

Cunningham



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: H H & K Builders

File: B-237885

Date: March 30, 1990

Don Hecht, for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
James M. Cunningham, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that an inadequate number of work days was specified for accomplishing housing maintenance services incident to transfers of Air Force personnel is denied where contracting agency shows specified work days are required to meet its minimum needs.

2. Provision for liquidated damages in contract for housing maintenance services incident to transfers of Air Force personnel is reasonable given significant financial considerations bearing on services and transfers.

DECISION

H H & K Builders protests request for proposals (RFP) No. F24684-89-R0019, issued by Malmstrom Air Force Base, Montana, for maintenance of military family housing, including Change of Occupancy Maintenance (COM) services for a base period of 1 year plus four 1-year options. The Air Force received several proposals under the RFP, but thereafter suspended the contracting process in view of the filing of H H & K's protest.

H H & K, the incumbent contractor for these services, protests the times allowed to accomplish several work tasks under the solicitation as well as the provision for assessing liquidated damages against the contractor for failure to meet these work-time requirements.

We deny the protest.

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The RFP described the work to be performed under 14 major work items ranging from major floor refinishing (refinishing of areas exceeding 200 square feet) to cleaning of the housing units. As to major floor refinishing, for example, the RFP stated that the contractor was to be paid, on the basis of the square foot price, for any floor refinishing which exceeded 200 square feet. In addition, the RFP provided for minor COM (for example, floor refinishing of 200 square feet or less) which was to be completed by the contractor as part of its overall price to the Air Force. As to several major work items (major painting, major wood floor refinishing, house cleaning, major floor covering replacement, and structural repairs incident to leveling uneven floors), the RFP specifically provided for the number of work days for the contractor to do the work ranging from one work day for house cleaning to five work days for major wood floor refinishing. As to minor COM work, for example, leveling floors not involving structural repairs and refinishing hardwood floors under 200 square feet in area, the RFP provided for a total of two work days.

H H & K argues that two work days is an inadequate time to allow for COM--particularly for minor floor leveling not involving structural repairs and to refinish hardwood floors under 200 square feet in area. As to minor floor leveling, H H & K points out that the RFP requires the adjusting of floor joists and the repairing of wall board, door trim, and base boards damaged by the adjustment. As to the refinishing of floor areas under 200 square feet, H H & K states that "to sand [the area] and put 3 coats of finish normally requires 3 days for drying time" alone. H H & K also insists that the one extra working day allowed for house cleaning is inadequate especially given the poor general condition of many of the houses to be cleaned and the RFP requirements to vacuum, shampoo, and dry the house carpeting incident to the general house cleaning.

In this regard, H H & K notes for the first time in its comments on the agency report that interim arrangements made by the Air Force to obtain these maintenance services pending the resolution of the protest allow "more time for a wide variety of tasks plus there is not any liquidated damages." H H & K therefore argues that the interim specifications should be adopted instead of the present RFP specifications.

The contracting agency has the primary responsibility to determine its contract needs and the best specifications for fulfilling those needs; consequently, we will not question an agency's determination of its actual needs unless there is a clear showing that the determination has no reasonable

basis. Hallmark Packaging Prods., Inc., B-232218, Oct. 25, 1988, 88-2 CPD ¶ 390. We conclude that the specifications in question are reasonable.

The Air Force states that the work times specified in the RFP were intended to be reasonably achievable yet limit the financial impact on the Air Force which generally flows from the reassignment of Air Force personnel and the associated need to perform needed maintenance on the housing before new occupants move in. The Air Force asserts that the longer a housing unit is vacant due to change of occupancy maintenance, the greater the likelihood that the agency will incur increased household goods storage expenses, temporary lodging costs, and additional administrative expenses. According to the Air Force, the contracting officer conducted a survey of eight Air Force bases and found that several bases currently use (or will soon use) a two-work-day COM schedule for all but major work items. The adoption of the same kind of schedule for use here, the Air Force insists, is reasonable and can be met provided that the contractor hires a sufficient work force to perform in the required time and adequately factors in the cost of this work force into its proposal.

We find reasonable the Air Force's general rationale for adopting the two-work-day schedule for minor COM tasks, including those which the protester specifically has protested.

The Air Force insists that 2 working days is appropriate for completion of minor floor leveling and refinishing since minor floor leveling adjustments should not cause extreme movement resulting in significant structural damage. If significant damage occurs, the contractor will be entitled to additional performance time as a "structural repair." As to floor refinishing under 200 square feet, the contracting officer notes that only two coats of finish are required, not the three supposed by H H & K, and that the drying time between two coats, especially if enhanced by chemicals added to the refinishing liquid, is minimal. H H & K has not contested the Air Force's analysis, which we find to be reasonable.

Similarly, the Air Force maintains that the one additional day allotted for house cleaning is reasonable especially since in some housing units the cleaners may be able to start working at the same time that the other 2-day minor change of occupancy work is proceeding. Although H H & K disagrees, citing the disruptive effects on house cleaning of the other work, we conclude that many of the cleaning tasks, removal of grease and soap scum, for example, could

proceed concurrently with other minor COM work. Further, we find reasonable the Air Force's view that if the house cleaners use non-saturating carpet cleaner and ventilating fans to speed carpet drying, the RFP's requirement for dry, as well as clean carpet, can be met.

As to liquidated damages, the RFP provides for the assessment of liquidated damages in the amount of \$53.88 "per half day that turn back [of the housing unit] is delayed." H H & K complains that this provision is unreasonable. Liquidated damages are not objectionable unless they represent a penalty; a penalty exists when there is no possible relation between the amounts stipulated for damages and the possible losses which are contemplated by the parties. Aquasis Servs., Inc., B-229723, Feb. 16, 1988, 88-1 CPD ¶ 154. Given the Air Force's analysis, above, of the significant financial considerations bearing on the reassignment of Air Force personnel and the associated need to accomplish COM of base housing as quickly as reasonably possible, and in the absence of any evidence from the protester indicating the contrary, we conclude that the liquidated damages provision is reasonable.

Finally, with respect to the protester's assertion that the Air Force should adopt the more lenient terms under which it has obtained these services during the pendency of its protest, i.e., no liquidated damages provision and longer completion schedules, we point out that the Air Force's willingness to tolerate a reduced level of service for a short period of time does not mean that it must accept it over the longer contract term. In other words, the fact that the Air Force used more lenient specifications for a interim period does not itself negate our finding, based on the record in this case, that the challenged specifications are reasonable.

We deny the protest.


James F. Hinchman
General Counsel