



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Crimson Enterprises, Inc.
File: B-243193
Date: June 10, 1991

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.
Fred Carter for Carter; Helen Kessler for Evergreene Management Group; N. Barry Bingham for Makenna Enterprises; R. Russell for Management & Training Corporation; William D. Kenworthy for Ogden Allied Government Services; and James C. Fontana, Esq., for Vinnell Corporation, interested parties. Jeffrey I. Kessler, Esq., and Maj. Allan R. Pearson, Esq., Department of the Army, for the agency. Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Determination to use cost-type contract for housing maintenance and management, because of unpredictable changes in the number of occupants, unforeseen requirements, and the addition of new requirements--such as a hazardous waste management program--is reasonable.

DECISION

Crimson Enterprises, Inc. protests the terms of request for proposals (RFP) No. DAAD09-90-R-0019, issued by the U.S. Army Dugway Proving Ground, Utah, for housing maintenance and management services for 646 family housing units. Crimson argues that the use of a cost-reimbursement contract was improper and placed small businesses at a disadvantage.

We deny the protest.

The RFP, as amended, was issued on an unrestricted basis and called for the submission of initial offers on March 12, 1991. Firms submitting proposals were required to do so on a cost-plus-fixed-fee basis. Award was to be made based on the best overall proposal. The RFP required the furnishing of all

labor, administration, supervision, equipment, parts, materials, and supplies to perform the following services: (1) family housing management; (2) family housing administration and operation; (3) furnishing/furniture management; (4) family self-help program management and operation; (5) maintenance and repair to family housing equipment, appliances and facilities; (6) maintenance of family housing improved grounds; (7) fuel oil delivery to family housing units, government administration buildings, and emergency generators; and (8) maintenance and repair of family housing playground equipment and other functions as described in the Performance Work Statement. The RFP provided that the Dugway Proving Ground had 646 housing units that required maintenance service under this solicitation, 104 of which were newly constructed; the other 542 units had either been remodeled or would be remodeled in the future. The RFP also provided that the successful offeror would be responsible for performing routine and emergency maintenance and service calls in the units that are being remodeled.

Crimson is the incumbent contractor for the maintenance and repair functions of this requirement. New to the current solicitation is the housing management function which is currently being performed by government employees. The agency also reports that a hazardous household waste management program will be negotiated into the statement of work during discussions with offerors.

Crimson filed this protest on March 6, 1991. Several proposals, including one from Crimson, were received by the closing date. The majority of the offerors, including Crimson, are small businesses. Only Crimson objects to the agency's use of a cost-reimbursement contract.

Crimson argues that the use of a cost-plus-fixed-fee contract type was improper because the requirement was for maintenance services that had been successfully performed by a small business for the past several years under a firm, fixed-price contract. Crimson maintains that the agency had a long record of experience with this requirement using a fixed-price contract and that the requirement did not present any unusual risks to offerors. Crimson further maintains that the use of a cost-plus-fixed-fee contract type will result in increased cost to the government and will require small businesses to implement an extensive cost accounting system, thereby restricting competition.

The Army justified the use of a cost-type contract on the basis of uncertainties in the nature, extent, and complexity of the work requirement. The Army states that the past experience of the housing maintenance services contract shows a history of unexpected needs in terms of the work

requirements. The Army also states that in the past, each time a new requirement was identified which involved housing maintenance services but which was not specifically covered by one of the existing line items, it was required to either modify the contract or place individual purchase orders to accomplish some of the necessary housing maintenance work. The Army further maintains that the variation in occupancy also changes the nature of the requirements as well. The Army reports that there is at least one known activity that will be transferring in the near future. The Army also expects that during the course of the contract gains or losses of other tenant activities, as well as the introduction of new missions at Dugway, are possible, all of which will affect occupancy.

