

DECISION



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

FILE:

B-220859.2

DATE:

March 4, 1986

MATTER OF:

The Big Picture Company, Inc.

DIGEST:

1. Protest that workload estimates in solicitation are defective is denied where protester fails to show that the estimates are not based on the best information available or otherwise are deficient.
2. Protester's contention that solicitation clause providing for price adjustments in the event of significant workload variations is not sufficiently detailed is without merit since clause need not specify exact formula for calculating price adjustment and any disagreement can be resolved under the standard Disputes clause.
3. Protest that RFP section did not clearly state the services for which a contractor would be responsible, and should be revised to show a detailed workload, is denied where the RFP, when read as whole, defines the services. There is no requirement that a solicitation be so detailed as to eliminate completely all performance uncertainties or address every possible eventuality.
4. Where a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that the officials had specific and malicious intent to harm the protester, since contracting officials otherwise are presumed to act in good faith.
5. Where agency rebuts an issue raised in the initial protest and the protester fails to respond to the agency's rebuttal in its comments to the agency report, the issue is deemed abandoned.

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6. Protest that solicitation should not require that a specific number of personnel operate a photo laboratory is academic where solicitation amendment deletes requirement.
7. GAO will not consider protester's contention that agency cannot demonstrate that re-competing its contract is cost effective. Where an option is exercisable at the sole discretion of the government, the decision not to exercise the option is a matter of contract administration which GAO will not review under its bid protest function.

The Big Picture Company, Inc. (BPC) protests the use of negotiated procedures and the terms of request for proposals (RFP) No. F41800-86-R-A520, issued by the Department of the Air Force, San Antonio Contracting Center (Air Force), for procurement of audiovisual services.

We deny the protest.

BPC, the incumbent contractor, protested to our Office on October 21, 1985, the Air Force's failure to exercise an option to extend its contract. In dismissing the protest, we explained that, where an option is exercisable at the sole discretion of the government, the decision not to exercise the option is a matter of contract administration and not within the purview of our bid protest function. The Big Picture Company, Inc., B-220859, Oct. 31, 1985, 85-2 C.P.D. ¶ 512. BPC then protested on November 15, 1985, challenging various provisions of the RFP, and supplemented its protest on December 4. In response to the protest, the Air Force has issued two amendments.

BPC contends that the RFP's workload estimates were established capriciously and without regard for the history of the contract. BPC asserts that the estimated requirements in its present contract have been exceeded by more than 50 percent, and therefore the requirements of the present RFP are understated. The Air Force responds that it derived the RFP estimates from figures in fiscal year 1985 production reports submitted by BPC under its current contract, and adjusted the figures to reflect increases/decreases in workload projected by the organization responsible for 25 to 30 percent of the audiovisual workload. According to the Air Force, BPC's workload figures submitted with its protest differ from those submitted to the government for payment purposes. BPC responds that this allegation is made to cast doubt on its credibility.

When the government solicits offers on the basis of estimated quantities to be used over a given period, the estimates must be compiled from the best information available. They must be a reasonably accurate representation of the anticipated needs, although there is no requirement that they be absolutely correct. Dynalelectron Corporation, B-219664, Dec. 6, 1985, 65 Comp. Gen. 85-2 C.P.D. 634. A protester challenging an agency's estimates bears the burden of proving that those estimates are not based on the best information available or otherwise are deficient. Richard M. Walsh Associates, Inc., B-216730, May 31, 1985, 85-1 C.P.D. 621.

BPC has not met that burden. The Air Force apparently relied on all available information--including BPC's production reports--in formulating its estimates. BPC offers no evidence to support its allegation that the workload data relied on by the Air Force was incorrect or that there was anything else wrong with the estimates appearing in the RFP. Accordingly, on this record, we must conclude that the estimates in the RFP have not been proven deficient.

In its October 21 protest letter, BPC also contended that the RFP should contain a provision for price adjustments in the event of significant workload variations. In response to the protest, the Air Force issued amendment No. 2, which added a workload variations clause providing for price adjustments when the net variation in workload is greater than 15 percent.

BPC now contends that the workload variations clause is not sufficiently detailed because it does not explain what weights are to be given to individual line items. We are, however, aware of no requirement that agencies set forth in their solicitations the precise basis for computing any necessary price adjustments. Capitol Services, B-217505, Aug. 1, 1985, 85-2 C.P.D. ¶ 112. If the Air Force and the contractor cannot agree on a price adjustment should one become necessary, the matter can be resolved under the Disputes clause incorporated in the solicitation by reference. See Federal Acquisition Regulation, 48 C.F.R. § 52.233-1 (1984).

In its initial submission to our Office, BPC also protested that RFP section 5.2.11, Computerization of Selected Functions, did not clearly state the services for which a contractor would be responsible, and should be revised to show a detailed workload. In response to BPC's protest, the Air Force revised the RFP to further explain that the contractor is required to train personnel,

complete program development, initiate input of specified reports, and interface via modems with, among others, the Department of Defense Audiovisual Information System and the Military Airlift Command's Aerospace Audiovisual System. BPC comments that the workload data is still vague and does not adequately explain what the Air Force attempts to achieve with computers. We disagree.

It is the obligation of the offeror to read the RFP as a whole and in a reasonable manner. Bay Decking Company, Inc., B-215248, Jan. 22, 1985, 85-1 C.P.D. ¶ 77. Amendment No. 2 indicates that the contractor shall input into the system the data from reports required by the Air Force Regulation 95 series (shown in Technical Exhibit 4) and all reports shown in section C of the Performance Work Statement. Input is to be initiated at 700 lines per computer per day until all data is entered into the system. Technical Exhibit 1, Performance Requirements Summary, and Technical Exhibit 2, Workload Estimates, reflect the tasks to be performed. Thus, the RFP, when read as a whole, states what services the contractor will be responsible for. We note that there is no requirement that a solicitation be so detailed as to eliminate completely all performance uncertainties or address every possible eventuality. See Aleman Food Service, Inc., B-219415, Aug. 29, 1985, 85-2 C.P.D. ¶ 249. We also note that comments by BPC about its disagreement with the Air Force over the compatibility of computer equipment furnished under its current contract with the Air Force's phone system concern matters of contract administration, which are the responsibility of the contracting agency, not our Office under our bid protest function. 4 C.F.R. § 21.3(f)(1) (1985).

BPC asserts that the Air Force solicited this requirement under negotiated as opposed to sealed bid procedures to lay the groundwork to insure that BPC is not awarded a contract. BPC believes it is being retaliated against for filing a claim on its present contract with the Armed Services Board of Contract Appeals.

We will not attribute bias to contracting officials on the basis of inference or supposition. PAE GmbH, B-212403.3, et al., July 24, 1984, 84-2 C.P.D. ¶ 94. Where a protester alleges that procurement officials acted intentionally to preclude the protester from receiving the award, the protester must submit virtually irrefutable proof that the officials had a specific and malicious intent to

harm the protester, since contracting officials otherwise are presumed to act in good faith. See Eaton-Kenway, B-212575.2, June 20, 1984, 84-1 C.P.D. ¶ 649.

BPC has submitted no such proof. The Air Force has explained that it used competitive proposals rather than sealed bids because it anticipated discussions would be needed to resolve any problems with proposals due to the complexity and magnitude of the contract. See 10 U.S.C.A. § 2304(e)(2)(A) (West Supp. 1985) and Federal Acquisition Regulation § 6.401(a) (FAC 84-5, April 1, 1985). Since BPC has not shown that the Air Force used negotiated procedures for any other reason, and merely calls our attention to changes the Air Force made in the RFP after BPC protested, we find the record does not support a finding of bias or unfair action toward BPC.

BPC also protests that the RFP does not contain information on evaluation factors. The Air Force responded in its report by pointing out Section "M" of the RFP which described how offers would be evaluated and BPC did not rebut that part of the Air Force's report. Therefore, we consider BPC to have abandoned this protest ground. Hamilton Sorter Co., Inc., B-220253, Nov. 22, 1985, 85-2 C.P.D. ¶ 592.

The Air Force's issuance of amendment No. 2, deleting the requirement to maintain a specific number of personnel to operate the photo laboratory, renders BPC's protest on this issue academic. See Dynalelectron Corp., B-219664, supra, at p. 10.

We will not consider BPC's comments on the agency report that the Air Force cannot demonstrate that competing its contract is cost effective to the U.S. Government. As noted earlier, an agency's decision not to exercise an option to extend a contract, where the option is exercisable at the sole discretion of the government, is a matter of contract administration which we will not review under our bid protest function. The Big Picture Company, Inc., B-220859, supra.

The protest is denied.

for Seymour G. Gove
for Harry R. Van Cleve
General Counsel