



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sunbelt Properties, Inc.

File: B-249307

Date: October 30, 1992

John Powell Walker for the protester.
Michael D. Weaver, Esq., Department of Housing and Urban Development, for the agency.
Barbara C. Coles, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation that provides for award of an indefinite-quantity contract for management and related services for single family properties is defective--based on the protester's belief that minimum quantity of 50 properties which will require these services is nominal--is denied because the government is obligated to acquire services for at least this number of properties and payment for work to be performed on 50 properties is more than adequate consideration for a binding contract.

2. Maximum quantity stated in solicitation for indefinite-quantity contract for properties that will require management-related services was properly based on historical and current information.

DECISION

Sunbelt Properties, Inc. protests the terms of request for proposals (RFP) No. 003-92-118N, issued by the Department of Housing and Urban Development (HUD) for management and related services for single family properties in eastern central Oklahoma that are either owned by HUD or in its custody.¹ The RFP contemplates the award of a firm, fixed-price indefinite-quantity contract. The protester principally contends that the agency has not specified realistic minimum and maximum quantities in the solicitation as

¹The five types of properties that may require services under the contract are as follows: (1) HUD-owned properties; (2) vacant lots; (3) non-HUD owned properties; (4) rental properties; and (5) homeless properties.

required by Federal Acquisition Regulation (FAR) § 16.504 for indefinite-quantity contracts.

We deny the protest in part and dismiss it in part.

The RFP was issued on May 20, 1992, and was subsequently amended two times. The original solicitation stated that HUD anticipated an initial delivery of approximately 206 properties. The geographic area, the current number of properties, the current holding time, the estimated number of monthly sales and monthly acquisitions, and other pertinent data were supplied in the solicitation.² It also provided that HUD guaranteed a minimum of one property to be assigned under the contract. In response to an agency-level protest filed by Sunbelt on June 3, the guaranteed minimum number of properties was increased to 50, and the solicitation also was amended to include a maximum ordering limitation of 2,500 properties. On the June 22 closing date, the agency received 10 offers in response to the solicitation; Sunbelt did not submit an offer.

MINIMUM QUANTITIES

Sunbelt, a former Real Estate Area Manager in the Oklahoma City area, argues that the minimum number of properties stated in the solicitation is a nominal quantity which is not an estimate of probable requirements, established in good faith, based on the best information available, and does not accurately represent the agency's anticipated needs. Sunbelt contends that the minimum quantity listed in the solicitation is "used to discourage competition and assure the agency of its ability to direct the award . . . to predetermined respondents."

FAR § 16.504(a)(1) provides that a solicitation for an indefinite-quantity contract should include a minimum quantity which the government would be obligated to purchase. FAR § 16.504(a)(2) provides that the minimum quantity must be more than a nominal quantity to ensure that the contract is binding. We think the protester's reliance on the term "nominal" to challenge the enforceability of the resulting contract is misplaced here.

²The agency provided these "estimated quantities" so that the offerors would have additional information on which they could calculate their prices. The solicitation stated that these estimates were not binding on the government and payment for actual services would be made at the unit prices the offerors specified in section B.

First, an indefinite-quantity contract is enforceable and, thus, binding on the parties so long as the buyer agrees to purchase from the seller at least a guaranteed minimum quantity of goods or services, Mason v. United States, 615 F.2d 1343 (Ct. Cl. 1980). Since the solicitation stated a minimum quantity of 50 properties, the government is required to acquire management-related services from the successful offeror for at least this number of properties. In our view, 50 properties or more than \$43,000³ of services are more than adequate consideration for a binding contract. Second, the FAR does not require that the minimum guaranteed quantity be exactly the minimum that the government is "fairly certain" to order, but only that it not exceed this amount. Therefore, the fact that the stated minimum quantity of 50 properties is less than the "estimated quantities"--that the agency included in the RFP as additional price calculation information--does not detract from the enforceability of the contract.

The protester also questions the enforceability of the proposed contract because the solicitation does not provide specific minimum quantities for each property type to be assigned under the contract. However, the FAR does not require that a minimum quantity be specified for each contract line item or task category, and it is not uncommon for solicitations, while guaranteeing overall minimums, to not include a minimum amount for each of them. See, e.g., International Creative and Training, Ltd., B-245379, Jan. 6, 1992, 92-1 CPD ¶ 26. Accordingly, the fact that the solicitation does not provide a minimum quantity of services needed for each of the five different types of property on which the contractor is required to perform management-related services does not, by itself, demonstrate that the contract awarded under this solicitation is not binding. Given the uncertainty that is associated with the real

³While the protester disagrees with the agency's estimate of the minimum amount the contractor will be paid under this contract, the protester concedes that the contractor is guaranteed at least "a few hundred dollars" under the worst-case scenario, that is, that the agency will assign only vacant lots to the contractor. If the protester is correct and the agency only assigns vacant lots to the contractor, the amount that the contractor will receive will correspond to the unit price it specified in section B "[f]or duties required for vacant lots." Contrary to the protester's suggestion, the fact that the contractor may be paid "a few hundred dollars" does not, by itself, demonstrate that there is no consideration to support the contract; in Tennessee Soap Co. v. United States, 130 Ct. Cl. 154 (1954), the court found that \$10 was adequate consideration.

estate market and the agency's uncertainty concerning the number of properties that will enter its inventory and will require services by the successful offeror, we do not find the absence of specified minimums for each work category to be objectionable.

MAXIMUM QUANTITY

The protester also challenges the 2,500 maximum quantity stated in the solicitation and argues that figure is unrealistic. According to the protester, the pitfall of having 2,500 as the maximum number of properties for which the agency may require management services is that the high quantity "may entice an unqualified respondent."

HUD states that it used 3 years of historical data available from its records to determine the maximum quantity given in the solicitation. Notwithstanding this data, the agency reports that it is difficult to determine the maximum number of properties to be assigned under the resulting contract because the inventory over the 3 years has varied at different times by more than 400 percent. In determining the maximum number of properties, the agency took into account the inventory at the time the solicitation was issued (600 properties); the highest quantity in its inventory over this time period (2,300 properties); the fact that its loan management properties are entering the foreclosure process and have the potential to significantly increase the inventory over the next 3 years; and the fact that HUD has assigned an average of 28 properties per month from January to March 1992.

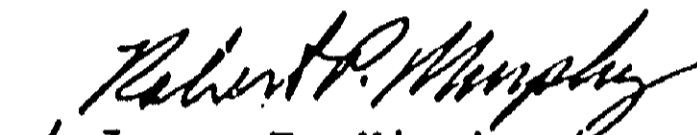
The record shows that the maximum quantity was based on a number of variables, including the fact that the number of properties in the agency's inventory has peaked at 2,300 in the last 3 years. While the agency's inventory may change as it has done in the past, the record shows that there was no readily available information upon which the agency could have adjusted its historical data to arrive at a more accurate number. Accordingly, we find no merit in the protester's contention.

OPTION TO EXTEND SERVICES

The protester contends for the first time in its comments on the agency report that the solicitation is also defective because, according to the protester, the solicitation's inclusion of the provision at FAR § 52.217-9, entitled "Option to Extend the Term of the Contract," conflicts with the requirement that indefinite-quantity contracts are for a fixed period of time.

This allegation is untimely and will not be considered. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues; where a protester later supplements a timely protest with new and independent grounds of protest, the later raised allegations must independently satisfy the timeliness requirements of our Regulations. Joseph L. De Clerk & Assocs., Inc.--Recon., B-233166.3, Apr. 6, 1989, 89-1 CPD ¶ 357. Protests based upon alleged improprieties in a solicitation, which are, or could have been, apparent prior to the closing date for receipt of proposals must be filed prior to closing. 4 C.F.R. § 21.2(a)(1) (1992); Golden Triangle Mgmt. Group, Inc., B-234790, July 10, 1989, 89-2 CPD ¶ 26. It was apparent from the solicitation that the agency contemplated the award of a contract for 1 base year and two 1-year option periods; consequently, this issue should have been raised when Sunbelt filed its initial protest. Because the protester failed to do so, we will not consider this matter.

The protest is denied in part and dismissed in part.


for James F. Hinchman
General Counsel