

DECISION

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

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FILE: B-214977**DATE:** August 21, 1984**MATTER OF:** Saxon Corporation**DIGEST:**

Protest that specifications are unclear or impose impossible burden on contractor is denied where record shows that solicitation requirements are reasonably related to the agency's needs and that bidders were provided with an adequate basis to submit well informed bids. The mere presence of risk in a solicitation does not make the solicitation inappropriate.

Saxon Corporation (Saxon) protests various portions of the specifications in invitation for bids (IFB) No. N622467-83-B-4107 issued by the Naval Weapons Station, Charleston, South Carolina. We deny the protest.

The IFB solicited bids for the maintenance of military family housing at the base. Saxon contends that it cannot prepare an adequate bid since several of the specifications are either unclear or impose impossible burdens on the contractor. Specifically, Saxon alleges that the Navy's scheme for contract deductions for nonperformed or unsatisfactory performance is ambiguous and is overly stringent. Also, Saxon argues that the Navy has reserved the right to change the definition of an "emergency" call and that this makes it impossible to estimate a price for this service. In addition, Saxon contends that the Navy should provide bidders with more information concerning the actual work required in previous years and the composition of the approximately 4,000 backlogged workorders which the contractor is required to complete. Finally, Saxon complains that the IFB's requirement that the contractor provide moving services for the base should not be included in a housing maintenance contract and that the Navy's requirement that any contractor constructed facility be torn down after the completion of the contract precludes competition on an equal basis since bidders are given no instruction as to how to build this facility or amortize its cost.

The Navy responds that the Schedule of Deductions does not expose a contractor to excessive penalties. The successful contractor is expected to propose an acceptable

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schedule within 15 days after award and the Navy indicates that the total amount of the deductions is limited by the total amount bid. While the Navy reserves the right to reject the proposed schedule, the Navy states that its right to do so takes effect only when the proposed schedule is unbalanced. Also, the Navy indicates that where a contractor's work is found not acceptable, the contractor is allowed to reperform the work, if possible, before any deductions are taken under the schedule. The Navy argues that this is a reasonable method which ensures an adequate remedy for the government in the event of breach and that the respective obligations of the parties under this scheme are clearly defined.

Further, the Navy indicates that it has not reserved the right to change the definition of an emergency service call during contract performance. Rather, the Navy states that it has merely reserved the right to disagree with the contractor's categorization of a service call and, if appropriate, recategorize such a call so that it is given immediate attention. However, the Navy indicates that the definition of an emergency service call itself is as set forth in the IFB and does not change.

Also, the Navy states that bidders were provided with sufficient historical data to assist in bid preparation. Appendix M of the IFB provided the average maintenance requirements for the family housing units over the previous year and the Navy contends that this information is sufficient to enable bidders to price the work. In addition, the Navy states that the backlogged workorders are representative of the type of work otherwise required by the IFB and as a result, bidders have adequate information concerning this requirement.

The Navy also argues that the requirement that a contractor remove any facility it constructs does not preclude equal competition. Although acknowledging that this requirement may call for some creativity or innovation on the bidder's part, the Navy contends that it is a straightforward requirement which is equally applicable to all bidders. Finally, the Navy indicates that it is unaware of any reason why the requirement that the contractor provide moving services for government-owned equipment is inappropriate.

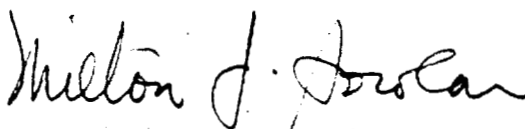
The determination of the needs of the government and the best method of accommodating such needs are primarily the responsibility of the contracting agency. This is

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. Edward E. Davis Contracting, Inc., B-211886, Nov. 8, 1983, 83-2 C.P.D. ¶ 541. Consequently, we will not substitute our judgment for that of the contracting agency absent a clear showing that the agency's determination had no reasonable basis. Big Bud Tractors, Inc., B-209858, Feb. 4, 1983, 83-1 C.P.D. ¶ 127.

Here, we find that Saxon has not met this burden. Based on the record, we cannot conclude that the solicitation requirements are unreasonable or that bidders were not provided with an adequate basis for the preparation of well informed bids. See Talley Support Services, Inc., B-209232, June 27, 1983, 83-2 C.P.D. ¶ 27. In our view, Saxon is primarily attempting to have the solicitation specifications restructured to eliminate as much risk as possible. However, it is fundamental that the mere presence of risk in a solicitation does not make the solicitation inappropriate. Diesel-Electric Sales & Service, Inc., B-206922, July 27, 1982, 82-2 C.P.D. ¶ 84. The IFB provisions complained of affect all potential bidders equally and the fact that bidders may respond differently in calculating their prices is a matter of business judgment and does not preclude a fair competition.

Finally, we note that the Navy received seven bids in response to the solicitation. Apparently these bidders were able to understand the specifications and calculated their bids despite the risks perceived by Saxon. Under these circumstances, we cannot agree that the specifications are unclear or impossible to perform.

The protest is denied.


Acting Comptroller General
of the United States