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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kime Plus Incorporated

File: B-241996

Date: March 19, 1991

Edward W. Mitura for the protester,
Herbert F. Kelley, Jr., Esq., and Jack B. Patrick, Esq.,
Department of the Army, for the agency.
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protest that solicitation for food services subjects bidders to unreasonable financial risks because it does not include separate line items to compensate the contractor when meal serving times are extended, headcounts are lower than estimated and for weekend ration pick-ups, and allegedly does not adequately describe government-furnished equipment and facilities, is without merit where the solicitation contains, or will be amended to contain, sufficient information for offerors to compete intelligently and on equal terms; there is no legal requirement that solicitations eliminate all risks for the contractor.

DECISION

Kime Plus Incorporated protests invitation for bids (IFB) No. DABT64-91-B-0001, issued by the Department of the Army for food services at Fort Chaffee, Arkansas. Kime, the incumbent contractor for these services, has raised a number of objections to the solicitation's provisions which, taken together, amount to a contention that the contracting agency has improperly allocated financial risk between the government and the contractor. Specifically, Kime argues that the solicitation improperly fails to provide separate, priced contract line items (CLINs) for compensating the contractor when meal service extends beyond the length of time specified in the solicitation, when headcounts are lower than estimated, and when rations have to be picked up on weekends. In addition, Kime alleges that the solicitation fails to alert other bidders to the unsatisfactory condition of the Fort Chaffee facilities and equipment.

We deny the protest.

The IFB, issued on October 1, 1990, contemplates award of a firm, fixed-price contract with price adjustments for extended operating hours for food services for a 1-year period with four 1-year options. Bid opening has been suspended pending resolution of this protest.

The IFB requires the contractor to furnish management, labor, and supplies to operate the daily full food service dining facilities, including service on weekends and legal public and religious holidays. For each building at which service is to be provided, the IFB requires bidders to provide a unit and total price for, among other items, weekday, weekend/holiday, and night/one meal service, for which an average number of meals served per day and an estimated number of days for each service is provided. For three of the buildings, the agency lists two range estimates for the average number of meals to be served and the estimated number of days for each service. Bidders are also required to give hourly unit and total prices for "extended service." Again, an estimated quantity for extended hours is provided.^{1/} At the foot of the bid schedule

^{1/} The pricing format for Building 1384 for the first option year, which lists two range estimates for meals served per day, is typical:

CLIN	Supplies and Services	Est Qty	Unit	Unit Price	Total Price
0020	Building 1384 Seating Capacity: 200				
	Average number of meals served per day: 500-700				
0020AA	Weekdays	60	day	\$ ____	\$ ____
0020AB	Weekends/holidays	21	day	\$ ____	\$ ____
0020AC	Night/One Meal Service	10	svc	\$ ____	\$ ____
	Average number of meals served per day: 701-900				
0020AD	Weekdays	182	day	\$ ____	\$ ____

for each building, bidders are required to enter the total annual cost for that building for the base year and for each option year.

The solicitation provides that normal weekday, weekend/holiday operating hours for each facility are "from 1-1/2 hours prior to serving the first meal of the day to 1-1/2 hours after serving the last meal of the day." "Normal meal hours," because they vary slightly, are listed for each building. For example, breakfast at Building 811 begins on weekdays at 7:00 a.m. and ends at 8:30 a.m., while breakfast at Building 1384 begins on weekdays at 6:00 a.m. and ends at 7:30 a.m. Similarly, the lunch and dinner meal times vary. The night meal, which may be required in addition to a three-meal per day operation, can be served in all but two of the buildings and is consistently scheduled from 11:00 p.m. to 1:00 a.m.

The IFB also provides that, when a three-meal operation is not required, a 1-meal operation is required for a breakfast, brunch, lunch, supper or dinner meal. Also, two separate 1-meal operations in a single day in the same or different facilities may be required. These two 1-meal operations in a single day could consist of, for example, a breakfast and lunch, brunch and supper, lunch and dinner, supper and a night meal. Each 1-meal operation will be a 4-hour operational period, allowing a 2-hour serving period and a 1-hour period before and after the serving period.

The solicitation notes that the contractor shall periodically be required to extend the food service operation beyond the normal operating hours in order to feed in excess of the scheduled breakfast or dinner meals and that the contracting officer may direct the contractor to provide extended services in any or all facilities. The contractor is to be given at least 1 hour's notice of any change in service requirements. The IFB provides that payments for extended services will be at the rates set forth in the applicable CLIN entitled "Extended Services" and only to the extent ordered and performed. If service is extended for part of an hour, the amount paid the contractor will be prorated. Payment for the

1/ (...continued)				
0020AE	Weekends/holidays	88	day	\$ _____ \$ _____
0020AG	Extended Hours	85	hr.	\$ _____ \$ _____

This format is used for each building for the base year and the 4 option years. In several buildings, the pricing sheets also list the capacity per meal. Also, the average number of meals served per day varies among the base and option years.

extended service hours has been clarified in the Performance Work Statement Errata Sheet 1 which explains that the "[e]xtended hours do not apply to the lunch meal when meal hours are periodically adjusted to meet unit requirements. Any adjustments to the lunch meal shall not exceed 1/2 hour and shall not constitute an increase or decrease in contract cost."

Finally, the solicitation provides a 69-page description of the government-furnished property, which gives the square footage of each dining facility and the type of equipment in each building. Generally, for each type of equipment, the agency lists its quantity, make and condition, and, where appropriate, its size. The solicitation also includes separate lists of government-provided expendable items, such as kitchen ladles, salt shakers and saucepans, a list of recommended janitorial supplies, and instructions for cleaning and maintenance.

A site visit, encouraged by the agency, was conducted on October 12, 1990. Eight bidders attended the site visit.

EXTENSION OF MEAL SERVING PERIODS

Kime first contends that the solicitation cannot be bid fairly because it calls for a firm, fixed-price contract without a separate line item to reimburse the contractor for costs incurred when meal serving times are extended. The protester, as the incumbent contractor, argues that "[b]ased on past experience, these meal durations are inadequate for periods of heavy feeding." The protester contends that compensation must be based on meal serving periods as well as on the total operating hours because the extension of a meal serving time increases the number of people served and consequently the number and working hours of personnel needed to serve them, including, for example, cashiers, cooks, servers, and dishwashing personnel. According to the protester, some of these personnel are utilized only for the meal serving periods. Therefore, the protester argues that the Army should include a separate line item in the solicitation for hourly costs of extended meal service.

Initially, the agency points out that the contractor is to provide food service on the basis of daily operating hours, not on the basis of individual breakfast, lunch, and dinner meals. The normal operating hours for each building relate to the first and last meal of the day, which is not usually the lunch meal. The normal operating hours for each facility are clearly set forth in the solicitation and extend from 1-1/2 hours before serving the first meal of the day to 1-1/2 hours after serving the last meal of the day. Although there are "normal" lunch meal hours, just as there are

"normal" breakfast and dinner meals for each building, the term "extended hours" applies only to the first and last meal of the day because the contractor runs a continuous operation throughout the day. Indeed, the agency points out that Kime currently operates with a shift change at noon. The new shift completes the lunch meal serving and cleanup and then begins preparing the next meal. Therefore, the new shift is working whether or not the lunch meal is extended. The contractor is compensated when service is extended beyond its operating hours. The agency says that "extended hours" is relevant to the lunch meal only when lunch is a 1-meal operation or part of a 2-meal operation. The agency also states that for clarification, it will amend the solicitation so that extended hours will apply when the lunch meal is the only, the first, or the last meal served in a facility on a given day. The agency has submitted to our Office a copy of a proposed amendment to that effect.

BELOW-AVERAGE HEADCOUNTS

Kime next argues that the agency's estimates for the average number of meals served per day, or "headcounts," are not accurate. As an example, the protester points to the agency's two range estimates of 500 to 700 and 701 to 900 meals served per day for option year 1 in Building 1384. As noted above, each contractor is to give a price for weekdays, weekends/holidays and so forth for the estimated number of days on which 500 to 700 meals and 701 to 900 meals are served. Kime contends that, based on its past experience, the meals served per day for a building may not even reach the lower limit of the agency's range. Kime questions whether the contractor will be paid if fewer than 500 meals are served and argues, again, that since this is a firm, fixed-price contract, a price must be requested for the entire range of meals that could be served, i.e., 1 to 700 rather than 500 to 700, to preclude any dispute on price because of headcount variation.

