



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richard M. Milburn High School

File: B-244933

Date: November 27, 1991

Robert H. Crosby for the protester,
B.W. Beebe for The American Educational Complex, Charles D. McGee for Language Research, Inc., and Marcus S. Patton for A.S.K. Associates, interested parties.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Behn Miller and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation's college credit requirement, applicable only to a small portion of total services being acquired, is unduly restrictive of competition where the agency fails to establish that including the coursework for which it requires college credit under a total package contract is necessary to meet agency's minimum needs.

DECISION

Richard M. Milburn High School protests the requirements of request for proposals (RFP) No. DAKF10-91-R-0064, issued by the Department of the Army for Army Education Center courses at Fort Stewart and Hunter Army Airfield, Georgia. Specifically, Milburn protests that the requirement to award college credit and the RFP's accreditation specification are unduly restrictive of competition.

We sustain the protest.

BACKGROUND

The RFP was issued on June 6, 1991; the scheduled closing date for receipt of proposals was July 8. Under the RFP, offerors are to provide under an "umbrella contract" the following five educational programs: (1) Advanced Skills Education Program (ASEP); (2) Basic Skills Education Program; (3) English as a Second Language; (4) Languages; and (5) Professional Development.

The RFP requires, at paragraph C.6.4.2.1, that the contractor award college credit for the ASEP course. The RFP also requires, at paragraph C.1.7.1.2, that offerors "[b]e a regionally or nationally accredited institution . . . and [be] recognized by the Council on Post secondary Education (COPA) and the Department of Education (DOE)."

On June 12, Milburn filed an agency-level protest with the Army, challenging these two specifications as unduly restrictive;¹ by letter dated July 15, the Army denied Milburn's protest, stating that the agency's minimum needs mandated these specifications. On July 24, Milburn filed this protest with our Office, essentially reiterating its agency-level protest. As explained below, we find that the college credit requirement is unduly restrictive and that the Army should not procure the ASEP requirement as part of a total package approach.

ANALYSIS

The RFP requires 24,500 hours of classroom instruction; only 2,100 hours (or 8 percent of the total coursework) is for ASEP. Milburn, believing that as a secondary education institution it can provide the remaining 92 percent of the contract requirements, contends that the ASEP college credit requirement is unduly restrictive of competition. In this regard, Milburn does not dispute the Army's need for ASEP and its corresponding college credit requirement; rather, Milburn contends that ASEP should be procured separately from the other four education programs.

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations include specifications which permit full and open competition and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 10 U.S.C. § 2305(a)(1)(B) (1988). Accordingly, use of a total package approach, that is, the combining of separate, multiple requirements into one contract, is consistent with the CICA requirement for full and open competition only where such an approach reasonably is necessary for the agency to meet its needs. Electro-Methods, Inc., B-239141.2, Nov. 5, 1990, 90-2 CPD ¶ 363. In this regard, we have upheld the Army's determination to acquire education services by a means of a total package basis where the reasoned judgment of the agency, based on investigation and evaluation of the evidence

¹Although Milburn clearly protested the college-credit requirement, in both its letter to this Office and its agency-level protest, Milburn inadvertently referred to the wrong paragraph number--C.1.7.2.2--which requires offerors to award equal credit for both on and off-campus coursework.

reasonably available at the time the decision was made, was that its minimum needs could not be satisfied otherwise. Chicago City Wide College, B-218433; B-218434, Aug. 6, 1985, 85-2 CPD ¶ 133; Chicago City-Wide College, B-212274, Jan. 4, 1984, 84-1 CPD ¶ 51. In the cited cases, the agency established that the total package approach was necessary, either to minimize class cancellations and to obtain needed upper-level, low enrollment courses in remote areas or to provide for a complete baccalaureate program. Here, however, we find that the Army has not reasonably justified including ASEP under this umbrella contract.

The Army maintains that ASEP must be procured under an umbrella contract with the other four programs to achieve administrative cost savings; by including the ASEP requirement under the instant RFP, the Army contends that it is spared the expense of an additional on-site director--an amount which it represents as approximately \$30,000.

This argument is not supported by the record. For example, the Army has advised us that an on-site director is required for total package contracts due to the variety and volume of procured services. The Army has not explained, however, why an on-site director would be required for a single program the size of ASEP. In short, the record does not support the claimed need for a separate on-site director simply because the program is procured as an individual requirement.

The Army also contends that ASEP cannot be individually procured because of an administrative space shortage at the Fort Stewart facility; in this regard, the Army maintains that the overhead burden on the government would be substantially increased by procuring the ASEP services under a separate contract since the Army would have to support the cost of two contractors setting up mobile offices. First, as noted above, the record does not establish that a separate ASEP contractor would require an on-site director with a mobile office. Second, the Army has not provided any indication of what costs would be incurred in this regard or why they would be substantial. Further, to the extent that the Army's administrative convenience would be served by having only one contractor, that alone is not a basis for justifying a restrictive procurement. See New York Tel. Co. et al., 69 Comp. Gen. 61 (1989), 89-2 CPD ¶ 435.

Finally, the Army maintains that ASEP should be procured as part of a total package because the installation's need for the college coursework could change dramatically at any time based on unit demands and needs. We find this assertion unpersuasive. The history of this requirement for the past

several years indicates that the ASEP program has traditionally involved a minimal percentage of 7.3 to 8 percent of similar umbrella education contracts at Fort Stewart and that changes in the requirement simply have not occurred.

In sum, the Army has not provided any persuasive program reason for including ASEP under a total package solicitation with the other four educational programs in order to meet its minimum need. Since the Army requires the granting of college credit for ASEP and since that requirement eliminates the protester and other secondary institutions from competing for the vast majority of the total contract requirements, we find that the total package approach of this RFP is unduly restrictive.

The contracting officer responds to the protester's challenge to the requirement for accreditation by a regional or national accrediting institution recognized by COPA or DOE by pointing to inclusion of ASEP in the solicitation, which effectively limits award to a post-secondary institution. Since we find that the ASEP courses, for which college credit is to be given, should not be procured as part of a total package solicitation, and since there is nothing in the record indicating that the remaining courses are college-level courses which cannot be taught by secondary institutions, the justification offered by the Army for its accreditation requirement is insufficient.² Consequently, based upon the record before us, we find the accreditation requirement is unduly restrictive.

CONCLUSION

The protest is sustained. We are recommending that the RFP be canceled or amended, as appropriate, so that the Army either procures the ASEP requirement separately from the other educational programs encompassed by its umbrella contracting approach or issues a single revised solicitation for all programs permitting an individual award for each

²The Army also argues that its accreditation requirement is reasonable because it is drawn from Army Regulation (AR) 621-5, paragraph 1-11(d), which provides "[c]n-duty and off-duty instructional services will be provided by institutions accredited by institutional accrediting bodies recognized by [COPA] and [DOE]." We do not find the Army's reliance on AR 621-5 to be persuasive since it does not appear that this regulation was intended to encompass instruction at the secondary level.

program or a combination awards that would result in the lowest total cost for the government. Also, we recommend that any accreditation requirement bear a reasonable relationship to the secondary or post-secondary educational services to be acquired.

The protest is sustained.

Wilton J. Jocular
for Comptroller General
of the United States