular A-76. The cost comparison is to determine whether it will be more economical to contract for security protection services at the Coast Guard Training Center (TRACEN) in Petaluma, California, or to continue the services in-house.

Paige's contends that it is at an unfair competitive disadvantage because the IFB does not include "a detailed schedule of the productive and supervisory staffing . . . as experienced in the past" by the Coast Guard. Paige's further contends that the wage differential between the applicable Department of Labor (DOL) wage rates for the Guard II service class for contractor personnel and the lower wages paid Coast Guard military personnel also precludes a true, fair and equitable cost comparison.

We deny the protest in part and dismiss it in part.

The solicitation calls for the successful contractor to provide daily, around-the-clock security protection services at TRACEN for a base year and 4 option years at a firm-fixed price. The resulting contract is subject to wage determinations issued pursuant to the Service Contract Act of 1965, as amended (SCA). 41 U.S.C. § 351 et seq. (1982). The detailed Performance Work Statement (PWS) included in the IFB contained, among other things, a description of the site; a description of the duties to be performed; the specific posts to be manned; and the minimum number of employees required to be on duty at all times. A site visit and contractor orientation session was held on April 4.

The IFB was issued on March 15, 1989, with bid opening scheduled for April 21. Paige's protest was filed with our Office the day before bid opening. Paige's challenges the IFB specifications on two bases. The protester first alleges that the IFB is defective because the Coast Guard failed to disclose its past experience in labor hours and total number of employees utilized by the agency to perform security services at TRACEN. Paige's argues that the Coast Guard, as the incumbent, enjoys a competitive advantage since only the agency has the required information to prepare a more reliable bid. The protester claims that this competitive advantage unfairly prejudices Paige's competitive position. As a remedy, Paige's requests that the Coast Guard, through an amendment, provide bidders with the historical data concerning staffing levels as experienced by the Coast Guard.

The Coast Guard disputes the protester's allegation that the solicitation is inadequate. The agency states that no detailed analysis of productive and supervisory staffing requirements was available other than a management study made in conjunction with the government's estimate. The Coast Guard points out that the management study and estimate were considered competition sensitive prior to bid opening but that information has since been released to all bidders as part of the A-76 cost comparison appeals

process. Moreover, the agency points out that a site visit was conducted where bidders were able to observe the operations at TRACEN and a pre-bid conference was held to answer questions concerning contract performance.

Finally, the agency defends not disclosing its experience in performing the services by pointing out that there is no requirement that an IFB be so detailed as to eliminate all performance uncertainties and risks. Nonetheless, the agency notes that Standard Form (SF) 98a^{1/}, which was included in the IFB, lists 22 military employees presently performing security services at 2 locations--TRACEN and the Support Center in Alameda, California. Thus, in its view, the information provided in the IFB along with the site visit and pre-bid conference were sufficient for bidders to submit intelligent bids.

It is a general rule that a solicitation must contain sufficient information to allow bidders to compete intelligently and on an equal basis. T & A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435 at 6. In other words, specifications must be free from ambiguities and must accurately describe the minimum needs of the procuring agency. However, as the agency states, there is no legal requirement that an IFB be drafted in such detail as to completely eliminate all performance uncertainties and risks. Id.; Ameriko Maintenance Co., B-230994, July 22, 1988, 88-2 CPD ¶ 73.

As discussed above, the IFB's PWS--21 pages long and with 10 technical exhibits--includes a description of the site; informs bidders where a map of the site is available; specifies the minimum number of guards required at all times; identifies the posts to be manned; describes the duties to be performed; and specifies the required experience/training levels for the contractor's personnel. While historical data on the staffing levels may be desirable from the protester's viewpoint to minimize the risk attendant to any underlying circumstances and conditions of which bidders may be unaware, neither the protester nor the agency is required to base its cost on historical data alone. It is the PWS, not historical data,

1/ An SF 98a is an attachment to the SF 98 "Notice of Intention to Make a Service Contract and Response to Notice." The SF 98 and SF 98a are completed by procuring agencies and submitted to DOL to obtain wage rate determinations for inclusion in solicitations and contracts for services.

which is the principal tool for calculating contract costs. See Contract Servs. Co., Inc., 65 Comp. Gen. 41 (1985), 85-2 CPD ¶ 472 at 5.

