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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: The Sequoia Group, Inc.
File: B-252016
Date: May 24, 1993

Wendy T. Kirby, Esq., and Daniel C. Sweeney, Esq., Hogan & Hartson, for the protester.
Larry N. Allen for Tower Commercial Corporation; and
James E. Harvey for Ogden Government Services, interested parties.
Howard L. Hardegree, Esq., General Services Administration, for the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly bundled requirements for building maintenance services at separate facilities in two cities into "total package" commercial facilities management procurement--notwithstanding agency's previous practice of breaking out the services--since the "bundling" represents the government's minimum needs because of (1) unsatisfactory levels of competition for, and performance of, the various maintenance contracts and (2) staffing cuts which have limited the agency's ability to monitor multiple contracts in two cities.

DECISION

The Sequoia Group, Inc. protests request for proposals (RFP) No. GS-07P-92-HTC-0113, issued by the General Services Administration (GSA), Region 7, Forth Worth, Texas, for commercial facilities management (CFM) services¹ at five federal office buildings in Houston and Galveston. Sequoia, the incumbent mechanical maintenance service contractor for the two federal buildings in Galveston, challenges the RFP's

¹CFM contracts typically consolidate/bundle an agency's total requirement for services necessary to operate and maintain a building or buildings (i.e., maintenance, custodial, elevator, janitorial, etc.) into a single "total package" procurement. See A&C Bldg. and Indus. Maint. Corp., B-230839, July 21, 1988, 88-2 CPD ¶ 67.

total package approach, contending that it is unduly restrictive of competition.

We deny the protest.

The RFP, issued December 2, 1992, covers basic and specified reimbursable services that the agency would have procured separately but for their consolidation into the CFM contract.² The agency synopsisized the procurement twice in the Commerce Business Daily (CBD); first, on October 9, 1992, when it announced the solicitation of a CFM contract for Houston, and again, on November 13, 1992, when the agency published notice of the Galveston's buildings' inclusion in the Houston CFM contract. The agency provided copies of the RFP to the 120 firms that responded to the CBD notices. GSA received a number of proposals by the January 26, 1993, closing date for receipt of proposals.³

A primary reason that GSA consolidated the Houston and Galveston work was because of the unsatisfactory level of competition and performance it had encountered in procuring the smaller contracts for individual building services in Galveston as well as one of the Houston buildings.⁴ For example, GSA reports a history of defaulted contracts in Galveston, in particular, contracts for custodial services, as well as a lack of adequate competition. Specifically, after defaulting a Galveston custodial service contract for non-performance, GSA resolicited 84 small business firms for the requirement. It only received 9 nonresponsive bids, and finally had to resort to negotiated procedures that yielded

²Basic services include facility management, operation and maintenance, elevator maintenance, custodial services, utilities, central station monitoring service, sewage treatment system maintenance. The reimbursable services involve building repair, maintenance, and alteration.

³We do not disclose the number of proposals as this is an ongoing procurement.

⁴On the basis of this sparsity of competition and the history of poor contract performance, the agency also found it unreasonable to expect that two or more small business concerns would be capable of managing the Houston/Galveston CFM contract. The Small Business Administration (SBA) representative concurred in the agency's determination to combine these requirements and approved the procurement's conduct on an unrestricted basis. Sequoia states that it "is not protesting GSA's decision not to set-aside this procurement, in whole or in part, for small businesses."

only 2 acceptable offers, both from large businesses. GSA also encountered problems with one of its Galveston mechanical services contracts where the agency defaulted two successive contracts for non-performance before making award to the protester. In the same vein, GSA solicited 38 potential bidders for the Galveston elevator maintenance contract but only 1 of the 3 bids received was responsive.⁵

The decline in the number of agency personnel available to perform building management functions was another factor influencing GSA's decision to consolidate its Houston and Galveston building service requirements. Specifically, GSA found that it could no longer maintain a full-time government inspector in Galveston,⁶ which would be essential if the services were provided under the current method that has generally yielded poor performance and little competition.