As to headcount, the agency first maintains that its estimates, which are based on historical headcount data, are accurate. Moreover, the agency points out that the solicitation provides that when the headcount is less than the estimated average, the agency may elect either to serve fewer diners in the facility or to close that facility and transfer diners to another building. If the agency elects to keep the facility open and serve fewer diners than estimated, the contractor will be paid the line item price for the lowest estimated quantity. Again, the agency has submitted to our Office a proposed amendment which clarifies how payment will be made in the event that fewer meals than the agency's lowest estimate are served in certain, identified buildings.

ADEQUACY OF GOVERNMENT-FURNISHED EQUIPMENT AND FACILITIES

Finally, Kime argues that the government-furnished equipment and facilities are inadequate, something which the agency has failed to properly explain in its solicitation. Specifically, the protester argues that, contrary to the agency's representations, the buildings do not have sufficient space or refrigeration to store food for a weekend during periods of moderate to heavy service. As a result, the protester states, it has incurred labor costs for ration pick-up on weekends. It contends that the solicitation should include a separate line item for weekend ration pick-up.

The agency disagrees with Kime's assessment of the condition of the equipment. First, the agency notes that Fort Chaffee is modernizing its dining facilities and, although it believes the modernization of one building, scheduled for completion in February 1991, will alleviate all weekend storage problems, it emphasizes that modernization of two other dining facilities was completed in 1990 and two or three additional facilities will be renovated in 1991. Therefore, it says that a separate CLIN for weekend ration pick-ups is not needed. Also, the agency notes that prospective bidders had an opportunity to visually inspect the facilities and equipment and to ask questions about them during the site visit.

DISCUSSION

The essence of Kime's protest is that the solicitation is defective in that it imposes an unreasonable financial risk on bidders because it requires them to include within the bid price the costs for extended meal hours, service for fewer meals than agency estimates, and weekend ration pick-ups. The protester requests that this risk be reduced through the use of separate line items for extended meal hours and weekend ration pick-ups and the inclusion of lower meal estimates to account for those occasions when fewer meals than estimated are served.

While offerors must be given sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis, Creative Management Technology, Inc., B-233255; B-233330, Feb. 28, 1989, 89-1 CPD ¶ 217; T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435, there is no requirement that the solicitation be so detailed as to eliminate all performance uncertainties and risks. Id.; Ameriko Maintenance Co., B-230994, July 22, 1988, 88-2 CPD ¶ 73. Risk is inherent in most types of contracts and bidders

are expected to allow for that risk in computing their bids. In fact, we have noted that service contracts, by their very nature, often involve the estimation of costs based on visual inspections, and that the presence of some element of risk does not make a solicitation improper. Triple P Servs., Inc., B-220437.3, Apr. 3, 1986, 86-1 CPD ¶ 318.

We think the record calls into question whether extended meal hours (principally, lunch) and weekend ration pick-ups occur with sufficient frequency and are so significant that an impermissible amount of financial risk to bidders exists if these aspects of the work are not bid, and paid for, as separate contract line items.

As to meal hours, the agency states that during Fiscal Year 1990, considering all the dining facilities at Fort Chaffee, the lunch serving period was extended for a total of 6-1/2 hours, and that with the completion of the renovations to the dining facilities it would expect that figure to be cut by more than half under the new contract. In addition, under the solicitation's clarified Performance Work Statement and as the IFB is to be amended by the agency, extensions to the lunch hour will be limited to 1/2 hour and should the lunch meal be the only meal served or is the first or last meal served in the affected facility on a given day, the provision under which the contractor is paid for extended service hours will apply.

Similarly, as to weekend pick-up of rations, the agency states that the already-infrequent occasions when this does occur should decrease as building renovations are completed. The adequacy of storage areas, including refrigeration equipment, could be observed by potential bidders during the site visit conducted by the agency. Given the information in the solicitation, plus the information a bidder could obtain during the site visit, we think the information provided was sufficient to permit prospective bidders to submit intelligent bids.

Finally, we note that the Army proposes to address situations where, for certain designated dining facilities, fewer than the lowest estimated number of diners are served, by the inclusion of a contract provision under which the contractor will be paid as though the minimum estimated number of diners were served. Since such a provision would serve to establish a price and to protect the contractor against loss if less than the minimum estimated headcount was achieved, we think it effectively makes academic the protester's argument that the

solicitation should contain a separate contract line item for estimated diner ranges which the agency considers unrealistically low.

Accordingly, the protest is denied.

Robert P. Murphy
for James F. Hinchman
General Counsel