



Washington, D.C. 20548

## Decision

**Matter of:** Virginia Blood Services

**File:** B-259717

**Date:** April 4, 1995

Sharon G. Hyman, Esq., and William F. Young, Esq., Hunton & Williams, for the protester.

Page Gambill for the American Red Cross, an interested party.

William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.

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### DIGEST

Agency decision to use sealed bidding procedures instead of competitive negotiation to procure supply of human blood is justified where the agency reasonably concludes that there is no reason to conduct discussions with offerors or to consider factors other than price in choosing a contractor.

### DECISION

Virginia Blood Services (VBS) protests the issuance of invitation for bids (IFB) No. 652-109-95 by the Department of Veterans Affairs (VA), Hunter Holmes McGuire Veterans Administration Medical Center in Richmond, Virginia, for the supply of blood, blood products, and related services. VBS contends that the agency is improperly utilizing the sealed bid method of procurement.

We deny the protest.

Under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(a)(2)(B) (1988), agencies must use negotiated procedures if sealed bids are not appropriate. Here, the protester argues that the quality of services to be provided--specifically, the procedures and safeguards used in providing the services, the nature and location of facilities, and the offerors' personnel, experience, and past performance--should be a key factor in the agency's award determination. Only through negotiated procedures, VBS asserts, can the agency take such issues into account in choosing a supplier.

While CICA eliminated the previous statutory preference for sealed bidding, agencies must still solicit sealed bids if (1) time permits; (2) award will be made on the basis of price and price-related factors; (3) discussions are unnecessary; and (4) the agency reasonably expects to receive more than one sealed bid. Eagle Fire, Inc., B-257951, Nov. 30, 1994, 94-2 CPD ¶ 214. Negotiated procedures are only authorized if sealed bids are not appropriate under 41 U.S.C. § 253(a)(2)(A). See 41 U.S.C. § 253(a)(2)(B); UXB Int'l, Inc., B-241028, Jan. 16, 1991, 91-1 CPD ¶ 45. The determination of which competitive procedure is appropriate essentially involves the exercise of business judgment by the contracting officer. Tennessee Apparel Corp., B-253178.3; B-253178.4, Sept. 21, 1993, 94-1 CPD ¶ 104.

VBS argues that the quality and safety controls and standards employed by potential contractors should be considered and evaluated, in order to ensure the quality of blood supplies; VBS also contends that it will be necessary to discuss proposals with the offerors in order to determine which offeror provides the best value to the government. VBS raises a number of considerations: whether offerors will allow donors who have tested positive for human immunodeficiency virus (HIV) subsequently to reenter the donor pool; offerors' procedures for labeling blood components, screening donors, and quarantining products during testing; and their plans for taking corrective action. VBS also argues that the location of laboratory services can affect delivery time and should be considered in the award decision and that offerors should provide experienced, trained personnel and adequate back-up blood supplies. VBS argues that the agency needs to compare and discuss these factors with offerors and should be prepared to pay a price premium to obtain higher quality services.

The solicitation statement of work (SOW) contains provisions addressing most of these concerns. For example, paragraph A of the SOW requires routine delivery within 12 hours and emergency delivery within 45 minutes. Paragraph B, Collection, contains standards for collection, storage, and shipping; paragraph C addresses processing. Subparagraph C.1 requires approval of the Center's medical director prior to acceptance of any blood testing positive for HIV; that subparagraph specifically states that blood from donors previously testing positive for HIV will only be acceptable under the guidelines established by the Food and Drug Administration (FDA) and the American Association of Blood Banks (AABB). Paragraph D requires labeling in compliance with AABB and FDA standards and regulations; paragraph E contains standards for delivery and transportation.

The protester in essence argues that the agency should evaluate each offeror's capability to meet the specifications, and can do so only through using negotiated procedures, including discussions with the offerors. The matters identified by VBS as necessary for discussions generally concern a company's capacity or capability to perform at a given price. Such matters typically involve offeror responsibility, and where an agency determines that it can adequately resolve responsibility-related matters through a pre-award survey or other contacts with the company and without resort to separate evaluation factors reflecting responsibility-type concerns, the agency is not required to use negotiation procedures in lieu of sealed bidding. See Tennessee Apparel Corp., supra; Advance Gear & Mach. Corp., B-228002, Nov. 25, 1987, 87-2 CPD ¶ 519.

In this instance, the agency has determined that its needs are sufficiently identified and described in the SOW to make it unnecessary to enter into discussions, for the purpose of ascertaining how the offerors propose to meet the agency's needs; that it can, through the process of making its responsibility determination, satisfy itself as to the offeror's understanding and ability to meet the SOW; and that inasmuch as it can assure the quality of performance in this way, there is no need to consider any factor apart from price in selection of an offeror. Accordingly, we have no basis to find the contracting agency's use of sealed bidding to be improper.

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel