

DECISION



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

FILE: B-221054

DATE: March 6, 1986

MATTER OF: The Saxon Corporation

DIGEST:

Agency decision to negotiate, requesting competitive proposals in lieu of sealed bids, is justified where the agency foresees a need for discussions and the basis for award reasonably includes technical considerations in addition to price and price-related factors.

The Saxon Corporation protests the Air Force's method of acquiring vehicle operations and maintenance services at Kelly Air Force Base, Texas. Saxon contends that the Air Force should have solicited sealed bids instead of competitive proposals for this small business set-aside.

We deny the protest.

In the original request for proposals (RFP), issued November 1, 1985, the Air Force did not require offerors to submit technical proposals; it merely specified that award would be made to the responsible offeror whose aggregate price, including options, was low.

Saxon protested to our Office on November 12 and, on November 14, the Air Force amended the RFP to extend the date and time for receipt of offers indefinitely in order to develop technical evaluation criteria to be applied to proposals that it had decided to request.

The RFP, amended again on January 14, 1986, now requires technical proposals and unit and extended prices for maintenance of all vehicles assigned to Kelly AFB; for management of taxis, buses, freight lines, and a wrecker service; and for support of mobility deployment, disaster preparedness, and other contingency exercises. The amended solicitation states that award will be made on the basis of the most favorable price among those proposals found technically acceptable. Further, the solicitation expressly provides that evaluation will be based

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on the following major criteria: (1) acknowledgment and understanding of job/performance work statement requirements; (2) organizational and personnel requirements; (3) corporate experience and management capability; (4) plans and management procedures for spare parts and other logistical support; and (5) quality, contingency, and safety program.

Saxon, the incumbent contractor, essentially argues that under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C.A. § 2304(a)(2)(A) (West Supp. 1985), sealed bidding is required if:

- "(i) time permits the solicitation, submission, and evaluation of sealed bids;
- "(ii) the award will be made on the basis of price and other price-related factors;
- "(iii) it is not necessary to conduct discussions with the responding sources about their bids; and
- "(iv) there is a reasonable expectation of receiving more than one sealed bid"

Saxon contends that the Air Force has complete specifications; that similar services have in the past been acquired through formal advertising; and that problems with past contracts cited by the Air Force, i.e., insufficient manpower and inadequate maintenance, can be resolved by use of special responsibility criteria, a prebid conference, and preaward surveys. Moreover, Saxon alleges that the requirement for technical proposals is an after-the-fact justification for the use of negotiation, since the Air Force did not amend the solicitation until after Saxon filed this protest.

The Air Force responds that a high level of technical competence is required to satisfy its needs, assure adequate contractor understanding and ability, and protect its interest in nearly \$6 million worth of government-furnished equipment. Due to the complex nature of vehicle management and operation on a large base, the Air Force asserts, it is impossible to write a performance work statement that adequately expresses its needs.

The agency supports its decision to negotiate by reference to problems that in the past have jeopardized vehicle operations. The Air Force does not attribute all

these past problems to the incumbent contractor, Saxon. Rather, the agency states, insufficiently defined specifications led to a misunderstanding of contract requirements and resulted in numerous modifications and contractor claims. The Air Force maintains that the evaluation of technical proposals and discussions would enable it to develop manning estimates based on offerors' technical and management expertise, to identify and revise problem areas, and to assure the contractor's full understanding of Air Force requirements. In addition, the Air Force argues that an operational plan for mobility deployment and disaster preparedness cannot be fully detailed in the performance work statement, and that discussions are necessary to define the scope of these requirements and evaluate contractor competency.

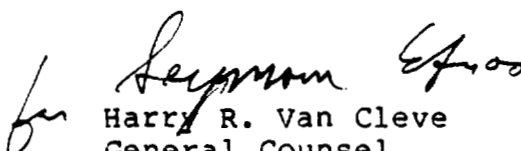
Last, the Air Force denies that it decided to require offerors to submit technical proposals merely to justify the use of negotiation after Saxon filed its protest. The agency asserts that it always intended to hold discussions and, after issuance of the original RFP, realized that without technical proposals, it would not have a basis for determining which areas required discussion or clarification, and that this approach might lead to unequal treatment of offerors and cause excessive delay in evaluation and award.

We do not find that the Air Force acted improperly. While CICA eliminates the statutory preference for procurement by formal advertising (now sealed bids), the statute provides specific criteria for determining whether sealed bids or competitive proposals should be requested. See United Food Services, Inc., B-217211, Sept. 24, 1985, 85-2 CPD ¶ 326; Federal Acquisition Regulation (FAR), § 6.401 (FAC 84-5, Apr. 1, 1985). We do not agree with the protester that the circumstances here mandate the use of sealed bids. Such use is proper where the award will be made on the basis of price and other price-related factors. The basis for award here is not limited to price-related factors; the Air Force also seeks technical proposals containing specific information as to offerors' managerial capability, experience, and plans for logistical support, quality control, and safety. Under these circumstances, we will not question the Air Force's judgment that a negotiated procurement, with an opportunity for discussions, is warranted. This was a business judgment by the contracting officer that Saxon has not shown to be unreasonable. See Essex Electro Engineers, Inc., B-221114, Jan. 27, 1986, 65 Comp. Gen. _____, 86-1 CPD ¶ ____.

We also reject the protester's argument that a prebid conference and preaward survey would adequately substitute for negotiation, since neither would accomplish the Air Force's purpose. A prebid conference is used to explain complicated specifications to bidders. See FAR, 48 C.F.R. § 14.207 (1984). A preaward survey, as part of a responsibility determination, focuses on the offeror's ability to perform and involves matters such as financial resources, experience, facilities, and performance record. In contrast, the purpose of the negotiation process is to develop, through discussions if necessary, the contractual terms themselves and thereby to define and frame the terms of a firm's offer. See Saxon Corp., B-216148, Jan. 23, 1985, 85-1 CPD ¶ 87.

Finally, the FAR, 48 C.F.R. § 15.606(a), provides that solicitations may be amended either before or after receipt of proposals where the government's requirements change or the agency decides to relax, increase, or otherwise modify its specifications. Kisco Co., Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334. The record here indicates that the Air Force determined that technical proposals were appropriate in order to conduct fair, expeditious, and meaningful discussions that would highlight problem areas. Saxon has not shown that the contracting officer abused his discretion in deciding to negotiate amending the solicitation to require proposals.

The protest is denied.


Harry R. Van Cleve
General Counsel