The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Military Base Management, Inc.

File: B-224115

Date: December 30, 1986

DIGEST

Agency decision to use negotiation procedures, in lieu of sealed bidding procedures to acquire mess attendant services, is justified where the contracting officer determines that discussions are necessary to ensure that offerors fully understand the services and the staffing required to adequately perform the contract.

DECISION

Military Base Management, Inc. (Military), the incumbent contractor, protests the negotiated procurement of mess attendant services for Norfolk Naval Air Station through the issuance of request for proposals (RFP) No. N00189-86-R-0466 by the Naval Supply Center, Norfolk, Virginia. Military contends that the services should be procured by formal advertising (sealed bids), as in prior procurements, and that the use of negotiation procedures for the acquisition of services that are neither complex nor unique is contrary to the intent of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304 (Supp. III 1985), and the Federal Acquisition Regulation (FAR), 48 C.F.R. § 6.401(a) (1985), which, Military asserts, requires a showing of compelling need for discussions. Military further asserts that the scope of work is set forth in minute detail so that a knowledgeable food service contractor can readily prepare a fixed-price competitive bid without negotiations. Military requests that the RFP be canceled and a procurement by sealed bids be conducted.

We find no merit to the protest.

The RFP, issued as a small business set-aside, contemplates the award of a firm-fixed-price contract for a 1-year base period with 3 renewal options. Under the RFP, the contractor would be required to provide managerial, administrative and direct labor personnel to accomplish the tasks specified in

the solicitation. The contractor would prepare and serve an estimated 40,000 meals per month, provide emergency food services, as required, and perform related janitorial services. The RFP requires offerors to submit manning charts showing, by space and job categories, the number of personnel proposed for each half hour of a day. The RFP advises that in determining the offeror's responsibility, consideration will be given to whether an offeror's manning charts insure that the total hours offered, including the manning distribution in space/job categories prior to, during, and after meal hours and at peak periods, present an effective and well planned management approach to performance of the services required. In evaluating offers, the RFP advised that the government would add the total price for all options to the price for the basic requirement and that the government may reject an offer as nonresponsive if it is materially unbalanced as to prices for the basic requirement and the option quantities.

The Navy states that a negotiated procurement is required because historically mess attendant solicitations have revealed problems with manning charts that evidenced differences in personnel staffing for hours and meals required to be served. The Navy states that the use of sealed bidding procedures would not provide the opportunity to clarify these differences between proposed staffing levels and the government's estimates, and that, based on past contracts, these differences often indicate a lack of understanding of the solicitation requirements and the effort necessary to adequately perform the services. The use of a negotiated procurement, the Navy states, would provide for discussions to resolve potential problems, and to ensure that all offerors fully understand the services required as well as the staffing necessary to maintain the continuity of services. Additionally, the Navy states that because of wide disparities in prices in a prior attempted procurement, it requires discussions to determine whether prices are fair and reasonable.

With the enactment of CICA, there is no statutory preference for sealed bids. Under CICA, agencies are required to obtain full and open competition and to use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement. 10 U.S.C. § 2304(a)(1) (Supp. III 1985). In determining the competitive procedure appropriate under the circumstances, the agency shall solicit sealed bids if: time permits; the contract award will be based on price and other price-related factors; it is not necessary to conduct discussions with the responding sources about their bids; and there is a reasonable

expectation of receiving more than one sealed bid. 10 U.S.C. § 2304(a)(2)(A). The determination regarding which competitive procedure is appropriate essentially involves the exercise of a business judgment by the contracting officer. Essex Electro Eng'rs, Inc., 65 Comp. Gen. 242 (1986), 86-1 CPD ¶ 92; see also NUS Corp. et al., B-221863 et al., June 20, 1986, 86-2 CPD ¶ 574.

In light of this change in the law and the statements proffered by the Navy, we find no basis to object to the use of negotiation procedures. First, the fact that formal advertising has been used to procure this type of service in the past is not relevant to what may properly may be used now since the statutory preference for formal advertising has been eliminated by CICA. See Military Servs. Inc. of Ga., B-221384, Apr. 30, 1986, 86-1 CPD ¶ 423. Moreover, contrary to Military's assertion, the FAR does not require a showing of compelling need to justify discussions. See Variable Staffing Sys., B-224105, Dec. 23, 1986, 86-2 CPD ¶ ____. The FAR merely states that sealed bidding shall be used whenever the CICA conditions set forth in the FAR, 48 C.F.R. § 6.401(a), and summarized above, are met. Here, the CICA conditions requiring sealed bidding have not been met because the contracting officer determined that it was necessary to hold discussions to ensure that all offerors fully understood the services and staffing necessary to perform the contract. In this regard, we have recognized that prior difficulties with contractor performance may serve as a legitimate basis for requiring discussions and therefore the use of negotiation procedures for subsequent procurements. See Variable Staffing Sys., supra; Servicemaster, All Cleaning Servs. Inc., B-223355, Aug. 22, 1986, 86-2 CPD ¶ 216.

We note that, unlike in Variable Staffing Sys., supra, the RFP here does not provide for a specific technical evaluation of proposals. Contract requirements also are spelled out in significant detail, and while offerors are to submit manning charts, these are specifically required for "the purpose of assisting the contracting officer in making an affirmative determination of . . . responsibility . . . ." It thus appears that, unlike in the prior case, discussions here will not be used to establish the terms of a vendor's offer or to permit revisions in offered technical approach. However, it is apparent that discussions may be used to insure that a vendor understands just what the agency believes is required by the specifications, and may be used to permit the submission of a revised price if discussions indicate to a vendor that its original submission did not accurately reflect the requirements to which the vendor was committing itself. We believe this is a proper use of discusssions and that the

possible need for holding such discussions is a matter within the sound judgment of the contracting officer.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel