

K. P. [unclear]



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Steel Circle Building Co.

File: B-233055; B-233056

Date: February 10, 1989

DIGEST

1. Protest of solicitation deficiencies is academic where contracting agency issues a corrective amendment.
2. Protest that solicitation for routine maintenance services for military family housing should be consolidated with solicitation for construction services for housing repairs incident to change of occupancy is denied where protester does not show that contracting agency abused the discretion committed to it in its choice of method of procurement.
3. Fact that solicitation for routine family housing maintenance does not provide separate bid line items for maintenance management services and for each of three types of service calls does not render solicitation improper where the management service duties are described in the solicitation and statistical information as to the number of each type of service call performed during the prior year is provided to bidders; a solicitation need not be so structured as to eliminate all risk, and agency could reasonably conclude that, based on the information provided, bidders could project their expected costs and include them in their prices for maintenance service.
4. Contention that solicitation amended six times is a "paste up" document which ought to be "reprinted" provides no legal basis for objection to the procurement, since there is no legal requirement that an entire solicitation be reprinted when there have been a number of amendments to it and where each amendment clearly indicated which provisions of the IFB were changed.

DECISION

Steel Circle Building Co. protests invitation for bids (IFB) Nos. N62472-87-B-5203 (IFB No. -5203), for family housing maintenance services, and N62472-88-B-5359

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(IFB No. -5359), for family housing construction maintenance, issued by the Naval Air Engineering Center, Lakehurst, New Jersey. The protester argues that the IFBs contain improper small business size standards and that neither solicitation adequately indicates which documents are to be submitted with a bid.^{1/} The protester also alleges that the specifications are ambiguous in two instances, and that the two contracts should be consolidated for cost-saving purposes. Finally the protester alleges that IFB No. -5203 with its six amendments is a "paste-up" contract that "should have been reprinted."

The protests are dismissed in part and denied in part.

The IFBs were both issued as total small business set-asides. The IFB for family housing maintenance services was amended six times and the IFB for family housing construction maintenance was amended eight times. The last amendment to each solicitation extended bid opening indefinitely.

IFB No. -5203 contemplated a services-type contract for the routine maintenance of family housing facilities, under which the contractor would perform such services as responding to residents' service calls, grounds maintenance and custodial service. This IFB incorporated provisions applicable to the Service Contract Act, 41 U.S.C. § 351 et seq. (1982). IFB No. -5359, on the other hand, is for a construction-type contract for repairs to family housing incident to changes of occupancy and includes tasks such as repainting interiors, replacing resilient flooring, refinishing or replacing hardwood flooring and replacing countertops. This IFB incorporated provisions concerning the Davis-Bacon Act, 40 U.S.C. § 276(a) (1982).

The protester first argues that it would be more cost-effective if the two contracts were consolidated and a single award made for all these requirements. The Navy maintains that the division of these requirements into two solicitations was not inappropriate and was within its discretion, especially since this approach will: (1) in the

^{1/} In this connection, we note that subsequent to the filing of this protest the agency issued amendments to both IFBs correcting the small business size standard and incorporating a list of documents that are required to be submitted with the bids. Because of these corrective measures taken by the Navy, we dismiss this aspect of the protest as academic. Areawide Services, Inc., B-225253, Feb. 9, 1987, 87-1 CPD ¶ 138.

Navy's judgment, enhance competition among small business concerns; and (2) is consistent with the application of differing wage rates to services and construction.

The method an agency chooses to accomplish its needs is primarily a matter within the agency's discretion. Kisco Co., Inc., B-216953, Mar. 22, 1985, 85-1 CPD ¶ 334. The protester has not shown an abuse of discretion here, particularly since the consolidating of requirements, as opposed to breaking them out, tends to restrict rather than enhance competition in violation of the mandate of the Competition in Contracting Act of 1984 requiring agencies to obtain full and open competition. 10 U.S.C. § 2304(a)(1)(A) (Supp. IV 1986).

Steel Circle next contends that IFB No. -5203 is defective because it lacks a separate bid line item for the maintenance management services required of the contractor. This refers to the contractor's responsibility to provide the staff and equipment necessary to perform certain management functions under the contract including, for example, receiving and processing service calls around the clock, planning and scheduling work, and maintaining certain files including a maintenance history file for each housing unit or related facility. The Navy responds that the protester was informed that maintenance management services for this IFB would not be bid as a separate line item and that bidders were expected to allocate the costs for such services among applicable line items in the bid schedule. This type of judgment, the Navy argues, is within the contracting officer's discretion.

We agree with the Navy that the determination of the government's minimum needs and the method of accommodating them is primarily the responsibility of the contracting agency. A solicitation is not improper because it imposes a risk that the contractor will not be able to recover all costs. Rather, it is the bidder's responsibility to project costs and include in the basic contract price a factor concerning any otherwise uncompensated costs. Ameriko Maintenance Co., B-230994, July 22, 1988, 88-2 CPD ¶ 73.

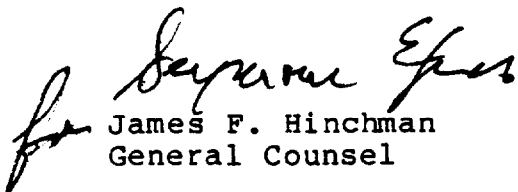
The protester also objects to the fact that there is only a single per-month line item for "service calls" in IFB No. -5203 and that the bidding schedule does not differentiate among the three service calls described in the IFB: (1) "emergency" (maximum 60-minute response time); (2) "urgent" (maximum 4-hour response time); and (3) routine (5-day response time). In response to this concern of the protester, the agency issued an amendment which provided historical data concerning the number and types of service

calls received during the previous 12 months. From this information it can be seen that approximately 77 percent of the calls were "routine," 21 percent were "urgent," and only 2 percent, or about 3 per month, were "emergencies."

We find that the solicitation, when read as a whole, contains sufficient information for intelligent bid preparation with regard to the potential cost of service calls. In any event, we fail to see why this particular lack of specificity in the context of the entire work for which the contractor is responsible involves anything more than a minor area of uncertainty or a risk that should be taken into account during bid formulation. T&A Painting, Inc., B-229655.2, May 4, 1988, 88-1 CPD ¶ 435.

Finally, the protester argues that IFB No. -5203, with its six amendments, is a "paste-up" contract "which should have been reprinted to make the change clear and concise to all bidders." Certainly it may have been a convenience to bidders had the Navy, through an amendment, republished the solicitation or major portions of it to incorporate all the changes made previously. We note, however, that each amendment which was issued did clearly indicate which provisions of the IFB were changed, and in the absence of any legal authority that requires reprinting an entire solicitation when there have been a number of amendments, we do not find that a failure to reprint the solicitation provides a basis for our legal objection to it.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel