



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

Decision

Matter of: National Waste Recycling, Inc.

File: B-251608

Date: April 13, 1993

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Smith, Currie & Hancock, for the protester.
David A. McIntyre for Ceres Tree Company, an interested
party.

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the Army, for the agency.

Glenn G. Wolcott, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest challenging feasibility of solicitation requirement for equipment capable of processing 90 cubic yards of debris per hour is denied where solicitation identified a particular piece of equipment which the agency reasonably concluded, based on the manufacturer's literature, was capable of meeting the stated requirement.
2. Protest that agency refused to correct "typographical error" in solicitation for wood debris chipper is denied where agency, in fact, corrected the error by amending solicitation to state contract requirements in terms of input rather than output.
3. Agency was not obligated to specify crew size required to operate chipping equipment where solicitation provides a performance requirement and individual crew members could reasonably be expected to perform at different rates depending on their levels of experience and expertise and on the type of equipment the bidder intended to use.

DECISION

National Waste Recycling, Inc. (NWR) protests the terms of invitation for bids (IFB) No. DACW17-93-B-0031, issued by the Department of the Army to provide chipping services for debris generated by Hurricane Andrew in Dade County, Florida. NWR asserts that the IFB requirement regarding the

amount of debris to be processed per hour was unrealistic, and that the agency's failure to specify a particular crew size to operate the chipping equipment precluded bidders from competing on an equal basis.

We deny the protest.

BACKGROUND

The IFB was issued on December 5, 1992, and sought bids to provide the labor and equipment necessary to convert vegetative debris (that is, trees, tree limbs, bushes, and shrubs) created by Hurricane Andrew into chips/mulch. The contract objective was to remove debris from fruit groves to permit farmers to take necessary precautions to protect the groves from potential freezes.¹

The IFB sought bids for up to 25 chippers along with the crews necessary to operate that equipment. The solicitation did not provide any required crew size, but stated:

"The operator and equipment shall be capable of processing a minimum of 90 cubic yards of chips per hour Chippers such as the Morbark E-[2] Model 20/36 and equals shall be considered sufficient."

The IFB called for bids on a lump-sum, per-crew basis for a base period of 30 days and for two 30-day option periods. The IFB initially provided that bids would be opened on December 8.

By letter telecopied to the agency after 10:00 p.m. on December 7, NWR requested that the solicitation be revised to clarify certain provisions which NWR believed were ambiguous or unreasonable. Among other things, NWR asked the agency to specify the crew size it required and challenged the IFB assertion that the Morbark chipper was capable of processing 90 cubic yards of chips per hour. Referencing the 90-cubic-yard requirement, NWR stated:

"NWR believes that this is an impossibility. The equipment specified with the best of crews can process 20 cubic yards per hour at best. Please clarify the government's specifications and requirements in this regard."

¹The primary method of freeze protection is to initiate pre-freeze irrigation of the groves and continue that irrigation throughout the duration of the freeze. Removal of the debris was necessary to permit the irrigation systems in the fruit groves to function properly.

NWR's December 7 letter concluded by requesting that bid opening be postponed until the IFB had been revised to clarify the problems identified.

The agency reviewed NWR's letter of December 7, and agreed that the IFB contained a mistake in that it required processing of 90 cubic yards of "chips" rather than 90 cubic yards of "debris."² Accordingly, the agency amended the IFB to state that the equipment must "be capable of processing a minimum of 90 cubic yards of debris per hour." (Emphasis added.) On December 8, the IFB amendment was telecopied to the potential offerors, including NWR, and bid opening was postponed until December 9.

By letter telecopied to the agency on December 9,³ NWR acknowledged receipt of the solicitation amendment, but expressed continued dissatisfaction with the IFB terms, stating:

"We have received and reviewed Amendment No. 1 revised to the above contract. We still need clarification and a rewrite of bid specifications before any bid opening of the solicitation so as to correct problems, confusion and ambiguities still existing in paragraphs . . . 9 and 10 of our letter to you of December 7, 1992."⁴

The agency did not further amend the solicitation and proceeded with bid opening as scheduled. A contract was awarded to the low bidder, Ceres Tree Company, on December 9. NWR filed this protest with our Office on December 10.

DISCUSSION

NWR protests that the IFB requirement for processing 90 cubic yards of "debris" was unreasonably high and, as such, precluded the agency from obtaining full and open

²The agency explains--and NWR does not dispute--that, in this industry, the term "chips" or "mulch" refers to output from the chipping machine, while the term "debris" refers to input, that is, the tree limbs, shrubs, etc. that are fed into the machine.

³The agency states that it received the letter approximately 1 hour before bid opening.

⁴Paragraph 9 of the December 7 letter asserted that the production requirement was unreasonably high; paragraph 10 requested that the agency specify the crew size the agency contemplated.

competition, NWR argues that the agency had no reasonable basis for concluding that the equipment specified in the IFB was capable of processing 90 cubic yards of debris per hour.

The agency responds that it relied on the manufacturer's literature for the Morbark chipper which stated that this equipment was capable of processing "debris" up to 12 inches in diameter at a rate of 85 feet per minute. Using this data, the agency determined that the Morbark was capable of processing as much as 148 cubic yards of "debris" per hour.⁵ Recognizing that the manufacturer's literature might contain some "hyperbole," the agency concluded that the Morbark chipper was clearly capable of processing a minimum of 90 cubic yards of "debris" per hour.

NWR points out that the IFB required the equipment on which bids were based to "be capable of processing a minimum of 90 cubic yards of debris per hour" (emphasis added), and argues that agency's calculation of 148 cubic yards per hour represented the maximum capabilities of the machine; therefore, NWR asserts that the basis for the agency's determination was improper. NWR argues that, if the agency had alternatively assumed lower parameters--for example, that the "debris" processed would average only 6 inches in diameter--the amount of "debris" the Morbark chipper could reasonably be expected to process would be less than 90 cubic yards.

