



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Multi Services Assistance, Inc.
File: B-232082
Date: October 28, 1988

DIGEST

Protest that solicitation calling for award of level of effort contract is defective because it does not specify level of effort required and includes an inspection clause inconsistent with level of effort type contract is without merit where, despite reference to award of level of effort contract, solicitation in essence contemplates award of a basic fixed-price services contract.

DECISION

Multi Services Assistance, Inc., protests the terms of request for proposals No. (RFP) DAEA18-88-R-0027, issued by the Department of the Army for operation and management services, including transportation, maintenance and laundry services, at Fort Huachuca, Arizona. Multi Services argues that the solicitation is defective because, although it calls for award of a fixed price, level of effort contract, it fails to specify a level of effort and includes a provision for reviewing the contractor's performance which in the protester's view is inconsistent with a level of effort contract.

We deny the protest.

The RFP, issued as a total small business set-aside, contemplated award of a contract for 1 base year and 4 option years. The solicitation provided that a specified level of effort for each work category would be mutually established at the time of contract award based on the staffing appendix prepared by the offeror, which was to include adequate staffing to accomplish the work identified in each functional area of the performance work statement (PWS). The RFP also included a Performance Requirements Summary (PRS) that detailed the major performance elements, the maximum allowable deviation from satisfactory performance, the quality assurance methods to be used, the

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value of each requirement and the procedure to be used to reduce contractor reimbursement for unsatisfactory performance that could not be reperformed. By amendment No. 3, the Army added a sentence to the RFP characterizing the type of contract to be awarded as a fixed price, level of effort contract.

Multi Services argues that the RFP is defective because the Army did not specify a level of effort and included a PRS which provides for the reduction of payment for unsatisfactory performance, contrary to Federal Acquisition Regulation (FAR) § 16.207, which states that a fixed price, level of effort contract may be used only when, among other factors, the required level of work is identified and agreed upon in advance, and payment is based on effort expended rather than results achieved. We find this argument to be without merit.

Generally, a fixed price, level of effort contract is intended for use in small contracts for studies in research and development areas where the work required cannot be clearly defined. The product is usually a report showing the results achieved through the required level of effort. As the protester states, payment is based on the effort expended by the contractor rather than the results achieved. FAR §§ 16.207-2 and 16.207-3.

Here, in contrast, the RFP calls for large-scale management services and, despite the reference in amendment No. 3 to a level of effort contract, in fact contains the basic elements of a fixed-price services contract. Specifically, the RFP required offerors to submit unit prices for the monthly performance of various services in defined functional areas. Historical workload data was provided to guide the offerors in formulating their proposals. Offerors also were to include a staffing appendix providing adequate staffing for each functional area identified in the PWS that subsequently would be made part of the contract.

In addition, the solicitation contained the standard "Inspection of Services" clause that generally must be included in all fixed-price service contracts. See FAR §§ 46.304 and 52.246-4. The clause reserves the government's right to inspect all services, to the extent practicable, at all times during the term of the contract and provides that, when defects cannot be corrected by reperformance, the government may reduce the contract price to reflect the reduced value of the services performed. The PRS included in the RFP in this case is in essence an extension of the Inspection of Services clause that provides additional information as to the maximum allowable

deviation from satisfactory performance for each performance element, the quality assurance methods to be used, the value of each requirement, and the procedure to be used to reduce contractor reimbursement for unsatisfactory performance that cannot be reperfomed.

In light of the type of services called for by the RFP and the requirement that the offerors themselves formulate the number and skill level of the required staff based on the detailed PWS and historical workload data provided, the RFP, read as a whole, contemplates award of a fixed-price services contract; the fact that the RFP labels it a level of effort contract, standing alone, does not in our view change the underlying nature of the contract. Accordingly, we see no basis to object to the lack of a specified level of effort or the inclusion of the standard inspection clause and PRS for reviewing the contractor's performance.

The protest is denied.


for James F. Hinchman
General Counsel