



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tumpane Services Corporation

File: B-242221

Date: April 12, 1991

Ralph L. Kissick, Esq., Zuckert, Scoutt & Rasenberger, for the protester.

Kevin J. Bovee for Management Technical Services, and Patrick R. Manley for PBM Construction, interested parties. Paul M. Fisher, Esq., Department of the Navy, for the agency. John Formica, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation for military family housing maintenance subjects bidders to unreasonable financial risk because it requires the submission of a lump-sum price for much of the work, rather than breaking out each element of work separately for payment on a unit price basis, is denied where the solicitation limited the amount of work which the contractor could be required to perform under the lump-sum portion of the contract, and contained sufficient information for bidders to compete intelligently and on a relatively equal basis.

2. Disparity in bid prices received does not by itself establish the existence of a solicitation defect.

DECISION

Tumpane Services Corporation protests the terms of invitation for bids (IFB) No. N62474-90-B-3727, issued by the Department of the Navy, for military family housing maintenance at the Point Mugu Naval Air Station, California. Tumpane maintains that the IFB is defective because it imposes unnecessary risks on the contractor and thus unduly restricts competition.

We deny the protest.

The solicitation is a follow-on to a contract for similar services which the protester is currently performing. It was issued on June 8, 1990, with an amended bid opening date of December 5. The work solicited includes virtually all tasks

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related to the routine maintenance of the 883 military family housing units at the Naval Air Station, as well as change of occupancy maintenance^{1/} and work to be performed as the result of service calls for a base period and 4-option years. Major repair work, and construction work where the estimated labor and material costs for a single incident of repair exceeds \$2,000, are not within the scope of the solicitation.

The solicitation required a single lump-sum price to cover all of the required services for a single year except those services which were listed in the IFB schedule as indefinite quantity items. For example, for several of the maintenance tasks the IFB stated that the tasks must be provided within the yearly total fixed price unless the work exceeds a specified amount, then the items are to be performed for unit prices included in the accepted bid. To guide bidders in pricing the work in excess of specified amounts, the IFB schedule provided the estimates for that work. An example of one such item is wooden fence replacement. Fence replacement of 5 linear feet or less per repair would be within the ambit of the lump-sum portion of the contract with performance required without additional compensation, while the work would be ordered under the indefinite quantity provisions of the solicitation if the repair were in excess of 5 linear feet, and the contractor paid on the basis of its unit price.

Tumpane timely protested the terms of the IFB 2 days before bid opening. The Navy, however, proceeded with opening and received 13 bids including one from the protester. The low total bid was \$3,929,370. Tumpane's total bid of \$6,389,941 was twelfth low.

The protester argues that 13 of the items of work which are included in the IFB's lump-sum price scheme should be priced on a unit or indefinite quantity basis as they represent work which is unpredictable in scope and frequency and the agency has not made available sufficient historical data to permit the formulation of a meaningful bid. The protested items represent such work as the replacement of wooden fences, parquet floors, carpet and partial painting, as well as galvanized pipe replacement and bathroom heat/exhaust fan maintenance. In addition, the protester argues that the solicitation terms concerning change of occupancy maintenance are unreasonable because they require that the work on the first ten housing units issued to the contractor within a given work week be completed within 2 days. Finally, Tumpane concludes that the range of bids received, from a low of \$3,929,370 to a high of \$8,271,625, shows that the defects

^{1/} Change of occupancy maintenance refers to the work needed to make a unit ready for occupancy.

\$3,929,370 to a high of \$8,271,625, shows that the defects that it has pointed out in the solicitation are in fact valid and therefore the firms were not bidding on a common basis.

Of the 13 items of work protested here, 11 items, such as the replacement of wood fencing, were to be priced on a lump-sum basis up to a designated limit and at that point became indefinite quantity items. The remaining two items --galvanized pipe replacement and bathroom heat/exhaust fan maintenance--are pure lump-sum entries. We will concern ourselves first with the lump-sum/indefinite quantity items.

