



GAO

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: TN-KY Contractors

File: B-291997.2

Date: May 5, 2003

Sam Zalman Gdanski, Esq., for the protester.
Maj. Robert Neill, Esq., Department of the Army, for the agency.
Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitation for fixed-price grass cutting contract does not impose an unreasonable cost risk upon offerors, where the solicitation, which does not have an unlimited scope of work, provides sufficient information upon which offerors can base their prices.

DECISION

TN-KY Contractors protests the terms of requests for proposal (RFP) No. DABK09-03-R-0004, issued by the Department of the Army for ground maintenance services at Fort Campbell, Kentucky. TN-KY contends that the requested monthly fixed-price for grass cutting services unreasonably shifts cost risk to the offerors, and that grass cutting should be priced on a “per cut” basis.

We deny the protest.

The RFP seeks the performance of grounds maintenance services, including “mowing, edging, trimming, removing debris, and repairing Contractor damaged areas.” In this regard, the selected contractor “shall provide all personnel, equipment, tools, supervision, and other items and services necessary to ensure that grounds maintenance is performed at Fort Campbell, [Kentucky], in a manner that will maintain healthy grass, and present a clean, neat, and professional appearance.” As indicated in the solicitation, “[grass] height is a guideline for a neat and professional appearance.” RFP at 39. Grass height tolerances for designated areas are set forth in the following five contract line items (CLIN): CLIN 0001 (Child Care Area)—maintain grass to 1½- to 3-inch height cut (311 acres); CLIN 0002 (Inside Fort Campbell Cantonment Area)—maintain grass to 2- to 5-inch height cut (1457 acres);

CLIN 0003 (Airfield Areas)--maintain grass to 2- to 5-inch height cut (2344 acres); CLIN 0004 (Housing Areas)--maintain grass to 1½- to 3-inch height cut (584 acres); and CLIN 0005 (Back Area Road/Road Shoulders)--maintain grass to 5- to 7-inch cut (829 acres). RFP at 3-4, 39. Offerors were advised that it is the “responsibility of the contractor to maintain [the] grass at the heights indicated in the bid schedule [*i.e.*, CLINS],” and that the “maximum height listed for each level shall not be exceeded at any time.” A “Grass Mowing Contract Performance Areas Map,” and other area maps, were included with the RFP, and offerors were informed that performance would “typically occur during a seven-month mowing period, (April through October); however, for the purpose of this requirement, an eight month mowing season has been established,” and the “[c]ost for the mowing season shall be spread over 8 months.” RFP at 39. The RFP does not specify the number of cuts that are required during the performance period, leaving to the offerors how best to meet the performance requirements.¹

As contemplated by the RFP, the Army conducted a pre-proposal conference on January 14, 2003. Prospective offerors could submit questions concerning the solicitation in writing at any time up until the pre-proposal conference. The Army responded to the questions in subsequent amendments to the RFP. The pre-proposal conference included a site visit during which prospective offerors could inspect the Fort Campbell vegetation, or offerors could make separate arrangements by telephone for a site visit. AR at 2-3; RFP at 82. TN-KY did not attend the pre-proposal conference, participate in the site visit, or submit any questions at that time.

The closing date for receipt of proposals was February 18. On or about February 13, TN-KY submitted a list of handwritten questions to the Army, to which the contracting officer responded in part on February 13, referred the remaining questions to the technical team for answers, and attempted to relay those answers to the protester on February 18. TN-KY was informed that the proposal closing date would not be extended.

On February 18, TN-KY submitted an agency-level protest, contending that the pricing requirements of the RFP should be changed for grass cutting from a monthly to a “per cut by delivery order” basis. The Army denied the protest that same day, and this protest followed.

TN-KY contends that the pricing structure of the RFP unreasonably shifts the cost risk to the contractor. According to protester, “TN-KY cannot determine what price to put in nor can any other offeror, because . . . [t]here is no limitation on the amount of work that can be ordered . . . , since depending on the rain there could be hundred

¹ Other CLINs, not at issue here, for cemeteries, parade grounds, and special events, specified the number of cuts required during a specific period of performance.

fold or two thousand fold increase as compared with past historical data.” Protester’s Comments at 2. To minimize this risk, TN-KY argues, pricing should be sought on a “per cut,” as opposed to a per-month, basis.²

The mere presence of risk in a solicitation does not make the solicitation inappropriate or improper. It is within the ambit of administrative discretion for an agency to offer for competition a proposed contract that imposes maximum risks upon the contractor and minimum burdens on the agency, and an offeror should account for this in formulating its proposal. Instrument Control Serv., Inc.; Science & Mgmt. Res., Inc., B-289660, B-289660.2, Apr. 15, 2002, 2002 CPD ¶ 66 at 7; Clifford La Tourelle, B-271505, June 5, 1996, 96-1 CPD ¶ 270 at 3. Here, the protester has not demonstrated that the allocation of risk is unreasonable.

Contrary to the protester’s contentions, the work here is not unlimited, but is restricted to grass cutting and grounds maintenance of specified areas and acreage for specified durations within specified height requirements.³ The RFP also includes maps of the cutting areas, and provided contractors with the opportunity to visit the site to inspect the type of grass and vegetation growing. In our view, the RFP provides sufficient information for offerors to intelligently formulate their prices.

The protester’s assertion that rain could cause a “hundred fold or two thousand fold increase” in required services is not supported by the record. Moreover, the fact that rain may affect the rate of grass growth, in our view, is a factor that offerors can

² The protester also contended, in its protest, that its knowledge as the incumbent of Fort Campbell’s grass cutting needs created an unfair competitive advantage that could cause other offerors to underbid it; that the Army failed to answer its questions posed on or about February 13; and that an RFP provision concerning the award term was unduly restrictive. The agency addressed each of these arguments in its report and the protester failed to respond in its comments; thus, we consider TN-KY to have abandoned these arguments and will not consider them further. Analex Space Sys., Inc.; PAI Corp., B-259024, B-259024.2, Feb. 21, 1995, 95-1 CPD ¶ 106 at 8.

³ These limitations distinguish this solicitation from the pricing schemes in BMAR & Assocs., Inc., B-281664, Mar. 18, 1999, 99-1 CPD ¶ 62, and Four Star Maint. Corp., B-240413, Nov. 2, 1990, 91-1 CPD ¶ 70 (cited by the protester), where we found the solicitations’ use of lump sum pricing for maintenance services imposed an unreasonable risk on the contractor because they placed no limit on the scope of work the contractor could be required to perform for major, potentially expensive service items under the lump sum portion of the contract. That is not the case here, where the RFP sets parameters around the grass cutting services required, and the only variable appears to be rainfall, which the protester has not shown will result in an unlimited scope of work.

reasonably take into account in formulating their proposals.⁴ A solicitation is not defective merely because it may place the contractor at risk in terms of, for example, the possibility that payments under the contract will not cover the cost of performance. Risk is inherent in most types of contracts, especially fixed-price contracts, and offerors must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. Sea-Land Serv., Inc., B-278404.2, Feb. 9, 1998, 98-1 CPD ¶ 47 at 11, 14; Steel Circle Bldg. Co., B-245749, Feb. 3, 1992, 92-1 CPD ¶ 134 at 3.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁴ The protester acknowledges that it is “very knowledgeable on the growing conditions and how they effect the grass and weed types” because it has had a mowing contract with Fort Campbell for 15 years. Protest at 1.