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

31828

FILE: B-217505 **DATE:** August 1, 1985

MATTER OF: Capitol Services

DIGEST:

1. Invitation for bids (IFB) calling for unit prices for repair of textile items is not ambiguous even though payment provision, standing alone, is unclear regarding basis for payment, since any ambiguity is resolved by the bid pricing schedule which clearly indicates that the contractor will be paid its unit price for each item processed.

2. Protester's contention that solicitation clause providing for price adjustments in the event of significant workload variations is not sufficiently detailed is without merit, since clause need not specify exact formula for calculating price adjustment and any disagreement can be resolved under the standard Disputes clause.

3. Contention that solicitation provision requiring that contractor document the work performed is not cost-effective does not raise a matter which is subject to legal challenge as it concerns the efficiency of the agency's approach rather than the legality of the award.

Capitol Services protests any award under invitation for bids (IFB) No. DAKF40-85-B-0020, issued by the Army for operation of a government-owned textile repair facility at Fort Bragg, North Carolina. We deny the protest.

Capitol filed its initial protest with our Office on January 2, 1985, two days prior to the scheduled bid opening date, challenging various IFB provisions as unclear or ambiguous. The Army responded by amending several provisions in the IFB on which the protest was based and

extending the bid opening date to May 15. In its report to our Office dated April 23, the Army argued that the amendments to the IFB either deleted or clarified all the IFB provisions complained of by Capitol and requested that we dismiss the protest as moot. In comments filed with our Office on May 7, Capitol argued that the amendments not only failed to resolve all the alleged defects in the IFB, but created additional ambiguities.

The Army proceeded to open bids on May 15. Seven bids were received. Award has not yet been made.1/

As provided in sections 5.3.4.1 and 5.3.4.2 of the IFB, the contractor is required to first inspect and identify the repair work required on all the items sent to it for processing. After the inspection, the contracting officer's representative (COR) is to determine which items are to be repaired; the contractor is to repair only those items which it is directed to repair by the COR. The items to be processed are divided into two groups, light items and heavy items. The IFB estimates that 86 percent of the light items and 82 percent of the heavy items will be repaired.

The IFB specifies both a guaranteed annual minimum number of items and an estimated annual maximum number of items to be processed. The pricing schedule in the IFB calls for bidders to provide two unit prices, one price

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1/The Army maintains that the protester is no longer an interested party for purposes of maintaining the protest because the protester was the fourth lowest bidder under the IFB. The ranking of a protester's bid is relevant to the protester's status as an interested party only in cases where, even if the protest were sustained, the protester would not be in line for award. See Dynalectron Corp.--PacOrd, Inc., B-217472, Mar. 18, 1985, 85-1 CPD ¶ 321. As discussed in further detail above, the protester here argues that it was prevented from bidding on equal terms with the other bidders due to an ambiguity in the IFB. It seeks cancellation of the solicitation and resolicitation of the requirement. Thus, the fact that the protester was the fourth lowest bidder has no effect on the protester's status as an interested party. See Swintec Corp., et al., B-212395.2, et al., Apr. 24, 1984, 84-1 CPD ¶ 466.

for light items and one for heavy items. The IFB provides that the total bid will be derived by multiplying the bidder's unit prices by the estimated annual maximum number of either light or heavy items.

Capitol's principal contention is that the IFB is ambiguous regarding the basis on which the contractor will be paid. First, section F.5 of the IFB provides that "[a]ll items processed (i.e., inspected only or repaired) are to be counted as an item." Based on this definition of "items processed," Capitol argues, it appears that the minimum and maximum number of items on which a bidder's unit prices are to be based include both those items which will be repaired and those that will be inspected only. Capitol maintains that this provision is inconsistent with section G.3(c) of the IFB. Specifically, section G.3(c)--which provides that "[t]he contractor will submit a monthly invoice for the actual number of repairs processed each month"--appears to indicate that the contractor will be paid for only the items actually repaired, not the items inspected only. Because the IFB thus is unclear regarding whether a bidder's unit price is to be based on receiving payment for all items, as section F.5 appears to indicate, or for repaired items only, as section G.3(c) states, Capitol maintains that all bidders may not have prepared their bids on an equal basis.

The Army states that, by including section F.5 in the IFB, it intended to indicate that both repaired and inspected only items were to be treated as items for billing purposes; thus, the contractor is to be paid its unit price for each item processed, whether repaired or only inspected.

In our view, section G.3(c), standing alone, is unclear because it does not explain whether the term "repairs processed" refers only to actual repairs performed or to all potential repair items submitted for processing. This ambiguity is resolved, however, when section G.3(c) is read in the context of the IFB as a whole; specifically, the bid pricing schedule, the principal provision relied on by bidders in formulating their bids, clearly indicates that the contractor will be paid its unit price for all items processed, both those inspected only and those repaired. In view of the clear meaning of the bid schedule, we do not think that the protester's reading of the solicitation is reasonable.

On the contrary, we find that the relatively minor ambiguity in section G.3(c) was not sufficient to cast doubt on the Army's intention, expressed in the bid schedule, to pay the unit price for every item processed.

The protester also contends that section 1.1.1.5, the IFB provision calling for a price adjustment based on variations in workload, is defective for failure to specify in sufficient detail the basis for adjustment. We disagree. Section 1.1.1.5 provides:

> "Technical Exhibit 3 [attached to the IFB] shows typical divisions of processed workload into reparable and nonreparable (i.e., inspect only). With respect to performance (and possible adjustment) on this contract, this ratio becomes significant if the nonreparable (i.e., inspect only) fraction exceeds 50% of the workload in three consecutive months. If the percentage of nonreparable items exceeds 50% of the total workload for three consecutive months, then an adjustment will be in order."[2]

Since the contractor's unit price is based on the agency's estimated division of the workload between inspected-only items and repaired items, the clear purpose of section 1.1.1.5 is to allow a price adjustment if the number of inspected-only items relative to repaired items changes significantly. The Army reports that if there is a significant change it will seek to negotiate a price adjustment with the contractor. Although in some cases agencies seek to spell out in their solicitations the precise basis for computing any necessary price adjustments, there is no requirement that an agency do so in every case. If the Army and the contractor cannot agree on a price adjustment should one become necessary, the matter can be resolved pursuant to the Disputes clause of the contract.

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[2] The protester also contends that the meaning of the term "nonreparable item" is unclear. As paragraph 1.1.1.5 clearly indicates, that term refers to items which are inspected only and not repaired.

Finally, the protester contends that section 5.3.4.1, the IFB provision requiring that the contractor document its inspection of all items processed, is onerous and not cost-effective. According to the Army, section 5.3.4.1 implements Army Regulation 750-1, para. 3-10, which requires that all items be inspected preliminarily in order to determine whether they should be repaired or discarded. The Army disagrees with the protester's position, arguing that the reporting requirement does not unduly burden the contractor and that the cost of reporting is minimal.

A documentation requirement is not subject to legal challenge merely because the requirement puts a heavy burden on a contractor or might not represent the most effective or efficient way of performing. See Jamar Trucking, B-205819, June 16, 1982, 82-1 CPD ¶ 594. What the protester must show is that the requirement exceeds the agency's minimum needs. Here, Capitol has not made any showing that the documentation requirement is not reasonably related to the agency's legitimate needs.

The protest is denied.

for Harry R. Van Cleve
General Counsel