Under the CFM contract, GSA proposes to resolve the problem of fewer agency personnel by transferring responsibility for certain building management duties from the government to the CFM contractor.⁷ GSA reports that transferring responsibility to a single CFM contractor provides economies of scale that will increase the quality of service received by the Galveston buildings' federal tenants over that previously provided under separate contracts "with little, if any, additional cost to the [g]overnment." In GSA's experience, the use of CFM contracts "reduce[s] administrative costs [and] duplicative managerial time, eliminate[s] the problem of no offers being received for some requirements, improve[s] building service[s], and [also] improve[s] repair[s], maintenance, and management techniques." Finally, GSA urges that its consolidation of Houston/Galveston requirements into a single CFM contract complies

⁵The agency experienced a similar lack of competition when it procured services for one of the Houston buildings, where GSA solicited 109 small business firms and only received 1 responsive bid.

⁶Because of an 18 percent reduction in authorized field office staffing, GSA could not replace its full time mechanical and custodial work inspector in Galveston following his transfer to another duty station.

⁷The duties previously performed by agency personnel include daily oversight, quality inspections, and responses to tenant complaints which are to be shifted to the CFM contractor's project manager.

with the statutory requirement that agency minimum needs determinations be predicated on fulfilling agency requirements "at the lowest reasonable cost considering the nature of the property or service procured." 41 U.S.C. § 414(1) (1988).

The Competition in Contracting Act of 1984 (CICA) generally requires that solicitations include specifications which permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 41 U.S.C. § 253a(a)(2). Since bundled, consolidated or total-package procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations to determine whether the approach is reasonably required to satisfy the agency's legitimate minimum needs. See National Customer Eng'g, B-251135, Mar. 11, 1993, 93-1 CPD ¶ ____; Airport Markings of Am., Inc. et al., 69 Comp. Gen. 511 (1990), 90-1 CPD ¶ 543.

Because a major benefit of increased competition is lower cost to the government, an agency's unsupported claim of economy generally will not prevail over the assumed benefits of maximum competition. National Customer Eng'g, *supra*. The same holds true for agency claims supporting the bundling of requirements that are founded solely on mere administrative convenience, since under CICA the agency has the burden of justifying restrictions on full and open competition. Burton Myers Co., 57 Comp. Gen. 454 (1978), 78-1 CPD ¶ 354; National Customer Eng'g, *supra*. On the other hand, actual administrative necessity can, in appropriate circumstances, constitute a valid justification for a total package approach. Eastern Trans-Waste Corp., 63 Comp. Gen. 519 (1984), 84-2 CPD ¶ 126 (small size of agency contracting staff justified the agency's combining electronic systems maintenance and operation, refuse collection and janitorial services).

We have upheld the consolidation of requirements where agencies have provided a reasonable basis for using such an approach--e.g., a definitive agency requirement that mirrors the agency's minimum needs and necessitates the questioned consolidation. See Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455 (agency properly combined all user activity photocopier requirements--high speed/volume and low speed/volume); Electro-Methods, Inc., B-239141.2, Nov. 5, 1990, 90-2 CPD ¶ 363 (agency properly combined requirements for jet engine upgrade modification kits and engineering services). On the other hand, we have sustained protests

seeking the break out of the combined requirements where the agency did not show the consolidation of the separate requirements was reasonably required to attain the agency's minimum needs. See National Customer Eng'g, supra (agency unreasonably bundled hardware and software maintenance service requirements); Richard M. Milburn High School, B-244933, Nov. 27, 1991, 91-2 CPD ¶ 496 (agency unreasonably combined college and secondary education coursework training requirements). Contracting officers must base their judgments about whether or not to consolidate requirements on the individual facts of each case, and our review recognizes that these procurements usually involve unique situations. Thus, in the area of building maintenance services, we have permitted, where justified, both the consolidation of a building's separate operation and maintenance service requirements into a single CFM contract, A&C Bldg. and Indus. Maint. Corp., supra, and the combining of several buildings' service requirements within the same city. Korean Maint. Co., 66 Comp. Gen. 12 (1986), 86-2 CPD ¶ 379.

The upshot of Sequoia's argument is that the agency's justification for consolidating its Houston and Galveston requirements into a single CFM contract amounts to nothing more than a claim of administrative convenience, consisting of "conclusory assertions of what is in the best interest of GSA without providing any analysis or evidence to support its conclusions." As an example, Sequoia discounts GSA's asserted staffing problems as simply a claim of administrative convenience not justifying the total package approach.

