



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Saxon Corporation
File: B-236194; B-236194.2
Date: November 15, 1989

DIGEST

In Office of Management and Budget Circular No. A-76 procurement, agency properly may refuse to include in request for proposals (RFP) certain historical cost data where: (1) RFP contained comprehensive statement of work describing in detail work to be done; (2) RFP included agency's best estimates of volume of work to be done in each major work category; (3) agency reasonably was concerned that requested historical cost data would allow experienced offeror to estimate approximate amount of government's own price; and (4) historical data have not otherwise been made publicly available.

DECISION

Saxon Corporation protests that request for proposals (RFP) No. F42650-88-R-0410, issued by the Air Force for performance of vehicle operations and maintenance at Hill Air Force Base, is deficient, because it does not contain certain historical information. The solicitation was issued pursuant to Office of Management and Budget (OMB) Circular No. A-76 to determine if contracting out for the services would be more economical than continuing to have in-house personnel perform them. The protester contends that historical data regarding the cost of parts and materials, labor hours and labor costs should be included in the RFP so that the government and commercial competitors will have the same information and will be competing on an equal basis.

We deny the protest.

The RFP was issued on November 18, 1988, to 45 potential offerors. As amended, the RFP required submission of initial proposals by July 17, 1989. By letter of June 1, Saxon requested that Hill Air Force Base release to it recent historical data the government had compiled (while performing the work in-house) regarding the above cost

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categories. By letter dated June 23, the Air Force denied Saxon's request. On July 14, Saxon filed its protest in our Office.

Saxon argues that the historical data it requested were collected by the Air Force while government personnel were performing the subject services and that the information normally would be releasable. Saxon does not believe that the Air Force is justified in withholding the historical data merely because the Air Force intends to use the information to calculate its in-house proposal. To the contrary, Saxon believes that all offerors, not just the Air Force, should be able to use the historical data the government has collected to help prepare their offers, and that failure to disseminate the information to potential offerors gives the Air Force an unfair advantage in the A-76 competition.

The Air Force asserts that the requested information is government commercial or proprietary data reflecting the manner in which the government does business, and that the information is exempt from disclosure under the Freedom of Information Act (FOIA) because it consists of "intra-agency memorandums . . . which would not be available by law to a party other than an agency in litigation with the agency." See 5 U.S.C. § 552(b)(5) (1988). The Air Force reports that, while the information was regularly collected during the course of performance by government employees pursuant to Air Force directives, it has only been distributed to managers within the agency on a "need to know" basis and has never been publicly available.

The Air Force also reports that the historical information will be used to calculate the government's offer. While the Air Force acknowledges that release of the cost data will not disclose the precise bid to be made by the government, the Air Force argues that "the data will enable an informed bidder . . . to make a closer approximation [of the government's offer] than would be possible without the release." The Air Force contends that the government would, therefore, be placed at a competitive disadvantage. Furthermore, the agency argues that release of the data might discourage offerors from taking the initiative to come forward with more innovative techniques for cutting costs, because offerors would be able to figure out the manner in which the government did the work, make an informed estimate of the government's actual bid price, and compute their offers so that they are just below what they believe the government's price will be.

We are persuaded by the Air Force's arguments that the government has a legitimate interest in not incorporating the requested historical data into the solicitation. That is, the Air Force hopes to encourage offerors to use creative or innovative techniques in order to keep their costs as low as possible, and is reasonably concerned that, if historical data are released and offerors are to use the information to estimate the government's cost of performance, then offerors might not be as creative in their proposals and their offers might not be at the lowest possible cost. The Air Force also justifiably does not want to reveal to all offerors the cost elements that will make up its in-house price.

We are aware of no requirement that the government include historical data in every A-76 solicitation. The guidelines for conducting an A-76 cost comparison are set forth in a publication entitled, "Cost Comparison Handbook." OMB Circular A-76, Supplement, Part IV (August 1983). Chapter 1, paragraph C.2 of the Handbook requires the government to develop a performance work statement (PWS) that will be the basis for comparing the cost of government performance with the cost of contracting out. Chapter 3, paragraph B.1 directs that contractors' bids or proposals must be predicated on the same PWS that was used to prepare the government's estimate. The Handbook further directs that: "[The PWS] must be sufficiently comprehensive to ensure that in-house or contract performance will satisfy Government requirements. The PWS should clearly state what is to be done without describing how it is to be done."

Thus, the government and all offerors must be competing to the same statement of work, but the statement of work should give offerors the latitude to determine just how they will propose to do the work.

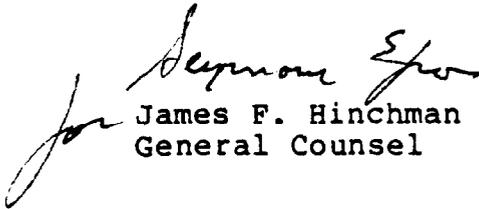
The present RFP contains a comprehensive statement of work that describes in great detail exactly what work the contractor will be required to do under the contract. While the RFP does not contain the historical data the protester requested, it does set forth the Air Force's best estimate of the volume of work required in each major category of work. The RFP also indicates that the Air Force reviewed the historical data to establish the anticipated work load data set out in the RFP. In our view, offerors experienced in this line of work have sufficient information upon which to prepare their offers. Further, all commercial offerors clearly are being treated alike in this regard.

The protester also argues that the information should be released in the present procurement because another Air

Force activity, Warner Robins Air Force Base, released similar historical data when it procured vehicle operations and maintenance services. In response, the Air Force reports that the circumstances were substantially different in the Warner Robins procurement, because it was not an A-76 procurement and, therefore, no government bid was going to be prepared. Accordingly, the Air Force points out that Warner Robins had no competitive position to protect, unlike the present case where Hill Air Force Base will be competing.

We agree that the circumstances in the procurements at the two Air Force bases are very different, and thus that the release of information by Warner Robins has no bearing on the propriety of the decision not to release the information in this case. Moreover, the fact that Warner Robins Air Force Base may have incorporated historical information into its solicitation does not mean that every Air Force activity must now release such information.

The protest is denied.


James F. Hinchman
General Counsel