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DECISION

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

FILE: B-219427 **DATE:** September 17, 1985

MATTER OF: Safeguard Maintenance Corporation

DIGEST:

> IFB for fixed-price custodial services contract which includes requirement for snow removal is not defective merely because agency required contractor to perform all snow removal at price fixed in advance where snow removal, although unpredictable in amount, represented a minor portion of contract.

Safeguard Maintenance Corporation protests that (IFB) No. GS-03-85-B-0038, issued by the General Services Administration for custodial services at the Internal Revenue Service Center in Philadelphia restricts competition. Specifically, the protester complains that the IFB requirement that snow removal be performed along with other required custodial services for a single fixed-price is unreasonable. We deny the protest.

Safeguard contends that because bidders cannot accurately predict the amount of snow that may have to be removed during the term of the contract, they cannot prepare competitive bids without subjecting themselves to extreme financial risk. Safeguard argues that snow removal should be separately priced on an hourly basis as needed for the contractor's use of specific predetermined equipment. According to Safeguard, the government's approach to pricing snow removal restricts competition and will result in unreasonable prices because bidders are forced to offer higher prices to protect themselves from unusually heavy snowfall.

We considered a similar issue in a previous protest by Safeguard. See Safeguard Maintenance Corp., B-197706, Aug. 25, 1980, 80-2 CPD ¶ 147. We held in that case that the agency's approach of pricing snow removal as one item under a fixed-price contract was reasonable. In reaching that conclusion, we pointed out that while this method of pricing requires bidders to include a contingency in their prices, it benefits the government by not having to

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account for hours worked as would be required under the approach suggested by Safeguard. We also noted that payment on an hourly basis would not necessarily encourage the most economical performance.

Finally, in that case, snow removal accounted for only about $7,000, or less than 1 percent of the average total bid. We stated that although a bidder may have to include a contingency factor in its bid to protect against an unusually severe winter, this factor was quite small in relation to the total bid.

The protester attempts to distinguish the current situation from the earlier case. Safeguard argues that the total area to be cleared of snow at the IRS Center is more than 539,000 square feet as compared to 60,500 square feet in the prior situation. Also, at the IRS Center, all snow must be removed entirely from the premises, while, according to Safeguard, in the previous case snow did not have to be hauled away unless there was a major snowfall.

We think that the reasoning in Safeguard Maintenance Corp., B-197706, supra, applies here. As in the prior case, the cost of snow removal at the IRS Center is small in relation to the scope of the entire contract. The four responsive bids which were received here ranged from $2,326,920 to $2,650,392 for the base year and 2 option years.1/ GSA estimates that snow removal will account for about $13,178 per year, or approximately 1.5 percent of the government's yearly estimate. The protester has not disputed this figure. Therefore, the contingency factor which might be added to compensate for an unusually heavy snowfall would appear to be quite small in relation to the total bid. Moreover, the protester's attempt to distinguish this case from Safeguard Maintenance Corp., B-197706, supra, based on the requirement in the current solicitation that the snow be hauled away from the premises is not persuasive. Although snow removal at the IRS Center could be more costly than in the circumstances of the previous case, as explained above, that cost is still quite small in relation to the total contract price.

1/ An additional bid of $16,148,751 was received, but the bidder indicated to GSA after bid opening that the bid prices it submitted were prepared for another solicitation and erroneously entered on the wrong bid form.

Contrary to Safeguard's contention, GSA's approach to pricing snow removal did not result in unreasonable prices or restrict competition. Four acceptable bids were received in response to the IFB, and all were below the government's estimate.

Finally, the protester contends that the proposed awardee under the IFB was listed on the "Consolidated List of Debarred, Suspended, and Ineligible Contractors," dated October 1984, and thus is not eligible for award. The protester further argues that even if that firm is eligible for award, it will not be able to perform satisfactorily at its low bid price. GSA informs us, however, that although the awardee was debarred, the debarment was lifted in December 1984. Regarding the awardee's allegedly below-cost bid, the submission or acceptance of a below-cost bid, standing alone, is not improper assuming the bidder is found responsible. Wall Colmonoy Corp., B-217361, Jan. 8, 1985, 85-1 CPD ¶ 27.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel