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

Decision

Matter of: Tucson Mobilephone, Inc.

File: B-247685

Date: May 29, 1992

Theodore M. Bailey, Esq., for the protester.
James Dever, Esq., and David H. Doro, Esq., Department of
the Air Force, for the agency.
C. Douglas McArthur, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where solicitation initially called for fixed prices for maintenance of seven general subline categories of land mobile radio equipment and communications systems, protest that solicitation did not fairly provide for equitable adjustment when agency adds or substitute equipment to inventory that is more expensive to maintain is denied where the agency proposes to amend the solicitation to provide for computing equitable adjustments by use of a weighted average that would reduce risk to an acceptable level; there is no requirement that specification be drafted in such detail as to eliminate all risk for the contractor.

2. Where solicitation statement of work contains clear and precise description of tasks constituting limited maintenance, and reasonably describes skill level of employees to be trained for limited maintenance, protest that solicitation does not adequately describe the contractor's duty for training government employees is denied.

3. Where solicitation statement of work reserves to the agency the right to perform limited maintenance, the performance of such maintenance is not inconsistent with the use of a requirements contract by which the agency obligates itself otherwise to obtain maintenance services from the successful offeror.

DECISION

Tucson Mobilephone, Inc. protests the terms of request for proposals (RFP) No. F42650-91-R-A005, issued by the Department of the Air Force for maintenance and service of radio

equipment. The protester contends that the terms of the solicitation are ambiguous and expose potential contractors to an unreasonable risk.

We deny the protest.

On December 6, 1991, the agency issued the solicitation for a firm, fixed-price requirements contract to provide all personnel, equipment, tools, and material necessary for recurring and nonrecurring maintenance of commercially manufactured land mobile radio communications equipment and systems, for a base year with four 1-year options. The solicitation includes several technical exhibits: technical exhibit 2, the estimated workload; and technical exhibit 11, a list of the specific equipment to be maintained.

The solicitation contains three line items for the base year and for each of the option years. For each year, line item 0001 contains seven subline items as follows: 0001AA, base stations; 0001AB, console control; 0001AC, mobile radios; 0001AD, pagers; 0001AE, portable radios; 0001AF, portamobile radios; and 0001AG, repeaters. Each subline item lists certain models requiring maintenance work; technical exhibit 11 lists the specific equipment applicable to each subline item.

Prior to the receipt of initial proposals, on January 6, 1992, Tucson Mobilephone filed a protest against the terms of the solicitation with the agency, alleging that the bid schedule and the pricing for technical exhibit 11 were ambiguous. The protester alleged that technical exhibit 11 did not accurately identify the equipment on-hand, that a contractor's exposure to liability and risk was excessive because there was no specific provision for the amount of adjustment where the agency substituted more expensive equipment for equipment currently on-hand. Tucson Mobilephone filed a separate protest against the solicitation requirement for training Air Force personnel to perform limited maintenance. The agency responded by letter of February 10, sustaining the protest in part and denying it in part, and this protest to our Office followed.

The protester essentially objects to the agency's decision to ask for prices on seven general categories of equipment, subline items 0001AA-0001AG, rather than for each specific piece of equipment listed in technical exhibit 11. The protester contends that each of the subline items in line item 0001 can encompass a wide range of models, each of which represents a varying degree of risk for potential contractors. Item 0001AE, for example, may contain some

models of portable radios that cost four times as much to maintain as other portable radios priced under the same line item. The protester also is concerned that if the agency deletes a less expensive portable radio model from the contract and replaces it with a portable radio model that is more expensive to maintain, the contractor's price for portable radios would not fairly compensate the firm for the price of performance.

While a solicitation must be drafted to inform all offerors in clear terms what is required of them, there is no requirement that specifications be drafted in such detail as to eliminate all risk for the contractor. Newport News Shipbuilding and Dry Dock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23, aff'd on recon., B-221888, 2, Oct. 15, 1986, 86-2 CPD ¶ 428. Here, in responding to the agency-level protest, the agency pointed out that the statement of work (SOW) provides for an equitable adjustment for new or substituted equipment; further, the agency has agreed to modify the solicitation to provide for computing equitable adjustments by a "weighted average" based on the contractor's estimate of the price of maintaining the new or substituted equipment versus the price of maintaining the replaced equipment. Based on the agency's representation that it will revise the solicitation to provide for such a formula to insure that a contractor receives fair compensation in the event that the addition or replacement of equipment creates a more expensive mix for maintenance, the protester's initial objection to lack of any specific adjustment provision in the original solicitation is academic.

