



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Industrial Maintenance Services, Inc.

File: B-261671; B-261847; B-261840

Date: October 3, 1995

George Papaioanou, Esq., Smith, Currie & Hancock, for the protester.
Glenn L. Blackwell, Esq., Rosenthal and Ganister, for Tri-Ark Industries, Inc.; Walter N. Prince, for Executive-Suite Services, Inc.; and Jackie L. Damron, for J&L Janitorial Services, Inc.; Raul Torres, for Integrity Management Services, Inc.; Dan Kalpin, for Harry A. Stroh Associates, Inc.; Margaret Alvarez, for Teps, Inc.; and William M. Grace, for Grace Industries, Inc., interested parties.
Col. Nicholas P. Retson, Capt. Bryant S. Banes, and Angela P. Bowers, Esq., Department of the Army, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protests that requirement in solicitations for offerors to have experience performing housekeeping services in healthcare or patient care environments for 24 months within the last 36 months unduly restricts competition are denied where agency reasonably concluded that the requirement is needed to ensure that offerors' performance of these services in these environments demonstrated compliance with federal regulations and hospital accreditation requirements which were implemented within the last 3 years.

DECISION

Industrial Maintenance Services, Inc. protests the terms of Department of the Army request for proposals (RFP) Nos. DADA10-95-R-0033 and DADA10-95-R-0040, and invitation for bids (IFB) No. DABT02-95-R-0005, for hospital housekeeping services.

We deny the protests.

The three solicitations, as relevant to the protests, required that offerors have experience performing hospital housekeeping services in vital patient care areas for 24 months within the previous 36 months from the dates initially established for receipt of proposals/bids.

Industrial objects to the experience requirement in the solicitations as too restrictive for it to submit an offer. Industrial asserts that the requirement unduly restricts competition by allowing only incumbent contractors or firms with recent government contract experience in hospital housekeeping services to compete; Industrial asserts that it is qualified to perform the contracts since it has performed housekeeping services for 29 years, including eight federal housekeeping service contracts, but that it lacks experience performing these services within the last 3 years.

The Competition in Contract Act of 1984 (CICA) requires that solicitations specify an agency's needs and solicit offers in a manner designed to achieve full and open competition, 10 U.S.C. § 2305(a)(1)(A)(i) (1994), and allows restrictive provisions only to the extent necessary. 10 U.S.C. § 2305(a)(1)(B)(ii). Where a solicitation includes requirements that restrict the ability of offerors to compete, we will review the record to determine whether the requirements imposed were reasonably related to the agency's minimum needs. See Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67. Further, with respect to solicitation provisions relating to human safety, an agency has the discretion to set its minimum needs so as to achieve not just reasonable results, but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc., B-250389, Jan. 29, 1993, 93-1 CPD ¶ 79, aff'd, B-250389.2, June 21, 1993, 93-1 CPD ¶ 472.

The requirement here is reasonably related to the agency's minimum needs. The Army reports that the requirement for offerors to have performed housekeeping services in the healthcare or patient care environment for 2 years within the past 3 years was needed to provide reasonable assurance that prospective contractors performing cleaning services in the hospitals had demonstrated experience in maintaining aseptic conditions in compliance with Occupational Safety and Health Administration (OSHA) regulations implemented 3 years ago. Specifically, the new OSHA regulations include the Bloodborne Pathogens Standard, 29 C.F.R. § 1910.1030 (1994), which requires employers to establish procedures to protect employees who stand a reasonable risk of occupational exposure to blood and infectious materials, and the Hazard Communications Standard, 29 C.F.R. § 1910.1200, which requires employers to establish procedures to protect employees against hazardous chemicals in the workplace. Further, the Army reports that the recent experience requirement was needed to show the contractor had an effective track record performing housekeeping services, consistent with the requirements established in 1995 by the Joint Commission on Accreditation of Hospitals (JCAH), since failure to perform in accordance with these requirements could result in costly fines, citations, and loss of hospital accreditation.

Although the requirement may eliminate from the competition otherwise qualified firms, such as Industrial, we think it is reasonable for the Army to anticipate that a firm which has performed housekeeping services in accordance with the OSHA and

JCAH requirements will more likely have a complete and up-to-date understanding of the requirements than a firm that has no performance experience under the requirements, even though that firm may have a greater number of years of general experience. The mere fact that Industrial will be unable to compete due to the requirement, while unfortunate, is not a basis for challenging the requirement, since we conclude that it was a reasonable means of assuring compliance with the regulations, which concern the safety and welfare of hospital personnel and patients. See Silco Eng'g & Mfg. Co., B-250012.6, May 7, 1993, 93-1 CPD ¶ 372.

The protests are denied.

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