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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-186602**

**DATE: December 9, 1976**

**MATTER OF: Nationwide Building Maintenance, Inc.**

**DIGEST:**

1. Protester does not sustain burden of affirmatively proving its case where only evidence in record as to whether protester was informed it was engaged in competitive procurement and whether best and final offers were requested is conflicting statements of protester and contracting agency.
2. No abuse of discretion found in conducting an oral solicitation or in limiting competition to two offerors in view of relatively short period of time available for consummating contract and where two offerors solicited were intimately familiar with contractual requirements.
3. Contracting officer's failure to confirm request for best and final offers in writing as required by regulation does not provide basis for overturning award.

On August 6, 1975, the Air Force issued solicitation F08651-76-B-0010 for hospital janitorial services at Eglin Regional Hospital, Eglin Air Force Base (AFB), for the period October 1, 1975, through June 30, 1976. A contract for the services was awarded to Nationwide Building Maintenance, Inc. (Nationwide), on November 10, 1975.

The contract contained an option to add work to the contract to cover a new addition to the hospital. The option had to be exercised within 90 days after award of the contract. Because of construction delays, the Government did not exercise the option.

However, on February 20, 1976, Air Force representatives met with the president of Nationwide, the janitorial contractor, to discuss an extension of the 90-day option period which had been requested by the Air Force in a letter of January 26, 1976. At the meeting, Nationwide maintained that it would not extend the option period at no cost; however, Nationwide agreed to submit a proposal to provide janitorial services.

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The proposal subsequently submitted by Nationwide amounted to a monthly charge of \$15,498.84. The original bid price for the option period was \$5,790. The contracting officer considered the proposed price to be unreasonable. Consequently, action to provide for increased janitorial services was suspended until a firm decision was reached concerning the date of beneficial occupancy of the new addition to the hospital.

On April 8, 1976, the hospital plant manager set a target date of May 15, 1976, for occupancy and requested janitorial services for the new addition for the period beginning May 17, 1976, through September 30, 1976.

Influenced by the sharp increase in Nationwide's proposed costs and the short period of time in which to consummate a contract for janitorial services, the Air Force decided to conduct competitive negotiations with two sources, namely Nationwide, the incumbent contractor, and Industrial Maintenance Services, Inc. (Industrial Maintenance). Industrial Maintenance was the hospital janitorial contractor during fiscal year 1975 and was at the time of the solicitation performing janitorial services at Eglin AFB. The latter was considered significant since Industrial Maintenance could easily and quickly undertake the new contract.

Both Nationwide and Industrial Maintenance, then, were intimately familiar with Eglin AFB janitorial contracts, and in view of the relatively short time available until janitorial services were required, the Air Force not only decided to negotiate a new contract pursuant to 10 U.S.C. § 2304(a)(2) (1970) (i.e., public exigency will not permit the delay incident to advertising) but conduct an oral solicitation as authorized by Armed Services Procurement Regulation (ASPR) § 3-501(d)(11) (1975 ed.).

On April 12, 1976, both Nationwide and Industrial Maintenance were asked to submit proposals and were reportedly told that competitive offers were being sought. The details of their proposals follow:

	<u>Nationwide</u>	<u>Industrial Maintenance</u>	<u>Government Estimate</u>
Total Monthly Price	\$1,808.84	\$9,430.30	\$8,855.00
Discount Terms	Net	0.5% 20 days	Net
Price/SF	\$.16	\$.1271 (Net)	\$.12

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According to the Air Force, because of the oral solicitations, the simplicity of proposals, and the press of time, it was decided to orally request best and final offers. Moreover, the Air Force contends that both offerors confirmed that their proposed prices constituted their best and final offers.

Nationwide protested the award of the janitorial contract to Industrial Maintenance on the following grounds:

1. Nationwide was never informed that it was engaged in a competitive procurement (counsel for Nationwide alleged that this is "[t]he most significant fact in this protest \* \* \*").
2. The Air Force failed to request best and final offers.
3. The contract was awarded without adequate competition.
4. Nationwide was unaware of the standards by which its price quotations were being considered.
5. The circumstances did not justify oral solicitations.
6. The Air Force failed to conduct meaningful negotiations.
7. The Air Force failed to treat all offerors objectively and impartially.

The corresponding rebuttals submitted by the Air Force are as follows:

- 1) The decision to compete the additional janitorial requirements was orally conveyed to both offerors on April 12, 1976, and, as noted above, both offerors were expressly told that competitive offers were being sought. April 27, 1976, was established as the date for receipt of proposals.

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- 2) Both offerors were orally requested to verify that their offers were their best and final offers. On both April 29 and 30, 1976, Nationwide was asked and confirmed by telephone that its proposed price was its best and final offer.
- 3) The contracting officer's decision to limit competition to two offerors was reasonable under the circumstances.
- 4) The standards under which Nationwide's price quotations were to be evaluated (i.e., specifications and the task and frequency charts) were contained in Nationwide's contract.
- 5) Oral solicitation was justified by the relatively short time in which to negotiate and consummate a contract for critical janitorial services.
- 6) The record shows that meaningful negotiations were conducted with both offerors.
- 7) All offerors were treated objectively and impartially.

#### DECISION

The record presents conflicting statements of fact as to whether Nationwide was informed that it was engaged in a competitive procurement and whether the Air Force specifically requested best and final offers. The protester has the burden of affirmatively proving its case. We do not believe that burden has been met where conflicting statements of the parties constitute the only evidence. Reliable Maintenance Service, Inc., --request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337. In this circumstance, we are unable to agree with the protester.

The protester recognizes that ASPR § 3-501(d)(11) (1975 ed.) authorizes oral solicitations "where the processing of a written solicitation would delay the furnishing of supplies or services to the detriment of the Government." However, the protester contends that oral solicitations were not justified here.

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The Air Force, on the other hand, has stated that janitorial services for the Eglin Hospital were critical and important, and because of the need for a clean hospital environment, no lapse in janitorial services could be tolerated. The decision to provide janitorial services for the new hospital addition was made on April 8, 1976. Services were to begin on May 17, 1976. A contractor would require 10 days to mobilize a work force prior to commencing work. Since this left only 29 days in which to solicit and award a contract, it was determined that it would be virtually impossible to award a contract within the 29-day period if written solicitations had been used. Based on the above, we cannot find that the Air Force's decision to orally solicit bids was arbitrary or capricious.

Also, we find no abuse of discretion by the contracting officer in limiting competition to two offerors, given the relatively short period of time in which to consummate a contract for critical janitorial services and the fact that both offerors were intimately familiar with the contractual requirements and were able to begin performance upon relatively short notice. In the absence of a showing that the contracting officer abused his discretion by limiting competition, we will raise no objection. See Non-Linear Systems, Inc., Data Precision Corporation, B-183683, October 9, 1975, 75-2 CPD 219.

We also find nothing in the record to substantiate the allegations that the Air Force failed to conduct meaningful negotiations with both offerors or that the Air Force failed to treat both offerors objectively and impartially.

Finally, the Air Force correctly maintains that the failure to confirm in writing a request for best and final offers as required by ASPR § 3-805.3(d) (1975 ed.) does not provide a basis for overturning an award, All Systems, B-181729, February 27, 1975, 75-1 CPD 117.

For the reasons stated above, the protest is denied.

  
Deputy Comptroller General  
of the United States