



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.N.A.M. Inc.
File: B-228936
Date: November 25, 1987

DIGEST

Protest against the terms in a solicitation for mess attendant services that provide for inspection by random sampling and payment deductions for defective services is denied where the protester has not shown that the terms are ambiguous or unreasonable.

DECISION

A.N.A.M. Inc. protests that invitation for bid (IFB) No. M00681-87-B-0104, issued by the United States Marine Corps for mess attendant services at the Marine Corps Base at Camp Pendleton, California, is defective and should be revised. Specifically, A.N.A.M. contends the solicitation's terms which provide for inspection based upon random sampling are ambiguous, unrealistic and incomplete. A.N.A.M. also complains that the IFB gives the government the right to require the contractor to reperform defective services and reduce the contract price. At bid opening, 27 bids were received. Bid opening, which was scheduled for September 10, 1987, has been indefinitely post-poned pending the resolution of this protest.

We deny the protest.

The IFB contains the standard inspection of services clause required to be included in all fixed price service contracts. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 46.304 (1986). This clause reserves to the government's the right to inspect all services, to the extent practicable, at all times during the contract term. It also provides that the government may require the contractor to perform the services again in conformity with contract requirements at no increase in contract price or that when defects cannot be corrected by reperformance, the government may reduce the contract price to reflect the reduced value of the service performed. FAR, 48 C.F.R. § 52.246-4.

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Additional inspection provisions are contained in Technical Exhibit 1 to the solicitation under the heading "Performance Requirement Summary" (PRS). These permit the government to use a variety of surveillance methods, including random sampling, periodic surveillance and customer complaints. At issue in this protest is random sampling.

Under the random sampling plan here, required services (i.e., beverage services) would be randomly inspected over a predetermined number of meal periods (the sample size). The sample size is determined by first choosing a lot size, then using the Mil-Std-105D tables (attached to the solicitation) to calculate the number of meals which will comprise the sample size. Regarding beverage services, the lot size is 81 meal periods per month. The Mil-Std tables dictate for this lot size the number of meals to be randomly inspected each month is 13 meals. If one or more defects are noted for a particular service during a meal period, the service is deficient for that meal period. If the number of meal periods for which that service is deficient exceed the acceptable quality level (AQL) for that service, as determined by the tables attached to the IFB, the Performance Requirement Summary states that the government may deduct a specified amount from the monthly contract payments. For beverage services, the AQL allows two deviations during the 13 meal periods before a deduction from contract price may be made.

The protester complains that the random sampling provisions are unreasonable and unrealistic because the IFB uses an incorrect lot size with the result that the contractor is being held to a higher standard of service than the government provided when performing the services in-house or what is generally accepted within private industry. The protester further complains that the use of an unrealistic lot size places an unduly high degree of risk on the contractor.

A.N.A.M. has not presented any evidence to support its complaint that the lot size is unreasonable or unrealistic. Instead, the protester states that a lot size comprised of the number of items being provided multiplied by the number of meal periods per month would be a more realistic lot size and in support of its statement submits the performance requirement summary from an unrelated procurement.

The burden is on the protester to affirmatively prove its case. Reliable Maintenance Service, Inc.--Reconsideration, B-185103, May 24, 1976, 76-1 C.P.D. ¶ 337. The protester has not met its burden here. A.N.A.M. asserts that the result of using meal periods per month as the lot size in the IFB's random sampling plan is to require perfect service to avoid deductions from contract price. However, the

protester's examples establish that before deductions are taken services must be noted as deficient in at least 3 of the 13 meal periods of the sample size.

To the extent that the random sampling method imposes a risk that sampled work will not be precisely indicative of the entire service, we believe that simply is a risk any prospective contractor must consider in preparing its bid price. Kime-Plus, B-215979, Feb. 27, 1985, 85-1 C.P.D. ¶ 244

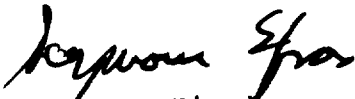
The protester also argues that the random sampling plan is ambiguous and incomplete because the IFB does not identify whether a service will be inspected at a random time or times during a meal period or whether the service will be sampled throughout the meal period. Thus, the protester's complaint is that it has not been informed when the inspections will occur. The inspection of services clause contained in this contract accords the government the right to inspect services at all times during the term of the contract. We have held that the random sampling method of monitoring performance is permissible. Since it is unreasonable to inspect all meal periods 100 percent of the time, a random sampling plan which provides a statistically accurate surveillance plan is a practical means of ensuring compliance with the specifications. C & H Management, Inc., B-221316.2, Sept. 9, 1986, 86-2 C.P.D. ¶ 275. Furthermore, to the extent that the protester objects that the government may unreasonably utilize its right to inspect at all times, this is a matter of contract administration that our Office does not review. Starlite Services, Inc., B-219418, Oct. 15, 1985, 85-2 C.P.D. ¶ 410.

A.N.A.M. also argues that the IFB is defective because it gives the government the right to require a contractor to reperform defective services and to reduce the contract price due the contractor. Under the inspection of services clause, the government is entitled to require the contractor to reperform defective services at no increase in contract price. Provisions in the IFB further entitle the government to note deficient services in the AQL equation to determine if a deduction from the contract price will be taken, although those services may later be reperformed.

We have previously recognized (under a similar clause in the Defense Acquisition Regulation) that the government may, but is not required to, permit reperformance. Environmental Asceptic Services Administration et al., 62 Comp. Gen. 219 (1983), 83-1 C.P.D. ¶ 194. In the Environmental protest, we recognized that even when deficient services are satisfactorily reperformed the government receives reduced value.

Therefore, we found the contention that deduction provisions are inconsistent with reperformance rights to be without merit.

The protest is denied.

for 
James F. Hinchman
General Counsel