



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fielman, S.L.

File: B-262104; B-262104.2

Date: October 17, 1995

Paralee White, Esq., Cohen & White, for the protester.

Cynthia S. Guill, Esq., Department of the Navy, for the agency.

Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency has provided sufficient information to prospective offerors regarding contractor's obligation pursuant to court orders to employ incumbent work force (which might affect offerors' price proposals) where: (1) agency has made its records pertaining to the applicable court order available for prospective offerors' review; and (2) at protester's request, agency has issued an amendment setting forth protester's calculation of estimated costs associated with the obligation.

DECISION

Fielman, S.L. protests the terms of request for proposals (RFP)

No. N33191-95-R-4517, issued by the Department of the Navy for janitorial services at the DGF School Complex located at the Naval Station in Rota, Spain. Fielman contends that an omission in the RFP prohibits offerors from competing on an equal basis.

We deny the protest.

Fielman is the incumbent contractor for these services. Of significance to this protest, on June 28, 1995, Fielman was ordered by the Spanish court--in accordance with Spanish labor laws--to hire 14 of the predecessor contractor's janitorial employees, and to pay these individuals any amounts owed for back-pay, severance, and social security fund contributions.

On July 11, the Navy issued this solicitation, without any reference to the Spanish court's order; in this regard, it is undisputed by all parties that any successor contractor for this requirement must employ the 14 individuals. On July 21, Fielman filed a protest with this Office arguing that the RFP precluded offerors from competing on an equal basis since it did not disclose the terms of the Spanish court's order. Without being advised of the obligation to retain the 14 employees,

Fielman argued, prospective contractors would underestimate the cost of performing the contract, and would improperly underbid Fielman's proposed price.¹

On August 30, the Navy provided an agency report which attempted to resolve Fielman's protest by means of a third amendment (issued August 29) which advised prospective offerors of the Spanish court's "firm judgment" in favor of the 14 custodial employees and made the Navy's records of the judgment available for prospective offerors' review. Although the Navy did not have an exact copy of the Spanish court's order in its possession, the Navy did have copies of the pleadings and associated correspondence.

On September 14, Fielman filed a second protest with this Office challenging the issued amendment as inadequate corrective action.

In response, during a September 18 telephone conference held by this Office, the Navy asked the protester to draft an appropriate amendment setting forth the estimated financial obligation which Fielman believed was created as a result of the Spanish court's order. The Navy also asked the incumbent to agree to the agency's inclusion of a disclaimer in the amendment which would advise prospective offerors that the calculation was solely the result of the incumbent's analysis. The protester agreed to the disclaimer, and responded with the requested estimates on September 25. That same day, the Navy issued amendment No. 0004 to the RFP, which advised prospective offerors about the Spanish court's order, and set forth the protester's proffered 3-page summary list of cost estimates--comprised of back-pay costs, severance costs, and social security costs. The amendment also included the following disclaimer by the Navy:

"The incumbent contractor claims that this liability exists as a result of [the Spanish court's order]. The Government makes no warranty as to the completeness or accuracy of this information. Furthermore, the Government makes no warranty as to the relevance of this information to the subject solicitation."

On September 25, Fielman filed comments with this Office which contend that the Navy's inclusion of the above-referenced disclaimer--and therefore the resulting

¹According to the protester and the Navy, under Spanish labor law, the successor contractor for this requirement becomes severally and jointly liable for the back-pay, severance, and social security fund judgments ordered by the Spanish court. Although the amount of this obligation is in dispute--and could be resolved by the time the successor contractor begins contract performance--all parties agree that the successor contractor could be required to assume some portion of the ordered judgment as part of its contract performance.

amendment--is inadequate corrective action. We disagree, and conclude that the amendment is unobjectionable.

As a general rule, a procuring agency must give sufficient detail in a solicitation to enable offerors to compete intelligently and on an equal basis. See Luis E. Garcia, Inc., B-254846.2, Mar. 21, 1994, 94-1 CPD ¶ 203. For example, when a collective bargaining agreement is required as a term of contract performance, agencies are generally required to disclose such an agreement to prospective offerors. See J&J Maintenance, Inc., B-244366, Oct. 15, 1991, 91-2 CPD ¶ 333.

However, 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 anticipation of the agency's actual needs. DSP, Inc., B-220062, Jan. 15, 1986, 86-1 CPD ¶ 43. Further, there is no requirement that a competition be based on specifications drafted in such detail as to eliminate completely any risk or remove every uncertainty from the mind of every prospective offeror. Automated Power Sys., Inc., B-257178; B-257178.2, Sept. 2, 1994, 95-1 CPD ¶ 76. Such perfection, while desirable, is manifestly impractical in some procurements--particularly where, as here, the agency does not possess the basis for the estimate, but instead must rely on a third party for the computations. See Luis E. Garcia, Inc., *supra*.

In this case, we think that the Navy reasonably ameliorated the competitive disadvantage which Fielman claims it would suffer had prospective offerors not been advised of the Spanish court's judgment. First, the Navy has made available to prospective offerors all information in its possession pertaining to the order. Next, the agency has issued an amendment confirming the court's order as a "firm judgment," and indicating the estimated costs of the obligation as calculated by the protester. While the protester objects to the Navy's disclaimer, given the fact that the Navy does not have a copy of any documentation from which to perform the cost calculations and must rely on the protester for these figures, we think the disclaimer is unobjectionable--and an appropriate means by which to apprise prospective offerors to carefully prepare this aspect of their offers. In sum, under the circumstances here, we consider the information furnished in the amendment sufficient to enable prospective offerors to estimate their costs and to compete intelligently and on an equal basis.

The protest is denied.

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