

**DECISION**



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

**FILE:** B-222119 **DATE:** May 12, 1986  
**MATTER OF:** AMERICORP, Inc.

**DIGEST:**

1. Protest is academic where the contracting agency modifies the challenged solicitation as the protester requests to insert appropriate wage determinations.
2. Provision in solicitation allowing equitable price adjustment only where variations in estimated quantities exceed estimated quantity by more than 30 percent or fall below 25 percent, is not improper, as provision affects all potential bidders equally, and the fact that bidders face risk in calculating their bid prices does not invalidate the provision since bidders should determine their bid prices taking into consideration the amount of risk involved.

AMERICORP, Inc. (ACI) protests the terms of request for proposals (RFP) No. FNS 86-10GD, issued by the Food and Nutrition Service, Department of Agriculture. The procurement is for services to store and distribute bulk quantities of food stamp coupon books that are received from the agency's food stamp coupon printer to individual state distribution agencies. ACI alleges that there are various improprieties in the solicitation. We dismiss the protest in part and deny the protest in part.

ACI first complains that Agriculture failed to incorporate in the solicitation a proper wage determination and that, in its absence, offerors must base their price proposals on estimates of applicable wage rates. However, the agency has received the appropriate wage determinations and has incorporated them into the solicitation by amendment. We therefore consider this matter to be academic. See Halifax Engineering, Inc., B-219178, July 22, 1985, 85-2 CPD ¶ 68.

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Next, ACI objects to a solicitation provision stating that when the actual quantity of a "unit price item" exceeds the estimated quantity (390,000 boxes) by more than 30 percent or is less than the estimated quantity by more than 25 percent, then negotiations for an equitable adjustment will be initiated upon demand of either party. The unit price items (Items B.1 and B.2) are described as "storage and distribution of food coupon books." ACI objects to variations in estimated quantities of this magnitude. ACI argues that these variations are excessive and, at their extremes, require different storage, handling and security facilities and also make it impossible to effectively plan, price and evaluate the proposed services. Specifically, ACI states that the solicitation's variations in estimated quantities provision places an "unreasonable burden" on the contractor, not only with respect to storage of the food stamp coupon books but also with respect to "swings in quantity" during the distribution process.

In the agency report, the contracting officer agreed that a variation for storage space of this magnitude would "place an unacceptable burden on the contractor." However, the contracting officer stated that the variations provision refers only to distribution quantities, the number of boxes to be distributed, and does not refer to the number of boxes which must be stored. Further, when ACI, in its comments, continued to express skepticism about the applicability of the variations provision to the solicitation's storage requirements, the contracting officer issued an amendment which expressly states that variations in estimated quantities only refer to distribution quantities and do not refer to variations in the number of boxes which must be stored.

With respect to variations in estimated quantities affecting the distribution process, the agency states that the current storage and distribution contract also contains these quantity variations. The agency explains that these quantity variations for distribution are closely linked to the current food stamp production and printing contract inasmuch as changes in necessary production levels affect the quantity levels that must be distributed. The agency also states that the estimated quantity set forth in the solicitation is accurate and is based on historical data from both the current distribution contract and the current production contract.

We do not agree with ACI that the quantity variations provision of the solicitation is defective. We think the intent of the variations clause is to enable the contractor or the government to seek an equitable adjustment in the event of a change in the government's requirements outside the normal workload. See Talley Support Services, Inc., B-209232, June 27, 1983, 83-2 CPD ¶ 22. Here, the government has provided all bidders with accurate information about its normal distribution requirements. While there is some risk involved in the possible quality variation, the mere presence of risk in a solicitation does not make the solicitation inappropriate. Diesel-Electric Sales & Services, Inc., B-206922, July 27, 1982, 82-2 CPD ¶ 84. Moreover, the provision affects all potential bidders equally and bidders are expected to allow for such risk in formulating their bids. See Edward E. Davis Contracting, Inc., B-211886, Nov. 8, 1983, 83-2 CPD ¶ 541. Accordingly, we deny this protest ground.

The protester also states that several required clauses are omitted from the solicitation. However, the protester does not identify these clauses either in its original protest or in its comments. Since the protester has not stated a sufficient basis for protest, we will not consider this matter. See 4 C.F.R. § 21.3(f) (1985).

The protester also asserts that the solicitation stating that technical factors are more important than cost, does not adequately indicate the relative weights of cost and technical factors. However, the solicitation provides that award will be made to the responsible offeror who offers the lowest overall acceptable proposal after evaluation of the total storage and distribution costs and the estimated costs of transportation. We find no ambiguity in this provision--award will ultimately be made on the basis of price and other cost factors after technical acceptability of the proposals have been determined.

The protest is denied.

*for Seymour Spas*  
Harry R. Van Cleve  
General Counsel