Sequoia also contends that our Office should disregard the portions of the agency's report documenting history of inadequate competition and performance problems in the Galveston buildings, because "GSA's contemporaneous justification for adding the Galveston sites to the Houston procurement is conspicuously silent on this point, and references only the perceived administrative inconvenience on the Houston Field Office if we were required to administer the Galveston sites through a separate contract," and the Galveston history rationale only appears as part of the determination not to set-aside the procurement for small business, and Sequoia is not protesting the non-set aside determination.

The agency's November 2, 1992, contemporaneous justification for including the Galveston buildings in the Houston CFM contract is not silent as the protester alleges, but expressly conditions the Galveston buildings' inclusion in the Houston CFM contract on GSA's receipt of SBA approval. Consistent with that understanding, GSA, on November 4,

submitted a justification to SBA for not setting aside the work for small business that sets out both the procurement history and the GSA staffing problems as reasons for not making the procurement a small business set-aside.

Sequoia contends that even considering the Galveston contract history, the agency has not established how consolidation would improve the situation by enhancing competition or reducing deficient performance because "the only logical result of GSA's decision to dramatically increase the scope of its requirements is that there would be less competition for the bundled requirements rather than more." (Emphasis in original.) Sequoia also claims that GSA did not adequately investigate less restrictive methods of satisfying its requirements.

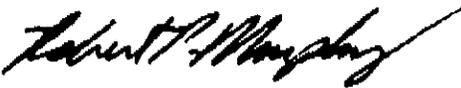
In our view, GSA has justified its use of a total package approach. The agency has provided procurement history that substantiates its concern that the consolidation of its Houston and Galveston requirements into a single CFM contract was necessary to stop an existing pattern of inadequate competition and poor performance for Galveston building maintenance contracts. In other words, the record shows that there was a dearth of quality service contractors--with the exception of Sequoia--able to successfully perform the Galveston maintenance service contracts. In addition, in view of its staffing cutbacks, GSA needed a capable contractor which could accept former government employee responsibilities in successfully accomplishing the maintenance services in both Galveston and Houston. Contrary to Sequoia's contentions, in appropriate circumstances the agency's staffing resources can and should be properly considered in fashioning contracts that will satisfy the government's minimum requirements at the lowest reasonable cost considering the nature of the property or services procured. See A&C Bldg. and Indus. Maint. Corp., supra; Eastern Trans-Waste Corp., supra.

Finally, GSA has adequately documented both the cost and quality benefits of maintaining these buildings under a CFM contract. See A&C Bldg. and Indus. Maint. Corp., supra. Indeed, GSA Region 7 has eight such contracts, sometimes combining geographically distant locations (e.g., Lubbock and Midland, which are located 17 miles apart), which GSA reports have improved building maintenance. Under the circumstances, GSA reasonably decided that it was necessary to consolidate its requirements to successfully satisfy its building maintenance requirements and to present a business opportunity attractive to contractors which had the capability of successfully performing the enhanced CFM services with minimal government supervision and

intervention. See Eastman Kodak Co., supra (combining requirements reasonably found to possibly enhance competition under the particular circumstances).

While Sequoia claims that this total package is too big as it cannot submit a proposal if the Galveston requirements are combined with the Houston requirements, it does not show this consolidation was not necessary to satisfy the government's requirements. In this regard, the agency considered, but decided against, procuring two CFM contracts (i.e., one for Houston and one for Galveston) and making the Galveston CFM contractor's project manager responsible for the duties formerly performed by the GSA inspector because a second CFM contract would not be cost effective due to the relatively small size and number of the Galveston buildings. Sequoia has not shown the agency's judgment in this regard to be unreasonable. In any case, just as an agency is not required to cast its procurement in a manner that neutralizes the competitive advantages some firms may have over the protester by virtue of their own particular circumstances, an agency likewise is not required to craft a solicitation with the aim of ensuring the protester's retention to the detriment of the government's actual requirements.⁸ Id.

The protest is denied.


for James F. Hinchman
General Counsel

⁸We note that, notwithstanding its professed inability to perform the CFM contract, the protester advises that it is "currently performing full maintenance contracts, including both mechanical maintenance and janitorial services for GSA" in five states (Vermont, New Hampshire, Texas, Alabama, and Louisiana).