

Murphy



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Korean Maintenance Company  
**File:** B-223780  
**Date:** October 2, 1986

---

### **DIGEST**

1. Agency is not required to separately purchase custodial services for several buildings where the agency's overall needs can be most effectively provided through a consolidated procurement approach involving award of the total requirement for services necessary to operate and maintain the buildings to one contractor.
2. Protest that agency should estimate its need for utility services rather than provide offerors information on historical usage is denied where the solicitation contains sufficient information for offerors to compete intelligently and on equal terms. There is no legal requirement that specifications eliminate all risk for the contractor.
3. Protest of performance and payment bond requirements in a solicitation is untimely where first raised after date set for receipt of proposals since the alleged deficiency in the solicitation was evident at that time.

---

### **DECISION**

Korean Maintenance Company protests the terms of request for proposals (RFP) No. GS-07-P-86-HT-C-0108/7PPB, issued by the General Services Administration (GSA) for the operation and management of several government facilities in Sante Fe, New Mexico. Korean Maintenance believes that GSA should divide the solicitation to increase competition from small businesses.

We deny the protest in part and dismiss it in part.

The solicitation sought offers to provide all services necessary for operation and maintenance of five federal buildings, including facilities management, janitorial services, insect and rodent control, snow and trash removal, operation and maintenance of mechanical equipment, utility services and building repair and alterations. This

036955

procurement was initiated under a GSA program to consolidate operation and management services under one contract for large facilities in major metropolitan areas where GSA's own staff does not meet existing needs, where the work is largely obtained by contract already, and where certain other factors are present. According to GSA, 12 contracts have been issued under the program.

Korean Maintenance currently performs custodial services for GSA at four of the five locations included in the protested procurement. GSA will not exercise any options under the contract with Korean Maintenance, but will obtain custodial services through the new, consolidated contract. The protester complains that if the options are not exercised, it will be unable to recoup its investment in snow removal and other equipment purchased to perform its custodial services contract. The protester does not argue, however, that GSA must exercise the options under its custodial services contract, a question that is a matter of contract administration and not within the scope of our bid protest function. The Big Picture Co., Inc., B-220859, Oct. 31, 1985, 85-2 CPD ¶ 512. Instead, the firm in effect contends that GSA is foreclosed from exercising the options because of the consolidated contract, and that Korean Maintenance and other small businesses cannot compete effectively for the new contract because of its size and the diversity of required work. Korean Maintenance believes that its overall business will greatly suffer if GSA consolidates building service contracts in other areas.

Korean Maintenance also contends that the specifications are defective by requiring the contractor to provide utility services without providing an estimate required of electric, water, sewage, and gas services or otherwise reducing the risk to the contractor from the possibility that its estimate of services required might be erroneous. Also, in its comments on GSA's administrative report, the protester argues that it is almost impossible for small businesses to provide the payment and performance bonds required by the RFP.

#### Consolidation of Required Services

The Competition in Contracting Act of 1984, 41 U.S.C. § 253a(a)(2)(B) (Supp. III 1985), generally requires that solicitations include specifications which permit full and open competition and contain restrictive conditions only to the extent necessary to satisfy the needs of the agency. The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174.

Since procurements on a total package or consolidated basis can restrict competition, we have objected to such procurements where the approach did not appear necessary to satisfy the agency's minimum needs. See, e.g., Systems, Terminals & Communications Corp., B-218170, May 21, 1985, 85-1 CPD ¶ 578; MASSTOR Systems Corp., B-211240, Dec. 27, 1983, 84-1 CPD ¶ 23. On the other hand, we have recognized that the possibility of obtaining economies of scale or avoiding unnecessary duplication of costs may also justify such an approach. The Caption Center, B-220659, supra at 5 and 6, and cases cited therein. In this regard, we have found that CICA's requirement to increase the use of full and open competition is primarily a means to an end--that of fulfilling the government's requirements "at the lowest reasonable cost considering the nature of the property or service procured." 41 U.S.C. § 414(1) (Supp. III 1985); see H.R. Rep. No. 861, 98th Cong., 2d Sess. 1434 (1984); The Caption Center, B-220659, supra at 6. In our opinion, the decision whether to procure by means of a total package or consolidated approach or to break out divisible portions of the total requirement for separate procurements, a matter generally within the discretion of the contracting agency, will not be disturbed absent a clear showing that the agency's determination lacks a reasonable basis. Servicemaster All Cleaning Service, B-223355, Aug. 22, 1986, 86-2 CPD ¶ \_\_\_\_.

