



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J&J Maintenance, Inc.

File: B-248915

Date: October 8, 1992

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.
W.H. Campbell, United States Coast Guard, for the agency.
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DIGEST

Protest alleging that invitation for bids (IFB) for facilities maintenance services is defective because bidders are precluded from intelligently preparing bids is denied where IFB contains detailed technical exhibits and a comprehensive performance work statement specifically describing the agency's requirements, the performance standards, and the contractor's responsibilities, and where bidders were afforded an opportunity for a site visit and review of all incumbent contractor-generated reports and work plans; there is no requirement that a solicitation be so detailed as to completely eliminate all performance uncertainties and risks.

DECISION

J&J Maintenance, Inc. protests numerous provisions in invitation for bids (IFB) No. DTCG41-93-B-QWE201, issued by the United States Coast Guard (USCG), to provide facilities maintenance services at the USCG's Reserve Training Center, Yorktown, Virginia. The protester contends that the IFB is defective because it lacks sufficient information regarding the work required to enable bidders to prepare bids.

We deny the protest.

BACKGROUND

The agency issued the IFB on April 1, 1992, contemplating award of a combination firm, fixed-price/indefinite quantity-type contract for a base year; the government reserves the option to extend the contract for a term not to exceed a total of 5 years. The IFB requires the contractor to provide the required services in accordance with the

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performance work statement (PWS) provided to bidders as an attachment to the IFB. That document consists of 15 technical exhibits (TE), and detailed narrative descriptions, specifications, and performance standards for each of the agency's requirements--consisting of a total of 131 pages not including the 15 TEs. As relevant here, for example, TE-3 consists of an updated, comprehensive description of the facilities and equipment to be maintained; TE-4 contains historical workload data; TE-5 contains total dollar amounts representing materials historically used in performing previous contracts for similar services; and TE-6 consists of a complete listing of all required contractor reports and various work plans, cross-referenced to the relevant IFB sections describing those tasks.

Bidders are required to submit unit and extended prices for numerous line items of fixed-price and indefinite quantity tasks to be performed during the base and each option period, in accordance with the PWS. Each of the line items in the IFB references the specific PWS sections where the contractor's responsibilities pertaining to that task is described. The IFB divides the work into Levels I, II, and III, depending on the services to be performed. Estimates are provided for each level of work. The IFB requires bidders to submit lump sum unit and extended prices for each level. Award is to be made to the bidder offering the lowest aggregate total for certain line items specifically identified in the IFB.

J&J Maintenance has been the incumbent performing the required services for the past 5 years.¹ On April 16, the agency convened a combination pre-bid conference/site visit, which a J&J Maintenance representative attended. The site visit included a tour of the facilities, during which bidders were encouraged to write and submit to the contracting officer any questions they might have concerning the work as result of the visit. After the tour, bidders were afforded an opportunity to review various documents referenced in the IFB, including all contractor-generated reports and work plans submitted to the agency under the incumbent's contract. Subsequently, on April 30, the agency held another

¹Although J&J Maintenance's current contract expired September 30, 1992, the agency explains that due to USCG's urgent need for the services, the agency extended J&J Maintenance's current contract, and has postponed bid opening until October 21, pending resolution of this protest.

pre-bid conference, which at least two J&J Maintenance representatives attended. By amendments to the IFB, the agency specifically responded in writing to innumerable questions generated by bidders after the site visit and the subsequent pre-bid conference. The agency has issued 11 amendments to the IFB further clarifying its requirements and the contractor's responsibilities.

PROTESTER'S CONTENTIONS--WORK ORDERS

The protester's allegations concerning numerous IFB provisions may be summarized as contentions that the IFB's lack of detail precludes bidders from preparing intelligent bids and has the effect of imposing unreasonable risks on the contractor. For example, J&J Maintenance contends that under the terms of the IFB, the agency may potentially divide indefinite quantity (Level III) work into several smaller work orders, totaling less than \$2,000 each (Level II), to accomplish repairs and remodeling in a piecemeal fashion. According to J&J Maintenance, this practice would shift unreasonable cost risks and administrative burdens onto the contractor.

DISCUSSION

Section C.5.1.1.2. of the IFB describes the requirements for performing "service work" as defined elsewhere in the solicitation. That section essentially authorizes the agency to prepare work orders to correct discrepancies, and states in pertinent part:

"Identical work items shall be submitted on the same work request for work within a single building. Identical work has the same character, and requires the same trade and material. For example, replacing carpet and painting are not identical, while exterior painting of the northern and southern exposures of a building are identical. . . . Discrepancy items noted during a [g]overnment inspection of any building, grounds, or equipment shall not be grouped unless they are identical."

The IFB then describes two types of work orders, Level II and Level III. The IFB states that Level II work orders are the contractor's responsibility under the firm, fixed-price portion of the contract, and includes any service work which does not exceed "\$2,000 in combined direct productive labor and direct material costs." Level III includes work which

exceeds \$2,000 but is less than \$50,000, and is to be negotiated with the agency.²

After J&J Maintenance filed this protest, the agency issued amendment No. 0008, further clarifying the conditions under which a contractor may seek equitable adjustments if the Level II work ultimately differs substantially from the requirements as projected in the IFB. That amendment added the following provision to the IFB:

"c. If the Level II Service Work ordered during a full year [of] performance substantially differs from the projected requirements, the contractor may be entitled to an [equitable] adjustment to the contract price, under the appropriate contract clause. The criteria for determining if a substantial difference exists from projected requirements occurs [if] . . .

"The [g]overnment issues more than 8,000 Level II work orders, and those work orders total in excess of 37,900 direct labor hours, and the direct labor hours are consistent with the accepted standards (R.S. Means or Engineered Performance Standards)." (Emphasis and parenthetical in original).

The protester contends that, despite the amendment, due to the use of the conjunction "and," the IFB imposes unreasonable risks because the contractor could easily expend in excess of 37,900 direct labor hours on Level II work, without receiving 8,000 work orders (under \$2,000 each). As a result, the protester contends that the IFB unduly restricts competition.

The agency states that through responses to questions and clarifications, it has reminded bidders that prices for Level II work should be based upon the information in TE-4 and TE-5, which contain projected labor hours and historical data regarding materials used. The agency further states

²The IFB distinguishes Level II and Level III "service work" from Level I "standing work," which is defined as:

"Work of a predictable, routine, cyclic, or recurring nature, including, but not limited to, operation of utilities systems, preventive maintenance, grounds maintenance, refuse collection, and other scheduled maintenance services."

Each specific task classified as Level I--standing work, is described in detail in sections C.5.1 through C.5.13 (pp. 45-129) of the IFB.

that to issue separate work orders for less than \$2,000 each, as contemplated by the protester, would be an ineffective and unnecessary use of the agency's limited resources. The agency points to the Level III service work included in the IFB which it intends to use for large-scale projects, such as the remodeling scenario presented by the protester.

An agency is not prohibited from offering to the competition a proposed contract imposing substantial risk upon the contractor and minimum administrative burdens upon the agency. See J&J Maint., Inc., B-244366, Oct. 15, 1991, 91-2 CPD ¶ 333. As risk inheres in any contract, bidders are expected to use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. See Custom Envtl. Serv., Inc., 70 Comp. Gen. 184 (1991), 91-2 CPD ¶ 38. Based on our review of the IFB, we cannot agree with the protester that the solicitation is defective, or that it imposes unreasonable risks on the contractor.

Bidders are required to prepare bids for Level II service work based upon the projected workload information and historical materials used as set forth in TE-4 and TE-5. TE-4 contains the number of Level II work orders that the agency estimates will be issued during each year of the contract (8,000), and the number of labor hours (total and breakdown by labor category) that the agency expects to require for Level II work orders during the basic term of the contract. TE-5 contains the dollar amount of supplies and materials purchased by the facilities maintenance, and barracks maintenance contractors, delineated by level of work (I, II, or III).

We find that the IFB adequately informs bidders when work orders will be combined or issued separately, and adequately explains how contractors will be compensated for Level II work. Section C.2.1 of the PWS, defining work orders, states that a work order may involve a specific task, whether multiple trades are involved (such as installing a door, repairing a leak or ceiling), or may involve similar work in more than one room in the same building. That section specifically states that a "work order may not include work in more than one building," and that "only work orders for the same work, in different rooms of the same building, turned in on separate work request forms on the same day, shall be combined." The IFB clearly states that "under no other circumstances may work be combined."

In addition, the IFB contains Federal Acquisition Regulation (FAR) § 52.243-1, "Changes--Fixed-Price," and FAR § 52.243-4, "Changes," which provide a mechanism for compensating the contractor for work performed as Level II or

Level III, where that work differs substantially from the estimates set forth in the IFB. Moreover, after J&J Maintenance filed this protest, the agency issued amendment No. 0008 explaining the conditions under which the contractor may be entitled to equitable adjustments for Level II work ordered under the contract. Based on our review of the challenged provisions, we cannot agree with the protester that the IFB lacks clarity regarding how the agency intends to order Level II work, or fails to explain how the contractor will be compensated for its work.

ASBESTOS AND LEAD PAINT REMOVAL

The protester also complains that the IFB is defective because, with respect to various work items, the agency has failed to provide the best available data. For example, the protester argues that with respect to asbestos and lead paint removal, the agency has provided no information concerning prior removal of these materials.³

USCG states that it has no single file with the type of information the protester requests. The agency explains that any records it might have related to asbestos or lead paint abatement is contained in separate files associated with numerous individual projects which might have involved removal of these materials in the past. The agency states that compiling this information would be burdensome on the agency, and the result would be of little or no use to bidders responding to this IFB, since such data would only show where those materials have been found and removed in the past, not where they might be found by contractors in the future.

Although a procuring agency must provide sufficient detail in a solicitation to permit competition on a relatively equal basis, the solicitation need not be so detailed as to remove any uncertainty from the minds of prospective bidders to eliminate every performance risk for the contractor. AAA Eng'g & Drafting, Inc., B-236034, Oct. 31, 1989, 89-2 CPD ¶ 404. Detailed specifications, in conjunction with on-site visits, ordinarily afford prospective offerors an adequate basis on which to compete intelligently. Bru Constr. Co., Inc., B-228206, Nov. 10, 1987, 87-2 CPD ¶ 476. There is no requirement that specifications be so exact as to obviate uncertainties and risk. Id. Based on our review of the record, we find that the agency has provided sufficient detail to allow competition on a relatively equal basis.

³The protester makes similar allegations with respect to "priorities of service work," "existing deficiencies," "special events," and "equipment maintenance."

Sections C.1.7.5 through C.1.7.5.6 of the IFB set forth the contractor's responsibilities regarding hazardous or toxic materials, including asbestos and lead paint removal, and include the specific performance standards for handling asbestos and lead, and the specific steps to be taken while working with these materials. In this regard, we note that this is not a hazardous materials abatement contract, where the majority of the work consists of asbestos removal. Rather, the contractor is merely required to remove and package for disposal materials containing asbestos that might be encountered only while performing the maintenance tasks called for by the contract. Under the terms of the IFB, whether the work performed involves asbestos removal, lead paint abatement, or repairing an air conditioner, the cost risks on the contractor are limited to the labor hours and material costs described in TEs 4 and 5. Within that context, we simply cannot agree with the protester that the failure of the IFB to specifically identify all areas where asbestos might be located in the future or where hazardous materials have been found in the past imposes such risks on the contractor so as to render the IFB defective.

Moreover, the agency has not performed a survey showing of where these materials may be found during contract performance, and the agency maintains no central files showing where these materials have been found in the past. The protester's contention, therefore, that the agency should compile all of the information it might have in its possession concerning toxic materials and provide it to bidders is unreasonable. In view of the contractor's responsibilities relative to hazardous materials, we fail to see why this particular lack of specificity, in the context of the substantial maintenance work for which the contractor is responsible, involves anything more than a minor area of uncertainty that bidders are expected to take into account in preparing their bids. As with other work, the IFB provides adequate mechanisms for compensating the contractor in the event that labor hours related to asbestos and lead abatement exceed levels projected in TEs 4 and 5.

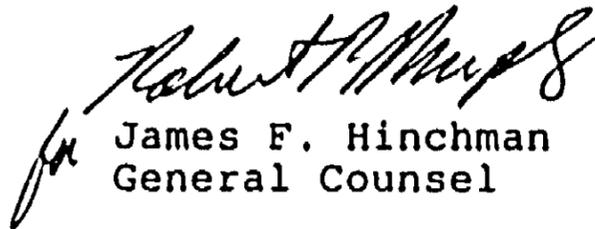
INSUFFICIENT BREAKDOWN OF WORK AND EQUIPMENT REQUIREMENTS

The protester contends that the IFB contains insufficient breakdown of levels of priorities of work. We find no support for this contention in the record. In response to questions from bidders the agency provided a list of the actual number of labor hours, by work category, expended by the incumbent facilities maintenance contractor (i.e., J&J Maintenance) for the period April 1, 1988, through September 30, 1990, and each fiscal year thereafter through 1991. For each period, the list is broken down into 10 work categories, including major, minor, service, standing, emergency, non-emergency, unscheduled, and scheduled, with

definitions for each category on the list. Concerning equipment maintenance, for which the protester also alleges the IFB lacks sufficient information, TE-6 is an updated list of all equipment, systems, buildings and structures for which the contractor will be responsible under the contract.⁴ For each piece of equipment, TE-6 provides make and model where appropriate, along with condition (e.g., used, good) and salient characteristics.⁵ Given the IFB's level of detail, the agency's written responses to nearly 250 questions posed by bidders, and the 11 amendments clarifying the agency's requirements and the contractor's responsibilities, we cannot say that the IFB lacks sufficient information for bidders to prepare their bids.

We have reviewed each of the provisions J&J Maintenance challenged and find that the information the agency has provided adequately describes its work requirements and contractor responsibilities. This is particularly a reasonable conclusion in view of the fact that bidders, including the protester, had an opportunity to review all contractor-generated reports and work plans; J&J Maintenance attended two pre-bid conferences and a site visit; and the agency responded in writing to numerous questions from bidders and has issued several amendments clarifying its requirements.

The protest is denied.


James F. Hinchman
General Counsel

⁴The list includes all motor vehicles and related equipment, major electrical systems, heating, ventilation, and air conditioning system, water system, sewer system, buildings and structures, food service and related refrigeration equipment, surfaced areas, and fire protective signaling system.

⁵For example, the IFB contains a detailed description for each transformer listed in the solicitation for which the contractor will be responsible, such as: "N1 13 General Electric--Condition used fair. 25 KVA (2 each), cont. at 55 degrees C rise, 60 hertz, high voltage 240/4160Y, Low Voltage 120/240, 1.7[percent] Imp. at 75 degrees C, no plug"; or "Roof Top Air Cooled Chillers, Building 221: 3 each, 1,719 MBH cooling total, condition used good."