



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

Curcio

146466

Decision

Matter of: Facilities Management, Inc.

File: B-247698.2

Date: April 24, 1992

Barry A. Furman, Esq., Furman & Halpern, for the protester.
Diane L. Celotto, Esq., Department of the Navy, for the
agency.

Mary G. Curcio, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that does not provide a detailed factual and
legal basis is dismissed.

2. Protest that the awardees did not accurately disclose
information concerning their ability to perform contract
concerns the agency's affirmative determination of the
awardees' responsibility which the General Accounting Office
will not review absent a showing of possible fraud or bad
faith, or misapplication of definitive responsibility
criteria in the solicitation.

DECISION

Facilities Management, Inc. (FMI) protests the award of two
contracts under request for proposals (RFP) No. N00140-91-R-
0483, issued by the Department of the Navy for nursing
services at the National Naval Medical Center.

We dismiss the protest.

The RFP was issued on May 29, 1991; 29 offerors responded to
the RFP by the July 22 closing date for the receipt of
proposals. The Navy evaluated the proposals, established a
competitive range, and held discussions with, and requested
best and final offers (BAFO) from, those offerors that were
included in the competitive range. After the BAFOs were
evaluated, the Navy made award to Nurse Works, Inc. and
Nurses, Inc. On March 2, FMI protested the award decision
to the Navy in a protest which raised four issues. On April
6, after the Navy dismissed all four bases of protest, FMI
submitted its protest to our Office. In its protest here,
FMI incorporated the four bases of protest set forth in its
protest to the Navy. FMI also asserted that the Navy
prematurely dismissed its protest before it responded to
FMI's request for information under the Freedom of

Information Act (FOIA), 5 U.S.C. § 552 (1988). FMI complains that because the Navy did not respond to the FOIA request, FMI was denied the opportunity to adequately supplement its protest.

As its first basis of protest, FMI complained that it prepared its offer based on its belief that the solicitation required that nurses be paid no less than \$26.74 per hour. FMI has not explained, however, specifically what its complaint is in this regard or how this belief acted to its prejudice. Accordingly, there is no basis for us to consider this aspect of the protest. In any case, in its response to FMI's agency-level protest, the Navy specifically pointed to a solicitation provision which demonstrated that there was no minimum wage required to be paid to nurses and that in fact the \$26.74 per hour was a cap on the salary that could be paid.¹ Despite this fact, FMI has not pointed to anything that establishes the \$26.74 as a minimum wage for nurses.

FMI also protested that at least one awardee under the solicitation was not paying its nurses the minimum wage required by the RFP. Since FMI has neither pointed to any provision in the solicitation that established a minimum wage requirement, nor addressed the agency's position that no such requirement in fact existed, we will not consider this issue.

FMI next protests that the successful offerors did not make a full and accurate disclosure of matters affecting their financial ability to perform. Whether the offerors have the financial capability to perform the contract concerns the contracting officer's affirmative determination that the awardees are responsible firms. Mechanical Resources, Inc., B-241403, Jan. 30, 1991, 91-1 CPD ¶ 93. In this case, the contracting officer has determined that the awardees are responsible. Our Office will not review the determination in the absence of information that the contracting officer acted in bad faith or fraudulently or failed to apply definitive responsibility criteria. Id. Since none of these conditions is present here, we will not consider this issue.

Finally, FMI complains that the Navy arbitrarily rejected the firm's proposal based on information that should not have been considered. Again, however, FMI has not explained specifically what underlies this basis of protest. Accordingly, since there is no detailed statement of the legal and factual grounds on which this complaint is based, it is dismissed. See Bid Protest Regulations, 4 C.F.R. §§ 21.1(c), (f) (1992).

¹This cap was subsequently raised to \$37.33 per hour.

FMI also asserts that it is unable to pursue its protest because the agency has failed to respond to the firm's FOIA request. Our Office, however, has no authority under FOIA regarding the release of documents in the possession of an agency. All Am. Moving and Storage, B-243630; B-243804, July 8, 1991, 91-2 CPD ¶ 32. Rather, the protester must pursue its disclosure remedy under the provisions of the Act. If, as the result of its FOIA request, FMI receives information which demonstrates that FMI has a valid basis of protest, it may then submit a protest to our Office. Assuming it is timely and otherwise meets the requirements for our review, we will consider it at that time.

The protest is dismissed.

Christine S. Melody
Christine S. Melody
Assistant General Counsel