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DECISION



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

FILE: B-197302

DATE: June 12, 1980

MATTER OF: H. M. Sweeny Company

DIGEST:

1. Protester's inability or unwillingness to compete under terms of specifications for contractor-operated civil engineer supply store (COCESS) procurements is not basis for GAO to conclude that COCESS method of procurement is unduly restrictive of competition since protester has not provided any evidence that COCESS method of procurement is unreasonable or fails to accommodate contracting agency's minimum needs.
2. In view of large number of line items required by contractor-operated civil engineer supply store procurement, purchase description for each item cannot be as detailed as generally found under other procurements and, where agency has indentified various line items as clearly as it believed possible under circumstances and protester did not seek any clarification within time provided by agency, protester will not be heard to complain now that descriptions were not sufficiently definite to permit competition on common basis.
3. Protester's inability or unwillingness to complete procurement package within time allotted is not basis for GAO to conclude that proposal preparation period used by agency was unduly restrictive of competition since two other small businesses were able to submit proposals within time provided.

[Protest Against Contract Award] 010870

H. M. Sweeny Company (Sweeny) protests the award of any contract under requests for proposals (RFP) Nos. F49642-79-R0470 and F49642-79-R0471 issued by the Washington Area Contracting Center, Andrews Air Force Base, Maryland (Air Force).

The solicitations requested proposals for contractor-operated civil engineer supply stores (COCCESS), one at Andrews Air Force Base (RFP-0470) and the other at Bolling Air Force Base (RFP-0471). The purpose of such a store is to provide the base civil engineering personnel with electrical, plumbing and other supplies they need to perform their mission. The successful contractor is required both to stock the store and to operate it on a daily basis. Thus, due to the nature of the procurement, each offeror is faced with the task of going through more than 1,400 pages of item lists which requires individual prices to be offered on thousands of separate items.

Sweeny did not submit an offer for either solicitation. However, the Air Force did receive proposals from B&D Supply Company of Arizona, Inc., and Century Industries, Inc., both small businesses. These proposals are presently being evaluated.

Sweeny's protest is directed not only against the specific manner in which these particular procurements have been conducted, but also against the COCESS concept in general. Regarding the actual procurements, Sweeny argues: (1) most of the line items are not described clearly enough so that offerors know exactly what the Air Force wants; as a result, offerors are not competing on an equal basis; (2) in those instances where "brand name or equal" is called for, the salient characteristics are not set forth sufficiently to allow the offeror to provide items other than the brand name items, and thus the solicitations are unduly restrictive of competition; and (3) the solicitations are also unduly restrictive of competition because offerors are not given enough time to complete the line item information required for each of the lengthy procurement packages.

In addition to the above arguments, Sweeny also maintains that the very structure of these COCESS procurements is unduly restrictive of competition. In

Sweeny's opinion, even if the solicitations were modified to set forth adequate item descriptions, their sheer size discourages many qualified contractors from competing, especially small businesses. Sweeny believes that the best way to remove this impediment on competition is to reissue the RFP's so that they call for a fixed-price-management fee with materials to be furnished on a cost-no-fee basis. According to Sweeny, solicitations so structured would stimulate maximum competition and thus create the market forces necessary to insure the lowest possible price to the Government.

However, we find no basis to question either the basic COCESS procurement structure or the two solicitations in question.

COCESS Procurement Structure

It is well established that the determination of the minimum needs of a contracting agency and the methods of accommodating those needs are the responsibility of the agency itself. This is because we have recognized that Government procurement officials who are familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, are generally in the best position to know the Government's actual needs and, therefore, are best able to draft appropriate specifications. Consequently, we will not question an agency's determination of what its minimum needs are unless there is a clear showing that the determination has no reasonable basis. Sub-Sea Systems, Inc., B-195741, February 12, 1980, 80-1 CPD 123; East Bay Auto Supply, Inc., B-195325, October 23, 1979, 79-2 CPD 281; On-Line Systems, Inc., B-193126, March 28, 1979, 79-1 CPD 208.

