

Calhoun



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Border Maintenance Service, Inc.

File: B-260954; B-260954.2

Date: June 21, 1995

Joan K. Fiorino, Esq., Donald E. Barnhill, Esq., and Edgar Garcia, Esq., East & Barnhill, for the protester. Sharon J. Chen, Esq., Barry D. Segal, Esq., and Emily C. Hewitt, Esq., General Services Administration, for the agency. Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly bundled requirements for building maintenance services at separate facilities in four cities into "total package" commercial facilities management procurement--notwithstanding agency's previous practice of awarding separate contracts for custodial services and for maintenance services--where the agency's overall needs can be most effectively met by awarding one contract which shifts the responsibility for managing these facilities to the contractor.

DECISION

Border Maintenance Service, Inc. (BMS) protests request for proposals (RFP) No. GS-07P-94-HTC-0106/7PPB, issued by the General Services Administration (GSA), Region 7, Fort Worth, Texas, for commercial facilities management (CFM) services¹ at five federal office buildings in four Texas cities. BMS, the incumbent custodial services contractor for two of these buildings, challenges the RFP's bundling of custodial requirements and maintenance requirements into one contract covering five locations as unduly restrictive of competition.

¹CFM contracts typically consolidate/bundle an agency's total requirement for services necessary to operate and maintain a building or buildings (i.e., maintenance, custodial, elevator, janitorial, etc.) into a single "total package" procurement. See The Sequoia Group, Inc., B-252016, May 24, 1993, 93-1 CPD ¶ 405; A&C Building and Indus. Maintenance Corp., B-230839, July 21, 1988, 88-2 CPD ¶ 67.

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We deny the protests.

The solicitation, issued February 28, 1995, consolidates under one contract complete CFM services for the Federal Building and the U.S. Border Patrol Sector Headquarters, both in McAllen, as well as the U.S. Border Stations in Hidalgo, Roma, and Pharr. Services to be provided include facilities management, custodial services, operations and maintenance, preventive maintenance, repairs, building alterations, water treatment, architectural/structural maintenance, and central station monitoring. GSA currently contracts for custodial services at the two McAllen buildings, as well as the Hidalgo Border Station, and contracts for custodial and mechanical maintenance services at the Roma Border Station. The Pharr Border Station is now under construction.

The Competition in Contracting Act of 1984 generally requires that solicitations include specifications which permit full and open competition, and contain restrictive provisions and conditions only to the extent necessary to satisfy the needs of the agency. 41 U.S.C. § 253a(a)(2) (1988). Since bundled, consolidated or total-package procurements combine separate, multiple requirements into one contract, they have the potential for restricting competition by excluding firms that can only furnish a portion of the requirement. We review such solicitations to determine whether the approach is reasonably required to satisfy the agency's legitimate minimum needs. National Customer Enq'g, 72 Comp. Gen. 132 (1993), 93-1 CPD ¶ 225; The Sequoia Group, Inc., supra.

Contracting officers must base their judgments about whether or not to consolidate requirements on the individual facts of each case, and our review recognizes that these procurements usually involve unique situations. In the area of building maintenance services, we have permitted, where justified, the consolidation of a building's separate operation and maintenance service requirements into a single CFM contract, A&C Building and Indus. Maintenance Corp., supra; the combining of several buildings' service requirements within the same city, Korean Maintenance Co., 66 Comp. Gen. 12 (1986), 86-2 CPD ¶ 379; and the consolidation of the building maintenance services at separate facilities in two cities into one CFM procurement. The Sequoia Group, Inc., supra.

GSA cites as its reason for consolidating the work under one CFM contract its inability to properly manage these multiple locations due to the recent loss of GSA employees at the facility responsible for their management. All five of these locations, which are between 10 and 70 miles apart, are managed by GSA's McAllen Customer Service Center (CSC).

