



Comptroller General
of the United States

Washington, D.C. 20548

91-2 CPD 333

Decision

PR

Matter of: J & J Maintenance, Inc.

File: B-244366

Date: October 15, 1991

Donald E. Barnhill, Esq., East & Barnhill, for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Christine F. Bednarz, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Neither the Federal Acquisition Regulations nor any other applicable regulation precludes an agency from issuing a request for proposals that requires net, rather than separate, pricing of the base and option periods; such required pricing does not impose an unreasonable risk on offerors.
2. Agency has provided sufficient breakdown of its requirements for indefinite quantity line items by furnishing offerors with detailed performance standards, layout drawings, opportunities for site visits, and access to all work orders issued under the incumbent's contract.
3. Protester is not entitled to award of the costs of filing and pursuing its protest, where the contracting agency promptly acted upon protest alleging certain ambiguities in the specifications and has diligently endeavored to clarify the matter by amending the solicitation.

DECISION

J & J Maintenance, Inc. protests various provisions in request for proposals (RFP) No. N62470-90-4445, issued by the Department of the Navy, Naval Facilities Engineering Command, for the maintenance of family housing projects at the Navy Public Works Center, Norfolk, Virginia. J & J also claims the costs of pursuing the protest, since the Navy allegedly took corrective action in response to some contentions in J & J's protest.

We deny the protest and claim for costs.
J & J has been the incumbent for these services since October 1, 1989. On March 15, 1991, the Navy issued this RFP

under which price and technical factors are equally weighted for award evaluation purposes. The scope of work under the RFP requires the contractor to maintain and repair all designated family housing units, equipment, systems, and household appliances. The RFP contains layout drawings of the housing grounds, indicating the location and number of units and the general mowing area. The RFP urges offerors to inspect the site to satisfy themselves as to all conditions that might affect the cost of contract performance. The agency conducted a site visit on April 10, 1991, which representatives of the protester attended.

The RFP contemplates award of a combination fixed-price/ indefinite quantity-type contract for a 1-year period. The government reserves the option to extend the contract for any term of months up to a 60-month duration. The RFP requests only first-year unit and extended prices for numerous line items of fixed-price and indefinite quantity tasks. Each of the fixed-price line items specifies a maximum quantity of work to be done under that line item, while each of the indefinite quantity line items specifies an estimated quantity of work to be done. The option period prices will be the same prices paid for the first year, except as adjusted by a revised Department of Labor wage rate determination.

First, J & J objects to the fact that the RFP invites prices for the first year only, and that those prices are applicable to the option periods. The protester argues that this pricing structure discourages offerors from allocating start-up costs to the base year, as incurred, and exposes them to performing at a loss if the government fails to exercise the contract options. J & J argues that the pricing structure, which precludes offerors from allocating future increases in materials and equipment to the option years, encourages offerors to overstate their base year prices to recover these costs.

There is nothing in the Federal Acquisition Regulations (FAR) or any other applicable regulation that prohibits an agency from requiring in a solicitation that the option period prices be the same as the base year prices.^{1/} Nor do we think the solicitation requirement for "net pricing" for the base and option periods imposes an unreasonable risk on the offerors, inasmuch as offerors can project start-up costs and future

^{1/} FAR § 17.203(c) ^X does preclude the government from limiting the prices that may be submitted for evaluated option quantities. This should be distinguished from time-extension options, such as in this RFP. See FAR § 17.201. ^J

increases over the probable duration of the contract and can factor these costs in their proposals. See Wespac Serco, B-239203, July 23, 1990, 90-2 CPD ¶ 64; Space Servs. Int'l Corp., B-207888.4 et al., Dec. 13, 1982, 82-2 CPD ¶ 525. To the extent that the duration of the contract remains uncertain, offerors are free to propose pricing to account for the risk associated with the non-exercise of contract options. An agency is not prohibited from offering to the competition a proposed contract imposing substantial risk upon the contractor and minimum administrative burdens upon the agency. LBM, Inc., B-242664, May 17, 1991, 91-1 CPD ¶ 476; Bean Dredging Corp., B-239952, Oct. 12, 1990, 90-2 CPD ¶ 286. As risk inheres in any contract, offerors are expected to use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. See Custom Envtl. Serv., Inc., B-241052, Jan. 15, 1991, 70 Comp. Gen. 11-1 CPD ¶ 38; McDermott Shipyards, Div. of McDermott, Inc., B-237049, Jan. 29, 1990.

The protester next complains that the RFP is defective because the agency has failed to provide the best available data to allow bidders to compete on an equal basis. The protester specifically asserts that certain indefinite quantity line items lack sufficient detail to allow offerors to price their proposals properly and that the agency should provide a further breakdown of its requirements for these line items.