LUMP-SUM/INDEFINITE QUANTITY ITEMS

Tumpane asserts that the solicitation does not contain sufficient data on which to base the lump-sum portion of its bid. The protester points out that the solicitation does not contain historical data pertaining to the scope or frequency of the service calls that have been made in the past for each of the particular tasks represented by these line items. Nor, according to the protester, does it contain estimates of the agency's future expectations for this work. The protester says that the necessary information is available since these particular items of work have been included as "pure" indefinite quantity items under the contract on which it is currently performing. The protester also refers to the fact that these items are currently indefinite quantity items in support of its position that it is reasonable and practicable for the agency to administer these items on a work order indefinite quantity basis. The protester concludes that the agency must either provide specific and accurate historical data for each of these items of work as well as indicate the quantity of work anticipated during each year of the contract or amend the solicitation so that these items are covered solely by the indefinite quantity portion of the solicitation.

The agency responds that it has reviewed the information and historical data available from its records concerning the lump-sum/indefinite quantity items, and while it has not been able to extract information concerning work orders for particular task items, it has included the information to which it had access. The agency also explains that it structured the solicitation so that the contested items would be covered in part by the lump-sum portion of the contract in order to lessen the agency's administrative burden.

While bidders must be given sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis, there is no requirement that a solicitation be so detailed as to eliminate all performance uncertainties and risks. Aldo Food Serv., B-233697.3, Apr. 25, 1990, 90-1 CPD ¶ 418. Some risk is inherent in most types of contracts, and firms are expected, when computing their bids, to account for such risk. Id. In fact, it is

within the agency's discretion to construct a solicitation so that the resulting contract imposes the maximum reasonable risk upon the contractor with the minimum administrative burden upon the agency. Bear Dredging Corp., B-239952, Oct. 12, 1990, 90-2 CPD ¶ 286.

Under the circumstances here, we do not believe that the solicitation's failure to provide the specific information requested by the protester prevented the competitors from formulating meaningful bids or placed an undue risk on them. The solicitation included a detailed description of the maintenance and service tasks required, an overall map of the facility, the number and location of the housing units, overall and individual unit floor plans, the approximate age of the units, estimated square footage per unit, and the roof types of the housing facilities. It also provided the number of routine, urgent, and emergency service calls per month for 1986 through 1989, and a lengthy list identifying the total work per year performed for many different items of maintenance and repair. Information concerning major renovations and upgrades of the housing facility which have been completed within the past 5 years and which are planned for the period of contract performance was also included. For example, this section of the solicitation provided that 96 to 98 percent of all wood fencing within two of the housing areas had been completely replaced in 1988.

Further, the risk that the contractor would be exposed to under the items of work at issue here is minimized by the express limitations on the amount of work per item the contractor could be required to perform under the lump-sum portion of the contract and by the fact that the solicitation contains a limitation on the work to be performed pursuant to a service call to 16 hours in labor or \$500 in materials.^{2/}

We have no legal basis upon which to interfere with the agency's selection of its pricing format or with the amount of information included in the solicitation. While it is true as the protester points out that these same items of work were priced as indefinite quantity items under the prior contract, we think that the agency could reasonably conclude that the

^{2/} These limitations distinguish this solicitation from the pricing scheme in Four Star Maintenance Corp., B-240413, Nov. 2, 1990, cited by the protester. In that case, we found that the solicitation's use of lump-sum pricing for similar maintenance services subjected the contractor to undue risk and was thus unduly restrictive because it placed no limit on the amount of work the contractor could be required to perform under the lump-sum portion of a building maintenance contract. Such is not the case here, since the work is priced on an indefinite quantity basis when the scope of the work reaches a specified level.

