The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Ronald E. Borello

File: B-232609

Date: January 11, 1989

DIGEST

Protest that solicitation for road maintenance in a national forest subjects bidders to unreasonable financial risks because it requires the submission of a single per-mile price for "maintenance," rather than breaking out each work element separately for payment on a unit basis, is without merit where the solicitation contains sufficient information for offerors to compete intelligently and on equal terms; there is no legal requirement that solicitations eliminate all risk for the contractor.

DECISION

Ronald E. Borello protests invitation for bids (IFB) No. R1-5-88-73 issued by the Forest Service, United States Department of Agriculture, for road maintenance in the Clearwater National Forest. Mr. Borello, who was awarded the prior year's contract, maintains that the terms of the solicitation place an undue financial risk on prospective contractors.

We deny the protest.

The solicitation's scope of work required the contractor to furnish all labor, equipment, supervision, transportation, operating supplies and incidentals necessary to perform road maintenance including blading and shaping, maintaining drainage facilities and removal of sloughs and slides. The IFB, which was for a base year plus 2 option years, described which roads were to be maintained under the first year of the contract and contained 5 1/2 single-spaced pages of specifications. In addition to requiring the use of a motor grader, the IFB specifications advised bidders that "a variety of equipment such as but not limited to" a backhoe/loader, dump truck, power saws and hand tools "may

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be necessary to efficiently complete the contract requirements." Prospective bidders were urged to complete a site inspection to examine any conditions that might affect the cost of contract performance.

The IFB Schedule was broken into five items, each of which represented a different geographical area. Within each item were two subitems: "Maintenance," which included most of the work and was to be bid on a per-mile basis; and "Hourly Rental (Motor Grader)," which was to be bid on a per-hour basis. Under the contract, the contractor is to notify the Forest Service when the work on a particular road segment has been completed. The length of that segment is then measured, the work inspected and, if the work is accepted, payment is made.

The protester contends that the solicitation cannot be bid fairly since virtually all the work is included within the single "maintenance" subitems. In particular, the protester argues that the amount of risk normal to the work of road maintenance in mountainous terrain subject to earth slides and trees felled not only by winter storms but logging operations is greatly increased by the requirement to bid on different maintenance tasks within a single bid item. The protester suggests that if the IFB permitted bidding on major severable requirements of the contract separately, that would decrease the amount of risk to a prospective bidder to an acceptable level. The protester urges that a pre-bid conference be held to clarify specification requirements and recommends that instead of requiring a single per-mile bid for "Maintenance," the IFB Schedule be divided into nine separate items for each of which estimated quantities should be provided and for which the contractor should be paid on a unit basis. As examples, "disposal" of debris would be paid for per cubic yard, and each culvert cleaned would be paid for individually as would each "piece" of merchantable timber removed from the roadway.

The protester also contends that the IFB's identification of only a motor grader as required equipment is inadequate to put prospective bidders on notice as to the type of equipment that is actually necessary to complete performance. According to the protester, its experience has been that the backhoe/loader, power saw, dump truck and hand tools listed in the IFB as equipment which "may be necessary" for performance of the contact all are absolutely necessary. The protester therefore contends that all this equipment should be required under the terms of the solicitation so that prospective bidders could factor into their bids these equipment costs.

The Forest Service acknowledges that it could reduce the risk to the contractor by adopting the protester's recommendation of breaking the road maintenance work into separate elements which would be individually measured and paid for. In the contracting officer's judgment, however, the task of measuring each item of work performed, for purposes of payment, would unacceptably increase the complexity of contract administration.

The agency also contends that the IFB as written does not impose upon prospective bidders a legally objectionable degree of risk. The Forest Service notes that the roads to be maintained during the base year are identified and that it expects that through site inspections the bidders should be in a position to evaluate current conditions and make an appraisal of changes which may occur prior to performance, thereby allowing them to factor the degree of risk into their bids. In this regard, the contracting officer points out that roads in the area are maintained on an annual, rotating basis so it is possible for prospective bidders to compare roads which have been maintained during the past year with those which have not as an aid in judging how much deterioration occurs. The agency also considers it appropriate simply to caution bidders in the IFB as to what equipment, other than the motor grader, may be needed to perform the contract, rather than to prescribe all the equipment to be used, since that would restrict the bidder's discretion as to its method of performance.

We understand the essence of Mr. Borello's protest to be that the solicitation imposes an unreasonable financial risk on bidders because it requires them to include within the single bid price for "maintenance" tasks whose magnitude is not known until the time for performance. The protester suggests as the "most feasible" method of reducing this risk the splitting of the maintenance work into nine separate line items to be paid for on a per-unit basis.

What the protester is suggesting is a restructuring of the solicitation to eliminate the risk that he will be required to provide a service for which there is no specific formula for compensation. While offerors must be given sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis, Automation Management Consultants, Inc., B-231986, Nov. 21, 1988, 88-2 CPD ¶ 494, there is no requirement that the solicitation be so detailed as to eliminate all performance uncertainties and risks. Ameriko Maintenance Co., B-230994, July 22, 1988, 88-2 CPD ¶ 73. In this regard, we have noted that service contracts, by their very nature, often involve computing prices based on visual inspections, and that the

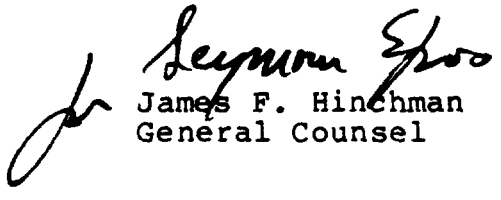
presence of some element of risk does not make a solicitation improper. Id.; Triple P Service, Inc., B-220437.3, Apr. 3, 1986, 86-1 CPD ¶ 318. We thus have found that where a solicitation for services provides information on the area to be maintained, and the bidders are advised to complete a site visit, it is not necessary for the specifications to mention specific quantities. Ameriko Maintenance Co., B-230994, supra.

In the present situation, the solicitation provides the number of miles of road to be maintained in each area. The bidder determines what it will cost to maintain the road per mile and multiplies that figure by the number of miles of road to be cleared. The hourly rental cost of the motor grader is added to the above amount to determine the total bid item. Given the information provided in the solicitation plus the information prospective bidders will gain by a site visit, we think that the information provided is sufficient to permit prospective contractors to submit intelligent bids. In this regard we note that nine bids, including one from the protester, were received by the Forest Service after the protest was filed.

We also do not think that in order to assure fair competition without undue risk to the bidders the government need go to the lengths of specifying as a contract requirement--as the protester contends--all the equipment and tools to be used in the performance of the contract. It is ultimately the bidder's responsibility to determine what equipment will be necessary to satisfactorily perform the contract on schedule, and the caveat in the solicitation as to the types of equipment which may prove necessary, in conjunction with the bidder's judgment as informed by a site visit, should provide an adequate basis for competition.

Finally, we note the provisions at issue here affected all offerors equally, and the fact that offerors may respond differently in calculating their prices is a matter of business judgment and does not preclude a fair competition. American Maid Maintenance, B-227909, Oct. 2, 1987, 67 Comp. Gen. ___, 87-2 CPD ¶ 326.

The protest is denied.



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