

Matter of: Patrick Loman  
File: B-254527  
Date: December 27, 1993

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Patrick G. Loman for the protester.  
Kenneth A. Markison, Esq., and Michael J. Farley, Esq.,  
Housing & Urban Development, for the agency.  
Robert C. Arsenoff, Esq., and John Van Schaik, Esq., Office  
of the General Counsel, GAO, participated in preparation of  
the decision.

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#### DIGEST

1. Protest against solicitation for appraisal services is denied where record shows that, although some risk was shifted to bidders under the fixed-priced contract format, the risk was not unreasonable where the solicitation provided bidders with sufficient information to compete intelligently and on an equal basis.
2. Protest against aggregate method of award provision is denied where solicitation provides a reasonable method for determining which combination of awards represent the best value to the government.

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#### DECISION

Patrick Loman protests the terms of invitation for bids (IFB) No. DU209B930000108, issued by the Department of Housing & Urban Development (HUD) for valuation appraisal services necessary to process mortgage insurance and loan applications for a number of loan programs administered by the agency. Loman alleges that the fixed-price nature of

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The programs involve HUD's statutory responsibilities for (1) mortgage insurance for the construction or substantial rehabilitation of rental apartments; (2) insurance to cover operating losses during the first 2 years of operation following completion of certain multifamily construction projects; (3) insurance for the acquisition or refinancing of rental apartments (4) insurance for construction, rehabilitation, acquisition, and refinancing of nursing homes and related care facilities; (5) loans to finance alterations,

(continued...)

the solicitation places too much risk on bidders and precludes intelligent bidding; Loman also alleges that the method of award provisions are irrational and subject to manipulation by the agency to favor particular competitors.

We deny the protest.

The IFB required bidders to submit fixed prices for a variety of appraisal services HUD requires to process insurance and loan applications involving multifamily housing projects in the agency's western region (Region IX).<sup>2</sup> The purpose of the appraisals--which typically involve site visits and economic analyses provided to the agency in the form of reports--is to assess underwriting risk by determining whether various cooperatives, apartment developments and nursing homes will generate sufficient income to support an expected mortgage and to determine the value of the property as a security. Bidders were permitted to bid on individual project types involving the three separate categories of multifamily properties. In addition to review functions involving preservation projects, the IFB contemplates delivery orders being sequentially placed for separate "stages"--i.e., site appraisal and market analysis, feasibility, conditional commitment, firm commitment--of appraisal services in connection with the mortgage/insurance application process; each stage is separately priced and bidders are required to submit prices for all appraisal stages applicable to a given project type to be eligible for the award of a contract to cover that project type.

The IFB also provided that bidders could offer prices for their choice of appraisal services across all of Region IX or in any of its five geographical subregions--i.e., Phoenix, Honolulu, Los Angeles, Sacramento, and San Francisco. In order to determine the lowest price to the government, prices for each project type in a subregion were to be multiplied by an estimated quantity for a particular program and class of property within that jurisdiction. The resulting calculations were then to be examined to determine whether it would be an overall better value to the agency if it were to aggregate a number of bids (based upon multiple bids by a single bidder) and award fewer contracts

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<sup>1</sup>(...continued)

repairs, additions, substantial rehabilitation or improvements to properties financed or insured by HUD; and (6) loans to preserve low and moderate income rental housing ("preservation projects").

<sup>2</sup>The contractor-provided services will be ordered by HUD as an adjunct to the services performed by the agency's in-house staff of appraisers as demand dictates.

than it would if it awarded contracts for each individual program in each subregion. The IFB incorporated by reference the provision at Federal Acquisition Regulation (FAR) § 52.214-22, which provided that for evaluation purposes \$500 would be the assumed administrative cost for issuing and administering each contract awarded.

Loman's essential contention is that the IFB places bidders at too much risk by requiring fixed prices for appraisal services that could widely vary in scope depending upon the size, character and location of the properties to be evaluated. The protester argues that, without more information about the complexity of each project, bidders are precluded from submitting intelligent bids and argues that the agency's needs would be better met by a cost reimbursement form of contracting.

