



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-States Service

File: B-232322

Date: November 3, 1988

DIGEST

1. Protester has not met burden of affirmatively proving its case where it does not rebut the agency's specific responses to the protester's allegation that the solicitation was defective because it failed to apprise all offerors regarding the operability, suitability for intended use, and condition of government-furnished property.
2. Where all offerors submit proposals on the basis that certain equipment will be operational, the fact that, after award, delay in obtaining certificate might (and in fact does) prevent use of equipment does not render solicitation defective for failure to disclose this possibility.
3. Protester's new and independent grounds of protest are dismissed where the later raised issues do not independently satisfy the timeliness rules of General Accounting Office's Bid Protest Regulations.

DECISION

Tri-States Service (TSS) protests various alleged defects in request for proposals (RFP) DAJA37-88-R-0239, issued by the Army Contracting Center, Europe, for operation of the government-owned contractor operated (GOCO) laundry and dry cleaning facility at Bad Kreuznach, West Germany.

TSS, the incumbent, contended that without amendment to the RFP, offerors would be unable to make proposals on an equal basis.^{1/}

^{1/} The contract has been awarded notwithstanding the protest based on the government's determination that urgent and compelling circumstances significantly affecting the interests of the United States would not permit waiting for the outcome of the protest. See 4 C.F.R. § 21.4(a) (1988).

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

The RFP required offerors to furnish monthly and annual prices for operating the GOCO plant as well as seven pickup points at various Army installations in and around Bad Kreuznach for a period of 1 year, with options for 2 additional years. Offerors were provided with a list of the government-furnished property (GFP) and its condition as well as workload estimates to assist in formulating their offers. TSS's allegations that the RFP is defective primarily concern the accuracy of this information.

TSS first claims that the RFP is defective because it does not inform all offerors that the GFP dry cleaning machines cannot be used. Use of the machines was halted during TSS's performance of the prior contract, when it was discovered that a toxic by-product of dry cleaning, perchloroethylene, was leaking through the sewer system into the soil and ground water, a violation of German environmental laws. Perchloroethylene will seep through untreated concrete and sealing the floor on which the dry cleaning machines rest is one method of avoiding a violation of the law. Since the Army has not sealed the floor, TSS concludes that operation of the machines would violate the law, and that by providing unusable GFP, the Army has failed to fulfill the RFP's requirement that GFP be "suitable for its intended use." In a subsequent filing, TSS further argued that all offerors should have been made aware that these machines could not be used, so that they might all "bid from the same pair of shoes."

The Army replies that it has acquired new water purification equipment and provided steel catch basins under the backs of the machines, which the German Water Council has advised can be used in lieu of sealing the entire concrete floor. The Army also reports that after "purification," waste water contains levels of toxic chemicals well within the legal limits. Although it has not yet obtained a certificate allowing use of the machines, the Army expects such certification and has allowed the new contractor to subcontract the dry cleaning work until the certificate is obtained.

While TSS apparently believes that the Army's failure to seal the floor renders the machines unusable, the Army has countered that the measures it has taken have been unofficially approved by the German Water Council and it expects official approval soon. TSS has not rebutted the agency's position in this regard. As such, it has not met its burden of proof, and its protest on this ground is

denied. See Automation Management Corp., B-224924, Jan. 15, 1987, 87-1 CPD ¶ 61. Further, as a general rule, a procuring agency need only give sufficient detailed information in its solicitation to enable offerors to compete intelligently and on a relatively equal basis. See T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435. The agency anticipated a fully operational dry cleaning plant by the time of award, and provided sufficient information to that effect. TSS itself admits that all offerors submitted proposals on the same basis: performance of the dry cleaning in the GOCO facility. Thus, we find no defect or prejudice in failing to advise offerors that some equipment might not be approved for operation at the time of award.

TSS next alleges that the Army, contrary to the provisions of the RFP, failed to describe the condition of all GFP, thus hampering offerors in the preparation of proposals. The Army admits that 6 of 115 items on the original equipment condition list had no statement of condition. However, at the preproposal conference TSS and the other offerors were advised that all GFP would be operational at award, except as specifically stated otherwise. Offerors were also furnished a new list detailing on one page all the equipment that was nonoperational or in need of major repair, with all operational equipment detailed on the remaining pages. Under the circumstances, it appears that all offerors were adequately apprised of what equipment was operational and what was not, prior to submission of initial proposals. As such, the RFP provided sufficient detailed information for offerors to prepare proposals on a relatively equal basis. T&A Painting, Inc., B-229655.2, supra.

