



Comptroller General  
of the United States

314156

Washington, D.C. 20548

## Decision

Matter of: American Contract Services, Inc.

File: B-256196.2; B-256196.3

Date: June 2, 1994

Jean DeFries for the protester.

Capt. Peter J. Seebeck, Department of the Air Force, for the agency.

Katherine I. Riback, Esq., Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that solicitation provisions are inadequate or ambiguous is denied where the provisions reasonably describe the work to be performed, and the information provided is adequate to enable firms to compete intelligently on an equal basis; the fact that uncertain quantities under contract impose some risk upon offerors is unobjectionable where agency has provided the best available information upon which offerors can reasonably base their estimates.

### DECISION

American Contract Services, Inc. (ACS) protests the terms of request for proposals (RFP) No. F01600-93-R-A086, issued by the Department of the Air Force for transient aircraft maintenance support services. ACS contends that numerous provisions in the RFP remain vague and ambiguous despite the agency's repeated amendments to the solicitation addressing the protester's concerns.

We deny the protest.

The agency issued the RFP on December 15, 1993, seeking proposals for a firm, fixed-price, 6-month contract to provide maintenance support services on transient aircraft at Maxwell Air Force Base and Dannelly Field Municipal Airport.<sup>1</sup> By letter dated December 28, ACS, the incumbent

<sup>1</sup>A transient aircraft is any aircraft with a serial number not assigned to the base.

contractor, submitted 86 questions to the agency regarding the solicitation provisions. ACS filed a protest in our Office on January 10, 1994, in which it submitted these same questions and stated that the agency had failed to respond to them.

Our Office dismissed that protest as academic after the agency answered each of ACS' questions, issued an amendment which, among other things, extended the closing date for receipt of proposals, and distributed minutes of the preproposal conference. On January 24, ACS filed the current protest in our Office alleging that the agency failed to answer its questions adequately and that numerous ambiguities remained in the RFP. On January 25, the agency issued a second amendment which further extended the closing date, and the agency responded to ACS' continued concerns in a letter dated January 27. The agency subsequently issued two more amendments to the solicitation. On February 15, 1 day before the amended closing date, ACS submitted an additional protest regarding this solicitation. ACS did not submit a proposal in response to this solicitation.

ACS argues that numerous provisions in the RFP remain ambiguous despite the amendments that the agency issued in response to the protester's concerns and despite the specific responses by the agency to those concerns.

As a general rule, the contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. C3, Inc., B-241983.2, Mar. 13, 1991, 91-1 CPD ¶ 279. However, there is no requirement that a competition be based on specifications which are drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. A&C Bldg. and Indus. Maintenance Corp., B-230270, May 12, 1988, 88-1 CPD ¶ 451. The mere allegation that a solicitation is ambiguous does not make it so. Snyder Corp., B-233939, Mar. 16, 1989, 89-1 CPD ¶ 282.

It appears that ACS is seeking a solicitation drafted in such detail that it eliminates all possible uncertainties. We have considered all of the protester's allegations and, based on our review of the record, conclude that ACS has failed to demonstrate that the specifications contain any genuine ambiguities. In our view, the solicitation reasonably describes the work to be performed and provides information which is adequate to enable all firms, including ACS, to compete intelligently on an equal basis. C3, Inc., supra. We discuss a representative sample of the protester's arguments below.

A number of ACS' questions concern the minimum number of personnel required by the RFP to provide the required services. Specifically, ACS argues that an RFP provision setting a two-person minimum staffing level for transient alert operations is misleading because it is inadequate for the total contract requirements.

In response to ACS' continued concern in this area, the agency included language in an amendment to clarify this issue:

"The contractor shall ensure that a minimum of two people are on duty at the Transient Alert facility during field operating hours. This does not mean that two people can provide the services of this contract at all times. It is the absolute minimum required. Contractor's proposal/bid should include the necessary personnel and price (not based on the minimum) to perform this entire performance work statement. Technical exhibits have been provided to assist the contractor in determining the adequate number of people to satisfactorily provide the services of this contract."

In addition, the agency repeatedly explained to ACS that this two-person minimum refers to the requirements for transient alert operations and does not include staffing for related tasks. The agency also informed ACS that the traffic flow of the transient aircraft is extremely variable and, thus, specifically declined to dictate the absolute numbers of people who must be on duty above the RFP's minimum personnel requirements. Instead, the RFP provided historical work load data and delineated the various tasks to be accomplished. For instance, the solicitation provided that the contractor shall, as required, meet transient aircraft upon arrival in a "Follow Me" vehicle to lead the aircraft into the assigned parking space, and wing walkers shall be used for all aircraft taxiing within 25 feet of any obstruction.

