



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: ANV Enterprises, Inc.

File: B-270013

Date: February 5, 1996

Wayne C. Allen for the protester.

Monica Allison Ceruti, Esq., Department of the Air Force, for the agency.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, participated in the preparation of the decision.

DIGEST

1. Protest that numerous specifications are inadequate to permit intelligent competition, and that agency has not sufficiently definitized the specifications in answers to protester's questions, is denied where agency provided all information in its possession, and the information generally was sufficient to permit intelligent competition.
2. Agency does not have to restructure requirement in manner that will require agency to furnish equipment to the contractor, where cost comparison will be conducted to determine whether contractor or in-house performance is more economical; agency need not adopt hybrid alternative preferred by protester solely because it will reduce contractor risk.

DECISION

ANV Enterprises, Inc. protests alleged specification deficiencies in invitation for bids (IFB) No. F22600-95-B-0096 issued by the Air Force for purposes of a cost comparison under Office of Management and Budget (OMB) Circular A-76. The cost comparison is to determine whether it will be more economical to contract for grounds maintenance services at Keesler Air Force Base in Mississippi, or to continue the services in-house.

We deny the protest.

The solicitation, which contemplates award of fixed-price contract for a base year with 4 option years, requires the contractor to supply all labor, equipment, tools, materials, transportation, supervision, and other items and services necessary for grounds maintenance. The appendix to the IFB contains a performance work statement, which includes detailed specifications with regard to all the items and services to be provided under the contract.

The Air Force held a pre-bid opening conference with all potential offerors during which ANV submitted a list of 77 questions with regard to numerous specifications it believed were ambiguous. The Air Force responded to these questions in a letter to all prospective bidders. The Air Force subsequently issued three amendments, two of which further responded to ANV's questions. In addition, the IFB provides for a site visit.

ANV generally maintains that, even as amended, the IFB contains numerous ambiguous specifications. ANV believes the agency did not adequately resolve most of the 77 questions on its list, and that the result is the imposition of undue risk on bidders and a competitive advantage for the agency in the cost comparison.

While a procuring agency must provide prospective bidders with information sufficient to enable bidders to compete intelligently and on a relatively equal basis, Cobra Technologies, Inc., B-254890, Jan. 24, 1994, 94-1 CPD ¶ 35, an IFB need not be so detailed as to eliminate all performance uncertainties and risks. RMS Indus., B-248678, Aug. 14, 1992, 92-2 CPD ¶ 109. Some risk is inherent in most types of contracts, and offerors are expected, when computing their prices, to account for such risks and exercise business judgment in preparing their bids. Service Technicians, Inc., B-249329.2, Nov. 12, 1992, 92-2 CPD ¶ 342.

The IFB, along with the information furnished by the agency, adequately describes the work requirements. We discuss three examples below.

Paragraph 5.1.1.1.8 of the specifications requires bidders to test soil for the proper fertilizer requirements, and to furnish and apply fertilizer. ANV asked whether the fertilizer is cost reimbursable, and requested that the Air Force provide information on the types and quantities of fertilizer used historically. The agency responded initially that the fertilizer was cost reimbursable and, subsequently, that the "types and approximate quantity used for a 12 month period are: 8-8-8 (1,000 bags), 3-13-13 (200 bags), 20-10-15 (520 bags), 29-3-5 (20 bags), osmocote (10 bags), ferti-lime (40 bags)," and explained that these "types and quantities were not based on soil samples and were not restricted to the areas in the solicitation." We see nothing inadequate in the information provided; the numbers are not precise, but they clearly are sufficient to give bidders an idea of the amounts used in the past. Although the protester desires more specific numbers, the agency states it has provided all information it possesses, and there is no indication that more specific information exists. There is no requirement that agencies obtain historical information for inclusion in an IFB. See Paige's Sec. Servs., Inc., B-235254, Aug. 9, 1989, 89-2 CPD ¶ 118. More generally, where a solicitation for services provides information on the area to be maintained and bidders are advised to complete a site

visit, as here, specifications are not inadequate just because they do not specify exact quantities. Ronald E. Borello, B-232609, Jan. 11, 1989, 89-1 CPD ¶ 28. We conclude that the information the agency furnished, along with the site visit, was adequate.

Paragraph 5.1.1.1.1 of the specifications concerns maintenance of improved grounds, and paragraph 5.1.1.1.4, maintenance of enhanced grounds. ANV asked the agency whether grass clippings from these grounds were to be bagged or mulched on each mowing. The agency responded that "[a]s stated in Paragraph 5.1.1.1.1, 'after mowing remove or mulch into the grass the clippings that remain on top of the mowed grass.' This applies to Paragraph 5.1.1.1.4 and will be added to that paragraph." ANV noted this response (on a list of the 77 questions included with its protest) as "N/R," for not responsive (ANV annotated each of the agency's responses either "N/R" or "OK"). However, we think the agency's answer was clear—mulching or removal is required after each mowing on the improved and enhanced grounds. ANV does not explain in its protest why the answer was not adequate.¹

Paragraph 3.1.2.2 requires replacement of government furnished equipment (GFE) at no cost to the government. ANV asked the agency to clarify the requirement and "explain the basis for determining when replacement is required and who will own the replacement items." The agency initially responded that replacement was required "when the equipment becomes useless or is not economically feasible for repair. The government will own the replacement items." Subsequently, however, the agency stated that the contractor would retain ownership. ANV maintains that this change did not resolve the problem, since it still had an insufficient basis for determining how much equipment replacement would be required. However, the IFB also includes a GFE listing that states the age of each piece of equipment. We think this information alone was sufficient to provide bidders with a means of estimating, in their business judgment, how much equipment would have to be purchased under the contract, and together with the fact that the contractor would

¹In its comments on the agency report, ANV for the first time states the specific reasons it believes certain specifications are ambiguous. Where a protester, in its initial protest submission, argues in general terms that a procurement was deficient, and then, in its comments on the agency report, for the first time makes out a detailed argument specifying the alleged procurement deficiencies, the detailed arguments will not be considered unless they independently satisfy the timeliness requirements under our Regulations. TAAS-Israel Indus., Inc., B-251789.3, Jan. 14, 1994, 94-1 CPD ¶ 197. ANV's comments were not received prior to bid opening; thus, its specific arguments concerning the adequacy of the specifications are untimely and will not be considered. Bid Protest Regulations, section 21.2(a)(1), 60 Fed. Reg. 40,740 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.2(a)(1)).

keep any equipment purchased (so that the contractor would retain any excess useful life of equipment purchased), adequately minimized the risk imposed on bidders.

ANV suggests that the IFB be revised to require the government to purchase new equipment and retain ownership. However, there simply is no requirement that the government participate in the contract in this manner. The agency has identified the acceptable alternative performance approaches--in-house or by contract--and is not required instead to remain involved in performance of the requirement under the hybrid approach preferred by ANV, solely to minimize the contractor's risk. Again, we see no reason why the information provided is not adequate to permit bidders to develop a reasonable estimate of the amount of equipment to be purchased, based on the average useful life of the GFE in question.

We have recognized that grounds maintenance services, by their nature, often require computing prices based on visual inspections and that the presence of some risk does not render a solicitation improper. Harris Sys. Int'l, Inc., B-224230, Jan. 9, 1987, 87-1 CPD ¶ 41. We do not consider these specifications to be so uncertain as to impose an unreasonable risk on bidders when exercising business judgment in preparing their bids, nor has ANV shown that the agency will have an undue advantage in the cost comparison.

The protest is denied.

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