



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: American Contract Services, Inc.

File: B-225182

Date: February 24, 1987

## DIGEST

1. When a solicitation includes wage determinations covering a list of 11 classes of service employees and incorporates a clause by which standards for wages and fringe benefits of unclassified employees may be conformed, the General Accounting Office denies a protest alleging that the solicitation is deficient because it does not also include a wage determination for a class of employee that the agency does not necessarily regard as required for contract performance. -
2. General Accounting Office denies a protest that color printing estimates in a solicitation for audiovisual services are defective, where protester fails to show that the estimates are not based on the best information available or are otherwise deficient.
3. Alleged violation of a Department of the Air Force regulation setting forth internal policies for audiovisual services does not provide a valid basis for protest. Moreover, an agency may reasonably base a solicitation on a revised regulation that will become effective during the term of the contract.
4. When a solicitation requires the successful contractor to furnish equipment described by a brand name or equal, and in response to a protester's concerns, the agency states that it will amend the solicitation to include salient characteristics, protest alleging that lack of information about the equipment prevents bidding on an equal basis is rendered academic.

## DECISION

American Contract Services, Inc. protests the terms and conditions of invitation for bids (IFB) No. F08637-86-B0035, issued July 17, 1986, for audiovisual services at Tyndall Air Force Base, Florida. The agency amended the solicitation

five times, partially in response to questions raised by the protester and other potential bidders; however, the protester contends that deficiencies remain. The Air Force has postponed bid opening indefinitely pending resolution of the protest. We deny the protest.

The solicitation, a 100-percent small business set-aside, contemplates a fixed-price requirements-type contract for a base and 4 option years. Bidders are to provide unit and extended prices for estimated monthly quantities of various audiovisual services. The IFB lists government furnished property to be operated by the successful contractor and specifies other equipment to be furnished by the contractor. Additionally, it incorporates two wage determinations setting forth minimum wages to be paid under the contract.

American asserts that (1) the wage determinations are defective because they do not include the job classification of computer graphics operator; (2) the estimates for color prints overstate the government's minimum needs and do not conform to the applicable Air Force regulation, and (3) the IFB fails to specify the quality and type of photo typesetter and processor to be provided by the contractor.

#### WAGE DETERMINATION

The Service Contract Act of 1965 requires federal contractors to pay minimum wages and fringe benefits as determined by the Secretary of Labor to employees under service contracts exceeding \$2,500. 41 U.S.C. §§ 351-358 (1982). Department of Labor (DOL) regulations implementing the Act require agencies to notify DOL of their intent to enter into such contracts and to list the classes of workers they expect to employ. 29 C.F.R. § 4.4 (1986). The Air Force in this case provided DOL with a list of 11 classes of prospective employees, but did not include computer graphics operators among these. The IFB contains this list, as well as two blanket wage determinations, one for administrative support and clerical occupations and the other for automatic data processing information occupations; together these encompass 93 classes of service employees.

The IFB also incorporates by reference a clause setting forth standards by which the wages and fringe benefits for any classes of employees omitted from the wage determination can be conformed. Generally, the contractor must take into account the knowledge and skill levels of unlisted workers and establish wage and fringe benefits that are reasonably related to those of workers in listed classifications with the same skills. 29 C.F.R. § 4.6(b)(2).

The protester contends that the Air Force improperly failed to notify the DOL that because of a recent purchase of computer graphics equipment, operators would be required. According to the protester, without a wage determination for computer graphics operators, bidders cannot compete on an equal basis. The protester believes it could be at a competitive disadvantage if it offered computer graphics personnel, since the conforming procedure is not initiated until after award. We find no merit to this argument. In the absence of a collective bargaining agreement, the question of the proper wage rate for unlisted classes of service employees is to be submitted to DOL for final determination. 29 C.F.R. § 4.6(b)(2)(ii). To the extent that the absence of a particular wage determination will affect bid prices, all bidders will be affected equally. Moreover, the wage determinations specify minimum wages; they are not a guarantee that a bidder can employ the appropriate workforce at those rates. See Broken Lance Enterprises, Inc., B-201482, Mar. 17, 1981, 81-1 C.P.D. ¶ 203. Some risk is inherent in projecting costs, and bidders are expected to allow for that risk in computing their bids. Id. Finally, although the solicitation required graphics services, it does not appear from the record that the Air Force had reason to expect that computer graphics personnel necessarily would be required to perform the contract.

We conclude that the agency complied with its obligation to obtain a wage determination for inclusion in the IFB. The regulatory procedures for contractors to establish wage and fringe benefits for omitted classes of employees provide a reasonable basis for them to estimate their labor costs for computer graphics operators--if they wish to offer such employees--and to compete on an equal basis. Consolidated Marketing Network, Inc., B-224458, Oct. 10, 1986, 86-2 C.P.D. ¶ 422. We deny the protest on this basis.

#### WORKLOAD ESTIMATES

The protester next complains that the estimates for color prints are excessive in comparison to previous color usage at Tyndall Air Force Base. The protester also contends that the color requirement is not in accord with Air Force Regulation (AFR) 95-7, "Audiovisual Services" (Sept. 4, 1984), which requires prior approval of color prints. Additionally, the protester maintains that half of the estimated number of prints will be larger than the standard 5 by 7 inch size authorized by AFR 95-7.

The Air Force responds that AFR 95-7 was written when color processing cost more than comparable-sized black and white processing. The agency reports that advancements in technology now make automated color processing as inexpensive or less expensive than manual black and white processing. According to the Air Force, AFR 95-7 was rewritten to reflect the current state of color processing, and the new regulation AFR 700-32, although not yet effective, will allow the use of color without prior approval except when black and white negatives are required for reproduction. The agency reports that it requested and received approval to base the solicitation upon the forthcoming regulation to preclude costly changes to the contract which, if options are exercised, will extend to 1991.

The agency also maintains that the estimated quantities of color prints are necessary to support the Air Force Engineering and Services Center. Additionally, the agency reports that AFR 700-32 places no limitation on the size of color prints.

The responsibility for drafting specifications is primarily that of the contracting agency, and we will not question an agency's determination of its minimum needs unless the protester shows that the determination is clearly unreasonable. Jones Refrigeration Serv., B-221661.2, May 5, 1986, 86-1 C.P.D. ¶ 431. When, as here, an agency solicits bids for a requirements-type contract on the basis of estimated quantities, it must base its estimates on the best information available, i.e., on reasonably accurate representations of anticipated needs. The Big Picture Co., Inc., B-220859.2, Mar. 4 1986, 86-1 C.P.D. ¶ 218. Since the protester bears the burden of proof, we normally will not sustain a challenge to an agency's estimates unless the protester shows that the estimates are not based on the best information available, misrepresent anticipated actual requirements, or resulted from bad faith or fraud. Id. Space Servs. Int'l Corp., B-207888.4 et al., Dec. 13, 1982, 82-2 C.P.D. ¶ 525.

In our view, the protester in this case has done no more than disagree with estimates that reflect the reasoned judgment of the agency personnel responsible for audiovisual services at Tyndall AFB. Moreover, AFR 95-7 is an internal Air Force manual; it sets out executive branch policy that lacks the force and effect of law. See Julie Research Laboratories, Inc.--Reconsideration, B-216312.2 et al., June 12, 1985, 85-1 C.P.D. ¶ 672. Therefore, to the extent the solicitation does not conform to AFR 95-7, it does not provide a valid basis for protest. See Timplex, Inc., et al., B-197346 et al., Apr. 13, 1981, 81-1 C.P.D. ¶ 280. In any event, we view the agency's determination to draft the solicitation in accord with the forthcoming regulation as reasonable.

CONTRACTOR-FURNISHED EQUIPMENT

The protester also alleges that the solicitation is deficient with regard to the contractor-furnished equipment. The IFB requires a photo typesetter and processor "equal to Compugraphic preview system." According to the protester, this equipment must perform successfully with new Air Force equipment that was not in place at the time of the site visit. The protester maintains that lack of information on this equipment could cause unequal bidding.

The agency states that upon resolution of the bid protest, it will amend the solicitation and set forth the salient characteristics of the Compugraphic equipment "to preclude any confusion as to what is necessary to satisfy the requirement." In our opinion, this renders the protest on this basis academic.

The protest is denied.

*for Seymour Efron*  
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General Counsel