



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Comfort Inn South

File: B-270819.2

Date: May 14, 1996

Phillip E. Johnson for the protester.

Lori S. Chofnas, Esq., Department of the Navy, for the agency.

C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where record supports agency determination that the need for providing a smooth transition between civilian and military life mandated consideration of offeror's past performance in solicitation for lodging and transportation of applicants for military service, use of negotiated procedures was justified, since award would not be based on price alone.

DECISION

Comfort Inn South protests the terms of request for proposals (RFP) No. N00140-96-R-0422, issued by the Department of the Navy, Fleet and Industrial Supply Center, for accommodations for applicants for military service. Comfort Inn South essentially challenges the agency's decision to conduct the procurement using negotiated procedures, rather than sealed bidding.

We deny the protest.

The RFP, issued on December 15, 1995, provides for award of an indefinite delivery/indefinite quantity contract for a period of 1 year, with three 1-year option periods, to provide applicants with lodging, meals (breakfast and supper), and transportation to the Jacksonville, Florida, military entrance processing station (MEPS) in accordance with the statement of work (SOW). The schedule, section B of the RFP, requires pricing on the basis of serving an estimated 16,000 applicants during each year of contract performance, in addition to providing testing rooms (an estimated 264 during the year) and delivering technical data as specified in the SOW. Section M of the RFP, as amended, states that the agency will consider price and past performance in selecting the offer most advantageous to the government, with past performance more important than price.

Paragraph 1.10.1 of the SOW, in pertinent part, requires the successful offeror to provide transportation to incoming applicants from the Greyhound bus terminal in Jacksonville to the contractor's facility. The contractor must pick up applicants within 30 minutes of receiving a phone call from the bus terminal. On January 4, 1996, prior to the amended date of January 23 set for receipt of proposals, the agency issued amendment No. 0003 to the solicitation, which advised potential offerors that approximately 10 percent of the estimated 16,000 applicants would require transportation from the bus terminal.

Section L of the RFP, the instructions for preparing and submitting proposals, calls for offerors to describe past performance on directly related or similar contracts held within the last 4 years, of similar scope, magnitude, and complexity, emphasizing similarity of such contracts to the SOW. The RFP also states that any offeror without relevant past performance history will receive a neutral rating for past performance.

Comfort Inn filed this protest with our Office on January 22, 1 day prior to the date set for receipt of initial proposals, challenging the agency's use of negotiated procedures and intention to evaluate past performance.

The protester asserts that, for the last 10 years, the agency has satisfied its lodging requirements through sealed bidding procedures. The protester argues that the decision here to use negotiated procedures cannot be supported by the need either to consider factors other than price in selecting a contractor or to conduct discussions with offerors. The protester contends that consideration of past performance will provide an unfair advantage to the incumbent contractor, which, Comfort Inn asserts, is the only motel in the Jacksonville area that has performed on a similar contract.

The Competition in Contracting Act of 1984 (CICA) directs contracting agencies to use the competitive procedure that is best suited to the circumstances of the procurement. 10 U.S.C. § 2304(a)(1)(B) (1994). CICA does, however, provide that sealed bidding shall be used if: (1) time permits; (2) award will be based on price; (3) discussions are not necessary; and (4) more than one bid is expected. 10 U.S.C. § 2304(a)(2)(A); F&H Mfg. Corp., B-244997, Dec. 6, 1991, 91-2 CPD ¶ 520. If any one of these conditions is not present, sealed bidding may not be used; negotiated procedures (competitive proposals) are to be utilized. 10 U.S.C. § 2304(a)(2)(B). The determination as to whether circumstances support the use of negotiated procedures is largely a discretionary matter within the purview of the contracting officer. Federal Acquisition Regulation § 6.401; Military Base Management, Inc. 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. If the contracting officer decides that competitive proposals are necessary, he is required to explain briefly which of the four requirements for sealed bidding are not met. I.T.S. Corp., B-243223, July 15, 1991, 91-2 CPD ¶ 55.

We find that the record here supports the agency's determination to use negotiated procedures rather than sealed bidding on the ground that the award will not be based on price alone. The record shows that the MEPS provides comprehensive qualifications screening and processing for military applicants for all branches of the service. Upon reporting, applicants must pass a variety of tests designed to measure aptitude, physical and psychological ability to perform as a member of the armed services. Testing begins at 5:30 a.m. and lasts approximately 12 hours. The agency notes that this testing generally represents the candidate's first experience with the military, and the agency considers a stress-free environment essential both to encourage recruitment and to ensure that applicants perform their best during the testing. To ensure the delivery of the highest quality of services, the agency contends, it is necessary to consider a contractor's past performance in evaluating proposals.

We think it was reasonable for the agency to assume that there is a correlation between the quality of service that can be expected from an offeror and the quality of the offeror's past performance. Given the agency's concern about ensuring a high quality of service, we see no basis to question the use of negotiated procedures, which allow the agency to evaluate the quality of the offeror's past performance in making a selection decision.¹ That the requirement previously was procured through sealed bidding procedures is simply not material to the reasonableness of a decision to now use negotiated procedures. Id.; see also Victor Graphics, Inc., 69 Comp. Gen. 410 (1990), 90-1 CPD ¶ 407 (agency's past practice is not a basis for questioning its application of otherwise correct procurement procedures). Further, the agency is not required to forgo consideration of past performance and use sealed bidding simply to neutralize any alleged advantage that the incumbent might have if the agency utilizes such a technical evaluation factor. I.T.S. Corp., supra.

The protester also contends that the RFP's transportation requirement is vague and ambiguous and that it is unable to estimate how often the contractor will have to provide transportation from the bus station to the hotel. We find no merit to this contention. The solicitation specifically advises offerors of the agency's estimate that approximately 10 percent of the 16,000 applicants expected each year, or 6 per

¹The agency also notes that negotiated procedures will allow the correction through discussions of irregularities and omissions that would require bid rejection in sealed bidding. See, e.g., Hospitality Inn--Downtown, B-248750.3, Oct. 28, 1992, 92-2 CPD ¶ 291 (denying a protest challenging the rejection of a bid for failure to acknowledge an amendment to the prior MEPS lodging solicitation). For example, the agency notes that the inclusion of meals with the price for lodging represents a new format that, it anticipates, may generate the need for discussions.

day,² will require transportation. Contrary to the protester's contention, we find this to be a fairly precise estimate. In any event, there is no requirement that a solicitation be so detailed as to completely eliminate all performance uncertainties and risks, as long as the solicitation contains sufficient information to enable bidders to compete on a relatively equal basis. DJ's Servs., Inc., B-240623, Dec. 5, 1990, 90-2 CPD ¶ 459.

The protest is denied.

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²In response to a question, the agency issued amendment No. 0004, which advised offerors that the MEPS would be open 5 days a week and 13 Saturdays, less 4 training days and federal holidays.