



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B-222578

File: Food Services, Inc.

Date: July 24, 1986

DIGEST

1. Protest that apparent low bidder and perhaps other bidders may have had inside information concerning the agency's plans to construct a new dining facility and, thus, may have had a competitive advantage in bidding on a food services contract is denied where there is no evidence or even an allegation that this was the result of unfair action by the government.

2. Protest that solicitation requirement that food services contractor have a "contract supervisor" present on all shifts is ambiguous because some bidders may have read the provision as requiring the use of salaried supervisors while others may have read it as permitting the use of hourly personnel is denied where the solicitation cannot reasonably be read as specifying or precluding any particular method of satisfying the requirement.

DECISION

Food Services, Inc., protests any award of a contract under invitation for bids (IFB) No. F45603-86-B0016, issued by McChord Air Force Base, Washington. We deny the protest.

The IFB is for food service attendant services at McChord for 1 base year beginning October 1, 1986, and 2 subsequent option years. When the agency opened bids on May 1, the protester's 3-year price was the fifth lowest, responsive bid. The protester says it learned the day after bid opening that the agency plans to open a new dining facility at McChord midway through the first option year. The protester says it also has learned that the proposed awardee was aware of this prior to bid opening and that other bidders may have had the same information. Food Services, the incumbent contractor, contends that it and other bidders without this information were prejudiced because the informed bidders may have bid reduced prices for the option years, knowing that the agency would have to negotiate an equitable adjustment.

The agency concedes that there are plans for a new dining facility at McChord. A design contract for the facility has been awarded, and funding for construction is contained in the agency's proposed budget for

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fiscal year 1988. The agency states, however, that all documents regarding the project are marked "for Office Use Only" and that even the contracting officer did not know of the plans to build a new facility. In any event, says the agency, funding for the project is far from certain and, even if funding is approved, construction would not begin until late in 1988. Thus, the facility would not be available until sometime in fiscal year 1989. If the new facility is available by then, the agency says it will not exercise the second option, but will recompetete its food services requirement. Finally, the agency notes that of all the bids received, only the protester's contains a marked decrease in price from the base year to the second option year.

We find no merit in the protester's position. The bid abstract indicates that all of the bidders submitted prices that were essentially level over the three periods for which prices were sought. All third-year bids, except the protester's, ranged between 31 and 33 percent of the total 3-year bids. (The protester's third-year bid was 28 percent of its total bid.) This analysis fails to suggest that some bidders may have submitted lower prices for the option years based on inside knowledge regarding a planned change in contract requirements. Significantly, the proposed awardee bid exactly the same price for the base year and each of the 2 option years.

The only evidence offered by the protester that any bidder may have structured its prices based on inside information is the protester's assertion that the proposed awardee, Western States Management, Inc., bid considerably less than the protester and informed it after bids had been opened that the agency planned to build a new dining facility. The protester has merely speculated concerning what the other four intervening bidders might have known. Even assuming that Western States did have knowledge that the agency contemplates construction of a new facility, however, there is no indication of how the firm came by this information. While the government must conduct its procurements such that all bidders are treated equally, the government is not required to equalize the competitive position of bidders unless it is shown that some bidders had an advantage as a result of prejudice or unfair action by the government. Automated Datatron, Inc., B-219195, July 1, 1985, 85-2 CPD ¶ 9. There is no evidence in this case, nor has the protester even alleged, that Western States' purported knowledge of the planned new dining facility was the result of unfair action by the government. In addition, given the preliminary and uncertain state of the agency's plans for a new facility, we cannot say that the agency was under any obligation to disclose these plans to all bidders.


The second basis for protest involves paragraph C-1.2.1.4 of the solicitation's Performance Work Statement, which provides: "At each food service facility, a contract supervisor shall be present during all hours contract employees are working." The protester believes from its experience as the incumbent that this provision requires the use of

"nonworking," salaried supervisors--a view the protester says was confirmed by agency personnel prior to bid opening. The protester complains that after bid opening, however, a representative from Western States informed the protester that it planned to use shift leaders to satisfy this requirement. The protester says that since shift leaders are Service Contract Act employees, they are compensated at a lower rate than salaried supervisors. Thus, says the protester, a bidder who bid on the basis of using shift leaders under paragraph C-1.2.1.4 had a competitive advantage over those who read the paragraph as requiring salaried supervisors. The protester suggests that the solicitation may be ambiguous on this point and contends that the agency should resolicit its requirement, clearly setting forth the "nonworking" supervisor requirement so that all bidders may compete on an equal basis.

In our view, the protester's reading of solicitation paragraph C-1.2.1.4 as requiring the use of "nonworking," salaried supervisors is unreasonable. The paragraph merely requires the contractor to provide a contract supervisor for all shifts, but does not require the supervisor to be a salaried employee. It also does not preclude the use of shift leaders as contract supervisors, a position that the solicitation does not further define. As we read the solicitation, the decision of whether to use salaried or hourly employees is left to the contractor. A solicitation that contains performance requirements is not improper merely because it does not give the exact details of how the contractor is to perform. IBI Security Service, Inc., B-217446, June 27, 1985, 85-1 CPD ¶ 732.

Further, we note that the protester's current contract contains a similar requirement for an "attendant supervisor" and that the agency's records indicate the protester was informed that this did not require a "nonworking" supervisor. Although the protester may have chosen, nevertheless, to use salaried personnel as supervisors under its current contract, and may have planned to continue using salaried employees if it were successful in this procurement, we are not convinced that the current solicitation reasonably can be read as requiring this method of performance. We find no ambiguity here. Rather, the solicitation merely allows for a permissible degree of flexibility in how the successful contractor is to provide for supervisory coverage.

The protest is denied.

for 
Harry R. Van Cleve
General Counsel