

J. Cunningham



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Caltech Service Corporation

File: B-240726

Date: December 18, 1990

Duane Y. Tom for the protester.

Louise E. Hansen, Esq., Defense Logistics Agency, for the agency.

James M. Cunningham, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency's workload estimates for operation of a supply depot are reasonable where based on averaged, actual operating experience for same services over the past 30 months operation of the facility. Moreover, contracting agency was not legally required to provide a minimum work guarantee, especially where funding constraints precluded guarantee.

2. Contracting agency's decision not to request cost data from offerors is reasonable where competition received under prior, canceled solicitation for the same services supports agency's expectation that adequate competition will be received to permit award to be made to lowest-priced, technically acceptable offeror.

3. Contracting agency's decision not to provide for site visits or a preproposal conference was reasonable where the services to be contracted for are the same as those sought under an earlier, canceled solicitation under which offerors--including the protester--were provided with a site visit and preproposal conference--and the site conditions and work requirements remain the same.

DECISION

Caltech Service Corporation has protested request for proposals (RFP) No. DLA005-90-R-0003, issued on July 31, 1990, by the Defense Logistics Agency (DLA) for operation, on a firm, fixed-price requirements contract basis, of DLA's "consolidation and containerization point," Lathrop, California, where Army cargo is received, documented,

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consolidated, packed, loaded, and shipped to Pacific Ocean receiving facilities.^{1/}

Caltech contends that the solicitation's workload estimates are defective; that it should contain guaranteed minimums for the work; that it should require offerors to submit detailed cost data in support of their offered firm, fixed-prices; and finally, that DLA should provide offerors with a site visit and preproposal conference.

We deny the protest.

The RFP initially required the services for a base period (November 1, 1990, or date of award whichever was later) through October 31, 1991, and for up to 2 possible option years of services. Offerors were asked to submit firm, fixed-price technical proposals which would demonstrate, in detail, how the offeror intended to perform the RFP's work requirements. Offerors were further informed that award would be made to the "responsible offeror submitting the lowest-priced technically acceptable proposal."

WORKLOAD ESTIMATES AND GUARANTEED MINIMUMS

In its initial protest, Caltech argued that the RFP estimated workload quantities provided in the RFP "appear high [given] the steady downward trend" over the years. Further, Caltech also argues that a planned consolidation of supply depots in the San Francisco area may also adversely affect the accuracy of the work estimates. Given these uncertainties, Caltech also questions the absence in the solicitation of guaranteed minimum quantities for the work.

Work estimates set forth in solicitations for requirements contracts are valid if the estimates were determined in good faith and are based on the best information available. Sentinel Elecs., Inc., B-221914.2 et al., Aug. 7, 1986, 86-2 CPD ¶ 166. The record does not support a conclusion that the workload estimates are unreasonable.

^{1/} Another company which states that it is a subcontractor to Caltech for this procurement also has submitted comments which, in addition to concurring with Caltech's position, raise additional objections to the solicitation. Since this company has not independently filed a protest, and in any event, as a potential subcontractor would not appear to be an "interested party" within the meaning of our Bid Protest Regulations, see 4 C.F.R. § 21.0 (1990), we will not address its contentions.

DLA disputes whether the downward trend evident in some areas can be predicted for the future. Indeed, Caltech's initial blanket allegation that the work shows a "downward trend" is not well-founded. For example, the estimated (averaged) quantity of 2,378 for item 0001AA (various stock routing tasks) for the year beginning December 1, 1990, is partially based on actual work figures which show an increase for the 6-month period from October 1989 to March 1990, compared with the same period for the prior year. Similarly, the actual work figure for item 0001AD (miscellaneous services) shows an increase for the latest 6-month period involved compared with all but one of the other four comparison 6-month periods. In any event, even if some work requirements evidence a declining trend, DLA's averaging method for determining RFP work estimates, described below, tends to reflect any declining usage which has occurred.

In addition, the agency points out that it amended the RFP in response to Caltech's protest in order to provide updated workload estimates which reflect the last 2-1/2 years of the incumbent contractor's workload data, derived from actual payment invoices. The workload estimates in the RFP's amended pricing schedule were averages generated from prior contract experience (30 months in all) from October 1987 through March 1990. Specifically, the items required under each work category for each of the past 30 months--which were listed in the RFP--were added and the result divided by 2-1/2 to arrive at an average yearly estimate to be used for pricing each RFP work task.

In its comments on the agency report, the protester "acknowledges" and "applauds" DLA's action in updating its workload estimates but still expresses a generalized dissatisfaction with the accuracy of the data in view of the pending consolidation of DLA facilities.

The contracting officer responds that he is in possession of no information which would indicate any substantial changes in projected workload quantities which can be attributed to the planned DLA consolidation since the same organizations will be using the facility after the planned consolidation as operated in the facility before the consolidation. In addition, the contracting officer notes that under the post-protest RFP amendment, the once-planned 2 option years have been reduced to two, 3-month options "in order to reduce the long term risks to offerors." On the basis of this record, we conclude that the RFP estimates reasonably represent DLA's reasonable needs and do not result from fraud or bad faith.

As to the absence of guaranteed minimum work requirements, DLA's position is that no guaranteed minimum quantities were set forth in the RFP since DLA currently does not have funds

for this purpose. We consider DLA's decision to exclude minimum work quantities to be reasonable considering this circumstance. In any event, we have held that it is not legally necessary that requirements contracts place a minimum or a maximum limit upon the estimated requirements. Savin Corp., B-232560, Dec. 5, 1988, 88-2 CPD ¶ 562; Sentinel Elecs., Inc., B-221914.2, supra.

ABSENCE OF RFP REQUIREMENT FOR COST PROPOSALS

Caltech argues that without the submission of detailed cost proposals DLA will not be able to ascertain whether an offeror's proposed prices are realistic. DLA states that it required only the submission of fixed-price, instead of cost, proposals since adequate price competition was expected for the award. DLA points out that under a previous canceled competition for these services, five competitive offers were received, and that DLA expects several of these companies to compete under this RFP.^{2/} Consequently, DLA insists that it properly did not request cost data under the RFP.

The Truth in Negotiations Act, 10 U.S.C. § 2306(a) (1988), requires the submission of appropriate cost data for all negotiated contracts exceeding a certain dollar threshold except in limited circumstances. The Act specifically exempts contracts awarded with "adequate price competition" from the requirement to submit the data. See 10 U.S.C. § 2306(a)(b)(1)(A). Thus, we conclude that given the expected competition under this RFP, which provides for award to the lowest-priced, technically acceptable offeror, there was no requirement to obtain cost proposals. See Research Management Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352.

PREPROPOSAL CONFERENCE AND SITE VISIT

Caltech argues that offerors should be afforded a site visit and a preproposal conference to obtain the necessary information to prepare a proposal. In reply, DLA states that it did not provide a preproposal conference and a site visit since both a conference and a site visit were provided to all offerors, including the protester, under the earlier canceled RFP. DLA insists that all questions were answered (under the canceled RFP) and that "none of the [work] site conditions have changed and there is no new information."

^{2/} In March 1990, the Department of the Army, the previous operator of the facility, canceled Army RFP No. DAAC21-90-R-0001 for operation of the facility after finding that the RFP needed to be revised. Since that date, responsibility for operation of the facility has been transferred to DLA.

Site visits and preproposal conferences are held at the discretion of the contracting agency when necessary to clarify contract requirements. See W.M.P. Sec. Serv., Co., B-238542, June 13, 1990, 90-1 CPD ¶ 553. We conclude that the contracting agency reasonably exercised its discretion not to provide for a separate site visit and preproposal conference under this RFP given that the services to be contracted for are the same as those sought under the earlier, canceled solicitation and since it appears that site conditions remain the same at the facility except for the change from Army to DLA control.

We deny the protest.

for Robert P. Murphy
James F. Hinchman
General Counsel