TSS next claims that two provisions of the RFP are contradictory, in that one provision allows for a contract adjustment to cover employees' severance pay, while the other disallows such an adjustment. The Army responds that the provisions are not contradictory because they refer to different situations in which severance pay would be required to be paid and simply make plain who will be responsible for paying it. Paragraph H-13 advises offerors that no adjustment in contract price will be made for severance pay attributable to transfers of employees at contract expiration or commencement. Paragraph H-16 advises that if, due to requirements changes during the contract, a particular GOCO facility is closed and employees must be separated, or if the successor contractor is not required by the Army to hire all of the predecessor's employees, severance pay can be reimbursed pursuant to a contract price adjustment. In order to make the difference in application

even clearer, the Army amended the RFP to rewrite H-13. In its comments, however, TSS maintains that the contradiction remains and poses a hypothetical situation as support for its position.

We agree with the Army's interpretation that the provisions are not contradictory. The provisions set forth those circumstances where the contractor must absorb severance pay costs and when the Army must adjust the contract price as reimbursement for severance pay. Thus, we disagree with TSS that its hypothetical situation is not adequately covered by the provisions of H-13 and H-16.

TSS also alleges defects in solicitation provisions regarding the allowability of overtime and restrictions on use of government facilities.^{2/} The Army amended the RFP to address the alleged defects and TSS has not challenged the efficacy of those amendments. Thus, the Army's action has rendered these issues academic. American Overseas Book Co., Inc., B-227835, July 17, 1987, 87-2 CPD ¶ 60.

After the closing date for proposals, TSS learned that the Army intended to discontinue the laundering of oil and grease soaked rags in the GOCO facility in order to comply with a German law prohibiting discharge of oil and grease into the sewer system. The Army decided it would not be cost effective to filter waste water containing oil and grease since new rags would cost less than laundered ones. TSS protested that deletion of this part of the work should be reflected in an amendment to the solicitation since it is "conceivable that some [offerors] were aware" of the deletion prior to the August 24 closing date, and thus "were able to adjust their prices downward."

TSS has submitted no evidence to support its speculation that some offerors may have known of the deletion prior to the closing date. TSS, as incumbent, was most likely to have been among the first recipients of the pertinent directive, yet it did not receive it until August 30,

^{2/} TSS also suggested that a provision of the RFP, advising offerors that they must comply with all laws and regulations, be supplemented by adding specific references to environmental laws. The Army responded that the provision was sufficient as stated and explained that specifying these laws might serve to "diminish the force" of other laws. Since TSS did not address this matter in its comments, we consider this issue abandoned. Pac Ord, Inc., B-224249, Jan. 5, 1987, 87-1 CPD ¶ 7.

6 days after closing. Likewise, the awardee states that it was unaware of the directive and would not have changed its offer if it had been aware. Since the protester's allegation is mere speculation, which is insufficient alone to provide the basis for sustaining a protest, this ground for protest is dismissed. American Identification Products, Inc., B-227599, July 13, 1987, 87-2 CPD ¶ 42.

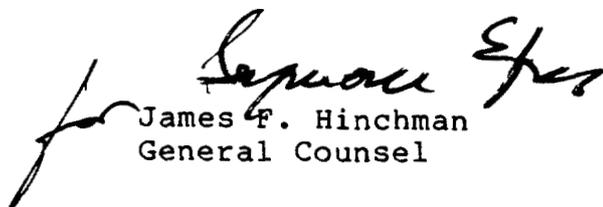
Finally, in addition to its comments on the agency report, TSS raises new grounds of protest with regard to the Army's decision to stop laundering oil and grease soaked rags. TSS now claims that laundering work uniforms from the Army Maintenance Depot at Mainz also would violate the German environmental laws. As such, it argues that the potential decrease in workload (approximately 1,500 pieces per week) combined with the reduction attributable to the rags, constituted a significant reduction in revenue and thus required that all offerors be advised of the matter and permitted to submit revised proposals.

TSS's newly raised protest contentions are untimely. Our Bid Protest Regulations require that a protest be filed within 10 working days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Where a protester initially files a timely protest and later supplements it with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements. See Little Susitna Co., 65 Comp. Gen. 651 (1986), 86-1 CPD ¶ 560. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Id.

As incumbent, TSS was well aware of the requirements for laundering these work uniforms and could have raised this matter at the same time it raised concerns about the deletion of the rag requirement. Moreover, there is no evidence to indicate, to the extent laundering these uniforms may violate German law, that the Army has not or will not make provision for complying with the law apart

from deleting this requirement. Thus, TSS's speculative allegations are insufficient alone to provide the basis for sustaining a protest. American Identification Products, Inc., B-227599, supra.

Accordingly, the protest is denied in part and dismissed in part.

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General Counsel