



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: TLC Systems
File: B-244655
Date: August 19, 1991

Sidney Earley for the protester.
Kim M. Thomas for ADT Security Systems, an interested party.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's assertion that sealed bidding procedures should be used for the acquisition of a fire alarm system, rather than the competitive negotiation procedures chosen by the agency for the procurement, is without merit, where agency has reasonably determined that--due to the presence of historic buildings at the site and the possible acceptability of different technical approaches--discussions may be necessary.

DECISION

TLC Systems protests the Department of the Army's use of competitive negotiations in soliciting offers for the design and installation of a fire alarm system at Carlisle Barracks, Pennsylvania, under request for proposals (RFP) No. DABT43-91-R-0020. TLC contends that the Army is required to use sealed bidding procedures.

We deny the protest.

The RFP calls for the design and installation of a radio fire alarm reporting system that, among other things, employs bi-directional radio signals to transmit data between each protected building and a central fire station. The solicitation specifies that the contractor will provide all necessary labor, materials, and equipment, and requires that separate price and technical proposals be submitted. TLC asserts that, in the past, the Army has procured fire alarm systems of this type through the sealed bidding process, and that TLC itself has installed similar systems at two Army depots near Carlisle Barracks. According to the protester, the system's equipment and specifications are sufficiently standardized for the

agency to use sealed bidding procedures here as well; it asks that the requirement be resolicited using sealed bidding procedures.

Under the Competition in Contracting Act (CICA), contracting agencies are required to obtain full and open competition and, in doing so, are required to use the competitive procedure--competitive proposals (negotiation) or sealed bidding--that they determine is best suited to the circumstances of a given procurement. 10 U.S.C. § 2304(a)(1) (1988); Military Base Management, Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. In determining the competitive procedures appropriate under the circumstances, an agency need not solicit sealed bids if, among other factors, it will be necessary to conduct discussions with responding sources about their offers. 10 U.S.C. § 2304(a)(2); TLC Sys. and King-Fisher Co., B-227842; B-227842.2, Oct. 6, 1987, 87-2 CPD ¶ 341. The determination as to whether discussions are necessary for a given procurement essentially involves the exercise of business judgment by the contracting agency, and we will not question the agency's judgment unless there is a showing that it is unreasonable. See TLC Sys., B-225871, Mar. 17, 1987, 87-1 CPD ¶ 297.

We find that the Army's decision to use negotiated procedures here was reasonable. The record indicates that, while the Army felt that its technical personnel were capable of evaluating the strengths and weaknesses of proposed systems, they were not prepared to state categorically that one particular approach should be followed in performing the work. This view was influenced by the fact that the Carlisle Barracks, unlike more typical facilities, includes several historic buildings which the agency found created special problems for the design and installation of the sophisticated, bi-directional radio alarm system. Given the decision to permit offerors to propose different approaches, the agency determined that technical discussions with offerors were necessary regarding the particular approach proposed. Specifically, the Army states that

" . . . [d]iscussions will probably be required to determine such things as placement of antennas, mounting of equipment, routing of cable, state of art, reliability, maintainability, frequency allocation, radio interference and connection with existing government owned equipment."

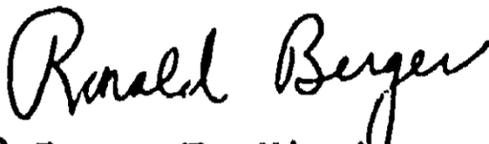
Based on its determination that discussions likely would be necessary, the Army concluded that negotiated procedures were warranted.

As indicated above, this is one of the enumerated circumstances under which CICA provides for the use of negotiated

rather than sealed bidding procedures. In its comments on the agency's report, TLC neither disputes the facts nor rebuts the agency's position; the mere fact that sealed bidding may have been used on prior similar projects is not determinative as to the reasonableness of the agency's judgment concerning this project. See TLC Sys., B-225871, supra. We conclude that the agency properly used negotiated procedures.

TLC also initially argued that only manufacturers, not nonmanufacturing firms such as itself, would be able to compete under the procurement, as evidenced by its own failure to locate a manufacturer that would provide the technical data needed to support a proposal. In its report, however, the Army stated that in fact it has received proposals from several nonmanufacturing vendors. In its comments on the agency's report, TLC did not challenge or otherwise respond to the Army's statements. We thus have no basis for considering this argument further. See TLC Sys., B-225871, supra.

The protest is denied.


for James F. Hinchman
General Counsel