



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ameriko Maintenance Company
File: B-224087
Date: December 19, 1986

DIGEST

1. When solicitation for hospital custodial services, read as a whole, provides sufficient information for formulating a bid, the General Accounting Office will deny a protest alleging that an additional, detailed breakdown of tasks should be provided. Solicitation provisions are not objectionable merely because they fail to account for every eventuality, and thus may expose the contractor to some risk.
2. Liquidated damages may not be fixed without any reasonable relationship to actual damages caused by work not performed or unsatisfactorily performed. However, the government does not have the burden of setting a measure of damages for each possible variation of a required task to establish a valid system of liquidated damages.
3. Agency's determination of whether deficient performance has occurred is a matter of contract administration, not for review by the General Accounting Office. The contractor may, however, challenge allegedly improper deductions under the Disputes Clause of the contract.

DECISION

Ameriko Maintenance Company protests the allegedly defective specifications and payment deduction provisions of invitation for bids (IFB) No. N62470-86-B-5541, issued August 4, 1986, by the Department of the Navy. The total small business set-aside is for custodial services at the Naval Hospital, Camp Lejeune, North Carolina. Bid opening, which was scheduled for September 4, has been postponed indefinitely.

We deny the protest.

The solicitation contemplates a combination fixed-price and indefinite quantity contract. The former will cover work that must be performed at regular intervals in occupied areas

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of the hospital; the latter will cover work as ordered in unoccupied areas. For the fixed-price work that is at issue here, bidders are to submit a lump sum price. The low bidder will have 15 days after award to provide unit and extended prices on a Schedule of Deductions which lists cleaning tasks and annual quantities for each; the total of the extended prices must equal the lump sum price initially submitted.^{1/}

The IFB incorporates by reference the standard Federal Acquisition Regulation (FAR) clause that provides that when defects cannot be corrected by reperformance, the government may reduce the contract price to reflect the reduced value of the services. 48 C.F.R. § 52.246-4 (1985). In this case, if approved by the contracting officer, the unit prices in the Schedule of Deductions will provide the basis for deductions from payments due the contractor for non-performance or unsatisfactory performance.

The solicitation also includes a Statement of Work that sets forth performance standards for each cleaning task and a Task and Frequency Schedule that is broken down into 39 separate schedules for work in particular areas of the hospital (clinics, patient areas, administration, etc.), with floor plans for each. The schedules show how often each of up to 28 cleaning tasks must be performed in the particular area and the level of cleaning required for that area.^{2/} -

In a protest filed on August 21, the protester alleged that numerous specifications were defective or ambiguous. The agency issued amendment No. 1, dated August 25, correcting a number of the alleged deficiencies. The protester, however, maintains that deficiencies remain, specifically that the required frequency of certain tasks is not listed in the Task and Frequency Schedule. The protester also complains that the Task and Frequency Schedule is defective because it does not break out the quantity or level of cleaning for each

^{1/} Bidders must submit unit and extended prices for estimated amounts of indefinite quantity work with their bids.

^{2/} The IFB defines Cleaning Level I as the highest level of cleaning, resulting in a completely disinfected environment, and Cleaning Level II as a lower level of cleaning, resulting in a sanitized environment.

particular task in each of the hospital areas represented by the 39 work schedules.

We find no merit to the protester's allegations. We view the solicitation, read as a whole, as sufficient for preparing an intelligent bid and in defining the scope of the required services which, if not properly performed, will result in deductions from payments due the contractor.

While specifications must describe the government's needs accurately, so that bidders are able to compete on a relatively equal basis, there is no requirement that an IFB be so detailed as to eliminate completely all performance uncertainties or address every possible eventuality. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218. Further, there is no requirement that competition be based on specifications which state the work in such detail so as to completely eliminate the possibility that the successful contractor will be required to perform work other than that specified. Such perfection may be impracticable in some procurements and the fact that a solicitation may impose some risk on the contractor does not render it improper. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687; Richard M. Walsh Assoc., Inc., B-216730, May 31, 1985, 85-1 CPD ¶ 621. Further, the offeror has an obligation to read a solicitation as a whole and in a reasonable manner. Bay Decking Co., Inc., B-216248, Jan. 22, 1985, 85-1 CPD ¶ 77.

For example, the protester complains that the Task and Frequency Schedule does not show how often entrance mats must be cleaned. In amendment No. 1, however, the agency made entrance mat cleaning a subtask of carpet vacuuming on the Schedule of Deductions. Accordingly, a bidder can determine the required frequency for entrance mat cleaning in each hospital area simply by referring to carpet vacuuming on the Task and Frequency Schedule.