However, GSA is facing the impending retirement of the CSC's buildings manager, and his staff has decreased 35 percent in the past year with the loss of one clerk-typist, two mechanical work inspectors, two mechanics, and one planner/estimator. Further, GSA is operating under administrative restrictions on filling vacant positions, and states that there is little or no hope of replacements for any of the positions. GSA states that the imminent loss of agency personnel makes it critical that the agency obtain integrated facility management services from a qualified contractor. The proposed CFM contract will make the successful contractor's facility manager and project managers responsible for these locations. As a result, the burden of daily oversight of these locations, quality control inspections, monitoring multiple functions, performance oversight of building alterations, and responding to tenant complaints will be placed primarily on the successful contractor instead of the CSC's buildings manager.

Countering the agency, Border asserts that GSA has not shown how the loss of these positions necessitates a bundling of services. Border argues that these positions are not "intensely" involved in custodial services, and contends that GSA could let a separate contract for such services. Border also asserts that small businesses will be precluded from competing under these bundled requirements, and argues that the benefits of maximum competition should prevail over GSA's justifications. Finally, Border argues that there is no history of poor performance or lack of competition that could lead the agency to bundle these requirements.

We see nothing improper in the determination to shift the burden of managing the five buildings to a contractor that is able to assume those responsibilities, given the agency's inability to effectively manage the facilities due to restrictions on filling the positions recently vacated among the buildings management staff. See A&C Building & Indus. Maintenance Corp., supra. Border's claim that a separate contract could be let for custodial services because these positions are not "intensely" involved in such services ignores the reality that such a contract also requires some degree of administration, which is precisely what the agency cannot effectively provide at this time. In addition, the record shows that representatives of eight firms attended the preproposal conference, which is evidence that the CFM contract approach does not represent an undue restriction on competition. Id.

Border's assertion that small businesses will not be able to compete under the bundled requirements has no support in the record. This is an ongoing procurement and proposals have not yet been submitted and, while there is no way to know


for certain the composition of the competition here, at least one of the firms present at the preproposal conference is a small business. Moreover, just as an agency is not required to cast its procurement in a manner that neutralizes the competitive advantages some firms may have over the protester by virtue of their own particular circumstances, an agency likewise is not required to craft a solicitation so as to ensure the protester's retention in the competition to the detriment of the government's actual requirements. Eastman Kodak Co., 68 Comp. Gen. 57 (1988), 88-2 CPD ¶ 455; The Sequoia Group, Inc., supra.²

In a supplemental protest filed shortly after its receipt of the agency report, Border asserts that GSA's decision not to set aside this procurement for small businesses was based upon its erroneous view that bundling the requirements was appropriate. Border again disputes the propriety of the bundling and seeks to have these requirements, once unbundled, set aside for small businesses. However, since we have concluded that GSA has justified its use of a total

²As for Border's contention that the facts here do not show a history of poor performance or lack of competition that could lead the agency to bundle these requirements, while such factors have been accepted as justifications for bundling requirements into one CFM contract, The Sequoia Group, Inc., supra, they are not required justifications in every case. Each procurement stands on its own facts.

package approach here, we need not address this allegation.³

The protests are denied.


cc. Robert P. Murphy
General Counsel

³In any event, this allegation is untimely. From the date of issuance, this solicitation clearly was not set aside for small businesses. Border has offered no explanation, nor do we see one, as to why this issue could not have been raised in its initial protest. We will not allow a prospective offeror to protest a solicitation term, causing the agency to incur delays by responding to that protest and postponing the submission of offers indefinitely, and then protest other solicitation terms after the receipt of the agency report, forcing the agency again to risk delay by responding with a second agency report and continuing the postponement of the closing date. See DataVault Corp., B-249054.2, Aug. 27, 1992, 92-2 CPD ¶ 133. Accordingly, because this new protest ground was raised in a piecemeal manner, we would not have addressed it in any event. Id.; Source AV Inc., B-244755.2; B-244755.3, Sept. 10, 1991, 91-2 CPD ¶ 237.