

DECISION

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

Nasfetter
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FILE: B-216453

DATE: December 13, 1984

MATTER OF: Integrity Management International, Inc.

DIGEST:

Public opening of bids under advertised solicitation does not result in an auction under a prior negotiated solicitation for a cost-plus-award-fee contract which used part of the same performance period for cost comparison purposes, since only some of the services included in the initial solicitation are in the second and the fixed-price bids are of limited use in preparing cost proposals under the initial negotiated solicitation.

Integrity Management International, Inc., protests the issuance of invitation for bids (IFB) No. DABT35-84-B-0169 by the Department of the Army for the operation of dining facilities at Fort Dix, New Jersey. Integrity contends that the public opening of bids in response to the IFB will create an auction in the Army's negotiation with offerors under another solicitation which encompasses some of the same services.

The protest is denied.

On March 30, 1984, the Army issued a request for proposals (RFP) for the management, staffing and operation of dining facilities at Fort Dix for a base period October 1, 1984, through September 30, 1985, with four 1-year options. The RFP included services which were previously provided by Army personnel as well as services provided under two contracts with Integrity. Integrity's contracts were then scheduled to expire on September 30, 1984, and have since been extended. The RFP is a part of a cost comparison process to determine whether the services should all be performed in-house or obtained by contract. The evaluation process has been delayed, and the agency does not believe that it will be able to complete the process and begin either in-house or contractor performance until April 1985. In order to continue the dining services provided by

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Integrity after its contracts were completed, the agency issued the protested IFB on August 27.

In view of the possibility that a contract might be awarded under the cost comparison RFP for performance to begin in April 1985, the Army amended the IFB to provide that the Army can terminate any resulting contract without cost any time after March 31, 1985. The cost comparison RFP was modified to make clear that the stated performance period of October 1, 1984, through September 30, 1985, is to be used for establishing a base for the cost comparison. Any contract awarded as a result of the RFP will commence on the "approved date of contract commencement."

The regulations prohibit the government from engaging in "auction techniques" during negotiations, including informing an offeror that its price is not low in relation to another offeror. Defense Acquisition Regulation, § 3-805.3(c), reprinted in 32 C.F.R. pts. 1-39 (1983). Because some of the same services priced for the same time period are included in both solicitations, Integrity contends that bid prices under the IFB are clearly related to offerors' prices under the cost comparison RFP. Thus, Integrity argues that public exposure of bids submitted in response to the IFB will result in an auction under the RFP.

Only a small portion of the services covered by the RFP are included in the IFB. The IFB scope of work calls for operation of three facilities and for providing attendant services in five facilities. The RFP contains two alternate schedules. The scope of work for Schedule I includes operation of seven facilities, providing cooks in six facilities and providing attendant services in two facilities. The scope of work for Schedule II includes operation of 13 facilities and providing attendant services in two facilities. The dining facilities vary widely in estimated number of meals served, hours of operation and size. Also, there are significant differences in the nature of prices to be provided under each solicitation. A firm-fixed-price contract will result from the IFB. Bidders submit fixed monthly prices for services in each facility. The cost comparison RFP is for a cost-plus-award-fee contract. Under it, offerors submit a cost proposal and detailed supporting data, including documentation of the basis for each cost element.

Because of the differences in the scope of work and the pricing information supplied under the two solicitations, bids submitted in response to the advertised solicitation will be of little use to those submitting proposals under the RFP. Also, because of these differences, bids submitted under the advertised solicitation will not inform offerors how their pricing proposals stand in relation to proposals of other offerors. Consequently, we do not believe that a public disclosure of bids submitted under the IFB would lead to an auction under the RFP.

Integrity asserts that the Army is not dealing with offerors in good faith by requiring time consuming and expensive responses to two solicitations for the same work. It also argues that an award under the IFB will make the time period for performance in the statement of work contained in the cost comparison RFP inaccurate. As discussed above, the services, included in the two solicitations differ substantially, and the periods for performance will not overlap. We have no reason to question the Army's good faith in seeking competition for needed services pending completion of the cost comparison process, and find the protester's contentions in this regard without merit.

The protest is denied.

Milton J. Fowler
for Comptroller General
of the United States