



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Custom Environmental Service, Inc.

File: B-241052

Date: January 15, 1991

William J. Valois, Jr., for the protester.
Kenneth R. Pakula, Esq., General Services Administration, for
the agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Agency properly amended invitation for bids (IFB) to solicit bids for an indefinite quantity-type contract for landscape maintenance and request a single percentage factor to be applied to agency pre-priced work items and agency estimated frequencies to determine the amount paid under the contract; this is a legitimate method to prevent deliberate unbalancing of prices by bidders and assure award to the low bidder under the IFB regardless of quantities ordered.
2. Protest challenging agency price and frequency estimates for landscape maintenance services is denied where agency properly prepared estimates on the basis of historic information, and adjusted estimates in light of information provided by the protester and further agency review of the requirements; protester's allegation that uncorrected defects in the estimate remain is unsupported.

DECISION

Custom Environmental Service, Inc. protests invitation for bids (IFB) No. GS-11P-90-MJC-0052, as amended, issued by the General Services Administration (GSA) that solicits an indefinite quantity contract for landscape maintenance services for a 1-year base period and four yearly options. Custom objects to the amended IFB pricing schedule that invites bids on a single percentage factor or net basis rather than soliciting prices for the multiple items of work.

We deny the protest.

OS0376/142954

The IFB, as initially issued, required the submission of unit prices for each work item for each period (base, first option, etc.). The unit prices would then be multiplied by a GSA-estimated frequency (i.e., how often the work will be required during the period) giving a sub-total. Summing the sub-totals of all work items for all buildings during the period would determine the bidder's total price for each period.

Amendment No. 2 changed the IFB pricing schedule. GSA reports that it amended the schedule to preclude unbalanced bidding, a problem that GSA had experienced with previous landscape maintenance solicitations. Amendment No. 2 provides a GSA-estimated unit price and a GSA-estimated frequency for each work item at each building. The bidders are asked to quote a single percentage, plus or minus, which will be applicable to all work items required during the contract period. The total price bid for each period is determined by applying the applicable percentage factor to the IFB's unit prices, multiplying the result by the applicable frequencies, and summing the results. By amendment No. 5, issued after this protest was filed, GSA revised many of its estimates and designated this contract as an indefinite quantity contract.

We have approved agency use of this net or single percentage factor method of soliciting bids for the purpose of avoiding unbalanced bidding. See Michael O'Connor, Inc., 56 Comp. Gen. 107 (1976), 76-2 CPD ¶ 456.1/ We found this was a legitimate approach to allow the agency to efficiently evaluate bids and assure award to the bidder that will ultimately cost the least, regardless of the quantities ordered during the contract term, and has the virtue of preventing deliberate unbalancing of prices by a bidder where it has reason to believe that the government's estimated quantities are substantially wrong. Id. Custom argues that net bidding deprives bidders of the ability to adjust for individual items in their bids, which may result in the government paying too much for these items. However, in such circumstances, where a bidder finds the solicitation's predetermined prices are too low or too high, it can adjust prices by an offered plus or minus percentage factor.2/

1/ That decision also found that where a requirements contract was solicited, the government's estimated quantities were required to be disclosed in the solicitation.

2/ Custom submitted an example of a \$7,892 savings for multiple line items that it could provide GSA using its own unit pricing instead of the GSA-estimated unit pricing. Under Custom's example, it can provide for \$34,508 the same work for which GSA anticipates paying \$42,400. Under the IFB, Custom

(continued...)

Custom also argues that net bidding imposes an improper risk on the contractor because the amount of work is dependent upon weather conditions (e.g., frequency of plant watering depends upon the amount of rainfall--wet versus a dry summer) and the bidder loses its ability to fine tune its bid to adjust for such variables. A solicitation is not defective merely because it may put some contractors at risk. Neil Gardis & Assocs., Inc., B-238672, June 25, 1990, 90-1 CPD ¶ 590. Risk is inherent in any contract, and bidders must use their expertise and business judgment to assess the risk's magnitude and possible cost in computing their bids. Id. Agencies properly may impose reasonable risks on contractors in order to limit the burdens on the government. See Natural Landscape Contractors, Inc., B-209745 et al., June 28, 1983, 83-2 CPD ¶ 32.; KCA Corp., B-236260, Nov. 27, 1989, 89-2 CPD ¶ 498. Here, we do not think net bidding imposes an unreasonable risk, since bidders can take into account the factors relevant to the contract work (e.g., weather conditions) in their quoted percentage.

Custom also challenges the accuracy of the IFB's price and frequency estimates. When an agency solicits bids on the basis of estimated amounts (here, prices and frequencies), the estimates must be compiled from the best information available and present a reasonably accurate representation of the agency's anticipated needs; however, there is no requirement that they be absolutely correct. Aleman Food Serv., Inc., B-219415, Aug. 29, 1985, 85-2 CPD ¶ 249.

Custom's protest contested specific aspects of the estimates. GSA developed the estimates from historical information (e.g., the bid sheets for the prior contract). In response to Custom's protest, an on-site review was made by an experienced GSA estimator to review the accuracy of the estimates. Amendment No. 5 corrected many of the estimates and was responsive to Custom's specific complaints that GSA found valid.

During a bid protest conference at our Office, the agency's estimator discussed with Custom many of Custom's specific objections. At that time, Custom admitted that the estimates were reasonable as applied to most contractors, but opined that they did not reflect the capabilities (and costs) of a capital intensive firm like Custom. When GSA commented in its

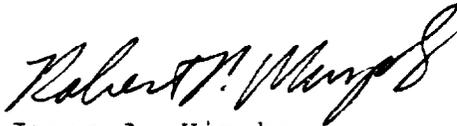
2/(...continued)

can offer that savings by bidding a minus percentage between 18 and 19 percent ($\$42,400 - \$34,508 = \$7,892$; $\$7,892/\$42,400 = 0.1861$).

conference comments on Custom's admission--that GSA's estimates were generally reasonable--Custom objected. Custom states that its admission did not apply to the majority of estimates that were not discussed at the conference.

Nothing in this record supports Custom's allegation that improper estimates remain in the IFB; to the contrary, the record indicates that the estimates are based on the best information available to GSA, including Custom's views, and appear to provide a reasonable basis for competition. Space Serv. Int'l Corp., B-207888.4 et al., Dec. 13, 1982, 82-2 CPD ¶ 525.

The protest is denied.



for James A. Hinchman
General Counsel