The frequency of other tasks is not shown primarily due to the nature of the task. Concerning chalkboard cleaning, an area where the protester alleges a deficiency, the Statement of Work specifies the number of chalkboards to be cleaned (30) and average size of each (12 square feet), and states that they must be cleaned "as required." The Schedule of Deductions specifies an annual quantity of 1,560 chalkboards, which, as the protester acknowledges, works out to an average of once a week (1,560-30=52).

The protester also alleges a deficiency with regard to emergency cleaning response. The Statement of Work requires

that the contractor provide sufficient personnel to perform emergency cleanups within 10 minutes of notification; the service is to be provided 24 hours a day, 7 days a week. The Statement of Work indicates that 3,500 requests will occur annually, each covering approximately 60 square feet with an average cleanup time of 15 minutes. The Schedule of Deductions also is based on an annual quantity of 3,500 emergency cleaning responses.

Thus, while the Task and Frequency Schedule makes no provision for "as required" services such as chalkboard and emergency cleaning, given the nature of these tasks and the other information provided, we do not believe the agency is required to include them on the Task and Frequency Schedule.

Nor do we find the Task and Frequency Schedule defective because it does not include quantities and level of cleaning for each particular task in each hospital area shown. Annual quantities for each task are given in the Schedule of Deductions, and the overall level of cleaning for each area is specified in the Task and Frequency Schedule; only 4 of the 39 areas require more than a single level of cleaning.

Moreover, the additional, detailed information sought by the protester may not be available. For example, the Statement of Work requires bed cleaning and remaking upon notification of patient discharge or transfer. The Schedule of Deductions specifies an annual quantity of 10,000 discharge beds. The Task and Frequency Schedule, as amended, specifies daily bed cleaning and remaking for the postpartum nursing and obstetrical units. The agency states that although it knows from past history that there will be discharges in those units, it cannot determine the exact number on a daily basis. Therefore, the agency has predicted the total quantity based on past history. Under these circumstances, we find the solicitation, read as a whole, sufficient for intelligent bid preparation.

The protester also contends that use of the unit prices as the basis for deductions is inaccurate and unfair. According to the protester, the unit price for the same task will depend upon its frequency and level of cleaning. The protester appears to suggest that bidders should submit unit prices for each task on each of the 39 work schedules in the Task and Frequency Schedule, and that if quantities and level of cleaning were provided therein the deduction provisions would be more accurate. Otherwise, the protester maintains, too much discretion is left to the quality assurance evaluator, and the contractor will not be unable to dispute a government determination that a particular task in a particular area has not been satisfactorily performed.

We find use of unit prices, representing the monetary value of different cleaning tasks, a reasonable basis for deductions. For example, the Schedule of Deductions provides a price per square foot for tasks such as floor cleaning that are measured in square feet, so that there is a specific basis for reductions.

The deduction provisions in this IFB establish a system of liquidated damages--that is, fixed amounts the government can recover from the contractor upon proof of violation of the contract, without proof of actual damages. See Environmental Aseptic Services Admin., 64 Comp. Gen. 54 (1984), 84-2 CPD ¶ 510; Sunrise Maintenance Systems, B-219763.2, Nov. 26, 1985, 85-2 CPD ¶ 603. Liquidated damages fixed without any reasonable relationship to probable actual damages may be held to be a penalty and therefore unenforceable. FAR, 48 C.F.R. § 12.101(b); Starlite Services, Inc., B-219418, Oct. 15, 1985, 85-2 CPD ¶ 410. However, the government does not have to set forth in the solicitation a measure of damages for each divisible area or each possible variation of a task in order to establish a valid system of liquidated damages. Id.

A protester who objects to deduction provisions has a heavy burden, since it is the contracting agency that is most familiar with the conditions under which the services and supplies have been and will be used. Eldorado College, B-213109, Feb. 27, 1984, 84-1 CPD ¶ 238. Therefore, our Office will not question agency decisions concerning the best methods of accommodating their needs absent clear evidence that those decisions are arbitrary or otherwise unreasonable. D. J. Findley, B-215230, Feb. 14, 1985, 85-1 CPD ¶ 197. We conclude that the protester here has not demonstrated that the deduction provisions are arbitrary or otherwise unreasonable. See Environmental Aseptic Services Admin., B-221316, Mar. 18, 1986, 86-1 CPD ¶ 268.

Finally, to the extent that the value of a task will differ depending upon such factors as frequency and level of cleaning, we believe that this is a risk any prospective contractor must consider in preparing its unit price for the annual quantity of each cleaning task. See Environmental Aseptic Services Admin.--Request for Reconsideration, B-218487.3, Jan. 2, 1986, 86-1 CPD ¶ 1; Sunrise Maintenance Systems, Inc., supra. The agency's actual determination as to whether a deficiency has occurred is a matter of contract administration, D. J. Findley, supra, and the contractor may

challenge an alleged improper deduction under the Disputes
Clause of the contract. Id.

The protest is denied.

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