

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211886**DATE:** November 8, 1983**MATTER OF:** Edward E. Davis Contracting, Inc.**DIGEST:**

1. Protester is an interested party under GAO protest procedures when it asserts that it would have submitted a bid but for alleged defects in the solicitation specifications.
2. Protester's allegations that the solicitation is defective because the successful contractor would be forced to provide service and maintain an inventory of parts and supplies for which the solicitation does not include any specific provision for compensation are without merit where the protester fails to show that the agency's position--that the potential costs of which the protester complains are either subject to contractor control or should be factored into the contractor's bid--is unreasonable.

Edward E. Davis Contracting, Inc. protests various portions of the specification in invitation for bids (IFB) No. N62467-83-B-2859 issued by the Naval Air Station, Whiting Field, Milton, Florida. We deny the protest.

The IFB, issued May 2, 1983, solicited bids to provide maintenance on family housing at the Air Station. Prior to bid opening, Davis, the incumbent contractor, protested to the contracting officer that certain of the specifications were either unclear or imposed impossible burdens on the contractor. By letter of May 17, the contracting officer responded to Davis' protest by attempting to clarify the questions raised. The contracting officer also issued an amendment to the solicitation addressing some of the issues raised in Davis' protest. Davis, unsatisfied with the agency's response, protested to this Office on May 19. At the May 31 bid opening, the agency received seven bids. Davis, however, did not bid on the solicitation.

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The agency contends that since Davis did not submit a bid in response to the solicitation it is not an interested party under our Bid Protest Procedures. 4 C.F.R. Part 21 (1983). We disagree. Where, as here, a protester contends that it would have submitted a bid but for the defective specifications, the protester has a substantial enough economic interest at stake to be considered an interested party. S.A.F.E. Export Corporation, B-207655, November 16, 1982, 82-2 CPD 445.

Davis contends that the specifications are defective in the following respects:

- (1) Section 00004, Paragraph 29 provides that all required work schedules be submitted to the agency for approval but the IFB does not set out which work will require scheduling.
- (2) Section 00004, Paragraph 32 states that the contractor will not be paid for an emergency or service call where it responds to a call and finds the tenant not at home. Davis states that these "false starts" should be a separate bid item because it is not fair to impose these costs on the contractor.
- (3) Section 00005, Paragraph 1.1.2(g) provides for a self-help program under which tenants will attempt to make minor repairs on their premises; however, the contractor will be required to bear the cost of any items damaged in the course of these repairs.
- (4) The specifications are drafted in a way that the contractor specifically with respect to emergency/service calls concerning gas ranges and heating and air conditioning units, may be required to replace a part or perform work, the cost of which to the contractor may be substantially more than it receives for an emergency/service call.

- (5) Section 00005, Paragraph 2.7 requires the contractor to have immediately available all materials required to accomplish all work but the solicitation does not provide for compensation to the contractor for keeping this stock on hand.
- (6) Section 00005, Paragraph 3.3.2 requires work orders to be completed within 3 days or else the contractor will be liable for liquidated damages. Certain items, however, require lead time to obtain but the amendment to the solicitation, which states that the agency may grant an extension of this time when nonavailability of materials is proven, does not require the agency to grant such extension.

The Navy responds that the section requiring submission and approval of work schedules is a general requirement in solicitations of this type which is not applicable to this procurement because the solicitation's statement of work does not require the contractor to submit any work schedules. Regarding Davis' contention with respect to the "false starts," the Navy argues that these "false starts" can be eliminated through prior arrangements with the tenants and through proper scheduling and that therefore the costs associated with "false starts" are subject to contractor management and control. To include a separate bid item for this, the Navy states, "would introduce unacceptable government exposure to exploitation, abuse and even fraud." Regarding the self-help program, the Navy states that the solicitation specifically provides that the government will provide all materials, supplies and parts used by the tenants.

With respect to Davis' contention that some emergency service calls may cost the contractor substantially more than it is paid for the call, the Navy notes that while this may be true, it is equally true that some calls may cost the contractor substantially less. The contractor's bid price, therefore, must represent a balance between these possibilities. The Navy also argues that the costs to the contractor of keeping stock on hand to accomplish all the work are similar to other contract costs for which

there is no separate bid item, and this should not preclude the bidder from submitting a bid. The Navy further states that the solicitation as amended would require an extension of the 3-day limit for completion of service work where material is not available. The Navy concludes that the reasonableness of the work descriptions and the work requirements is demonstrated by the fact that it received seven bids in response to the solicitation.

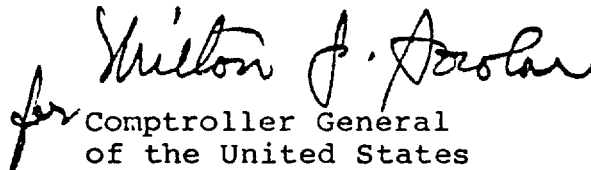
The determination of the needs of the government and the best method of accommodating such needs are primarily the responsibility of the contracting agency. This is because the agency is familiar with the conditions under which supplies, equipment or services have been used in the past, and how they are to be used in the future, and therefore, is generally in the best position to know the government's actual needs and best able to draft appropriate specifications. East Bay Auto Supply Inc.; Sam's Auto Supply, 53 Comp. Gen. 771 (1974), 74-1 CPD 193. Consequently, we will not substitute our judgment for that of the contracting agency absent a clear showing of abuse of its discretion. Big Bud Tractors, Inc., B-209858, February 4, 1983, 83-1 CPD 127.

Here, Davis has not made that showing. Primarily, Davis apparently seeks to have the solicitation specifications restructured so as to eliminate as much as possible any risk that the contractor will be requested to provide a service or maintain an inventory for which there is no specific provision for compensation. We are not persuaded by Davis' argument that it would be inequitable to place on the contractor the risk of its having to provide services without specific provision for compensation or having to incur high costs for certain types of repairs. As the agency states, some of the services for which Davis argues there should be separate provisions for compensation are either subject to management control (e.g., "false starts") or are more properly included in overhead costs (e.g., inventory costs and high cost repair items). In any event, the presence of risk, of itself, does not render a solicitation improper. Some risk is inherent in most types of contracts, and bidders are expected, when computing their bids, to allow for such risk. Palmetto Enterprises, 57 Comp. Gen. 271 (1978), 78-1 CPD 116.

Further, Davis' contentions regarding the work schedules appears academic as the statement of work does not require any such schedules. While it is true, as the protester argues, that it will have to replace items broken by the tenants attempting to perform their own maintenance, we fail to see the problem as the contractor is clearly required to supply replacements for broken items listed in the solicitation no matter what the cause. Finally, we see no reason why the agency should be required to grant an extension to the 3-day service completion requirement for all items that are not commercially available. The solicitation amendment provides for such extensions upon a showing of need by the contractor. This should be sufficient.

It is obvious from the fact that the agency received seven bids in response to the solicitation that these bidders were able to understand the specifications and factor into their bids the risks perceived by Davis. Under these circumstances, we cannot agree that the specifications were unclear or impossible to perform.

The protest is denied.


for Comptroller General
of the United States