

DECISION



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

FILE: B-212849

DATE: May 1, 1984

MATTER OF: Pan Am, Inc.

DIGEST:

Absent evidence of possible fraud or willful misconduct on the part of contracting officials, GAO will not consider protest contention that the government will not be adequately protected in the absence of more restrictive solicitation requirements.

Pan Am, Inc. protests the Department of the Army's decision to resolicit its requirement for preventive maintenance and repair services for refrigeration equipment at Army commissaries in the Republic of Panama. The Army terminated a contract awarded under a prior solicitation for these services. Pam Am contends that it should receive the award under the original solicitation as the only technically acceptable offeror. We dismiss the protest.

On April 29, 1983, the Army issued RFP DAKF71-83-R-0042 for these repair services. The RFP provided that the contractor was to have at least 3 years experience in the repair and maintenance of commercial multiplex refrigeration systems. Of the eight proposals received, that of Edsansu, S.A. was second low and Pan Am's was fourth low. The low offeror withdrew its offer before award. The Army awarded the contract to Edsansu after the agency determined that the firm possessed the requisite 3 years experience with multiplex refrigeration systems. Pam Am protested the award based in part on the argument that Edsansu did not have the requisite multiplex experience. Subsequently, the Army found that Edsansu in fact had no experience in servicing multiplex refrigeration systems and terminated Edsansu's contract for the convenience of the government. The Army then reviewed its needs and decided that the 3-year experience requirement was unnecessary because none of its commissaries in Panama contain multiplex refrigeration systems.

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Pan Am contends that it is entitled to award under the original solicitation as the only offeror with the necessary experience in the repair and maintenance of commercial multiplex refrigeration systems. It argues that the original solicitation's requirement for multiplex experience is designed to ensure award to the most technically competent firm; it is thus, according to Pan Am, not dependent on the existence of multiplex equipment in the commissaries. Pan Am contends further that resolicitation will result in an improper auction since its pricing data and proposal have been disclosed to its competitors.

The Army's decision to resolicit rather than to make award to another offeror under the initial solicitation is predicated upon its conclusion that the experience requirement in the solicitation is overly restrictive and that elimination of the requirement will maximize competition and reflect the actual minimum needs of the government.

Pan Am is in essence alleging that the government's interest as a user of these services would not be adequately protected without the multiplex experience requirement. We will not consider a protest of this nature. Pan Am's presumable interest as a beneficiary of more restrictive provisions is not protectable under our bid protest function, since our purpose is to ensure that the statutory requirement for free and open competition is met. Further, procurement officials and user activities are responsible for ensuring that sufficiently rigorous requirements are employed, since they must suffer any difficulties due to inadequate service. Therefore, absent evidence of possible fraud or willful misconduct on the part of such officials, we consistently have refused to review allegations that more restrictive requirements should be used. See King-Fisher Company, B-209097, July 29, 1983, 83-2 CPD 150.; Gentex Corporation, B-209083, April 13, 1983, 83-1 CPD 394; Miltope Corporation--Reconsideration, B-188342, June 9, 1977, 77-1 CPD 417. Although Pan Am points to other similar procurements where the multiplex experience requirement has been imposed, this does not establish that the Army's actions here reflect fraud or misconduct.

While it is unfortunate that Pan Am's prices, along with the prices of the other offerors, have been exposed, this fact does not prevent the agency from resoliciting

on the basis of its actual minimum needs, which is the only proper basis for awarding a contract. See PRC Information Sciences Company, 56 Comp. Gen. 768 (1977), 77-2 CPD 11.

Pan Am also complains that the Army improperly eliminated a major item from the solicitation after negotiations with Edsansu without notifying other offerors and argues that Edsansu offered prices below those necessary to pay its workers in accordance with Panamanian minimum wage laws. Since the requirement is to be resolicited, events under the original competition now are of no consequence. We dismiss these allegations as academic.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel