



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-177206

May 22, 1973

30757

Hewes Engineering Company, Inc.
P. O. Box 2245
Poquoson, Virginia 23362

Attention: Mr. F. W. Hewes
President

Gentlemen:

We refer to your telefax of October 5, 1972, and subsequent correspondence, concerning your protest under Letter Request for Technical Proposal (LRTP) No. 74-USAF/DAPS-1, issued on September 22, 1972, by the Department of the Air Force as the first step of a two-step procurement to procure services and facilities for complete management and operation of the Department's Publications Distribution Center, Baltimore, Maryland, from July 1, 1973, to June 30, 1974.

You maintain that the procurement does not meet the requirements in Armed Services Procurement Regulation (ASPR) 2-501 for two-step formal advertising, since complete specifications allegedly exist for the operation and the required services are not technical in nature; that proposals should not be evaluated on the basis of understanding of the work requirements and effective management capability since these factors relate to a firm's responsibility and not to responsiveness to technical requirements; that the LRTP provision requiring the contractor to observe the present contractor's operations for 90 days is unreasonable; that the provision making the TMO the final arbiter on all transportation matters creates an improper employer-employee relationship; and that the LRTP does not contain the clauses applicable to service contracts under the Service Contract Act of 1965, 41 U.S.C. 351, thereby making it impossible for the contractor to submit an adequate first-step proposal.

The LRTP stated that offerors were required to submit technical proposals under the first step of the procurement which would clearly show that the offeror had (1) a thorough and complete understanding of the work requirements, and (2) an effective management capability to accomplish the work and discharge the responsibilities outlined.

PUBLISHED DECISION
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The statement of work for the operation was set forth in Exhibit II of the LRTP and provided, among other things, that the contractor, under the cognizance of the Department's Traffic Management Office (TMO) at the Center, would normally provide the clerical, administrative, and technical tasks for the receipt and movement of materials; that the TMO would make final determinations on all transportation and traffic management matters including modes of transportation and carriers to be used, certification of demurrage/detention charges, distribution of completed Government Bills of Lading, proper packaging and labeling of shipments, Military Airlift Command (MAC) shipment clearance, and issuance of Certificate in Lieu of Certified True copies of Government Bills of Lading; and that the TMO would be the first point of contact for all transportation and traffic management advice or guidance required by the contractor. The LRTP further provided that prospective offerors were required to observe the present contractor's operations for a 90 day period prior to July 1, 1973, in order to understand thoroughly all aspects of the work.

Offerors were also advised that their proposals should follow a proposed outline, which was set forth on page 4 of the LRTP in pertinent part, as follows:

(1) Organizational and Functional Chart for the proposed operation of the Center.

* * * * *

(2) History of Company and Relationship of Center to other Branches or Divisions of the Company.

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(3) Experience

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(4) Experience of Key Personnel

(5) Personnel Management Plan

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(6) Automatic Data Processing Equipment (ADP):

Detailed descriptions of the Automatic Data Processing Equipment (ADPE) proposed for use, including the Manufacturer's Name, Model Number, List of Components, and all Supporting Equipment. If it is proposed to use different ADP equipment than is presently being used, include in the Technical Proposal your detailed conversion plans.

(7) System Control and Management: Detailed instructions, policies, and standard operating procedures that personnel would use to:

(a) Process AF Form 124, DD Form 1629, DD Forms 1149, and DD Forms 1142.

* * * * *

(8) Equipment: A list of equipment, other than AWP and Supporting Equipment and Government Furnished Property, which the offeror proposes to use in the Center operation.

In reply to your contention that the procurement should not be made under two-step formal advertising procedures, the Air Force points out that ASPR 2-501 provides that the two-step method is useful in procurements requiring technical proposals where inadequate specifications preclude the conventional formal advertising; that the regulation also states that the word "technical" has a broad connotation and includes engineering approach, special manufacturing processes and special testing techniques; and that it further provides that management approach, manufacturing plan, or facilities to be used may also be clarified in the technical proposals. Relating these provisions to the facts here, the Air Force states that the Government was unable to adequately specify its requirements in the areas of automatic data processing equipment and software for the operation, notwithstanding its ability to state its requirements in other work areas, and that it believes the former areas must be considered "technical" under the broad connotation of that term as used in ASPR 2-501.

We have held, in this connection, that an agency's decision to use two-step procedures because it is unable to adequately specify its technical needs to meet the requirements of a single-step procurement is one within the authority of the agency, and such decision, when supported by the facts, will not be questioned. See B-174737, April 12, 1972. Based on our review, we cannot conclude that the Air Force improperly decided to use two-step procedures on the basis that it lacked an adequate technical description of the data processing equipment, and the attendant software, which will be required to successfully operate the center.

Concerning your collateral objection that this method of procurement will give the present contractor an unfair advantage because of the "climate and closeness" of "being on the job," the Air Force states that this would be true in any type of procurement. In this regard, we are unaware of any restriction on the Government's selection of the method of procurement merely because an incumbent contractor may have a greater understanding of the work requirements. Consequently, we see no basis for questioning the validity of two-step procedure because of this circumstance.

With respect to your allegation that the requirement for proposals to demonstrate a thorough understanding of the work requirements and an effective capability to do the work relates to matters of responsibility which should not be considered by the Air Force in evaluating first-step proposals, it is not uncommon in procurements involving the furnishing of services to require that offerors show in their proposals an understanding of the work requirements, and the prior experience, qualifications and capabilities of the offerors' proposed organizations which will perform the work. When required to be set out, these factors, which also relate to a proposed contractor's responsibility, are generally regarded as proper for consideration in a comparison evaluation of the proposals received. See B-176538, January 12, 1973. The contracting officer advises that these general standards will be used in deciding how well an offeror has scored in the areas set forth in the proposed outline of data to be included in the technical proposal, and that the responsibility of the apparently successful offeror will not be formally determined until after second-step bids have been received. We must therefore conclude that the criteria set out in the LRTP are appropriate for evaluating the first-step proposals.

Concerning your allegation that it is unreasonable to require prospective offerors to observe the incumbent's operations for the 90 day period prescribed in the LRTP, the Air Force has recently advised this Office, in response to your objection, that it has reduced the observation period to 30 days. On the present record, we cannot conclude that a 30 day observation period is inappropriate considering the complexity of the work requirements.

With respect to your argument that the provision making the TMO the final arbiter on all transportation matters would create an improper employer-employee relationship between the Government and the contractor, the administrative report states that it is not the intent of the Air Force to actively engage in the daily routine work of the contractor, but that its traffic management officer will be present to render assistance in resolving transportation problems. However, in this regard, the Air Force has recently advised this Office that the Statement of Work has been amended to delete the statement that the TMO would make final determinations on all transportation and traffic management matters.

Our Office has noted that the Civil Service Commission has taken the position that a service contract is to be questioned if the terms of the contract permit or require detailed Government supervision over the contractor's employees. 51 Comp. Gen. 561, 563 (1972).

Based on our review of the amended statement of work concerning the duties of the TIO, we cannot conclude that the LRTP permits or requires detailed Government supervision over the contractor's employees as you suggest.

With respect to your statement that the LRTP does not contain the clauses required by the Service Contract Act of 1965, the Air Force states that the required services are covered by the act and that the Invitation for Bids (IFB) which will be issued under the second step of the procurement will cover bidders' responsibilities under the act.

Concerning your statement that prospective bidders would not be able to submit adequate first-step proposals without this information, we must point out that the Service Contract Act requirements primarily relate to the costs a contractor will incur in meeting the minimum levels of compensation, and related fringe benefits, for personnel employed under the contract. See ASPR 12-1004(a). In this regard, ASPR 2-503.1(a)(v) states that the step-one LRTP shall contain a statement that the technical proposals shall not include prices or pricing information. Since the regulation requires that an offeror's first-step proposal omit pricing information, we do not believe an offeror would need to know the Service Contract Act requirements in order to prepare his first-step technical proposal. Consequently, we cannot disagree with the Air Force's intention to place these requirements in the second-step IFB.

You also question the right of the Air Force to adjust the compensation paid to the contractor for stock shortages and for failure to consolidate shipments. You further question the agency's right to require the contractor to place certain markings on shipping documents. In this regard the contracting officer has replied as follows:

The contractor is required to protect Government property in accordance with sound Industrial practices. Surveillance of incoming and outgoing personnel is the responsibility of GSA and removal of Government property requires written authorization.

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Lack of consolidation could result in excessive transportation costs; therefore consolidation must be enforced.

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B-177206

The statement "will be required to show his identity on each document" or "container" has been set forth for sound reasons. The statement reflects sound management practices and is included as a means of Quality Assurance by the contractor and the contracting officer.

Based on our review, we cannot conclude that the Air Force unreasonably determined that these requirements are necessary for proper contract administration.

For the reasons set forth above, your protest must be denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States