

DOCUMENT RESUME

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[Alleged Improper Provisions in Solicitation for Translation Services]. E-188954. September 14, 1977. 5 pp.

Decision re: Translation Consultants Ltd.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).
Organization Concerned: Environmental Protection Agency.
Authority: Freedom of Information Act. F.P.R. 1-3.404-3(b).
E-187367 (1977).

The protester objected to a variety of allegedly improper provisions in a solicitation for translation services. The protest alleging that the 40-month contract without an escalation clause was unreasonable was denied. The specification that the offeror must demonstrate telecopy capability did not require that the offeror own a telecopier, but only that the offeror have one available for use as needed. The agency's method for estimating work requirements was reasonable where based on past contract experience. The requirement that the translation work performed by the contractor be mailed to the agency by registered mail was reasonable since registered mail prevents document loss. (Author/SC)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188894

DATE: September 14, 1977

MATTER OF: Translation Consultants Ltd.

DIGEST:

1. Protest alleging that 40-month contract, without escalation clause, is unreasonable, is denied. Protester has not shown that conditions justifying use of escalation clause exist.
2. Specification requirement that offeror must demonstrate telecopy capability does not require that offeror own a telecopier but only that offeror have one available for use as needed.
3. While RFP does not specify exact time allowed for doing rush orders, competition is not precluded where RFP provides that required time on each rush order shall be established jointly by Government and contractor.
4. Agency's method for estimating RFP work requirements was reasonable where based on past contract experience. Agency was not required to release prior contract figures to offerors under Freedom of Information Act in absence of written request for such information.
5. Requirement that translation work performed by contractor be mailed to agency by registered mail is reasonable since registered mail provides trackability of documents and prevents document loss.

Translation Consultants LTD. (TCL) protests what it considers are improper provisions in the Environmental Protection Agency's (EPA) solicitation No. DU-77-C056 for translation services. EPA's request for proposals was issued April 15, 1977 for offers on an indefinite delivery, indefinite quantity basis, to supply translation services for a period of 40 months. Several awards are contemplated. Basically, TCL objects to the risk that small businesses (the procurement is set aside for small businesses) must assume in order to

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compete for a fixed-price type contract, for a period of 40 months, without an escalation clause "such as that contained in the two previous contracts." According to TCL, requiring small business offerors to project their costs over the 40-month duration of a contract is unreasonable and precluded TCL from making an offer.

In response, EPA states that the prior contract, which called for a 1-year period of performance with two 1-year options, did not contain an escalation clause but did provide for a different set of fixed unit prices for each 1-year period. EPA points out that under FPR 1-3.404-3 (b) escalation is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. EPA does not believe that these conditions exist in this case, but states that if an offeror during the course of this procurement can show that the conditions justifying escalation do exist, then escalation would be considered. TCL, on the other hand, has not shown that these conditions do exist in this case. Moreover, EPA reports that a "sufficient number" of small businesses have responded to this solicitation. Under the circumstances, we find no reason to object to the absence of an escalation clause in the solicitation.

TCL also objects to certain provisions of the solicitation which deal with an offeror's capacity to support EPA's orders for "rush items." TCL argues first that by requiring offerors to have "[a]vailable telecopy capability," TCL has been ruled out as a competent offeror. Apparently, TCL has misconstrued the solicitation's award factor 7.A. That clause states as follows:

"To be considered for an award, an offeror must demonstrate to EPA that he has the following:

* * * * *

- "2. Available telecopy capability. Failure to demonstrate such capability will render the offer nonresponsive."

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Admittedly, EPA's use of the term "nonresponsive" may not be appropriate in a negotiated procurement, TM Systems, Inc., B-187367, January 26, 1977, 77-1 CPD 61. Nevertheless, it conveys the meaning intended by EPA, i.e., that an offeror that does not demonstrate available telecopy capability will not be awarded a contract. However, contrary to TCL's contention, which appears to assume that total control of such capability tantamount to ownership is required, EPA notes that:

"A large quantity of rush work is anticipated. If contractors removed from the Project Office [Triangle Research Park, North Carolina] are involved, the EPA would be limited in assigning rush work because of the location[,] since too much time would be used up in the mails getting the documents to and back from the contractor. Telecopy capability will enable the contractors to share equally in rush requirements and, by spreading the workload, give the EPA a better turnaround time. Proposers are not required to own a telecopier--only to show that they have made arrangements to have one available perhaps by sharing arrangement with someone else. It is recognized that this may have a price impact; however, the cost can be factored into the unit prices or into the rush surcharge."

Accordingly, we do not believe that EPA's need for telecopy capability unreasonably limited the competition.

TCL also argues that the term rush capability is not sufficiently definite so as to afford offerors the opportunity to quote reasonable prices. In this regard the solicitation sets out the obligations on the part of the contractor and EPA with respect to "turnaround time." For documents of average length (4,000 words or less) and content the standard turnaround time is, depending on the language, either three or four weeks. For more lengthy or difficult documents the standard turnaround time will be more than three or four weeks and will be set by the contracting officer. "Rush" is defined as faster than "standard" turnaround time. Thus, "rush" with respect to average length and content documents means turnaround times of less than three or four weeks and, with respect to more lengthy or

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difficult documents, less than the time the contracting officer would have specified for such documents had there been no rush requirement. The solicitation further states that the "turnaround" time on rush items will be established by the Government in consultation with the Contractor and marked on the case/order."

We think that competition can be obtained under these provisions. Since it is provided that turnaround time will be established jointly by the Government and the contractor, offerors are assured that the contractor's capability to handle a particular rush order will be considered in establishing the turnaround time along with the needs of the Government. Thus, the fact that the solicitation does not set forth the precise turnaround time on rush orders should not preclude competition. Furthermore, while TCL questions what the word "items" means in the term "rush items," we think it clearly means orders. Accordingly, we do not agree with TCL's objections to the rush order requirements of the solicitation.

TCL also contends that EPA should be required, under the provisions of the Freedom of Information Act, to release to offerors information as to the quantities and kinds of past contractual work accomplished so that reasonable prices can be submitted by offerors. EPA reports that the method used to arrive at the estimated quantities set forth in the solicitation was based on a count of the actual number of translations (languages and total words per language) and rush jobs performed during a 3-month period, multiplied by 4 to arrive at a 1-year requirement, then multiplied by 3.33 to establish a 40-month estimated requirement, then rounded off; in addition, estimates for languages not covered by the prior contract were based on purchase orders issued during the past year. EPA believes that the estimating method it used was reasonable, and we see no reason to disagree. As for TCL's belief that EPA should be required to release information on completed transactions under the Freedom of Information Act, EPA states that no written request under the Act has been made to it for such information, but that the protester may do so if it wishes. In any event, we do not believe that the agency was required to release this information in the RFP.

Finally, TCL questions the solicitation requirement that "all translations are to be marked registered mail", stating that this will increase costs considerably. While acknowledging that this

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requirement will have a cost impact, EPA insists that the added cost is acceptable because the requirement will provide trackability of documents and prevent document loss. We believe that EPA's position is reasonable and find no reason to question the requirement for registered mailing..

Accordingly, the protest is denied.

R. F. K. 11/16/16
Deputy Comptroller General
of the United States