administrative burden represented by the need to issue a priced work order for each service call necessitated by that pricing format was not practicable and that the proposed "mixed" format of lump-sum and indefinite quantity pricing is an appropriate compromise which both reduces the agency's burden and limits the risk to the contractor. Similarly, we think that the agency has made a reasonable effort to include large amounts of historical data even though it has not been able to construct from its raw data files detailed information concerning each of the separate line items of work. Further, the record shows that 13 bids, including one from the protester, were received by the Navy after the protest was filed, and no bidder other than the incumbent contractor timely challenged the terms of the solicitation.^{3/}

GALVANIZED PIPE REPLACEMENT

The protester raises similar arguments with regard to the solicitation provisions concerning the maintenance and repair of the housing facilities' plumbing system, which is included in the IFB's lump-sum price scheme. Specifically, Tumpane states that while a solicitation provision here requires the replacement of damaged or deteriorated galvanized pipe, it fails to provide specific data as to the number of occurrences and quantity of pipe replaced for each year of contract performance. The protester argues that without this information, firms will not be bidding on a common basis and will be exposed to undue risk, and concludes that this item of work must therefore be deleted from the lump-sum portion of the solicitation and priced on an indefinite quantity basis. The agency responds that specific historical data concerning galvanized pipe replacement is unavailable as Tumpane was not required to maintain such data in the performance of its prior contract.

In addition to the general information concerning the base housing discussed previously, the solicitation provided information as to the percentage of galvanized pipe already replaced, as well as information concerning the planned renovation of the housing units which is to include the repair and upgrade of the plumbing systems. Additionally, the risk imposed on the contractor was minimized by: (1) the express limitation on the amount of galvanized pipe the contractor can be required to replace to 25 feet or less; (2) the exclusion of major repair work, specifically, the complete replacement of the hot and cold water or drainage piping of a housing unit, from the scope of the contract; and (3) the overall limitation on the work to be performed pursuant to a service call to 16 hours in labor or \$500 in materials.

^{3/} One bidder, after it learned that its bid was fifth low, did submit a letter to our Office in support of Tumpane's protest.

We find again that, considering the information provided in the solicitation and the limits on the amount of work the contractor could be required to perform, the solicitation provided enough information to enable bidders to submit intelligent bids and did not impose a legally objectionable amount of risk on the contractor. See Jones Refrigeration Serv., B-221661.2, May 5, 1986, 86-1 CPD ¶ 431.

CERAMIC TILE REPLACEMENT

Tumpane argues with regard to ceramic tile replacement, a lump-sum/indefinite quantity item, that the solicitation includes historical data which understates the amount of tile replaced at the Naval Air Station. Tumpane asserts that it has replaced a total of 8,739 square feet of tile at the facility over the past 4 years. On the other hand, the agency says that it has reviewed its records and believes the data supplied, indicating that 4,238 square feet of tile were replaced, is based on the best information available.

Where historical data is provided in a solicitation, there is no requirement that it be absolutely correct; rather, it must be based on the best information available. DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43. We will not disturb a solicitation unless we find that the data used is not based on the best information available or is otherwise deficient. Id. While the protester disputes the agency's position, based upon the information it has collected during its performance of the prior contract, we are not convinced that the historical data did not result from the best information in the agency's possession. Furthermore, because ceramic tile replacement is a relatively inexpensive item and the disparity between the protester's and agency's figures totals only 1,125 square feet of tile per year, the potential pricing problem raised by the protester here is minimal in relation to the cost of the entire contract. American Maid Maintenance, 67 Comp. Gen. 3 (1987), 87-2 CPD ¶ 326.

BATHROOM HEATER/EXHAUST FANS

Tumpane refers to a provision in the IFB which states that "there are approximately 470 bathroom heater/exhaust fans which have been disconnected by the government . . . all other bathroom heater/exhaust fans shall be maintained to be safe and fully operational," and argues that the solicitation is deficient because it fails to identify the location of the disconnected fans. The protester asserts that absent this information, a contractor would have to respond to numerous useless service calls to "repair" fans intentionally disconnected. The agency responds that while it maintains a list of the locations of the disconnected fans and will try during the performance of the contract to screen calls before forwarding service requests to the contractor, firms should

provide in their bids for the contingency that unnecessary requests for service may slip through.