Although a procuring agency must provide sufficient detail in a solicitation to permit competition on a relatively equal basis, the solicitation need not be so detailed as to remove every uncertainty from the minds of prospective offerors and to eliminate every performance risk for the contractor. AAA Eng'g & Drafting, Inc., B-236034, Oct. 31, 1989, 89-2 CPD ¶ 404; I.T.S. Corp., B-228919, Nov. 25, 1987, 87-2 CPD ¶ 521. Detailed specifications, in conjunction with layout diagrams and on-site visits, ordinarily afford prospective offerors an adequate basis on which to compete intelligently. Bru Constr. Co., Inc., B-228206, Nov. 10, 1987, 87-2 CPD ¶ 476. There is no requirement that specifications be so exact as to obviate the need for site visits and to eliminate all performance uncertainties and risk. Bru Constr. Co., Inc., supra.

The Navy has made available to prospective offerors the facilities maintenance history files, which house approximately 36,000 work orders issued from October 1, 1989, to September 30, 1990, under J & J's existing housing

maintenance contract.^{2/} In our view, the information the agency has provided adequately describes the work requirements, especially in conjunction with a site visit. We also point out that J & J, as the incumbent contractor, has a considerable advantage over other offerors as to the site conditions affecting the cost of performance. ~~See Harris Sys. Int'l, Inc., B-224230, Jan. 9, 1987, 87-1 CPD ¶ 41; Sunnybrook, Inc., B-225642, Apr. 10, 1987, 87-1 CPD ¶ 399.~~

The specific line items challenged by the protester require the repair and replacement of estimated quantities of air conditioning and heating units, house accessories, electrical fixtures and plumbing fixtures. J & J does not dispute the accuracy of the agency estimates, but contends that too wide a range of appliances and fixtures exist within each of these general categories to afford an equal basis for competition. We think that the solicitation provides sufficient information for offerors to price these line items. A section of detailed performance standards accompany and elucidate the specifications for each of these line items. For example, both the general maintenance standards and the air conditioning maintenance standards provide that all replacement articles shall match existing articles in dimensions, materials, quality, finish, color, design, and operational ability. The standards also briefly describe each individual line item and set forth additional requirements. Elsewhere, the RFP describes each of the various housing types, including a description of the equipment installed and the installation date.

Based on our review of the record we find the agency has provided sufficient detail to allow competition on a relatively equal basis.

J & J further protests that the RFP fails to inform offerors that the wages contained in the incumbent contractor's Collective Bargaining Agreement (CBA) apply to the successful contractor under this RFP. This allegation has no merit. The

^{2/} The protester believes that the contracting agency has prepared a synopsis of these work orders, which it refuses to disseminate to prospective offerors. The protester has presented no evidence of its allegation, and the contracting agency claims that no such synopsis exists and that the facilities maintenance history files represent the best and only information available to the agency. While J & J might prefer a synopsis, notwithstanding that it was the recipient of the work orders, the agency has no obligation to generate such additional information. See AAA Eng'g & Drafting, Inc., supra.

RFP incorporates FAR clause § 52.222-41, "Service Contract Act of 1965, as Amended," which, among other things, explains the applicability of CBA wage rates to successor service contracts. The agency also provided all offerors with a copy of the protester's CBA in amendment No. 1 and explained in the pre-bid conference that these wages applied to successor contracts.

Finally, J & J requests that our Office declare it entitled to recover the reasonable costs of filing and pursuing its protest. This claim is associated with certain other protest issues raised by J & J that we dismissed on July 17, 1991, based upon the agency's agreement to postpone bid opening and to issue an amendment clarifying these matters. The dismissed protest contentions were that certain specifications were ambiguous and that two indefinite quantity line items lacked sufficient detail for informed pricing.

On July 29, the protester filed a claim with our Office under § 21.6(e) of our revised Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(e)) for the costs of filing and pursuing its protest. Under this regulation, we may declare a protester entitled to recover the reasonable costs of filing and pursuing its protest, including attorneys' fees, where the contracting agency decides to take corrective action in response to a protest. In adopting the revised regulation, we did not intend to award protest costs in every case where the agency takes corrective action in response to a protest. Our intent was to award costs where the circumstances of the case reflected that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. Pulse Elecs., Inc.--Claim for Costs, Aug. 19, 1991, 91-2 CPD ¶ ____.

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The circumstances of this case do not reflect such undue delay. J & J filed its protest on June 6, 1991. On June 11, 1991, the agency decided to extend the proposal due date until July 18, 1991, to correct various solicitation defects unrelated to J & J's protest. An extensive review of the RFP followed, which incorporated and considered matters raised in J & J's protest. This review persuaded the agency that it should substantially amend the solicitation and postpone the proposal due date until such time as it could accomplish the changes. On July 16, 1991, amendment No. 7 postponed bid opening indefinitely.

We do not view the time taken by the agency to implement corrective action as unreasonable. The agency considered J & J's protest only days after it was filed, and, as both parties admit, the scope of review and revision was extensive. The agency explains that the amendment now exists in final draft form and has entered the approval process.

Such action, initiated early in the protest process and diligently pursued, provides no basis for a determination that the payment of protest costs is warranted.

The protest and the claim for costs are denied.

Robert P. Murphy
James F. Hinchman
General Counsel