We find that GSA's decision to procure by means of a consolidated facility management approach has a rational basis. GSA reports that the use of a consolidated contract will reduce administrative costs and duplicative managerial time, eliminate the problem of no offers being received for some requirements, improve building service, and improve repair, maintenance and management techniques. Also, there is no evidence that inadequate competition results from GSA's consolidation of building service contracts or will occur in this case. According to GSA, small businesses have been strong competitors for the consolidated contracts, receiving 3 out of the 12 consolidated contracts issued so far. Two such contracts have been issued in the same GSA region as Sante Fe, New Mexico; one of these was awarded to a small business and the awardee under the second will subcontract over 50 percent of the work to small businesses. GSA points out that small firms can subcontract work in areas in which they do not have experience, and that two out of three offerors on the protest procurement are small businesses. On this record, we have no basis to object to GSA's procurement approach. See Eastern Trans-Waste Corp., B-214805, July 30, 1984, 84-2 CPD ¶ 126.

## Utility Services

Korean Maintenance contends that the RFP is defective because it fails to provide an estimate of utility usage or to provide a method of reimbursement for errors in the contractor's estimate. The protester believes that contracting agencies must determine their requirements and may not pass this responsibility to contractors.

Solicitations must contain sufficient information to allow offerors to compete intelligently and on equal terms. Analytics Inc., B-215092, Dec. 31, 1984, 85-1 CPD ¶ 3. Specifications should be free from ambiguity and should describe the agency's minimum needs accurately. Klein-Seib Advertising and Public Relations, Inc., B-200399, Sept. 28, 1981, 81-2 CPD ¶ 251. There is no legal requirement, however, that a competition be based on specifications drafted in such detail as to eliminate completely any risk for the contractor, or that the procuring agency remove every uncertainty from the minds of every prospective offer. Security Assistance Forces & Equipment International, Inc., B-199366, Feb. 6, 1981, 81-1 CPD ¶ 71.

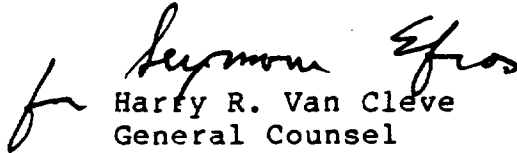
In this case, we do not consider the risk imposed upon contractors to be unreasonable. GSA provided offerors with the history of utility costs for the past 3 years, and, as manager of the facilities, the contractor will have some control over usage in the future. For example, the contractor has some discretion in limiting water flow in lavatories and may adjust thermostats on water heaters to conserve energy use. The protester has quoted language from decisions of this Office to establish that agencies are primarily responsible for establishing their minimum needs. Those cases, such as Radix II, Inc., B-211884, Sept. 26, 1983, 83-2 CPD ¶ 375, concern allegations that agencies have overstated their minimum needs and have thereby unduly restricted competition. In contrast, Korean Maintenance does not claim that GSA has inaccurately described its needs for utility service, but that GSA should assume all risks of estimating future usage. We do not agree, and deny this basis of the protest.

## Bond Requirements

The protester believes that competition will be unduly restricted because of the difficulty small business will have in obtaining required performance and payment bonds for such a large and diverse contract. The bonding requirements for this procurement were contained in the solicitation, and, for that reason, were required to be protested before the closing

date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1985) (protests based upon improprieties in a solicitation that are apparent prior to closing must be protested by that date). Korean Maintenance did not raise the issue until after GSA filed its report with our Office. Although we dismiss this basis of protest as untimely, we note that bond requirements are usually justified where, as here, the contract requires use of substantial government property and the services are essential for operation of the facility. Rampart Services, Inc., B-221054.2, Feb. 14 1986, 86-1 CPD ¶ 164.

We deny the protest in part and dismiss it in part.

  
Harry R. Van Cleve  
General Counsel