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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Diversified Contract Services, Inc.

File: B-224152

Date: December 15, 1986

DIGEST

Where protester's contention that a fixed-price, award-fee contract is unnecessary for obtaining excellent food services is not supported by convincing evidence, there is no basis for questioning agency's position that an award-fee contract could improve the food services.

DECISION

Diversified Contract Services, Inc. (Diversified), protests the inclusion of an award-fee provision in request for proposals (RFP) No. FO4699-86-R-0176, issued by the Department of the Air Force. This solicitation contemplates a fixed-price requirements contract which includes an award-fee provision and invites proposals to provide full food services at McClellan Air Force Base. Diversified's primary contention is that the award-fee provision should be removed because it may increase costs to the government and is unnecessary in view of the excellent level of services being obtained under the current contract that has no award-fee provision. Diversified also contends that the solicitation is ambiguous in several respects.

We deny this protest.

The determination of the government's minimum needs, the best method of accommodating them, and the technical judgments upon which those determinations are based are primarily the responsibility of the contracting officials who are most familiar with the conditions under which the supplies and services have been used in the past and will be used in the future. Accordingly, our Office will not question an agency's decision concerning its minimum needs and the best method of accommodating those needs unless there is clear evidence that those decisions are arbitrary or otherwise unreasonable. Four-Phase Systems, Inc., B-210642, July 22, 1981, 81-2 CPD ¶ 56. A mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset the agency determination. Id. The protester must carry the burden of affirmatively proving its case. Id.

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In response to Diversified's protest, the Air Force reports that this fixed-price, award fee type of contract is specifically authorized by the Department of Defense Federal Acquisition Regulation Supplement § 16.404-2(c)(70), (Defense Acquisition Circular 84-13, Aug. 30, 1985), which provides that award fee provisions may be used in various types of contracts where ". . . it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts." In this regard, we note that fixed-price incentive contracts are also generally authorized by the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 16.401, 16.403 (1985).

The Air Force reports that it chose this type of contract in order to provide incentive for the contractor to provide more than minimally acceptable service. To this end, the solicitation indicated that, in addition to any other compensation included within the fixed-price submitted by the contractor, the contractor would be able to collect an award fee of up to \$60,000 for providing "superior" performance. The Air Force further reported that it used this incentive type contract to replace its heating and air conditioning systems and the results were outstanding. Accordingly, the contracting officer concluded that such a provision was appropriate for inclusion in this food services contract. The solicitation was issued only after it was considered by the activity's Pre-Purchase Request Release Panel and Business Strategy Panel, in conjunction with Headquarters, Air Force Logistics Center Food Service personnel, and approved by the Chief, Contracts Division. The Air Force contends that the provision is neither unfair nor overly restrictive of competition as alleged by the protester.

In its comments on the Air Force's report, Diversified acknowledges that the Department of Defense has authority to use award-fee contracts but argues that since the current food services are outstanding without an award-fee provision in the contract, it is reasonable to assume that an award-fee provision is not required in the contract to result from this solicitation. Diversified also expresses its belief that sufficient standards for awarding the fees have not been established and its conviction that the award-fee provision will increase the cost to the government. The Air Force contends, however, that its experience with award-fee contracts indicates that generally the government receives better performance and the contractors obtain higher profits when they are used.

The arguments presented by Diversified and the Air Force reflect a clear disagreement as to the advisability of using an award-fee contract in this instance. Such a difference of opinion is not sufficient, however, to justify overturning the Air Force's decision. Julian A. McDermott Corp., B-191468, Sept. 21, 1978, 78-2 CPD ¶ 214 at 6. This is especially so here, where the record shows that the Air Force's approach was thoroughly studied and reviewed before it obtained the necessary approvals. Moreover, Diversified's allegations are supported not by convincing evidence but primarily by speculations such as the award-fee contract "may" increase costs and "it would seem reasonable to assume" that such a contract is not necessary to obtain excellent services. Such speculation provides no basis for a protest. American Airlines Training Corp., B-217421, Sept. 30, 1985, 85-2 CPD ¶ 365 at 4.

Insofar as Diversified contends that the award-fee provisions of the solicitation do not provide sufficient standards for determining the amount of the award-fees, we have examined the provisions and are not persuaded by Diversified's argument. The RFP's award-fee provisions specifically set forth the method by which the amount of the fee will be determined and define the various categories of work performance which will result in the contractor receiving a specified percentage of the total available fee. For example, "superior" performance is defined in part as "outstanding, approaching the best that could be obtained from a qualified contractor" where the contractor "has greatly exceeded the required performance and areas of deficiency are few or non-existent and relatively unimportant in nature" superior performance will result in 80 to 100 percent of the allowable fee being awarded. Furthermore, the RFP provides for two interim performance evaluations during each award-fee period, the contractor is encouraged to provide a self-evaluation at the end of each award-fee period, and a performance evaluation board is required to conduct a comprehensive evaluation of the contractor's performance before the actual amount of the award is determined. We believe these performance standards to be sufficient to determine the amount of the actual fee awarded and to put the contractor on notice of the manner in which the determination will be made.

Finally, in support of its position that the solicitation is ambiguous, Diversified points to the 47 questions it directed to the contracting officer at the pre-proposal conference. Even if we assume that these questions evidence ambiguity, we

believe all questions were adequately answered by the contracting officer or resolved by minor amendments to the solicitation.

Accordingly, the protest is denied.

for *Seyman Efros*
Harry R. Van Cleve
General Counsel