



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Quality Lawn Maintenance

File: B-270690.3

Date: June 27, 1996

Michael Van Fleet for the protester.

Brian Brinson, Excell Management Corporation, an intervenor.

Emily C. Hewitt, Esq., Gary F. Davis, Esq., and Richard E. Hurst, Esq., General Services Administration, for the agency.

Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation requirements exceed contracting agency's minimum needs and are unduly restrictive of competition is denied where there is no showing that agency lacked a reasonable basis for the challenged requirements.

DECISION

Quality Lawn Maintenance protests the terms of invitation for bids (IFB) No. GS11P96MJC0001, issued by the General Services Administration for landscape maintenance services at 30 installations in Washington, D.C. and Maryland. The protester contends that certain requirements in the solicitation exceed the agency's minimum needs and unduly restrict competition.

We deny the protest.

The amended IFB, set aside for small business concerns, includes a requirement for the contractor to have an on-staff horticulturist that is either certified by the American Association of Nurserymen or some equivalent organization, or possess a Bachelor of Science Degree in either horticulture or a related life science. The protester contends that this requirement is in excess of the agency's minimum needs because the grounds maintenance services can successfully be provided without a certified or degreed horticulturist on staff. The protester states that this requirement was not included in predecessor contracts, that the requirement is restrictive for small businesses that may not have such a horticulturist on staff, and that the requirement will greatly increase the cost of the contract.

In preparing a solicitation for supplies or services, a contracting agency must specify its needs and solicit offers in a manner designed to achieve full and open competition, and may include restrictive provisions or conditions only to the extent necessary to satisfy the agency's needs. 41 U.S.C. § 253a(a) (1994). The determination of the agency's minimum needs and the best method of accommodating them are primarily within the agency's discretion and, therefore, we will not question such a determination unless the record clearly shows that it lacks any reasonable basis. RMS Indus., B-247233; B-247234, May 1, 1992, 92-1 CPD ¶ 412.

The agency explains that the current IFB includes more complex technical and scientific requirements than included in prior contracts, especially due to a Presidential Directive, issued on April 26, 1994, to enhance and ensure environmentally and economically beneficial practices on federal landscaped grounds. This directive calls for utilization of techniques that complement and enhance the local environment and seek to minimize the adverse effects that the landscaping will have on it, such as the use of regionally native plants and employing landscaping practices and technologies that conserve water and prevent pollution, using integrated pest management techniques that control the use of toxic chemicals, recycling green waste, and minimizing runoff. The agency also explains that the 30 installations to be serviced under the contract involve cabinet-level agency headquarters buildings that serve as national showcases and are the subject of public scrutiny in light of the public's and the Administration's expressed interest in environmental matters. To ensure effective implementation of these interests and directives, the agency determined that an on-staff degreed or certified horticulturist was required to provide higher standards of professional expertise.

We find the IFB's degreed/certified horticulturist requirement unobjectionable. Although, as the protester states, landscaping services have been procured in the past without such requirement, the agency has shown that the current requirement is reasonably related to its current minimum needs of effectively coordinating and providing quality landscaping at the 30 federal installations to be serviced under the contract. The technical requirements of the current IFB and the number of properties to be serviced have increased from prior contracts, and, as indicated by the agency, environmental concerns regarding the performance of the contract have also increased. We find the agency's determination that the stated relevant educational/certification requirement will better ensure the provision of appropriate, quality services under the contract reasonable. Further, we do not consider the challenged requirement restrictive. Through the issuance of solicitation amendments, the agency, in our opinion, has ensured in a fair and unrestrictive manner that the professional qualifications required by the IFB can be reasonably obtained; the horticulturist qualifications requirement may be met with a life science

degree other than in only horticulture, contrary to the protester's contention, or alternatively, through certification by any appropriate, relevant nurserymen organization. In short, the record shows that the requirement is legitimately and reasonably related to the type and quality of services to be provided, that it is not overly restrictive, and that there is no showing that it would unreasonably affect the cost of the contract. Accordingly, we have no basis to object to the stated requirement.

The IFB also requires four on-staff certified pesticide applicators and that pesticides be applied only by certified personnel. The protester contends that this requirement is restrictive of competition since small businesses may not have four certified pesticide applicators, that the requirement exceeds pesticide application regulations issued by Washington, D.C. local government authorities (which require that pesticide application be supervised, but not performed, by a certified applicator), that it will increase the cost of the contract, and that it should thus be deleted from the IFB. In response, the agency reports that for the last 2 years, all of its landscape maintenance contracts have included this requirement to best meet its minimum needs in implementing the Administration's directive for environmentally beneficial pest control practices and in protecting the health and safety of building occupants; the agency also states that this standard has been adopted by "green" (environmentally sensitive) organizations.

The protester has not shown that the requirement is excessive of the agency's actual needs; nor is it material here that the pesticide application certification requirement exceeds the requirements of local regulations. See IBI Sec. Serv., Inc., B-233726.2, Apr. 6, 1989, 89-1 CPD ¶ 359. Given the large number of installations to be serviced in the subject metropolitan area, and the importance of the effective, responsible and knowledgeable regulation and application of the pesticides--the use of which is to be limited in accordance with the referenced directive, but which limited use may still be toxic and potentially hazardous to the health and safety of building occupants if pesticides are applied incorrectly--we believe the applicator certification requirement is reasonably related to the agency's minimum needs and the scope of work required under the contract. Where, as here, a solicitation requirement relates to safety concerns, 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. See United Terex, Inc., B-245606, Jan. 16, 1992, 92-1 CPD ¶ 84; see PTI Servs., Inc., B-225712, May 1, 1987, 87-1 CPD ¶ 459. Further, the agency points out that prior contracts which have included this pesticide application certification requirement have not resulted in a noticeable increase in cost, nor has

the requirement been shown to be restrictive upon small business competition since the pesticide portion of the contract may be subcontracted.

The protest is denied.¹

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¹The protester also generally challenges the IFB's stated minimum personnel and equipment requirements. The record, however, provides no basis to question the reasonableness of the requirements. First, the protester challenges any requirement for a 32-employee minimum, but that requirement was reduced by solicitation amendment to 25 (since cross-utilization of staff is anticipated) and, despite the protester's contention that the contractor should be free to staff the project as it deems necessary, the protester does not show that the amended minimum is unreasonably excessive or restrictive in light of the numerous services required in the IFB's statement of work. Quality Lawn also protests the minimum equipment requirements of the IFB, stating that a small business cannot be expected to own the many pieces of equipment called for in the IFB and that the contractor should be permitted to use the equipment the contractor determines to be necessary to accomplish the work. The agency, by solicitation amendment, substantially reduced the initially stated quantity of identified equipment and has advised all bidders that ownership of the equipment is not necessary since sufficient evidence of leasing arrangements would be adequate. Since the equipment required by the IFB is reasonably related to the scope of work to be performed, and the record does not show that the stated requirement poses a substantial adverse impact on competition, we have no basis to question the requirement. See Consolidated Maintenance Co., B-220174, Nov. 12, 1985, 85-2 CPD ¶ 539.