Furthermore, we are unpersuaded that bidders could not reasonably use their business judgment to determine the staffing levels needed to perform the PWS on the basis of the information in the solicitation plus the information gained through a site visit and pre-bid conference. In any event, the risks cited by the protester appear to fall within the normal type risks associated with bidding. See, e.g., American Maid Maintenance, 67 Comp. Gen. 3 (1987), 87-2 CPD ¶ 326. In this regard, we note that 17 contractor bids, including 1 from Paige's, were received and there is no indication that Paige's was disadvantaged in any way not shared by the other bidders. See Benco Contract Servs., B-233748, Feb. 24, 1989, 89-1 CPD ¶ 205.2/

Next, the protester alleges that the requirement for Guard II class employees places it, and other bidders, at a competitive disadvantage relative to the Coast Guard since the agency enjoys a labor cost advantage through lower labor rates for its military personnel.^{3/} To mitigate this labor cost advantage, Paige's suggests that use of a Guard II employee be limited to those instances where an armed guard is required to accompany the cashier delivering weekly payrolls and that for all other duties bidders should be permitted to use lower-paid Guard I class employees.

However, the Coast Guard report establishes that the qualifications, job requirements, and duties to be performed are consistent with the Guard II classification in the SCA Directory of Occupations. More specifically, a Guard II class employee is described in part as one who enforces regulations; whose duties require specialized training; and who is required to demonstrate proficiency with weapons. The protester has presented no evidence to rebut the agency's assertion that the services required are that of a Guard II class employee. It simply argues that it is

2/ The Coast Guard bid \$1,644,584; Paige's bid \$1,873,421.53. Of the remaining bids, one was nonresponsive for failure to price the final option year; seven were below the Coast Guard bid; four were between the Coast Guard bid and the Paige's bid; and four were above the Paige's bid.

3/ The SCA, which requires federal contractors performing service contracts entered into by the government to pay minimum wages and fringe benefits as determined by the DOL, is not applicable to federal agencies.

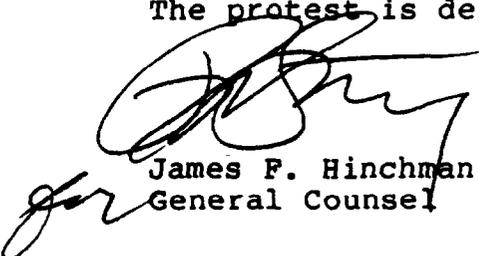
placed at an unfair competitive disadvantage when the A-76 cost comparison is conducted because of the wage differential between military personnel and the Guard II employees.

While the government and bidders must compete based on the same PWS, when a cost comparison is being considered they may, as here, be subject to different legal obligations regarding performance which cause bidders to suffer a cost disadvantage. Bay Tankers Inc., B-227965.3, Nov. 23, 1987, 87-2 CPD ¶ 500, aff'd on reconsideration, B-227965.5, Apr. 5, 1988, 88-1 CPD ¶ 338. There is no requirement under A-76 procedures that the cost comparison include a factor to equalize such inherent disparities. Id. Thus, the fact that the Coast Guard is not subject to the SCA and the applicable wage determinations does not constitute a legally impermissible competitive advantage.

Finally, in its comments on the agency report, Paige's variously contends that "several" or "many" of the lower priced bids are "not responsive" because the bid prices are inadequate to cover the cost of using the class II guards required by the solicitation. The protester speculates that these bids were calculated on the basis of using lower-paid class I guards.

It is well-established, however, that whether a contract can be satisfactorily performed at the price bid is a matter of the bidder's responsibility, not the responsiveness of its bid. The submission and acceptance of a below-cost offer is not in itself legally objectionable. Whether the prospective contractor can meet contract requirements in light of its low offer is a matter to be considered by the contracting officer in assessing that bidder's responsibility, affirmative determinations of which our Office does not generally review. Automated Data Management, Inc., B-234549, Mar. 2, 1989, 89-1 CPD ¶ 229. This aspect of Paige's protest is therefore dismissed.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel