



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Medical Directions

File: B-240798

Date: October 30, 1990

Sam Zalman Gdanski, Esq., for the protester.
Craig E. Hodge, Esq., and Lucie Sterling, Esq., Department of the Army, for the agency.
Louis Fein for Delta Contract Services, Ltd., an interested party.
Catherine M. Evans, Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where invitation for bids for physician services required submission of physician qualifications with bid, allegation that low bidder is nonresponsible because it substituted proposed physicians with incumbent contractor's employees prior to award amounts to challenge against contracting officer's affirmative determination of responsibility, which General Accounting Office will not consider absent specific allegations not present here.
2. Allegation of collusive bidding is a matter for the Justice Department, and will not be considered by the General Accounting Office under its bid protest function.

DECISION

Medical Directions (MD) protests the award of a contract to Delta Contract Services, Ltd. under invitation for bids (IFB) No. DAAB07-90-B-C058, issued by the Department of the Army for emergency room physicians at Patterson Army Community Hospital, Fort Monmouth, New Jersey. MD, the incumbent contractor, complains that Delta was unable to supply the required physicians until after bid opening, when it obtained commitments from MD's employees. MD also alleges that Delta engaged in collusive bidding practices with a related firm.

We dismiss the protest.

The IFB required bidders to submit qualifications of proposed physicians with their bids, and required the successful bidder to submit detailed documentation regarding each physician's

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credentials. Delta's low bid, which contained resumes for seven physicians, was found to be responsive to the solicitation. The agency then asked Delta to submit the detailed credentialing information required by the IFB. Delta responded that, instead of the physicians listed in its bid, it wished to employ the physicians currently working under MD's contract. After the agency verified the current physicians' intent to work for Delta under the new contract, the agency awarded the contract to Delta.

MD argues that Delta's offer, after bid opening, to perform the contract using MD's physicians is evidence that Delta never intended to provide the physicians it offered in its bid, and Delta is therefore nonresponsive. In this regard, MD contends that Delta "received additional time to confirm actual employment of physicians . . . by waiting until award."

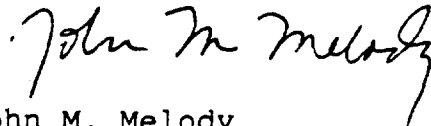
The physician information requested by the IFB concerned the potential awardee's ability to perform as required, not its obligation to do so. As such, the information concerned bidder responsibility. See DAVSAM Int'l, Inc., B-218201.3, Apr. 22, 1985, 85-1 CPD ¶ 462. Delta was found to be responsible here. We will not review a contracting officer's affirmative determination of responsibility absent a showing of possible fraud or bad faith or a failure properly to apply definitive responsibility criteria. 4 C.F.R. § 21.3(m)(5) (1990); ALM, Inc., B-225679.3, May 8, 1987, 87-1 CPD ¶ 493. To the extent that MD's protest can be read as alleging bad faith on the part of the agency because it allowed Delta additional time to secure commitments from MD's physicians, allowing this late submission of commitments neither constitutes nor evidences bad faith; information concerning a bidder's responsibility generally may be provided or changed any time prior to award. Adrian Supply Co., B-239681, Aug. 28, 1990, 90-2 CPD ¶ 170.

MD also appears to object generally to Delta's hiring of MD's physicians. However, it is neither unusual nor inherently improper for an awardee to recruit and hire personnel employed by an incumbent contractor. Booz, Allen & Hamilton, Inc., B-236476, Dec. 4, 1989, 89-2 CPD ¶ 513.

Regarding MD's allegation that Delta engaged in collusive bidding practices with a related firm, we generally do not consider allegations of collusion under our bid protest function as this is for the Justice Department's consideration. The Forestry Ass'n, Inc., B-237225, Oct. 19, 1989, 89-2 CPD ¶ 365. Moreover, the allegation is not supported by the record. MD notes that the bid opening official's log contained an entry for a firm called Medi-Call, which is located at the same address and telephone number as

Delta, and concludes that there may have been collusion between the two firms. Delta's president, who also operates Medi-Call, explains, and the agency confirms, that Medi-Call did not submit a bid; Medi-Call's name was recorded on the list of bidders because Delta's bid was mailed in a Medi-Call envelope, and Delta's name was added to the list once the bid was opened. Indeed, the bid abstract lists a bid from Delta and none from Medi-Call.

The protest is dismissed.

A handwritten signature in cursive script that reads "John M. Melody". The signature is written in dark ink and is positioned above the printed name and title.

John M. Melody
Assistant General Counsel