



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Robertson & Penn, Inc.

File: B-223945

Date: October 30, 1986

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### DIGEST

1. GAO will not object to an agency's use, in an advertised procurement for food services, of minimum staffing requirements which are intended to ensure that the agency's minimum needs are met.
2. It is a bidder's responsibility in bidding on a fixed-price contract to project costs and include in the basic contract price a factor covering any otherwise uncompensated cost increases.

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### DECISION

Robertson & Penn, Inc. (Robertson), protests certain provisions of invitation for bids (IFB) No. DAKF24-86-B-0052 issued by the Department of the Army for mess attendant services at Fort Polk, Louisiana. Bid opening was scheduled for August 9, 1986, but has been postponed indefinitely.

We deny the protest.

Robertson's principal contention is that the IFB's minimum staffing requirement unduly restricts competition and would be "wasteful" of government money. Robertson states that it is currently performing the mess attendant services for Fort Polk in a satisfactory manner and with a staffing level lower than that required by the IFB. Robertson argues, therefore, that the minimum staffing requirement is unnecessary.

The Army responds that a minimum staffing requirement was established because Fort Polk has had considerable problems with past contractors who understaffed the mess halls. The Army states that contractors shifted personnel from mess hall to mess hall, depending on where inspectors were at the time, and where inspections were repeatedly being failed. According to the Army, there was not adequate staffing across the board to meet the government's needs and the contract

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requirements. The Army has submitted records of inspections of Robertson's performance over the past contract year which evidences many examples of unsatisfactory performance which the Army attributes, in most cases, to insufficient staffing.

The responsibility for drafting specifications that reflect the minimum needs of the government is primarily that of the contracting agency, and we therefore will not question specifications in the absence of a showing that they do not reflect the agency's minimum needs. Consolidated Maintenance Co., B-220174, Nov. 12, 1985, 85-2 C.P.D. ¶ 539. Moreover, in the absence of evidence clearly establishing a substantial adverse impact on competition, our Office has specifically found the use of minimum manning requirements in advertised procurements to be permissible. See J.E.D. Service Co., B-218228, May 30, 1985, 85-1 C.P.D. ¶ 615; Linda Vista Industries, Inc., B-214447, B-214447.2, Oct. 2, 1984, 84-2 C.P.D. ¶ 380.

Although Robertson contends that it has performed satisfactorily without contract-specified minimum manning levels, the Army has submitted substantial evidence indicating that Robertson's performance was frequently unsatisfactory. In our view, Robertson has done no more than disagree with the manning level for the dining facilities that reflect the reasoned judgment of the Army personnel responsible for food services at Fort Polk. This does not provide us a basis for questioning the solicitation's minimum manning requirement. J.E.D. Service Co., B-218228, supra; Dragon Services, Inc., B-213041, Mar. 19, 1984, 84-1 C.P.D. ¶ 322.

Robertson's second contention is that IFB clause C.1.16.2, which establishes minimum staffing when only one or two meals is served in a given day, is unfair to bidders. Robertson argues that based on its experience, it takes more man hours to serve breakfast than either of the other two meals, but under this clause the contractor would only receive one-third of the daily payment if only breakfast is served. We disagree.

Clause C.1.16.2 provides:

"Minimum Staffing for One or Two Meals.  
When dining facilities serve only one (1)  
or two (2) meals (except building 7179/

7180), the minimum staffing requirements (manhours) shall be reduced by one-third (1/3) for two meals served or two thirds (2/3) for one meal served respectively using the criteria in attachment No. 9. Minimum staffing requirements do not apply to extended quarter hours or pre-service cleanup."

Neither the above-quoted clause nor any other provision of the solicitation which we are aware provides that the contractor shall receive one-third the daily payment for one meal service. This clause only establishes the minimum staffing requirement for one meal service. If a contractor expects that its staffing for breakfast would exceed the minimum staffing level, then it is free to calculate that factor into its bid prices for one meal service.

Robertson complains about clause C.2.15 of the solicitation which provides that during other than normal operating hours, when a dining facility is open and the number of meals to be served does not exceed the dining facility's seating capacity, dining facility attendant services will not be ordered (or paid for) and soiled dishes resulting from these meals will be placed in soiled dish racks or stacked for cleaning during normal operating hours. Robertson argues that the dirty dishes from such meals will create unsanitary conditions and additional work for which the contractor will receive no direct compensation.

The Army argues that the service of meals during other than working hours where the contractor is not called in to assist does not create an unsanitary condition because the dishes used will be cleaned within 1 or 2 hours after they are soiled. Robertson has not provided us with a basis to disagree with the Army's determination that an unsanitary condition will not be created.

The Army has not directly addressed Robertson's argument that the IFB creates a risk that the selected contractor will be uncompensated for specific work other than to point out that the contractor would be paid if it is asked to serve meals outside normal operating hours. However, we see no reason why the agency must allow separate prices for this work. The selected contractor can be paid for the cleaning of the dishes soiled during other than normal operating hours by including a factor for this work in its bid prices for work to be performed during normal operating hours.

It is the bidder's responsibility to project costs and to include in the basic contract price a factor covering any otherwise uncompensated cost increases. American Transparents Plastic Corp., B-210898, Nov. 8, 1983, 83-2 C.P.D. ¶ 539. Moreover, we have held that it is within the ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon the selected contractor and minimum administrative burdens upon the agency. Second Growth Forest Management, Inc., B-218273; B-218273.2, Apr. 10, 1985, 85-1 C.P.D. ¶ 410; American Transparents Plastic Corp., B-210898, supra. Therefore, we do not agree with Robertson's contention that the IFB creates an improper risk that the selected contractor will not be compensated for certain work.

Finally, Robertson contends that clause C.5.6.3 of the IFB places an impossible requirement upon the selected contractor. That clause requires, with respect to the North Fort area, that pots and pans be cleaned within 1 hour after the service of a meal. Robertson states that there is only room for two people in the pot and pan cleaning area and based upon its experience as the incumbent contractor, two people can not physically perform the task within 1 hour.

The Army responds that pots should be cleaned during the 90-minute period that the meals are in progress in addition to the 1-hour period after the meal is over. The Army states that this combined time is more than an adequate amount for the cleaning of the pots and pans.

While Robertson disagrees with the Army's view concerning the adequacy of the amount of time for cleaning the pots and pans, Robertson has not met its burden of showing that the clause complained of is unreasonable.

The protest is denied.

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General Counsel