The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Chicago City-Wide College

File: B-228593.4

Date: August 26, 1988

DIGEST

Protest that startup date for contract for educational services is unduly restrictive is denied where agency states reasonable basis for requirement and protester offers no evidence to rebut the agency's showing.

DECISION

Chicago City-Wide College (CCC) protests the terms of request for proposals (RFP) No. F64605-87-R-0024, issued by the Department of the Air Force, for the acquisition of off-duty post-secondary educational services. CCC argues that the RFP requirement that the awardee commence performance in as little as 23 days from the date of award is unduly restrictive of competition.

We deny the protest.

The RFP was issued on June 1, 1987, and originally called for the submission of initial offers by October 1. In response to the solicitation, CCC filed an agency-level protest alleging that the solicitation violated section 1212(b) of the Department of Defense Authorization Act, 1986, Pub. L. No. 99-145, 99 Stat. 583, 726 (1985), codified at 10 U.S.C. § 113 note (Supp. IV 1986). As a result of the protest, the Air Force, by amendment No. 3, issued on September 29, indefinitely suspended the date for the submission of initial offers. On October 16, the Air Force issued amendment No 4, setting October 26 as the date for the submission of initial offers. CCC filed a protest in our Office on October 22, alleging, as it had in its

agency-level protest, that the terms of the RFP violated the 1986 Department of Defense Authorization Act. During the pendency of CCC's October 22 protest to our Office, offers were in fact received on October 26, and evaluation of offers was initiated.

By decision dated February 29, 1988, our Office denied CCC's protest. Chicago City-Wide College, B-228593, Feb. 29, 1988, 88-1 CPD ¶ 208. Thereafter, CCC filed a request for reconsideration with our Office; we affirmed the decision. Chicago City-Wide College--Reconsideration, B-228593.2, July 19, 1988, 88-2 CPD ¶ 64. During the pendency of that reconsideration, CCC on May 25, 1988, filed another protest (B-228593.3) alleging that the terms of amendment No. 8 to the solicitation were improper. The Air Force deleted amendment No. 8 and CCC withdrew its protest. The Air Force subsequently issued amendment No. 10 which set the closing date for receipt of best and final offers (BAFOs) as June 20 and requested that offers be extended to July 10.

On June 20, CCC filed the current protest, alleging that the date set for commencement of performance under the contract--August 1, 1988--was unduly restrictive of competition. On July 7, the Air Force executed a determination and finding (D&F) authorizing award notwithstanding the current protest on grounds that urgent and compelling circumstances for award existed. Awards were made to the University of Maryland and Central Texas College on July 8.

CCC argues that the period of time between the date of award and the required commencement of performance date was restrictive because only an incumbent academic institution could meet the startup date because of the unique nature of the Pacific theater which is comprised of 80 installations. According to CCC, it would be impossible for an academic institution which is not currently present in the Pacific theater to provide the personnel and supplies necessary to begin performance by the startup date. CCC suggests that the Air Force should have instead extended the existing contracts for educational services in the theater for a sufficient time in order to provide for a more "realistic" startup date.

The Air Force responds that the August 1 requirement was necessary in order to fulfill its minimum needs. In particular, the Air Force argues that, in order to avoid a disruption in course offerings to military personnel and their dependents in the Pacific theater, it had to have its educational provider in place in time to begin the first semester of study in late August. The Air Force also argues that an extension of the current providers' contracts would

be detrimental to students. According to the Air Force, this is because military personnel are only stationed in the area for a limited time, and switching from one academic institution to another midway through a course of study could necessitate the repeat of course work, thereby preventing the student from graduating before the end of his or her tour of duty. The Air Force also argues that similarly short startup times have proven sufficient in the past for other nonincumbent contractors. The Air Force also indicated that the incumbent contractors were having difficulty retaining staff due to the delays in contract award which would affect continued contract performance. Finally, the Air Force argues that the startup date for this contract has always been August 1, and that CCC through its previous protests has itself caused the gradual diminution of the lead time which it claims to need.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition. 10 U.S.C. § 2305(a)(1) (Supp. IV 1986). Consequently, when a solicitation provision is challenged as unduly restrictive of competition or as exceeding the agency's actual needs, the initial burden is on the procuring agency to establish support for its contention that the provision is justified. Abel Converting Inc., B-224223, Feb. 6, 1987, 87-1 CPD ¶ 130; Daniel H. Wagner, Associates, Inc., 65 Comp. Gen. 305 (1986), 86-1 CPD ¶ 166. We determine the adequacy of the agency's justification by examining whether its explanation can withstand logical scrutiny. R.R. Mongeau Engineers, Inc., B-218356, et al., July 8, 1985, 85-2 CPD ¶ 29. Once the agency establishes support for the challenged provisions, the burden shifts to the protester to show that the provisions in dispute are unreasonable. Information Ventures, Inc., B-221287, Mar. 10, 1986, 86-1 CPD ¶ 234.

In connection with this protest, CCC has directed our attention to two previous decisions of this Office, Rampart Services, Inc., 65 Comp. Gen. 164 (1985), 85-2 CPD ¶ 721 and Informatics, Inc., B-190203, Mar. 20, 1978, 78-1 CPD ¶ 215. In both cases, protests were sustained on grounds that the startup time provided to prospective offerors was unreasonably short and therefore unduly restrictive. CCC contends that the circumstances of this case present an almost identical situation.

We find that the Air Force has presented an adequate explanation for its August 1 startup date. First, as noted above, the Air Force had included the August 1 startup date in the solicitation from the outset. Thus, the record shows the Air Force engaged in sufficient advance planning

for this acquisition and we cannot say that it failed in its obligation to provide for full and open competition by improperly calculating the overall lead time necessary to properly execute this procurement action. (In contrast, the agency in Rampart, Inc., 65 Comp. Gen. 164, supra, failed to adequately plan its acquisition.) Second, we find that the Air Force has provided cogent reasons for the August 1 startup date. The Air Force's position that it needed its new providers in place by August 1 in order to avoid a break in the availability of educational services is reasonable. Within the Pacific theater, we are informed that approximately 60,000 students enroll in courses during a given academic year and that there has not been a break in educational services for approximately 15 years. The record indicates that the incumbent contractors were having difficulty replacing staff in the absence of an award decision under this contract, posing potential contract performance problems if a short-term contract extension were to be granted.1/ The protester has not rebutted this. We think that the agency's desire to avoid the disruption or temporary suspension of educational services and to prevent a change of institutions and teachers during a course of study or semester is a reasonable basis for the August 1 startup date.

Moreover, CCC has offered no evidence, that it is "impossible" to meet the August 1 startup date. CCC claims that it would be impossible, for example, to hire the necessary instructors to staff all positions in the Pacific theater. In our opinion, however, this explanation is without merit since, as a practical matter, instructors could have been hired on a contingent basis and CCC has had more than a year to plan for the possible award of this contract since the RFP was issued on June 1, 1987, with the same August 1 commencement of performance date.

We also think that the two cases cited by CCC are readily distinguishable. In both cases, the agency had failed to offer any rationale beyond administrative convenience for

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1/ The record contains a determination and finding (D&F) which was executed in order for the Air Force to make award despite the current protest. The D&F explains the difficulties in terms of staffing which the then-current contractors were having.

the protested terms and the protesters had offered substantive evidence of the undue burden imposed by those terms. Accordingly, we do not think that those cases are applicable to the circumstances of this case.

The protest is denied.

James F. Hinchman
General Counsel