

DECISION

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

FILE: B-221299

DATE: April 4, 1986

MATTER OF: McNaughton Book Service

DIGEST:

1. Allegation that an agency should have considered phase-in costs in evaluating proposals is without merit where the solicitation did not provide for such evaluation.
2. The General Accounting Office will not review a contracting agency's affirmative responsibility determination where there is no showing that the contracting officials possibly acted fraudulently or in bad faith and the solicitation contains no definitive responsibility criteria.

McNaughton Book Service protests the award of a contract for lending library services to Baker & Taylor under request for proposals (RFP) No. BO/DQ-B-00605(N), issued August 19, 1985, by the General Services Administration (GSA). The solicitation covered the renewal of adult and young adult book plans at 56 overseas Air Force base libraries. McNaughton primarily contends that the agency should have evaluated phase-in costs before deciding which offer was the most advantageous to the government. McNaughton also questions whether Baker & Taylor will be able to provide not only a basic inventory of books but also required special services, including an automatic best seller maintenance program.

We deny the protest in part and dismiss it in part.

The record indicates that McNaughton has been providing lending library services to the Air Force since 1972, and the firm currently has a Federal Supply Schedule contract with GSA for such services. The estimated dollar value of the services covered by this procurement, \$303,128, exceeded the \$60,000 per item/order maximum order limitation in

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McNaughton's schedule contract. GSA therefore prepared a sole source justification for a separate contract with McNaughton and announced its intent to procure the services from the firm in the Commerce Business Daily on August 5, 1985. Baker & Taylor submitted a proposal in response to this announcement.

Baker & Taylor was the low offeror for the adult book plans, and on November 19, 1985, GSA made an award in the amount of \$250,735 for that portion of the contract. It awarded McNaughton, the low offeror for the young adult plans, a second contract in the amount of \$39,288.

McNaughton first alleges that it will cost the government \$29,000 to return the 35,000 books in current inventories to it, and argues that this amount more than offsets the \$15,000 difference between its own and Baker & Taylor's proposed prices for the adult book plans. McNaughton contends that an award that does not consider phase-in costs would not be the most advantageous to the government.

Proposal evaluation must be based upon the factors set forth in the solicitation. 41 U.S.C.A. § 253b(a) (West Supp. 1985). Since the RFP here did not provide for the evaluation of phase-in costs, GSA could not consider them in evaluating proposals. See Rockwell International Corp., 56 Comp. Gen. 905 (1977), 77-2 CPD ¶ 119; Dynamic Sciences, Inc., B-214111, Oct. 12, 1984, 84-2 CPD ¶ 402. Further, the decision whether to include an evaluation factor for phase-in costs is discretionary; contracting agencies may choose to avoid considering these costs because consideration of advantages resulting from incumbency may have a detrimental effect on competition. Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 CPD ¶ 229.

McNaughton's second basis of protest concerns the ability of Baker & Taylor to provide an automatic best seller maintenance program and a preselection service plan, both of which the protester has been providing to Air Force libraries. The RFP specifically required continuation of these services. Essentially, this contention questions the capability of Baker & Taylor to perform the contract as required, and it is thus a matter of responsibility.

A contracting officer must make an affirmative determination of a bidder's responsibility before awarding a contract. Federal Acquisition Regulation, 48 C.F.R. §§ 9.103(a) and (b) (1984). Here, before making an award, the contracting officer determined that Baker & Taylor was a responsible firm. Our Office will not review an affirmative determination of responsibility unless the protester shows either possible fraud or bad faith on the part of contracting officials or that the solicitation contains definitive responsibility criteria that have not been applied. Vulcan Engineering Co., B-214595, Oct. 12, 1984, 84-2 CPD ¶ 403. The protester here has not alleged fraud, and the solicitation contains no definitive responsibility criteria. We therefore will not review the contracting officer's determination. 4 C.F.R. § 21.3(f)(5).

The protest is denied in part and dismissed in part.

for Seymour Efron
Harry R. Van Cleve
General Counsel