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DECISION



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

FILE: B-220062 **DATE:** January 15, 1986
MATTER OF: DSP, Inc.

DIGEST:

1. Protest by incumbent contractor that agency has vastly understated the number of service calls required to be performed is denied since allegation is based upon protester's misinterpretation of what repair items should be treated as service calls.
2. Protest that agency's estimates for painting, termite repair, roof repair and floor refinishing are inaccurate is denied where record does not establish that estimate is not based on the best information available.
3. Allegation that solicitation is defective because it does not include a specific provision which offers incentives to contractors to make cost-cutting suggestions is denied since law does not require that a specific incentive clause for this purpose be included in every solicitation which is issued.

DSP, Inc., protests any award under invitation for bids (IFB) No. F41612-85-B-0046 issued by the Department of the Air Force for the maintenance of military family housing units at the Sheppard Air Force Base, Texas. DSP, the incumbent contractor, contends that the IFB does not provide an accurate estimate nor an adequate description of the work to be accomplished. In addition, DSP argues that the IFB is defective since it does not contain the incentives allegedly required by 10 U.S.C.A. § 2301(b)(5) (West Supp. 1985) to encourage contractors to take actions which reduce costs.

We deny the protest.

The IFB was issued on June 10, 1985, and solicited bids on a fixed-price basis for the period October 1, 1985, to September 30, 1986, with two 1-year options. Three amendments were issued and, at bid opening, the Air Force received nine bids. DSP did not submit a bid, but filed

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this protest with our Office prior to bid opening. The Air Force indicates that the work has been moved in-house pending the resolution of this protest.

The IFB is divided into several line items. Item No. 0001 requires bidders to provide a fixed monthly price for all services and materials necessary for maintaining the family housing units. The actual work to be performed under this item is further divided into five categories, including management, service calls, change of occupancy maintenance (COM), recurring equipment maintenance and recurring exterior facilities maintenance. In addition, the IFB specifies a different job response time for service calls and COMs and differing penalties for failure to complete work within the required time for these two categories.

Item No. 0002 is the total estimated cost of materials for which the contractor may be reimbursed under the contract and the IFB requires bidders to price this item at \$210,000. Items Nos. 0003-0006 are for painting, termite repair, roof repair and floor refinishing and are reimbursed on a per-square-foot basis after the deduction of a stated minimum quantity.

DSP argues that the Air Force has vastly understated the number of service calls under item No. 0001 and, as a result, concealed from bidders the true amount of work actually required. The IFB estimates an average of 1,041 service calls per month and a yearly estimate of 588 units for which COM is required. DSP contends that there are, in fact, some 25,000 additional service calls per year that should be disclosed in the IFB. DSP indicates that the Air Force conducts pretermination inspections of units prior to vacancy and that work which is discovered at that time is routinely deferred until the COM rather than accomplished as a service call. DSP indicates that the performance period for work to be accomplished under a COM is much more stringent and that the Air Force's failure to disclose the fact that approximately two-thirds of all "service call" items will be performed in this manner is improper.

With respect to item No. 0002, DSP contends that it was only reimbursed \$28,000 in material costs this past year. DSP argues that the difference between this amount and the \$210,000 indicated in the IFB is an additional cost of which bidders should be made aware. Also, DSP contends that the actual orders for items Nos. 0003-0006 ranged from 0-30 percent of the government's estimate. DSP argues that the

IFB is defective, precludes full and open competition and requests that an amended solicitation be issued and the requirement recompeted.

The Air Force argues that the estimates contained in the IFB are accurate and that the IFB provides an adequate basis for bidders to submit intelligent bids. The Air Force indicates that its estimate for item No. 0001 was based on historical data and, in this regard, the Air Force states that DSP was required to perform an average of 1036 service calls per month and that 446 units were turned over to DSP for COM this past year. The Air Force contends that the additional "service calls" alleged by DSP are based on DSP's interpretation of what constitutes a service call under the contract and that DSP has improperly added together COM items and service calls to arrive at its inflated total.

In addition, the Air Force indicates that under the IFB, contractors are to bear the cost of all materials, parts and supplies up to \$50 per item per job order and that reimbursement is made only for costs above that amount. Also, the Air Force states that the estimates for the remaining items were derived from engineering estimates. The Air Force indicates that exterior painting estimates were based on the type of material on each unit and its age and condition. The estimate for major roof repair was based on repairs being required from major storms and was not necessarily predictable. Also, the estimate for major termite damage repair represented the engineers best estimate and the major floor refinishing estimate was based not only on prior experience, but also on planned changes in the type of flooring to be used. The Air Force argues that it utilized a logical basis to estimate the quantities in the solicitation, that adequate competition was obtained and that DSP's protest should be denied.

