

Comptroller General  
of the United States

Washington, D.C. 20548

P. Williams  
145790

## Decision

**Matter of:** Steel Circle Building Company

**File:** B-245749

**Date:** February 3, 1992

Vincent O. Manuele, Esq., and Timothy A. Sullivan, Esq., Starfield, Payne & Korn, for the protester. Paul M. Fisher, Esq., Naval Facilities Engineering Command, Department of the Navy, for the agency. Paula A. Williams, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest by incumbent contractor that solicitation for housing maintenance and repair services is defective because it fails to limit the scope of services that the selected contractor could be required to perform on a lump sum, fixed-price basis and thus imposes undue risk on prospective bidders is denied. The solicitation reasonably minimizes the risk of performance by placing ceilings on the amount of potentially expensive work that can be ordered under the lump sum portion and by including other expensive required services on an indefinite-quantity basis, which provides for unit pricing.

### DECISION

Steel Circle Building Company protests the terms of invitation for bids (IFB) No. N62472-91-B-8448, issued by the Department of the Navy for military family housing maintenance and repair services at the Family Housing Facility in Niagara Falls, New York. Steel Circle, the incumbent, argues that the IFB is defective because it contains a pricing scheme which imposes an unreasonable risk on bidders.

We deny the protest.

The IFB, which solicits bids on a combination lump sum fixed-price and indefinite-quantity basis for a base year and four 1-year options, is a follow-on to a contract for similar services that the protester is currently performing. The IFB requires the selected contractor to furnish all labor, materials and supervision necessary to maintain and repair the housing facility as described in section C of the

IFB. The requirement is divided into two line items: one for the lump sum, fixed-price work, the other for indefinite-quantity work. Line item 0001 on the bid schedule requires bidders to enter a single lump sum bid for all fixed-price work set forth in the statement of work; line item 0002 is the total for various subline items consisting of required unit and extended prices for services specifically identified as indefinite-quantity work, with estimated quantities included for each subline item.<sup>1</sup> Bid opening has been postponed pending resolution of this protest.

Steel Circle contends that the pricing scheme in the IFB is defective because it fails to limit the amount of work the government can order on a lump sum, fixed-price basis. The protester argues that there is no mechanism to limit the contractor's performance obligations since the scope of work under the lump sum portion of the solicitation is undefined. In this regard, Steel Circle points to the requirements in section C.11, the plumbing, heating, ventilation and air conditioning (HVAC) systems, and section C.15, maintenance of utility systems, as indicative of requirements under the lump sum portion of the solicitation for which the scope of work is undefined. Thus, Steel Circle asserts that the IFB exposes bidders to unwarranted risk.<sup>2</sup>

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<sup>1</sup>To illustrate, under the task "interior painting-complete," five separate subline item unit prices were requested as follows: (1) 3-bedroom units consisting of 1,250 square feet with an estimated quantity of 18; (2) 4-bedroom units consisting of 1,250 square feet with an estimated quantity of 5; (3) 3-bedroom units consisting of 1,400 square feet with an estimated quantity of 8; (4) 4-bedroom units consisting of 1,400 square feet with an estimated quantity of 5; and (5) 4-bedroom units consisting of 1,837 square feet with an estimated quantity of 2.

<sup>2</sup>In support of its contention that the solicitation's pricing scheme subjects bidders to unreasonable risk and is restrictive, Steel Circle relies upon our decision in Four Star Maintenance Corp., B-240413, Nov. 2, 1990, 91-1 CPD ¶ 70. There, we found that the solicitation's use of lump sum pricing for housing maintenance services imposed unreasonable risk on the contractor because it placed no limit on the scope of work the contractor could be required to perform for major, potentially expensive service items required under the lump sum portion of the contract. As discussed elsewhere in the decision, we find that this solicitation does contain reasonable limitations on the amount of such work that the selected contractor can be required to perform on a lump sum basis, and reasonably includes other major items under the indefinite-quantity

If its needs so dictate, an agency may decide to impose a reasonable degree of risk on the selected contractor in order to minimize administrative burdens on the agency. Bean Dredging Corp., B-239952, Oct. 12, 1990, 90-2 CPD ¶ 286. A solicitation is not defective merely because it may put bidders at risk in terms of, for example, the possibility that payments under the contract will not cover the cost of performance. S.P.I.R.I.T. Specialist Unlimited, Inc., B-237114.2, Mar. 8, 1990, 90-1 CPD ¶ 257. Risk is inherent in most types of contracts, especially in fixed-price contracts. Id.

The Navy contends that the challenged provisions in the solicitation do not impose a legally objectionable degree of risk on bidders since the solicitation places the appropriate work requirements under the indefinite-quantity section of the solicitation and contains limitations on the amount of potentially expensive work that the contractor could be required to perform under the lump sum section of the solicitation. The agency points out that the solicitation defines the various types of service-call work, the preventive-maintenance inspections and change-of-occupancy responsibilities. Also, the solicitation includes 2 to 6 years of historical data which indicate the types, approximate order of magnitude, and seasonal trends in the workload; an inventory of appliances to be maintained, identified by brand name and year of manufacture; floor plans and a performance requirements summary which lists the tasks the selected contractor will be required to perform and the frequency with which those tasks were performed.

We find that the solicitation's bidding scheme does not impose undue risk on prospective bidders. While the solicitation does not contain a maintenance/repair schedule for each element of work nor specify the number of times a task/service call is to be performed, the solicitation in fact does limit the scope for potentially expensive work required under the lump sum portion of the contract. For example, the plumbing and HVAC requirements, section C.11, exclude all major repairs, defined as any element of work having a total estimated cost exceeding \$2,000; also excluded are the replacement of hot and cold water or drainage piping; the replacement of heating ductwork; or the replacement of hot and chilled water piping system in a housing unit. Specific elements of work under this requirement which are to be ordered as indefinite-quantity items include the replacement of faucet valves that cannot be repaired, bathtub replacements, replacement water heaters, and replacement furnaces. Thus, appropriate limitations

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line item.

have been placed on the major items for which the contractor would otherwise incur potentially expensive risk under this lump sum component of the contract.

While the protester also complains that the work description under section C.15 is inadequate, in fact, the solicitation specifically defines the scope of work required under section C.15, maintenance of utility systems. That clause provides a series of functions that the selected contractor is required to perform, such as the maintenance of sanitary sewers. The work encompasses a twice-monthly visual inspection and the unclogging of the sewer line when necessary. Electrical system maintenance is also called for, including developing an electrical preventative maintenance program/schedule for routine inspections, tests and servicing of all electrical equipment as specified in the solicitation. None of these requirements appears to call for the contractor to absorb potentially expensive, major tasks.


Steel Circle's argument that the solicitation should have defined the lump sum work on the basis of levels of labor hours and material costs and that the agency's failure to format the solicitation in this manner "foists" upon the selected contractor unlimited exposure for performance of the work is without merit. While bidders must be given sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis, there is no requirement that a solicitation be so detailed as to eliminate all performance uncertainties and risks. Tumpane Servs. Corp., 70 Comp. Gen. 406 (1991), 91-1 CPD ¶ 369. In our view, when presented with the information contained in this solicitation, experienced maintenance contractors such as Steel Circle, which is the incumbent contractor, can reasonably project the costs involved to compete intelligently and on a common basis. Id.; KCA Corp., B-236260, Nov. 27, 1989, 89-2 CPD ¶ 498.

In sum, we find that the detailed specifications in conjunction with the extensive historical data, appliance/equipment inventory, detailed floor plans and performance requirements summary provide an adequate basis for a bidder to project costs and to include in its bid a factor concerning any otherwise uncompensated costs. To the extent that the solicitation encompasses major, potentially expensive services, these items are contained in the indefinite-quantity component, with appropriate ceilings and limitations under the lump sum component. If, as the protester alleges, prospective bidders anticipate that the pricing scheme in the solicitation will not cover their performance costs for the lump sum work, it is the bidders'

responsibility to project these costs and to allow for that risk in computing their bids. See Barker & Williamson, B-208236, Nov. 17, 1982, 82-2 CPD ¶ 454; Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139. In this regard, Steel Circle could formulate these costs in the course of its performance of the current contract.

Finally, Steel Circle alleges that a schedule of deductions contained in the solicitation is defective because it does not include a line item for maintenance management, an element of the required services, and thus creates uncertainty with respect to the allocation of this cost component. To the extent that any uncertainty exists among prospective bidders with regard to the amount that they should calculate for deduction for unsatisfactory performance of maintenance management services, the existence of that uncertainty does not by itself constitute an unreasonable risk. We agree with the agency that these administrative services are an inherent part of each element of the required services and prospective bidders may reasonably be expected to formulate the deductive amounts in a manner which includes a reasonable allocation of their administrative costs. See Ameriko Maintenance Co., B-242303, Mar. 21, 1991, 91-1 CPD ¶ 314.

Accordingly, the protest is denied.

  
for James F. Hinchman  
General Counsel