The Army states that an additional area of uncertainty is the inclusion of the housing management function under the contract. According to the Army, there is no fixed-price history data on the housing management function, since it has been on a cost-reimbursement basis under the base operations contract and only recently has been performed by government employees. Under the housing management requirement, the contractor must determine all housing requirements, develop construction requirements, perform terminations and assignments, perform housing inspections, develop project documentation, provide furnishing and equipment management and inventory, perform housing surveys and occupant counseling, evaluate occupant self-help requests, and perform many other functions that the agency maintains are not conducive to individual line item pricing.

Finally, the Army contends that another significant area of uncertainty is the changing nature of environmental problems to which the housing maintenance and management contractor must respond. The agency states that the hazardous household waste management program that will be added to the requirement has been mandated to prevent unauthorized household waste dumping in the landfill which is not permitted under state or federal environmental law. The agency reports that this is a new requirement for which no prior contracting experience or historical data exists. Due to the complexity of the environmental aspects of the requirement, the agency contends that the requirement cannot be specified in detail sufficient to permit fixed pricing. The Army asserts that considering the factors mentioned above, the contracting officer's decision was reasonable.

In response, Crimson generally disagrees with the Army's conclusions concerning the uncertainties and risks involved in performing the requirements. Crimson asserts that services of this type have been acquired at other military installations on a fixed-price basis and contends that the Army has not demonstrated any unique requirements or uncertainties in this

procurement which justify the use of a cost-type contract. Further, Crimson asserts that the Army failed to take into account the increased administration and surveillance costs. Crimson contends that the Army's determination was therefore improper.

In the conduct of negotiated procurements under the Competition in Contracting Act of 1984 (CICA), the head of an agency of the Department of Defense (DOD) "may enter into any kind of contract that he considers will promote the best interests of the United States." 10 U.S.C. § 2306(a) (1988). The applicable regulations require that the use of cost-type contracting be justified on the basis that the uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. Federal Acquisition Regulation (FAR) § 16.301-2. A lack of experience in contracting for particular goods or services may justify the use of cost-type contracts until a contracting history adequate to provide a basis for price determination is established. See United Food Servs., Inc., B-220367, Feb. 20, 1986, 86-1 CPD ¶ 177. We will review such determinations to ascertain whether the decision was reasonable. See id.

We conclude that the Army's determination to use a cost-type contract was reasonable. The contracting officer specifically states that the past history of numerous sole-source negotiated additions of unforeseen requirements, and increases of quantities and prices due to unpredictable changes in requirements, reveal that the breadth and complexity of the requirements are such that all major contingencies cannot be expressed in the statement of work or delineated in the pricing schedule. The introduction of two new requirements, a hazardous waste management program and the housing management function for which the Army has no historical data, also support the Army's determination to use a cost-type contract. Because of the evolving state and federal environmental regulations coupled with the limitations of the installation landfill, which the Agency reports may require the implementation of a more extensive recycling program, performing the hazardous waste management requirement may also result in an unpredictable significant work effort. In our judgment, these considerations reflect at reasonable basis for the contracting officer's determination to use a cost-type contract.

The contracting agency also reports that proposed costs received in response to this RFP are less than the current housing maintenance contract costs. The agency anticipates that this cost-reimbursement contract will be less costly because offerors will not have to factor into their pricing

the risks involved with the uncertainties in contract performance. This contract type will also allow the agency to take advantage of any cost savings due to decreases in workload.

Crimson also argues that the use of a cost-type contract will require small businesses to implement an extensive cost accounting system, thereby restricting competition. While some small businesses may have to alter their accounting system to maintain a record of the expenditures under a cost-type contract, small businesses are exempt from all Cost Accounting Standards requirements, FAR § 30.201-1(b)(3). Moreover, the record reflects that small business participation has significantly increased since this requirement is being procured on a cost-reimbursable basis.

Finally, we do not find Crimson's references to other procurements at other installations to be persuasive evidence that the use of a cost-type contract is improper, since each procurement must stand alone. United Food Servs., Inc., B-220367, supra.

The protest is denied.


for James F. Hinchman
General Counsel