As a general rule, a procuring agency must give sufficient detail in the IFB to enable bidders to compete intelligently and on a relatively equal basis. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687. Where estimates are provided in a solicitation, there is no requirement that they be absolutely correct. Rather, they must be based on the best information available and present a reasonably accurate representation of the agency's anticipated actual needs. Aleman Food Service, Inc., B-219415, Aug. 29, 1985, 85-2 CPD ¶ 249. It is the protester's burden to establish that the stated estimates are not based on the best information available or are otherwise deficient. Richard M. Walsh Assocs., Inc., B-216730, May 31, 1985, 85-1 CPD ¶ 621.

DSP's argument that the Air Force's information concerning service calls is vastly understated is based upon its assertion that the solicitation requires repair items identified by Air Force housing inspectors during a pre-termination inspection to be treated as service calls rather than repaired during COM. The solicitation, however, defines COM (para. 2.2.4) to include the inspection, repair, maintenance and service of the housing units vacated. In addition, the solicitation states (para. 5.3.1) that work items identified during a pretermination inspection are to supplement the total requirements of Technical Exhibit 9, which lists the items required to be checked by the contractor during a COM. In our view, these provisions, when read together, clearly demonstrate that the work items identified by Air Force inspectors are additional work items to be repaired under the COM provisions rather than as service calls. Accordingly, we cannot agree with DSP that the estimates provided by the Air Force for item No. 0001 are misleading.

Furthermore, to the extent DSP is alleging that information concerning the number of work items found by the Air Force during pretermination inspections should be released to prospective bidders, we note that there is no requirement that a solicitation be so detailed as to eliminate all performance uncertainties. Aleman Food Service, Inc., B-219415, *supra*. Here, prospective bidders were on notice that items identified by the Air Force inspectors were to be repaired during COM and, presumably, each bidder is knowledgeable enough to recognize the efforts and risks associated with that expectation. Talley Support Services, Inc., B-209232, June 27, 1983, 83-2 CPD ¶ 22. The government is under no obligation to eliminate risk from a procurement entirely and bidders are expected to exercise business judgment in preparing their bids. Operational Support Services, B-215853, Dec. 3, 1984, 84-2 CPD ¶ 607. As stated above, the basic rule for solicitation requirements is that they be unambiguous, state minimum needs accurately and provide for equal competition. We are unable to conclude that the solicitation requirement for COM does not meet this standard.

We also find without merit DSP's arguments concerning the remaining items specified in the solicitation. Item No. 0002, for which bidders were required to bid \$210,000, is the Air Force estimate of the total cost of materials for which bidders may be reimbursed. The solicitation further specifies that bidders will be required to pay the first \$50 per item per job order and that the Air Force will reimburse the contractor only for costs above this threshold. The

solicitation does not indicate that \$210,000 will be reimbursed to the contractor, as alleged by DSP, and, as a result, we disagree with DSP's assertion that the difference between this amount and the amount actually reimbursed is an "additional cost" required to be disclosed by the Air Force.

In addition, we are unable to conclude that the Air Force's estimates for items Nos. 0003-0006 were not based on the best information available. The Air Force indicates that its estimates for these items were based on engineering estimates, prior experience and planned changes for future requirements. Although DSP has alleged that the amounts actually ordered under these items for the past year were minimal, an agency is not required to base its estimates solely on historical data. Hero, Inc., supra. In our view, DSP has not established that the Air Force abused its discretion in relying on its engineering estimates and that the Air Force's estimates are not based on the best information available.

DSP also argues that the solicitation is defective because it does not include a specific incentive clause for the contractor allegedly required by 10 U.S.C.A. § 2301(b)(5). Section 2301(b)(5) states as follows:

"(b) Further, it is the policy of Congress that procurement policies and procedures for the agencies named in section 2303 of this title shall be in accordance with the requirements of this chapter--

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(5) provide incentives to encourage contractors to take actions and make recommendations that would reduce the costs to the United States relating to the purchase or use of property or services to be acquired under contracts;"

DSP argues that this provision requires the Air Force to include a provision in the solicitation which offers incentives to contractors to make cost-cutting suggestions.

We disagree with DSP's interpretation of the requirements imposed by this provision. Section 2301 sets forth a broad congressional statement of defense procurement policy. See H.R. Rep. No. 861, 98th Cong., 2d Sess 1431 (1984). Although Congress intended that agencies encourage

contractors to make cost-cutting suggestions and provide incentives for contractors to do so, there is nothing in the language of the provision which requires that a specific incentive clause for this purpose be included in every solicitation which is issued. Accordingly, we find DSP's argument that the solicitation is defective for this reason to be without merit.

Finally, we note that DSP has alleged that the Air Force deliberately withheld relevant information from its agency protest report, that the report was not responsive and that it should be disregarded because it was not made in a timely manner. These allegations are without foundation. The Air Force's response to this protest addressed the issues which DSP raised with our Office and all replies were filed by the Air Force in a timely manner.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel