



Comptroller General
of the United States
Washington, D.C. 20548

Denise Mitchell
145539

Decision

Matter of: Image Contracting, Inc.

File: B-245599

Date: December 27, 1991

George W. Stringe for the protester,
Marvin G. Koeltzow for Eckstine Electric Company, an
interested party.
Herbert F. Kelley, Jr., Esq., and Gerald P. Kohns, Esq.,
Office of the Judge Advocate General, Department of the
Army, for the agency.
Michael Burros, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency decision to use negotiation procedures, in lieu of sealed bidding procedures, for the repair and installation of a complex fire alarm reporting system is justified where the award will be primarily based on technical, non-price factors and where discussions may be needed.

2. When protesting the inadequacy of specifications, the protest must set forth a detailed statement of the specifications which are inadequate.

DECISION

Image Contracting, Inc., protests the solicitation for the repair and installation of a post-wide fire alarm reporting system at Fitzsimons Army Medical Center, Aurora, Colorado. The protester objects to the use of negotiated procedures in procuring these services and to the adequacy of the technical specifications in the RFP.

We deny the protest in part and dismiss it in part.

The Army's solicitation requested proposals for the removal of an existing fire alarm reporting system and the installation of a new system in over 100 buildings at the Fitzsimons Army Medical Center. The RFP required submission of technical proposals and the award primarily was to be

based on technical factors, with price and price related factors of secondary importance.

NEGOTIATED PROCUREMENT METHODS

Image Contracting alleges that a sealed bid procedure would permit the contracting agency to evaluate the qualifications of the bidders just as well as a negotiated process.

According to the Army, the installation of the fire alarm reporting system and its integration with existing equipment at the Medical Center is a complex endeavor that requires certain technical considerations be assessed prior to the award. This includes a determination by the agency whether the system proposed by each offeror is compatible with an existing main frame computer as well as consideration of staffing plans, safety parameters, availability of technical manuals, emergency response times and notification methods, availability of replacement parts, and qualifications of offerors.

In addition, the Army points out that it had solicited bids for the installation of a similar system in Fitzsimons' main hospital building. The solicitation was canceled when it became clear that the bidders did not understand the scope and complexity of the requirements. The government then sought the same services through negotiation. As a result of technical discussions, it became clear that the low offer was technically deficient, and the contract was awarded to the second low offeror.

Based on all of these facts, the Army states that there are significant factors other than price which must be considered in the selection of a contractor. In addition, because these factors may require technical discussions with the offerors, the Army determined that the negotiated method of procurement was appropriate.

The Competition in Contracting Act of 1984, 10 U.S.C. § 2304(a) (1988), eliminated the specific statutory preference for sealed bid procurement. The Act provides that agencies should use the competitive procedure or combination of procedures best suited to the circumstances of the procurement. Nevertheless, section 2304(a)(2)(A) requires the use of sealed bidding procedures where the following conditions specified are present:

"(i) time permits the solicitation, submission, and evaluation of sealed bids;

"(ii) the award will be made on the basis of price and other price-related factors;

"(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

"(iv) there is a reasonable expectation of receiving more than one sealed bid."

Negotiation procedures are appropriate if sealed bids are not required. The determination regarding whether to use negotiated or sealed bid procedures essentially involves an exercise of business judgment by the contracting officer.

In our prior decisions, we have found the use of negotiated procedures to be reasonable where an award will be based on technical considerations in addition to price and price related factors. Essex Electro Eng'rs, 65 Comp. Gen. 242 (1986), 86-1 CPD ¶ 92; TLC Sys., B-225871, Mar. 17, 1987, 87-1 CPD ¶ 297 (Air Force decision to conduct a fire alarm repair and installation procurement by negotiation rather than by sealed bid was reasonable).

We have also found the use of negotiated procedures reasonable where the agency has presented persuasive evidence that discussions were required. For example, we have not objected to this justification where technical proposals were requested because of historical performance problems, or to determine the offeror's technical approach, management organization, and prior experience in fulfilling the contract requirements. Military Base Management, Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720; A.J. Fowler Corp.; Reliable Trash Serv., B-233326; B-233326.2, Feb. 16, 1989, 89-1 CPD ¶ 166.

Here we do not think that the protester has shown the contracting officer's decision to use a negotiated procedure to be unreasonable in view of the complexity of the system requirements, the Army's historical experience with a similar procurement, the need to consider technical as well as price and price related factors, and the need for discussion of technical considerations.

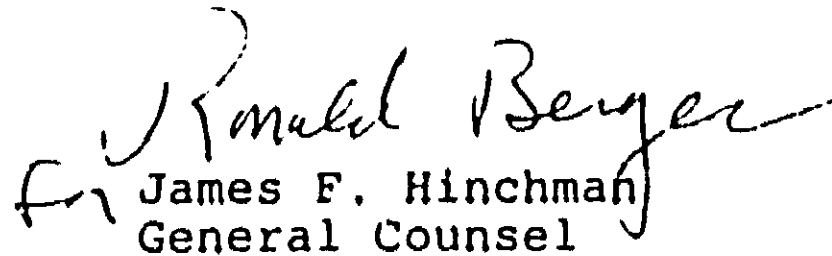
INADEQUATE SPECIFICATIONS

In its protest filed with our Office, Image Contracting also maintains that the technical specifications for the project are inadequate. It does not, however, state which specifications are objectionable. In response to this allegation, the Army notes that 1) based on a prior inquiry by Image Contracting it has already amended the solicitation, 2) the protester provides no specific information on which technical specifications are deficient and how they are deficient, and 3) three other offerors apparently found the specifications sufficiently detailed and complete to submit proposals. The Army urges that an

assertion that specifications are deficient, without more, will not support a protest. We agree.

Our rules require that a protest set forth a "detailed statement of the legal and factual grounds of a protest." 4 C.F.R. § 21.1(c)(4) (1991). This requirement is intended to provide us and the agency with a sufficient understanding of the grounds for the protest and with an opportunity to consider and resolve the matter without disrupting the orderly process of government procurement. See Sector Technology, B-239420, June 7, 1990, 90-1 CPD ¶ 536. The protest submitted by Image Contracting does not contain enough specific information to allow us to determine which specifications it considers deficient much less how those specifications are deficient. This aspect of its protest is therefore dismissed.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel