



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Creative and Training, Ltd.

File: E-245379

Date: January 6, 1992

Clark Bannert, Jr. for the protester,
Herbert F. Kelley, Jr., Esq. and Gerald P. Kohns, Esq.,
Department of the Army, for the agency.
Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest that solicitation which provides for award of an indefinite-quantity contract is defective because it does not state minimum quantities for line items for certain overtime work and for servicing of new government-furnished property is denied where agency cannot guarantee any overtime work or that any new equipment will be put into service and minimum order quantities necessary to support an indefinite-quantity contract are provided under other line items.

2. Estimated minimum and maximum quantities for operation and maintenance services are properly based on historic information reasonably adjusted to reflect known anticipated quantities, financial constraints, and agency reassessment of its requirements.

3. Broad ranges between minimum and maximum estimated quantities do not impose an impermissible risk on the contractor where agency breakdown of minimums, estimates and maximums are based on best available information.

DECISION

International Creative and Training, Ltd. (ICT) protests the terms of invitation for bids (IFB) No. DAHC77-91-B-0075, issued by the Department of the Army for the operation and maintenance of the Training and Support Center, Schofield Barracks and Fort Shafter, Oahu, Hawaii. The protester principally contends that the agency has not specified minimum and maximum quantities for each line item listed in the solicitation as required by Federal Acquisition

Regulation (FAR) § 16.504 for indefinite-quantity contracts, and that the quantities that are given for some line items are not realistic. The protester also argues that the ranges between the minimum quantities and the maximum quantities that are given are "too broad to permit intelligent bidding"

We deny the protest.

BACKGROUND

ICT has performed these services for the past 3 years. On August 14, 1991, the Army issued this IFB, which contemplates the award of an indefinite-quantity contract and lists 72 contract line item numbers (CLINs). While the Army originally supplied fixed guaranteed minimum quantities for several CLINs, it listed only maximum quantities and estimated quantities for other CLINs.

In its original protest, ICT argued that FAR § 16.504(a)(1) requires that each CLIN have a stated minimum and maximum. During the pendency of the protest, on November 15, the Army issued amendment 3 to the IFB which, among other things, revised the quantities listed for each CLIN. In relevant part, amendment 3 lists fixed quantities for eight CLINs; estimated, minimum, and maximum quantities for 52 CLINs; and estimated and maximum quantities for seven CLINs. The seven CLINs which list only estimated and maximum quantities are for overtime and servicing additional government-furnished property which may be required during the course of the contract.

MINIMUM AND MAXIMUM QUANTITIES

ICT argues that the solicitation is defective because it does not provide minimum quantities for each CLIN.¹ Specifically, ICT says that the agency must indicate the minimums and maximums for all services, including overtime and government-furnished property since this information "is essential to establishing a level of effort."

FAR §§ 16.504(a)(1) and (2) provide that a solicitation for an indefinite-quantity contract should include a minimum

¹ICT first argues that the indefinite-quantity type contract is inappropriate because the services being procured under the solicitation are not commercial products or commercial-type products as required by FAR § 16.504(b). However, FAR § 16.504(b) was amended on May 15, 1991, to remove the "commercial products" language and now reads simply: "An indefinite-quantity contract should be used only when a recurring need is anticipated."

quantity which the government would be obligated to purchase. Contrary to the protester's assertions, the FAR does not require that a minimum quantity be specified for each line item, and it is not uncommon for solicitations, while guaranteeing overall minimums, to not include a minimum amount for each solicitation line item. See, e.g., Sletager, Inc., B-244710, Nov. 13, 1991, 91-2 CPD ¶ 118; Moqas Indust., Inc., B-239182, Aug. 10, 1990, 90-2 CPD ¶ 118. In this instance, the requisite minimums are provided under the other CLINs. As for the protester's point that minimums and maximums are needed to establish a level of effort, the Army states that while it will pay the contractor overtime under line items 0063 through 0067, it "will not guarantee any minimum amount of overtime," and cannot guarantee minimums for CLINs 0068 and 0069 (servicing new government-furnished property) because it cannot guarantee that any new equipment will be put into service. Under these circumstances, we do not find the absence of specified minimums for these CLINs to be objectionable since obviously there may be no need at all for services under these CLINs.

REALISTIC ESTIMATES

The protester next disputes the accuracy of the minimum and maximum quantities which are set forth in the solicitation. ICT originally argued that, based on its own previous experience with the work required, the minimum and maximum quantities were not "realistic." According to the protester, the maximum quantities provided are much greater--three to 150 times greater--than the actual quantities and the minimum quantities, which it suggests are more accurate, "should become the stated maximum quantities." While the protester concedes that amendment 3 answers many of its concerns regarding the quantities given in the solicitation, the protester still questions if the agency provided maximum quantities which are "realistic and based on the most current information available."

ICT also contends that the use of estimated quantities is not appropriate for an indefinite-quantity contract since FAR § 16.504 refers only to maximum and minimum quantities. ICT says that the "estimated quantities provided in the solicitation . . . have no basis or value in an indefinite-quantity type procurement and only confuse bidders." The protester says that it does not know from these figures which quantity "is realistic and reflects the quantity required to be purchased by the government."

The fact that a solicitation for an indefinite-quantity service contract may not provide sufficient detail to eliminate all performance uncertainties and risks does not render the solicitation improper where it contains sufficient information for offerors to compete intelligently and on equal terms. While solicitations for indefinite-quantity contracts must contain estimates of probable requirements, these estimates need not be precise; rather, such estimates are unobjectionable so long as they were established in good faith based on the best information available and accurately represent the agency's anticipated needs. International Technology Corp., B-233742.2, May 24, 1989, 89-1 CPD ¶ 497.

The Army states that it used 2-1/2 years of historical data available from its records to determine the maximum quantities given in the solicitation. It also modified these figures to reflect known quantities and financial constraints. The agency then estimated each minimum quantity as a fixed, reduced percentage of the maximum quantity. After further review of the historical data, the Army revised the maximum and/or minimum quantities for five CLINs in amendment 3.

The record shows that the information which the agency has provided adequately describes the work requirements based on the best information available to the Army, including ICT's views, and nothing in the record supports ICT's allegation that the IFB quantities are inaccurate. For example, for CLIN 0013, the agency's maximum quantity of 30,000 is based on previous quantities of 23,888 and 31,717 for 1989 and 1990, respectively, and a projected quantity of 26,664 for 1991. Similarly, for CLIN 0014, the agency's maximum of 5,000 is based on 1989 and 1990 quantities of 4,341, and 6,606, respectively, and a projected quantity of 2,782 for 1991. Further, when the agency had information available which suggested that its needs were likely to change in the future, it made appropriate adjustments to the historical data to arrive at more accurate numbers for the period covered under this IFB. In one instance, for example, where the provided maximum is significantly greater than the average of what was required in previous years, the agency has indicated an "anticipated requirement" approximately 200 percent greater than that average. Thus, the figures used appear to be "realistic" relative to the quantities used in the recent past and future anticipated needs.

We find nothing wrong with the use of "estimated" quantities in conjunction with maximums and minimums for an indefinite-quantity contract. The estimated quantities provide the bidder with more precise information and, for evaluation purposes, the unit prices for the line items are extended by these estimated quantities, while only the minimum quantity is guaranteed and the maximum quantity may be ordered.

RANGE BETWEEN THE MINIMUM AND THE MAXIMUM QUANTITIES


The protester next argues that the range between the minimum and the maximum figures "is too broad to permit intelligent bidding." The protester cites Fabrics Plus, Inc., B-218546, July 12, 1985, 85-2 CPD ¶ 46, in which we said that "[a] request for proposals with an estimate of orders totaling from \$100,000 to \$1,500,000, without further explanation, does not give offerors sufficient details to enable them to compete intelligently and on an equal basis." ICT argues that, here, based on the minimums and the maximums given by the agency, the bid could have the same broad dollar range as cited in Fabrics Plus and argues that such a broad range imposes a disproportionate cost risk on the contractor.

A solicitation is not defective merely because it may put some contractors at risk. Custom Envtl. Serv., Inc., 70 Comp. Gen. 185 (1991), 91-1 CPD ¶ 38. 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, the solicitation provides sufficient information for offerors to price each line item. The situation here is not analogous to that in Fabrics Plus, where a solicitation was issued for an indefinite-quantity contract under which purchase orders would be issued for drapery measurement, presentation of fabrics, installation and hardware services, all on a nationwide basis. There, we found that offerors could not prepare their proposals intelligently because the solicitation "merely set forth \$100,000 minimum and \$1,500,000 maximum order limitations," without any estimate of the number of linear feet of draperies to be installed or removed, and no indication as to the amount of existing hardware that could be reused, or as to what would have to be replaced. Contrary to the protester's argument, we did not find the broad range between the minimum and the maximum order limitations to be improper; rather, we objected to the fact that the specific services to be performed were not set forth with any particularity. Here, by contrast, each requirement is set out in a CLIN, with estimated, minimum and maximum quantities, which provide guidance and limitations on the amount of work which the contractor could be required to perform under each CLIN. In sum, the

estimates provided accurately reflect the agency's anticipated needs based on the best available information, and the solicitation includes sufficient detail to allow competition on a relatively equal basis.

The protest is denied.


for James F. Hinchman
General Counsel