Notwithstanding the provisions of the RFP and the agency's advice, ACS continues to assert that the solicitation

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<sup>2</sup>For example, the agency repeatedly explained that the minimum does not include the aerospace ground equipment (AGE) technician. Apparently, under the previous contract, the AGE technician was permitted to operate the control room and therefore could be included under the two-person minimum. Here, the RFP states that the AGE technician will work exclusively on powered and non-powered AGE equipment and is not permitted to man the control room console.

concerning this issue is misleading and erroneous. We disagree. The RFP identifies a minimum staffing level for a specific aspect of the contract requirements, specifies the various tasks to be performed, and includes historical work load data. While not as detailed as the protester would like, it is not ambiguous. Neither is there anything unreasonable in requiring an offeror to exercise its judgment in proposing an appropriate number of personnel to meet the requirement. We believe that a company experienced in transient alert services should have the expertise to determine the number of people needed for the performance of this contract based upon the solicitation requirements and the detailed information provided in the RFP.

In another instance, ACS requested more specificity in the work load estimates concerning special events. The protester noted that the historical data regarding the frequency of special events provided in the RFP was from fiscal years (FY) 1990 and 1991. The protester requested that the agency provide more recent data on special events or provide projections of the FYs 1994 and 1995 requirements.

The agency acknowledged that the information provided in the solicitation regarding the frequency of special events was dated, but explained that it represented the most accurate picture of the number and type of special events that the agency estimates will occur during the performance of this contract. The agency stated that it could not provide projections of the FY 1994 or 1995 special events because the special events for 1994 are not finalized and the 1995 events are not yet scheduled.

Where estimates are provided in a solicitation, there is no requirement that they be absolutely correct; rather, they must be based on the best information available and present a reasonably accurate representation of the agency's anticipated needs. Service Technicians, Inc., B-249329.2, Nov. 12, 1992, 92-2 CPD ¶ 342. Here, the record provides no reason to question the agency's determination that older historical data on special events represent an accurate projection of the frequency and type of special events that will occur during the performance of this contract. Further, the protester has not explained why more recent data would be more representative, nor has it provided any other reason to question this determination by the agency.

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<sup>3</sup>ACS has alleged that the historical data provided in the solicitation was inflated in part due to frequent visits by former President Bush, who, according to the protester, enjoyed fishing in the Montgomery area during the time frame  
(continued...)

We conclude that the RFP reasonably describes the work to be performed and provides offerors with sufficient information to compete intelligently. The RFP thus is not deficient, even if some risks and uncertainties remain. A&C Bldg. and Indus. Maintenance Corp., *supra*.

Finally, ACS complains that a solicitation provision that evaluators are to evaluate proposals without knowledge of the contractor's identity conflicts with the solicitation's evaluation scheme, which includes consideration of the past performance of the contractors. ACS argues that in evaluating past performance, the identity of the contractor will become known to the evaluators. ACS seems particularly concerned that its identity as the incumbent will become apparent to the evaluators, many of whom were associated with the performance of the previous contract.

The agency explains that past performance is a necessary evaluation criterion for proposals to provide transient aircraft maintenance support services. The agency concedes that the evaluation process cannot be totally objective. However, it states that in addition to requiring offerors to remove any identifying names, logos, addresses, or other identifiers from their proposals, the agency itself would remove any remaining identifying information from the technical proposals as a measure to lessen subjectivity on the part of the evaluators.

The evaluation factors that apply to a particular solicitation are within the broad discretion of the agency. Federal Acquisition Regulation (FAR) § 15.605(b). The FAR also requires that quality be included as an evaluation factor in every source selection, and provides that quality may be expressed, among other means, by past performance. *Id.* Thus, evaluation of offerors' past performance reflects a legitimate agency concern. Here, the agency has taken steps to foster objectivity in the evaluation process.

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<sup>3</sup>(...continued)

in question. However, we note that only one visit by former President Bush during FY 1990 and 1991 was listed in the historical data included as part of the RFP.

<sup>4</sup>To the extent that ACS objects to the actual composition of the technical evaluation panel, the composition of the panel is within the discretion of the contracting agency's discretion. As such, it does not give rise to review by our Office absent a showing of possible abuse of that discretion, such as actual bias on the part of the evaluators. Beckman Instruments, Inc., B-246195.3, Apr. 14, 1992, 92-1 CPD ¶ 365.

However, since quality, as expressed in an evaluation of past performance, is a legitimate consideration, the agency cannot eliminate the possibility that an offeror could be identified based on recognition of past performance data. While the protester views this as a conflict, we find any conflict to be unobjectionable. Ordinarily, past performance on similar contracts represents an evaluation benefit to an offeror. Thus, we perceive no prejudice to an offeror should it be identified by the evaluators through its experience.

The protest is denied.

/s/ John M. Melody  
for Robert P. Murphy  
Acting General Counsel