Ms. Coles

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wespac Serco

File: B-239203

Date: July 23, 1990

Jeff Terry, for the protester.
Dominica F. Pelias, for Spheres Company, an interested party.
Lt. Col. Howard G. Curtis, Esq., Department of the Army, for the agency.
Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest allegation that solicitation for requirements contract precludes bidders from reasonably calculating bid prices--because the solicitation does not guarantee a minimum payment to the contractor--is denied where the solicitation contains annual estimates of items needed and the contractor's expected hourly rate of work, and advises bidders of possibility that rate of work may double or triple in some instances. It is the bidder's responsibility in bidding a fixed-price contract to project costs and allow for risks--that, for example, the income derived from agency's orders may not encompass all costs--in computing its bid.

DECISION

Wespac Serco protests the terms of invitation for bids (IFB) No. DAKF57-90-B-0043, issued by the Department of the Army for tailoring services at Fort Lewis, Washington. Wespac contends that in light of the Army's contemplated method of payment under the contract, the IFB precludes bidders from formulating reasonable bid prices and, hence, is defective.

We deny the protest.

The IFB calls for award of a fixed-price requirements contract for a base year and 2 option years for tailoring services, including labor, materials and equipment necessary for sewing military insignia, nametapes, tabs, and badges.

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The IFB required bidders to perform these services at Fort Lewis from 9 a.m. to 5 p.m., Monday through Friday, except holidays. There were three schedules in the IFB: schedule I pertained to sewing services for active duty service members; schedule II to sewing services for reserve component service members; and schedule III to furnishing nametapes and "U.S. Army" tapes in conjunction with the sewing services called for under schedule II. The IFB advised bidders that the Army would base payment on the actual number of items sewn on a uniform, either on an individual basis or per set as indicated on the bid schedule, and the actual number of nametapes and "U.S. Army" tapes furnished under schedule III. In this regard, the IFB contained estimates of the services required under each schedule. The IFB also informed bidders that under schedules I and II, the contractor shall be capable of sewing at least 50 items per hour, except that, in the event that the government experiences an unusual demand for the services available under the contract, the contractor shall double or triple its rate of work.

Wespac contends that the IFB is defective because it precludes bidders from formulating reasonable bid prices. In support of this allegation, Wespac argues that, when read together, the agency's contract format--a requirements contract based on indefinite quantities--and the agency's contemplated method of payment--based only on the actual number of items sewn on uniforms--prevent bidders from reasonably formulating bid prices absent a guarantee in the IFB that the income derived from the work that is ordered will cover the contractor's reasonable profit and labor and equipment costs. Further, Wespac asserts that the IFB creates uncertainty with respect to factoring wages into the bid prices, since there may be occasions where there is no work to be accomplished but the presence of a sewing operator is required, and conversely, there may be occasions where the contractor will have to double or triple its rate of work and therefore will need more than one operator. Wespac suggests that the Army alleviate these alleged pricing uncertainties by guaranteeing the contractor monthly payments to cover the minimum expenses the contractor must incur.

If its needs so dictate, an agency properly may decide to impose maximum risk on the contractor. Robertson and Penn, Inc., B-226992.2, July 13, 1987, 87-2 CPD ¶ 39. Risk is inherent in most types of contracts, especially in fixed-price contracts such as this one, and the fact that the bidder, in computing its bid, must consider a variety of scenarios that differently affect its anticipated costs does not itself render an IFB defective. See Maintenance Inc. and Worldwide Servs., Inc., B-208036, B-208036.2, June 9, 1983, 83-1 CPD ¶ 631. Moreover, the fact that the solicitation's provision for payment may not precisely reflect the costs incurred by the contractor in performance of the contract is not itself objectionable. Space Servs. Int'l Corp., B-207888.4 et al., Dec. 13, 1982, 82-2 CPD ¶ 525. When a bidder anticipates that payment will not cover performance costs in a fixed-price contract, it is the bidder's responsibility to project these costs and to allow for that risk in computing its bid. See Barker & Williamson, B-208236, Nov. 17, 1982, 82-2 CPD ¶ 454.

Based upon our review of the record, we do not find that the IFB precludes bidders from reasonably calculating their bid prices. The agency determined that it required the presence of contractor personnel at Fort Lewis from 9 a.m. to 5 p.m., Monday through Friday. According to the agency, same-day tailoring services are required to give soldiers the opportunity to have insignia sewn on at government expense with minimal delay. The agency states that the services are made available to soldiers being processed through the Replacement Detachment, where they remain for only a short period, after which they are expected to arrive at their units in proper uniforms. The agency also determined that a requirements contract would best meet its minimum needs because the agency anticipates recurring requirements for the supplies and services but cannot predetermine the precise quantities that will be needed during the contract period. See Federal Acquisition Regulation § 16.503(b).

In regard to the contract format, the estimates in the IFB of the services required are a reasonable indication of what to expect under the contract, and thus allow bidders to project intelligently the probable cost of labor and equipment. As there is no indication in the record, and Wespac does not argue, that the Army's estimates were not accurate, we see no basis to object to the solicitation in this regard. See Savin Corp., B-232560, Dec. 5, 1988, 88-2 CPD ¶ 562. To the extent that some unknown aspects of performance remain, bidders are free to propose pricing that covers the risk that such aspects may involve higher costs. Again, the agency is not required to eliminate all risk, and in fact may impose maximum risk on the contractor, in which case it is the responsibility of the bidders to factor the risk potential into their bid prices.

The protest is denied.

Ronald Berger

for James F. Hinchman
General Counsel