To the extent that the protester still argues that having offerors submit a price for each piece of equipment under technical exhibit 11 would allow better control of potential risks for offerors, the proposed modification for the use of weighted averages appears, in our view, to provide a reasonable mechanism to reduce the risk faced by potential contractors, and offerors may properly use their business judgment in setting their prices to reflect the risk of being asked to maintain more expensive models than those in

¹The example provided by the agency concerns three models at an estimated maintenance cost of \$4 (quantity of 50), \$10 (quantity of 100), and \$5.50 (quantity of 200) and a corresponding line item cost of \$6.57 (350 items at \$2300). If the agency scrapped the 50 cheapest models and added 150 of the medium-cost models, the agency would equitably adjust the appropriate maintenance line item cost upward to \$8 per item (450 items at \$3,600).

the original inventory. See Klein-Sieb Advertising and Pub. Relations, Inc., B-200399, Sept. 28, 1981, 81-2 CPD ¶ 251, aff'd on recon., B-200399.2, Feb. 8, 1982, 82-1 CPD ¶ 101. We cannot find the agency's position unreasonable in this regard.

Paragraph C.5.3.4 of the solicitation statement of work (SOW) requires that the contractor provide training to two agency personnel for the purpose of performing "limited maintenance" of equipment, to cover the use of test equipment, tools, test fixtures, and technical manuals. The protester contends that the solicitation does not state the agency's minimum needs, minimum training requirements, or the competency or level of training required. The protester also argues that the solicitation does not define "limited maintenance" sufficiently for a potential contractor to determine the level of training required.

Contrary to the protester's assertion, paragraph C.1.12.4.4 of the SOW specifically defines "limited maintenance" to include:

- (a) Isolating faults down to, and replacing plug in circuit cards and plug in modules/components.
- (b) Replacing damaged or missing knobs, portable and mobile antennas, minor hardware, and connectors on external interconnecting cables.
- (c) Repairing mounting brackets, fixed antennas, external cables, and power cords.
- (d) Cleaning external and internal surfaces, open relays and switches, and connectors.
- (e) Other maintenance actions, not including repairing or replacing hard wired components, which can be accomplished with common hand tools and available test equipment.
- (f) Maintenance action on [intrinsically safe] portable radios which will not jeopardize [their] certification.
- (g) Installation and removal of government-owned [land mobile radio] equipment.

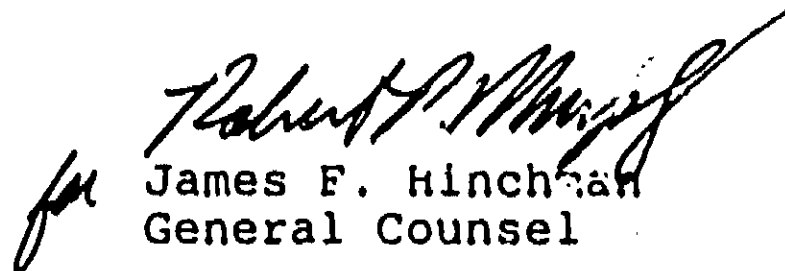
The protester also contends that the level of training required for limited maintenance is ambiguous because the solicitation does not identify the specific personnel to be trained. While the agency has not definitely identified the personnel whom it will designate to receive training, it states that if land mobile radio managers are to perform the work, both are electronic technicians with certificates of training including successful completion of military general electronics school. Also, paragraph C.1.12.4.1 of the SOW provides that the agency personnel designated for training will be "trained Government electronic technicians." We

believe that the solicitation reasonably describes both the nature of the limited maintenance to be performed and the level of the training to be provided.

The protester argues that the limited maintenance provisions of the solicitation conflict with the nature of a requirements contract, as contemplated by the solicitation. Paragraph C.1.1 of the SOW, which defines the scope of the contractor's obligation, excludes services specified in section C.3 of the SOW, which specifically reserves to the agency "the right to perform maintenance, install and remove any . . . equipment when deemed necessary by the [contract functional monitor]." The agency states that the provision allows it to repair equipment where contractor personnel are unavailable or where users deliver equipment for repair that is easily repairable by technicians with equipment on-hand, without breaching the contract.

We do not find that the provision for limited maintenance by government personnel, within the bounds set by the SOW, is either unreasonable or inconsistent with the nature of the contract. While the protester also asserts that the agency assumes no responsibility for supplies and materials consumed during limited maintenance, our review of the solicitation shows that line item 0002AB, under nonrecurring maintenance, provides for reimbursement of parts and material required for repairs at net invoice cost to the contractor plus transportation charges.

We deny the protest.


for James F. Hinchman
General Counsel