It appears to us that the solicitation should have provided a list of the locations of the disconnected fans, or indicated that the agency intends to screen service calls. However, we think that this is a relatively minor matter, and there is no indication that the protester was disadvantaged in any way not shared by the other bidders or that it was unable to prepare a bid. The potential pricing problems raised here again appear to be minimal in relation to the cost of the entire contract. American Maid Servs., 67 Comp. Gen. 3 (1987), supra.

CHANGE OF OCCUPANCY MAINTENANCE

Tumpane also argues that the solicitation requirements concerning change of occupancy maintenance are unreasonable. The IFB provides that these services will be scheduled 30 days in advance in the absence of certain specified circumstances, and requires that when these services are required for ten units or less in 1 work week, all work must be completed within 2 working days after each unit becomes available. The solicitation states that on occasion service for more than ten units may be requested during a work week, and should that occur, 1 additional day shall be allowed to complete all work for each unit in excess of ten. The IFB includes a table showing the number of units needing these services per month from 1986 to 1989.

The protester speculates that under this provision "10 units could come on line on Friday and another 10 on Monday, requiring the first 10 units to be completed by Tuesday and the other 10 units by Wednesday," and should this occur, the contractor would not have "sufficient time to hire qualified personnel to complete the work." Tumpane argues that the problem of surges in the ordering of these services is not alleviated by the provision that they normally will be scheduled 30 days in advance, because under its current contract the Navy does not routinely provide 30 days advance planning as required.

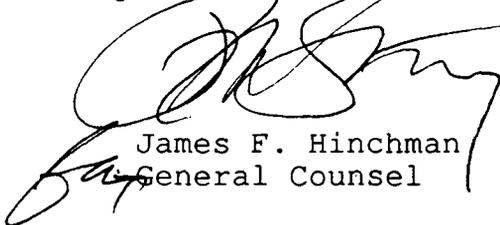
The determination of the government's minimum needs and the best method of accommodating those needs are primarily the responsibility of contracting agencies. Government procurement officials, since they are the ones most familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future, are generally in the best position to know the government's actual needs. Consequently, we will not question an agency's determination of its actual needs unless we find that the determination lacks a reasonable basis. Jones Refrigeration Serv., B-221661.2, supra.

The record here supports no such finding. While it is true as the protester argues that the services could be ordered in such a way (i.e., ten on Friday and ten on Monday) so as to create a heavy work load, there is no indication other than the protester's argument that such a work load could not be reasonably handled by the contractor. In fact, no other firm has complained about this provision. We thus have no basis upon which to conclude that the provision does not reasonably express the agency's needs. The protester's next contention is essentially that provisions are unreasonable because the agency will not adhere to the scheduling requirements in its administration of the contract. The protester's speculation that the agency will act in a manner inconsistent with its obligations under the contract, even if based upon past experience, does not provide a basis on which to question the terms of the solicitation.

DISPARITY OF BIDS

As to the protester's argument concerning the disparity in bid prices, a wide range of prices is not by itself conclusive evidence that bids were not prepared on an equal basis.^{4/} Teltara, Inc., B-240888.2, Jan. 15, 1991, 91-1 CPD ¶ 40. Here, we have concluded that the solicitation contained sufficient information on which bidders could base their bids, and we again note that no bidder other than Tumpane protested the terms of the IFB.

The protest is denied.



James F. Hinchman
General Counsel

^{4/} The total bids received were: \$3,929,370, \$4,288,013, \$4,348,058, \$4,809,440, \$4,848,148, \$4,917,095, \$5,071,513, \$5,366,784, \$5,419,713, \$5,562,300, \$5,840,195, \$6,389,941, and \$8,271,625. This results in a relatively close upward progression of bids with each succeeding bid increasing by an average of approximately 6.65 percent.