Therefore, the fact that a potential bidder is unable or unwilling to compete because of the terms of a specification does not render the specification unduly restrictive if it represents the legitimate needs of the agency. J. S. Tool Co., Inc., B-193147, March 7, 1979, 79-1 CPD 159.

Here, Sweeny argues that the specifications for a COCESS are too burdensome, especially for a small business. However, the two proposals which the Air Force has received are both from small businesses. Further, Sweeny has not presented any evidence that the COCESS specifications fail

to represent the Air Force's legitimate needs. Rather, Sweeny proposes a different method of satisfying those needs. But as noted above, it is the contracting agency's responsibility to determine both its minimum needs and the methods of accommodating those needs. Sub-Sea Systems, Inc., supra. Thus, Sweeny's inability or unwillingness to compete under the terms of the specifications is not a basis for us to conclude that the COCESS method of procurement is unduly restrictive of competition. J. S. Tool Co., Inc., supra.

Defective Solicitations

It is a fundamental precept of Federal procurement practice that all offerors must compete on an equal basis. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175. However, the purpose of competitive procurement is not to insure that all offerors face the same odds in competing for Government contracts. IMBA, Incorporated, B-188364, B-187404, November 9, 1977, 77-2 CPD 356. Rather, the only requirement is that no offeror enjoy a competitive advantage as the result of a preference or unfair action by the Government. See Telos Computing, Inc., 57 Comp. Gen. 370 (1978), 78-1 CPD 235.

Here, it is clear that all offerors were required to work from the same item lists. Thus, there is no evidence that any offeror obtained an unfair competitive advantage. It appears then that Sweeny is actually claiming that the line item descriptions were ambiguous or otherwise defective.

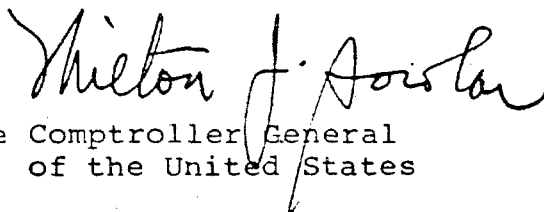
It is a basic principle of Government procurement that specifications must be sufficiently definite so as to permit competition on a common basis. M. J. Rudolph Corporation, B-196159, January 31, 1980, 80-1 CPD 84. For example, Sweeny points out that for "brand name or equal" items Defense Acquisition Regulation § 1-1206.2(b) (1976 ed.) states that the purchase description "should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government." Without pointing out specific examples, Sweeny claims that many of the solicitation's "brand name or equal" descriptions did not set forth

the salient characteristics sufficiently and that other line item descriptions were so unclear as to make it impossible to determine the Government's need.

However, we have recognized that there are certain procurements that require such a large number of individual items that it is impossible for the contracting agency to draft detailed specifications for each and every item. See, e.g., McCotter Motors, Inc., B-188761, B-188839, B-188975, January 12, 1978, 78-1 CPD 29. In the present case, the Air Force has identified the various line items as clearly as it believed possible under the circumstances. Further, on November 12, 1979, it sent a notice to all offerors extending the closing date for receipt of proposals to December 20, 1979, and requesting that any inquiries regarding the preparation of offers be received by November 25, 1979, in order that they could be researched and a suitable response provided before the closing date for receipt of offers. No inquiry was received from Sweeny by the date provided. If the descriptions posed the problems Sweeny says they did, it had an opportunity to have them cleared up, but failed to take advantage of the opportunity. In the absence of an objection to the item descriptions by November 25, Sweeny will not be heard to complain now that the descriptions were not sufficiently definite to permit competition on a common basis. In the circumstances, we will not object to the Air Force's proceeding on the basis of its item descriptions.

Sweeny argues that not enough time was permitted for the preparation of proposals. The Air Force, however, points out that it extended the normal 60-day preparation period to 90 days. Moreover, two small business firms were able to submit proposals within the time allotted. In light of this, we do not believe that the mere fact that Sweeny was unable or unwilling to complete the proposal packages within the 90-day time period is sufficient to conclude that the preparation period used for these procurements was unduly restrictive of competition.

Protest denied.



For the Comptroller General
of the United States