



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Convention Marketing Services

File: B-239233

Date: July 24, 1990

J. William Bennett, Esq., for the protester.
Pamela M. Deese, Esq., Robins, Kaplan, Miller & Ciresi, for
The Capitol Inn, an interested party.
Lt. Col. Donald A. Cox, Esq., and Col. Herman A. Peguese,
Department of the Air Force, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Contention that agency improperly relaxed solicitation requirements by making award to low bidder is denied where the requirements, which allegedly were not relaxed for awardee, were not, in fact, included in the solicitation but were erroneously inferred by the protester based on an unreasonable interpretation of the solicitation.

DECISION

Convention Marketing Services (CMS) protests the award of a contract to The Capitol Inn, under invitation for bids (IFB) No. F01600-90-B-0008, issued by the Department of the Air Force. The IFB sought lodging, meals, and transportation services for applicants to the U.S. Armed Forces attached to the Military Entrance Processing Station at Gunter Air Force Base, Alabama. CMS argues that the award here was improper, because the agency materially relaxed certain solicitation requirements for Capitol Inn, the incumbent contractor, to the prejudice of the other bidders.

We deny the protest.

The Air Force issued the IFB on January 26, 1990, calling for bids to "[f]urnish all facilities, labor, supplies, and equipment necessary to provide lodging, meals, and transportation services" for applicants to the U.S. Armed Forces entering military service at the processing center at Gunter Air Force Base, Alabama. The IFB contemplated award of a requirements contract and estimated the agency's needs

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at an average of 150 lodgings per night, up to a maximum of 300 lodgings per night.

Four bids were received and opened on February 26. Capitol Inn submitted the apparent low bid of \$3,654,042.79 for the base year and 4 option years; CMS submitted the second-low bid of \$4,506,665.06. After Capitol Inn confirmed its bid price was not in error, and after the contracting officer denied CMS' agency protest, CMS protested to this Office.

The protester's challenge to acceptance of Capitol Inn's low bid--i.e., that the agency is improperly relaxing solicitation requirements by accepting Capitol Inn's bid--is based on an interpretation of the solicitation that is at odds with the interpretation of the agency and the awardee.^{1/} In essence, CMS argues that the solicitation, read as a whole, requires bidders to provide a minimum of 300 lodgings at a single facility. Thus, CMS argues that the award here is clearly improper because Capitol Inn, with only 95 rooms and a maximum occupant capacity of 160, cannot provide up to 300 lodgings per night without subcontracting with other motels.

The integrity of the competitive bidding system mandates that agencies award contracts based on the requirements stated in the solicitation; agencies may not award contracts with the intention of significantly modifying them. See Falcon Carriers, Inc., B-232562.2, Jan. 30, 1989, 89-1 CPD ¶ 96, aff'd, B-232562.3, B-232562.4, 89-1 CPD ¶ 550. Where an agency abandons solicitation requirements or significantly modifies them, and the competition for the contract as modified would be materially different from the

^{1/} In its initial protest, CMS also suggested that Capitol Inn's bid is nonresponsive. To the extent CMS challenges Capitol Inn's ability to perform in accordance with the specifications, that challenge is not a matter of responsiveness, but one of responsibility. See King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177. The contracting officer here concluded that Capital Inn was a responsible bidder based on its past performance as the incumbent contractor providing these services, and based on a preaward survey. Our Office will not review such affirmative determinations of responsibility absent a showing that the determination may have been made fraudulently, or in bad faith, or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5) (1990); Research Management Corp., B-237865, Apr. 3, 1990, 69 Comp. Gen. ____, 90-1 CPD ¶ 352. No such showing has been made here.

competition originally obtained, we generally will conclude that the award was improper and recommend resolicitation under revised specifications.

In support of its contention that the solicitation requires bidders to provide the required lodging at one facility, CMS raises two points: the solicitation, read as a whole, is drafted to require a single facility; and the solicitation's subcontracting provisions bar subcontracting in all but very limited circumstances. With respect to its first point, CMS cites several provisions from the IFB that refer to the contractor's "facility," not the contractor's "facilities." In addition, CMS cites the IFB requirement, at section C 1.1.2.3, that the evening meal be provided within 300 feet of the "lodging facility."

As evidence of the IFB's restriction against subcontracting, CMS cites section C 1.10.7 of the IFB, which states, in relevant part, that the "[c]ontractor lodging facility will provide transportation to another lodging facility if unscheduled applicants arrive after 8 p.m. and there are no rooms available." According to CMS, this provision permits supplemental lodging at a different facility for overflow requirements only, not for routine lodging needs. Further, CMS argues that section C 1.3 bars routine subcontracting for lodging. This provision states:

"Subcontracting: The contractor shall furnish meals, lodging and transportation from his/her establishment or at the location specified in the contract, subcontracting to any other establishment or any other location shall be permitted only with the prior written consent of the contracting officer. There will be no additional cost to the Government."

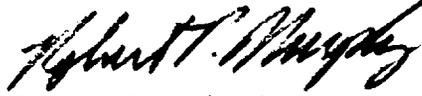
We do not agree with, nor do we find reasonable, the assertion that forms the basis of CMS' protest--that bidders must provide no fewer than 300 lodgings, the estimated maximum requirement, at one facility. First, despite the use of the word "facility" (rather than "facilities") at several places in the solicitation, the cover page of the IFB, the schedule of supplies/services, and the introductory paragraph of the statement of work, all express a need for "facilities."

Second, the protester's assertion that bidders must provide at least 300 lodgings at one facility is based on a misunderstanding of why estimates are provided to bidders competing for requirements contracts. These estimates are included to help contractors anticipate the level of effort

required. Reading a maximum estimate, such as the one provided here, to create a minimum required capacity, without permitting the use of additional resources to expand capacity for limited periods of time, ignores the unspecified nature of this procurement. The solicitation here does not seek a commitment for a fixed number of rooms, nor does it simply seek lodging for between 150 and 300 applicants per night. Rather, the solicitation seeks lodging for whatever number of applicants is required by the agency. As explained in the solicitation at clause 52.216-21(a), the quantities stated are estimates only "and are not purchased by this contract." Thus, it is not reasonable to interpret the estimates, provided solely for guidance to the bidders, as an implied requirement for the amount of space a bidder must have available on its immediate premises.

We are also unpersuaded by the protester's corollary assertion that all lodging must be provided at one facility because the solicitation bars subcontracting in any instance other than the situation described in the IFB at section C 1.10.7--dubbed the "overflow provision" by the protester. This provision applies to the transportation requirements in the IFB and assures the agency that late and unexpected applicants will be lodged and will be transported to and from their lodging. The protester's argument that this provision is intended to bar subcontracting for routine lodging needs is inconsistent with the provision's placement under the "Transportation" heading within the statement of work. Also, as mentioned above, there is a separate section, C 1.3, that applies to subcontracting; restrictions against subcontracting would properly be located in that section. On that point, we also do not agree with the protester's assertion that the subcontracting provision in the IFB, quoted above, bars the use of subcontract facilities here. We have held that the award of a contract to an offeror proposing that some portion of the work be performed by a subcontractor is consistent with such a clause because contract award constitutes the agency's written permission to engage in subcontracting to the extent identified in the proposal. See Commercial Building Serv., Inc., B-237865.2, B-237865.3, May 16, 1990, 90-1 CPD ¶ 473.

Based on the discussion above, we find that CMS has failed to show that award to Capitol Inn is inconsistent with, or in any way relaxes, the solicitation's requirements. Accordingly, we deny the protest.



for James F. Hinchman
General Counsel