NWR's argument is based on the assumption that the IFB requirement that the equipment "be capable of processing a minimum of 90 cubic yards of debris per hour" precluded bids based on any equipment which might, under any circumstances, process less than 90 cubic yards per hour. NWR's interpretation of the IFB requirements is clearly erroneous. The IFB merely required that the equipment on which bids were based "be capable of processing a minimum of [that is, at least] 90 cubic yards of debris per hour." (Emphasis added.) Clearly, based on the capabilities of the Morbark represented in the manufacturer's literature (which NWR does not dispute), the Morbark is capable of processing at least 90 cubic yards of "debris" per hour.⁶ Accordingly, NWR's

⁵Although we do not discuss the formula used for calculating cubic yards per hour based on the data identified above, the protester and agency do not disagree regarding the formula to be applied.

⁶In fact, as noted above, the Morbark is capable of processing considerably more than 90 cubic yards of "debris" per hour.

allegation that the agency had no reasonable basis for requiring the equipment on which bids were based to be capable of processing 90 cubic yards of "debris" is without merit.

NWR next complains that the IFB requirement for processing 90 cubic yards of "debris" per hour was a "typographical error" which the agency refused to correct.⁷ NWR argues that:

"The Corps apparently intended to specify production [of] 90 cubic yards of mulch per day not [per] hour. Since ten (10) hour work days were required, the daily figure would have yielded a reasonable hourly mulch production figure of nine (9) cubic yards. In fact, the Corps admitted this mistake to the bidders."

NWR's argument erroneously posits that the amended IFB contained a requirement for production of 90 cubic yards per hour of "mulch" or output, rather than "debris" or input. As noted above, the IFB, as originally issued, erroneously required a production rate of 90 cubic yards of "chips" or output, rather than "debris" or input. This solicitation error was corrected by amendment. The agency maintains that the amended IFB requirement for processing 90 cubic yards of "debris" per hour was both an accurate and reasonable statement of the agency's needs.

The agency explains that the reference to a "typo" in the notes from the post-award conference referred to the fact that, as originally issued, the requirement had been expressed in terms of output. The agency further explains that the reference to 9 cubic yards of "mulch" per hour is essentially the same as the IFB requirement for processing 90 cubic yards of "debris" because the agency calculated an

⁷After the protest was filed, NWR received additional documents in response to a Freedom of Information Act (FOIA) request. Among those documents were notes from a post-award conference held with Ceres Tree Company. At the bottom of one of these documents is the handwritten notation: "The 90 cy is a typo[;] it should be 9 cy/hr of mulch per machine."

average "reduction ratio" of 10 to 1.⁸ Finally, the agency has submitted documentation demonstrating that the awardee under this contract is, in fact, consistently processing more than the required 90 cubic yards of "debris" per hour.⁹

The record does not support NWR's assertion that the 90 cubic yard input requirement was a "typographical error." As the agency acknowledged, the IFB initially contained an error in that it defined the processing requirements in terms of output rather than input; however, this error was corrected prior to bid opening and communicated to all offerors, including NWR.¹⁰ We note that the agency received seven bids in response to this solicitation; no bidder other than NWR protested the IFB requirements as being erroneous or unrealistic. Further, the awardee is, in fact, performing above the production rate stated in the solicitation. Accordingly, the record substantiates the agency's representation that the solicitation, as amended, contained an accurate and reasonable statement of the agency's requirements.

Finally, NWR objects that the IFB did not specify a particular crew size and asserts that the absence of this specification precluded bidders from competing on an equal basis. NWR complains that its bid was based on a three-man crew while other offerors, including the awardee, submitted bids based on two-man crews.

Solicitations must contain sufficient information to allow offerors to compete intelligently and on an equal basis. University Research Corp., 64 Comp. Gen. 273 (1985), 85-1 CPD ¶ 210. However, agencies may properly state their requirements in terms of specified levels of performance,

⁸The agency states that the "reduction ratio" (that is, the difference in the size of the piles of "debris" being fed into the chippers and the piles of "chips" or "mulch" output from the chippers) for this type of work varies from as low as 3 to 1 (where the piles of "debris" are very compacted) to as high as 25 to 1 (where the piles of debris are very loosely stacked).

⁹Pursuant to 31 U.S.C. § 3553 (1988), the head of the procuring activity determined that the best interests of the government precluded delaying contract performance pending resolution of NWR's protest.

¹⁰Since the primary objective of the contract is to clear debris--not to create chips/mulch--there is no reason to question the agency's decision to state the performance requirements in terms of input rather than output.

leaving bidders free to submit bids based on differing approaches to meeting the government's requirements. Imperial Schrade Corp., 66 Comp. Gen. 308 (1987), 87-1 CPD ¶ 254. Bidders are expected to use their business judgment and professional expertise to determine the most efficient and effective manner of meeting the government's requirements. McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990, 90-1 CPD ¶ 121; General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512.

Here, the solicitation established the level of performance required and identified one piece of equipment with which bidders could reasonably expect to meet that requirement; however, the solicitation did not mandate the use of any particular equipment. We do not find unreasonable the agency's decision not to specify a required crew size; different personnel could reasonably be expected to perform at different rates depending on their levels of experience and expertise as well as on the type of equipment the offeror intended to use. See, e.g., US Defense Sys., Inc., B-248845, Sept. 23, 1992, 92-2 CPD ¶ 197. Accordingly, NWR's protest that the agency's failure to specify a particular crew size precluded offerors from competing on an equal basis is without merit.

The protest is denied.



 James F. Hinchman
General Counsel