

*Agreement*

**DECISION**



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

27020

**FILE:** B-212564

**DATE:** December 13, 1983

**MATTER OF:** Interstate Court Reporters

**DIGEST:**

Agency decision to use negotiation procedures in lieu of formal advertising when awarding contract for stenographic reporting services is not legally objectionable where record shows that agency's minimum needs required a level of managerial and technical competence which could not be assured through formal advertising.

Interstate Court Reporters, Inc. (Interstate), protests request for proposals (RFP) No. SEC-R-596 issued by the Securities and Exchange Commission (SEC) for stenographic reporting services. Interstate contends that the SEC's use of negotiation rather than formal advertising was improper.

We deny the protest.

The SEC acknowledges that in the past its requirements for stenographic services were formally advertised. However, the agency indicates that the past performance of contractors has not adequately met the minimum quality of services required by the SEC to carry out its mission. As a consequence, the SEC determined that in order to ensure that the agency's minimum needs would be met, it was necessary to evaluate the management controls and experience of potential offerors. The SEC argues that it is impossible to draft adequate specifications detailing the management techniques and approaches which are necessary to the nationwide performance of the stenographic reporting services requiring many subcontractors and, accordingly, negotiation is justified.

Interstate argues that the reporting services required by the SEC are routine and are well suited to formal advertising. Interstate contends that the SEC's asserted need for effective management controls and experience are responsibility matters and do not justify negotiation where a routine service is being procured. Further, Interstate argues that although the SEC contends that management capability was critical, the evaluation scheme employed by the SEC demonstrates that this was not the case. In Interstate's opinion, the stenographic reporting services

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contract should be awarded solely on the basis of the lowest bid received under a formally advertised procurement.

The general rule is that the determination of the government's minimum needs and the best method of accommodating those needs is primarily the responsibility of the contracting agencies. This rule recognizes that, since government procurement officials are the ones most 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, they are generally in the best position to know the government's actual needs. Consequently, our Office will not question an agency's determination of its minimum needs unless there is a clear showing that the determination has no reasonable basis. Frequency Electronics, Inc., B-204483, April 5, 1982, 82-1 CPD 303.

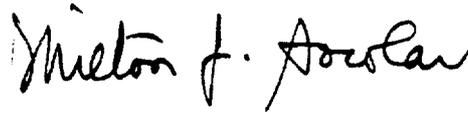
As to the decision of what is the best method of accommodating the government's minimum needs, we have held that the agency's use of negotiation procedures is proper where the contracting agency requires a high level of technical competence to satisfy its minimum needs and adequate specifications describing those needs cannot be drafted. Del Rio Flying Service, B-197444, September 4, 1980, 80-2 CPD 175. We have upheld this justification for the use of a negotiated method of procurement even when the protester has asserted that the services to be provided are "routine." Chameleon Co., Inc., B-197244, July 22, 1980, 80-2 CPD 59.

Furthermore, our prior decisions have never held that an agency is precluded from negotiating simply by the fact that the services it wishes to procure can be characterized as routine. We have held that an agency may not justify negotiation for a basic service by asserting the need to procure managerial and technical expertise where an agency merely desires an increased quality of service, but where a lesser level of quality would satisfy the government's needs. Tidewater Protective Services, Inc.--Reconsideration, 56 Comp. Gen. 649, 77-1 CPD 361. However, where an agency conducts more than a mere price competition and shows that its minimum needs require a level of managerial and technical competence, which could not be assured through formal advertising, an agency's decision to

negotiate has been upheld even though the procurement was for a basic service. See Chameleon Company, Incorporated-Reconsideration, B-197244.2, September 19, 1980, 80-2 CPD 210. The key inquiry is whether the agency has reasonably shown that its minimum needs can be satisfied only by the best available services which depend extensively on management techniques and approaches which cannot be adequately described in a specification.

The SEC has determined that the agency's minimum needs require a high degree of management and technical expertise. The record before us provides no basis for finding arbitrary action on the part of the SEC. The SEC's concern for management and technical expertise is adequately demonstrated in the RFP which informed offerors that technical factors will account for 35 percent of the evaluation and required information concerning an offeror's corporate experience, management plan and technical capabilities. Also, we do not view these management services to be the same as the routine elements of management which would normally be an indirect aspect of contract performance and considered in connection with a responsibility determination. The agency is not only evaluating an offeror's ability or capability to perform, but is also determining whether an offeror can provide the particular quality of service required by the agency.

Consequently, we find that the SEC is justified in utilizing negotiation rather than formal advertising. Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States