The contracting agency, not our Office or the protester, is responsible for determining its needs and the best means of meeting those needs since the agency is most familiar with the conditions under which supplies or services are to be used. Kastle Sys., Inc., B-231990, Oct. 31, 1988, 88-2 CPD ¶ 415. Even burdensome requirements are not objectionable provided they reflect the agency's minimum needs and our Office will not question an agency's determination unless it is unreasonable. Id. Further, there is no requirement that an agency eliminate all uncertainty or risk from a solicitation and, to the extent there are uncertainties as to exactly what may be required, bidders can take those

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<sup>3</sup>Loman also suggests that HUD may act improperly by assigning to its own staff relatively low-cost appraisal projects which do not require the services of engineers, architects and other professionals while assigning contractors the more complex projects involving higher costs and states that, although the agency maintains that no outside consultants will be necessary, professional appraiser association standards "may in fact dictate otherwise." Loman has not pointed to any provision of the IFB which requires the contractor to hire engineers, architects, or other professionals nor does our review of the solicitation disclose any. Also, beyond Loman's speculation, there is no basis in the record for presuming that the agency plans to manipulate the assignment of appraisals in the manner suggested by the protester. Finally, Loman asserts that, because the IFB states that membership in a professional appraisal organization is "desirable but not required," HUD intends to disfavor bidders who are not members of such organizations. We think that it is clear that the award or awards under the IFB will be based on low price and the IFB does not permit the agency to require membership in professional appraisal organizations or favor bidders that are members.

uncertainties into account in computing their prices. Id. In determining its needs, however, it is the agency's responsibility to provide sufficiently detailed information, to enable offerors to compete intelligently and on relatively equal terms. International Resources Corp., B-248050.3, Feb. 16, 1993, 93-1 CPD ¶ 138.

We have examined the structure of the IFB and do not find that it is unreasonable or that it places an undue risk on bidders. Each separately-priced "stage" of any appraisal project is defined in detail in the statement of work and typically involves a routine on-site visit and an economic analysis performed in accordance with HUD directives. If the agency decides, for example, in a complex situation, to proceed with additional stages, a separate delivery order will be issued at the award price for the next individual stage.

Moreover, the solicitation does provide guidance to bidders for calculating fixed prices, in the form of historically-based estimated quantities broken down for each project type in each subregion. In the case of apartment properties, the IFB provides data as to how many properties involve under 50 units and more than 50 units. Bidders are also, for example, specifically advised that a typical insurance appraisal involves a 100-unit project and that a typical preservation project involves 100 to 200 units which are between 18 and 22 years old. Thus, contrary to Loman's unsupported assertion that insufficient guidance is provided to bidders as to what types of projects will be assessed under the contract, it is evident that the IFB provides details concerning the size of the projects, their age, and, because individual estimates are geographically segregated, their general location.

In our view, Loman's arguments are based on little more than its judgment that there are better methods for accomplishing the agency's objectives than a fixed price format. As stated earlier, however, it is the contracting agency, not this Office or the protester, that must determine its needs and the best way of accommodating them. Kastle Sys., Inc., supra. Moreover, we find nothing in the record to support Loman's contention that a lack of pertinent information concerning the scope of work to be performed precluded bidders from intelligently competing on a relatively equal basis, even though some risk was involved in formulating prices. In this latter regard, we note that no other protests were filed against the terms of the IFB and the agency reports that 40 bids were submitted. International Resources Corp., supra.

Loman also objects to the procedures the agency intends to employ to decide whether or not to aggregate awards, which

the protester asserts are overly complex and subject to manipulation by HUD. The award procedures are complex since numerous individual line item bids must be compared to one another across subregions and then the whole of Region IX, and \$500 per contract has to be factored into the assessment to determine which aggregation of awards will produce the best value to the government. Nonetheless, in spite of the complexity, the award or awards under the IFB are to be based on the combination of responsive bids from responsible bidders that results in the lowest prices. Since the awards will be based on low price--an objective and verifiable criterion--there is nothing beyond the protester's speculation to indicate that the solicitation's method of award provisions will result in manipulation by HUD.

The protest is denied.

James F. Hinchman  
General Counsel

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"In its agency report, HUD informed this Office that, in response to Loman's protest, the IFB had been amended to delete language regarding costs of outside experts, to clarify the method of award provisions, and to add a new bidding schedule with estimated quantities. Loman claims that this "corrective action" taken in response to its protest entitles it to be reimbursed for protest costs pursuant to 4 C.F.R. § 21.6(e) (1993). Pursuant to that regulation, however, we will only find entitlement to such costs where, based on the circumstances of the case, we find that the agency unduly delayed in taking corrective action. That is not the case here since HUD amended the solicitation within 35 calendar days after the protest was filed and before the agency report was due. PLX, Inc.--Request for Declaration of Entitlement to Costs, B-251575.2, Mar. 10, 1993, 93-1 CPD ¶ 224.