



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Uniserv, Inc.; Fort Riley Food Service Co., a
Joint Venture
File: B-228530; B-228530.2
Date: December 23, 1987

DIGEST

1. When a procurement has properly been reserved exclusively for small disadvantaged business participation, an offeror that is not a small disadvantaged business concern is not an interested party for the purpose of objecting to how the procurement is conducted.
2. The Army's violation of an Army regulation which requires approval to contract out work previously performed solely by military personnel without a cost study prior to issuing a solicitation is not a valid basis of a protest where the approval was received shortly after the solicitation was issued and the protester has not shown any harm or prejudice caused by the violation.
3. The regulations require that offerors be afforded sufficient time to consider the information in an amendment in preparing or modifying their offers. It is within the contracting officer's discretion to determine the appropriate preparation time. Where the agency receives numerous timely proposals, including one from the protester, we have no reason to question the contracting officer's determination.

DECISION

Uniserv, Inc. and Fort Riley Food Service Co., a Joint Venture protest the terms of request for proposals (RFP) No. DAKF19-87-R-0145, issued by the Army for full food service and dining facilities attendant services at Fort Riley, Kansas.

We dismiss Uniserv's protest and deny in part and dismiss in part Fort Riley Food's protest.

The RFP was issued September 10, 1987, as a small disadvantaged business set-aside. Uniserv is the incumbent

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contractor and is a partner in Fort Riley Food. Both Uniserv and Fort Riley Food submitted almost identical protests alleging several solicitation improprieties.

Uniserv, which did not submit a proposal, has not taken issue with the Army's assertion that it is not a small disadvantaged business, and has not objected to the issuance of the solicitation as a small disadvantaged business set-aside. Our Bid Protest Regulations require that a protester be an "interested party" before we will consider its protest. 4 C.F.R. §§ 21.0(a), 21.1(a) (1987). Once a procurement has been reserved exclusively for small disadvantaged business participation, offerors that are not small disadvantaged business concerns are not interested parties for the purpose of objecting to how the procurement is conducted. See Gino Morena Enterprises--Reconsideration, B-224235.2, May 13, 1987, 87-1 CPD ¶ 501. Uniserv's protest, which does not question the propriety of the set-aside, is therefore dismissed.

Fort Riley Food did submit a proposal and has certified that it is a small disadvantaged business. Consequently, we will consider its protest.

Fort Riley Food contends that some of the locations cited in the solicitation are currently having food services provided in-house by Army personnel and argues that the Army failed to conduct a cost study as required by Office of Management and Budget (OMB) Circular A-76, and Federal Acquisition Regulation (FAR), 48 C.F.R. § 7.3 (1986). The agency states that the in-house work is being performed by military personnel and argues that OMB Circular A-76 and FAR, 48 C.F.R. § 7.3 do not apply. In this regard, the agency explains that the applicable regulation is Army Regulation (AR 5-20) paragraph 4-2(d), which authorizes the transfer of work previously performed solely by military personnel without a cost summary, as long as approval for the transfer is obtained from Army Headquarters prior to the solicitation of offers. As far as the applicability of OMB Circular A-76 is concerned, the decision whether to perform in-house or contract out or which particular "contract out" program is to apply is a matter of executive branch policy that we do not review. Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255. We consider protests concerning OMB Circular A-76 only when it is alleged that an agency did not adhere to the rules announced in a solicitation issued for the purpose of comparing the cost of contracting out to the cost of performing in-house. Id. Concerning AR 4-2(d) the record shows that the solicitation was issued on September 10 and Headquarters approval for the conversion was granted September 25. Although the Army failed to

receive approval prior to issuing the solicitation, we can not see how this in any way prejudiced the protester.

Fort Riley Food also argues that the RFP required full food service in two designated Table of Organization and Equipment (TOE) buildings in violation of AR 30-1. That regulation limits the use of civilians in TOE dining facilities to dining facility attendants. The Army states that it intended to change the buildings' TOE status prior to the start of contract performance. One of the TOE facilities has already been reclassified and the Army states that the other facility will be soon reclassified. We have no basis upon which to object to the Army's actions and in any event, we again fail to see how this could harm the protester.

The protester further argues that the RFP did not allow sufficient time for proposal preparation. The RFP as originally issued allowed 29 days for the preparation of proposals as opposed to 30 days as generally required by 15 U.S.C. § 637(e)(3)(B) (Supp. III 1985). Nevertheless, Amendment 001 to the RFP extended the date set for receipt of proposals by 6 days allowing offerors 15 days after the amendment was issued to submit their proposals. Fort Riley Food further argues that since the amendment consisted of 15 pages of changes, the additional time allowed was insufficient for offerors to adequately prepare their proposals.

Since the RFP, as amended, provided for more than a 30 day response time, there is no question concerning a violation of 15 U.S.C. § 637(e)(3)(B). Further, the regulations require that an amendment afford offerors sufficient time to consider the information in it in preparing or modifying their offers, see FAR, 48 C.F.R. § 15.410. The decision as to the appropriate preparation time lies within the discretion of the contracting officer. See R&E Electronics, Inc., B-223723, Sept. 8, 1986, 86-2 CPD ¶ 273. There is nothing in the record which would indicate that the contracting officer abused that discretion here. In fact most of the amendment consisted of questions and answers from a preproposal conference. Further, the Army's receipt of 14 timely proposals, including one from Fort Riley Food, indicates that adequate time was allowed and that full and open competition was obtained. The protester and its partner were the only firms to complain about the response time.

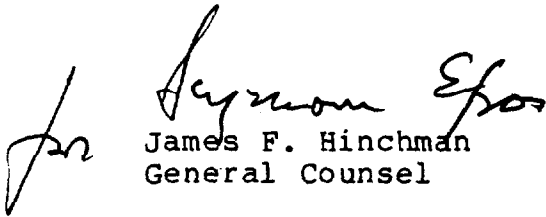
Fort Riley Food also challenges the RFP specification that all contract personnel read, write, speak and understand English. The Army has issued an amendment deleting the provision and substituting a requirement that supervisory

and food preparation personnel be able to read, write, speak, and understand English. Serving personnel need only speak and understand English.

Since the basis of the protester's challenge to the requirement apparently is that servers should not have to read and write English, we believe the amendment satisfies that concern. This aspect of Fort Riley Food's protest is therefore academic. See Americorp, Inc., B-222119, May 12, 1986, 86-1 CPD ¶ 451.

Finally, Fort Riley Food alleges, without specifying which classes of employees were not covered, that the RFP's wage determination does not sufficiently cover all of the work classifications of employees needed under the contract. The agency stated in its protest report that the wage determination included all the important labor categories. Since the protester has not responded to the agency report on this issue, we consider it abandoned. See Action Industrial Supply, B-224819, Jan. 6, 1987, 87-1 CPD ¶ 11.

Uniserv's protest is dismissed; Fort Riley Food's protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel