



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Benco Contract Services

File: B-233748

Date: February 24, 1989

DIGEST

While contracting agency generally must give bidders sufficiently detailed information in solicitation to enable them to compete intelligently and on a relatively equal basis, solicitation is not deficient where performance work statement reasonably describes and estimates work even though it does not eliminate all risk of performance to the contractor.

DECISION

Benco Contract Services, the incumbent contractor, protests various allegedly ambiguous and inadequate provisions contained in invitation for bids (IFB) No. F28609-88-B-0038, issued by the Air Force for food service attendant services at McGuire Air Force Base, New Jersey. We deny the protest.

The IFB was issued on September 14, 1988. As a result of this protest, filed on December 1, the Air Force has postponed bid opening indefinitely. On December 13, the Air Force also issued amendment 4 to the IFB, seeking to resolve Benco's concerns regarding allegedly inadequate solicitation provisions. While Benco acknowledges that the amendment resolves some of its concerns, those remaining unresolved form the basis of this protest.

Benco first objects to paragraph 1.6.2.1 of the performance work statement of the IFB which appears under the subsection "contingency services" and provides that the contractor shall perform "additional food service requirements" in accordance with a technical exhibit which lists periodic events to be held at the base. The IFB states that the additional requirements shall be included as part of the price of the contract. Benco argues that the technical exhibit fails to estimate the additional periodic workload which may be required. The protester asserts that in

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procurements for food services at other Air Force bases, the IFBs contained a more definite statement of the workload estimates for similar requirements.

The Air Force states that these contingent workload requirements are too uncertain to estimate. In addition, it points out that the solicitation contains a separate bid item for "extended meal service" and that the contractor is entitled to a price adjustment if additional meals served vary from estimated quantities.

Solicitations generally must be drafted to inform all offerors in clear and unambiguous terms of what is required of them so they can compete on an equal basis. Newport News Shipbuilding and Drydock Co., B-221888, July 2, 1986, 86-2 CPD ¶ 23. Nonetheless, the contracting agency, not our Office, is responsible for determining its needs and the best means of meeting those needs since the agency is most familiar with the conditions under which the supplies and services are to be used. Aaron Refrigeration Services, B-230833.2, Aug. 17, 1988, 88-2 CPD ¶ 153. There is no legal requirement that a competition must be based on plans and specifications which state the work in such detail as to completely eliminate the possibility that the successful contractor will encounter conditions or be required to perform work other than that specified. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687. We have stated that such perfection, while desirable, is manifestly impracticable in some procurements, and that the mere presence of a risk factor does not make a solicitation improper. Id.

Under these standards, we find the protested IFB provision adequate. The agency states that, in most cases, additional workload occasioned by such contingencies is simply impossible to estimate with any accuracy. Recognizing the uncertainty of the requirement, the solicitation provided bidders with the opportunity to separately price extended meal service and also provided that equitable adjustments would be available to compensate the contractor for increased costs caused by excessive contingency requirements. Further, there is no indication in the record that Benco is disadvantaged in any way not shared by the other bidders or that it is unable to prepare a bid on the solicitation. All potential bidders under the IFB are on notice of what is expected of them during contract performance, and each can take account of any uncertainties or risks in computing their bids. See Aaron Refrigeration Services, B-230833.2, supra. In this regard, we note that

25 other bidders responded to the IFB without protesting or taking exception to the IFB. See American Maid Maintenance, B-227909, Oct. 2, 1987, 67 Comp. Gen. ____ (1987), 87-2 CPD ¶ 326.

Benco also alleges that the equipment repair estimate in the solicitation understates the actual amount that will be required. The record shows that the IFB includes a 2-year history of equipment repairs and replacement which bidders may utilize in estimating their bid prices. Because all bidders may adjust their prices accordingly, we think this repair history provides an adequate basis on which to intelligently prepare a bid under this solicitation.

We have reviewed Benco's other allegations and find them also to be without merit. Benco essentially seeks to have the solicitation restructured to eliminate any risk to the contractor and to ensure that it will not be required to furnish services without specific compensation. For example, Benco requests that the agency designate a suitable site for recycling cans and bottles. While the agency has not designated a specific site for recycling, the agency points out that several areas in building 26-04 can be used at the contractor's convenience and discretion. While this may not be specific enough to satisfy the protester, it appears to be a reasonable response to the protester's concern. As stated above, the presence of risk to the contractor does not render a solicitation improper. Further, the provisions contested here affect all bidders equally, and the fact that bidders may respond differently is a matter of business judgment and does not preclude fair competition. American Maid Maintenance, B-227909, supra.

The protest is denied.



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General Counsel