



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Luis E. Garcia, Inc.

File: B-254846.2

Date: March 21, 1994

David G. Collins for the protester,
Leonard G. Crowley, Esq., and Paul M. Fisher, Esq.,
Department of the Navy, for the agency.
John A. Carter, Esq., and William T. Woods, Esq., Office of
the General Counsel, GAO, participated in the preparation of
this decision.

DIGEST

Protest that solicitation for housing and grounds maintenance to be performed in part on a fixed-price basis is defective because it does not provide reliable information needed to bid is denied where the solicitation contains historical data or estimates of required services which, together with opportunities for site visits, should be sufficient to permit bidders to estimate the cost of performing the services and compete intelligently on an equal basis.

DECISION

Luis E. Garcia, Inc. protests the firm, fixed-price requirements in invitation for bids (IFB) No. N68711-93-B-2695, issued by the Marine Corps Air Ground Combat Center, Twentynine Palms, California, for grounds and family housing maintenance. Garcia contends that the historical information provided with the solicitation is inadequate for formulating a competitive offer for some of the fixed-price items without undue risk and that this results in an unfair competitive advantage to the incumbent.

We deny the protest.

The IFB solicits bids on a combination fixed-price and indefinite-quantity basis for a broad spectrum of grounds and family housing maintenance requirements. The contractor will be paid a fixed monthly price to perform all of the services included in the fixed-price portion. This portion of the IFB covers most residential maintenance, including change of occupancy maintenance (COOM), repair or replacement of appliances, cabinets or counters, calls for emergency water cleanup, and scheduled grounds maintenance,

such as monthly street sweeping and ditch cleaning. Modifications to the solicitation provided information on the approximate square footage and number of bedrooms in the housing units, and the monthly number of changes of occupancy. The IFB also provided tables showing the number of water heater, garbage disposal, range, refrigerator, range hood, dishwasher, and smoke detector replacements; and a percentage breakout of the number of tasks per service call and whether they were emergency, urgent, or routine. In its final form, the IFB limits the contractor's liability for COOMs to \$1,200, and to \$300 for major appliance repair or replacement. The contractor would not be responsible for such major repairs as a total roof replacement or total rewiring of a residence. Services included in the indefinite-quantity portion of the IFB, such as carpet replacement or interior painting, will be ordered on a task-by-task basis, and the contractor will be paid for each task as it is completed. The agency provided for two site visits for bidders.

Garcia contends that the information contained in the IFB is inadequate for bidding without undue risk to the bidder. For example, Garcia observes that the level of COOMs has not been consistent from one fiscal year to the next and also complains that the agency has provided no data on the number of times kitchen counters have required replacement. Garcia also notes that in response to an earlier, almost identical protest of a similar solicitation issued by the Marine Corps Logistics Base at Barstow, California, the Marine Corps agreed to change COOMs and other items from fixed-price to indefinite-quantity work. Garcia suggests that the same should be done here, and argues that the failure to do so gives the incumbent contractor an advantage in bidding for the contract.

The agency responds that this is not risk-free work and that inclusion of some items, such as COOMs, in the fixed-price portion of the IFB reduces administrative overhead and allows the contractor to manage its work load better. The agency also points out that it has included COOMs in the fixed-price portion of the last two contracts at Twentynine Palms without problems. The agency says that some of the work that Garcia cites, such as the replacement of kitchen cabinets, occurs so infrequently that the agency does not retain records on it. The agency contends that it has provided all the information it has on the remaining work. The agency also observes that it has provided estimates for those items for which it does not have data.

As a general rule, a procuring agency must give sufficient detail in a solicitation to enable offerors to compete intelligently and on a relatively equal basis. See Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 CPD ¶ 687. Where

estimates are provided in a solicitation, there is no requirement that they be absolutely accurate; rather, they must be based on the best information available and present a reasonably accurate representation of the agency's anticipated actual needs. DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43. In addition, there is no legal requirement that a solicitation be so detailed as to eliminate all performance uncertainties; such perfection, while desirable, is manifestly impractical in some procurements, and the mere presence of risk does not render a solicitation improper. Benco Contract Servs., B-233748, Feb. 24, 1989, 89-1 CPD ¶ 205. Rather, offerors properly may be left to exercise some business judgment in preparing their offers. Petchem Inc., B-233006, Feb. 8, 1989, 89-1 CPD ¶ 126.

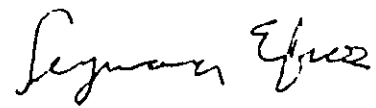
In this case, although Garcia contends that the information in the IFB is inadequate, we think the estimates and scope of work provided are sufficient to inform bidders of the amount and type of work they can anticipate under the contract. The agency says that it has provided in the IFB all the information it has on the work to be performed. Garcia has not shown that the information in the IFB is inaccurate, or that the agency has additional information it has not disclosed. In addition, the agency provided an opportunity for two site visits. The agency has attempted to reduce the contractor's risk by placing dollar limits on COOMs and appliance repair/replacement. As stated above, the presence of some element of risk does not mean that a solicitation is improper. We consider the information furnished here sufficient to enable prospective bidders to estimate their costs and to compete intelligently on an equal basis.

Additionally, we are not convinced that the incumbent is afforded an improper competitive advantage under this IFB. The government has no obligation to equalize a legitimate advantage that a competitor may have gained through incumbency, e.g., by seeking from the incumbent information not in the government's files, unless the advantage results from a preference or unfair action by the contracting agency. Foley Co., B-253408, Sept. 14, 1993, 93-2 CPD ¶ 165. There is no evidence here of a preference or unfair action.

Finally, the fact that the Marine Corps may have changed the solicitation in another procurement to accommodate Garcia's concerns is not relevant here. Each procurement is a separate transaction, and agency action under one procurement does not affect the propriety of the agency's

action under a different procurement, Trio Graphics, Inc.,
B-253471, Aug. 27, 1993, 93-2 CPD § 139; Tri-Services, Inc.,
B-253608, Sept. 7, 1993, 93-2 CPD § 131.

The protest is denied.

for 
Robert P. Murphy
Acting General Counsel