



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Beautify Professional Cleaning Service, Inc.

File: B-277238

Date: August 19, 1997

Lawrence J. Sklute, Esq., for the protester.

Michael Colvin, Department of Health and Human Services, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

A customer complaint program used by an agency as part of its quality assurance plan as a means for collecting information regarding the contractor's performance is not objectionable where it is the assessment by the government of the contractor's performance, not unvalidated customer complaints, which will determine whether contract deductions are warranted.

DECISION

Beautify Professional Cleaning Service, Inc. protests the terms of request for proposals (RFP) No. 263-97-P(GG)-0025, issued by the National Institutes of Health, Department of Health and Human Services, for custodial services for a large number of government buildings.

We deny the protest.

The RFP was issued on April 25, 1997, and contemplated the award of a firm, fixed-price, indefinite delivery/indefinite quantity contract. As relevant to this protest, the RFP's statement of work categorized space in existing and any future buildings into five room groups (public, staff, health, support, and exterior) and identified five performance/acceptable quality levels (outstanding, very good, good, fair, and minimal) for each room group. The RFP contained a detailed list of the conditions likely to be evident at each performance level.

For example, for an "outstanding" level of cleaning, the RFP required that waste containers be empty of trash and litter; that dust very rarely be seen on some surfaces; that litter only rarely be seen on a surface or in any container; that corners and edges exhibit insignificant detailing problems; that streak or residue problems rarely be seen on any surface; that buildup or neglect problems not be

evident on any item or surface; that there be excellent gloss or shine on floor and polishable surfaces; that spots or marks rarely be visible on any surface; and that carpeted floors and furniture exhibit insignificant fiber, litter, or dust buildup problems. The RFP summarized this detailed listing of what would constitute an "outstanding" level of cleaning by stating that this level of performance would deliver a "highly defect-free environment" and by stating that when at least 90 percent of all items or surfaces cleaned are free of any of the conditions described, the performance would be considered "[w]orld [c]lass."

The RFP also described the government's quality assurance plan. Under the direction of the contracting officer's technical representative (COTR), the government would assess customer satisfaction (complaint management and customer survey) and the cleanliness of the work environment (continuous improvement and acceptable quality levels by room group) to measure, monitor, and evaluate the contractor's compliance with acceptable quality levels. The COTR would meet with the contractor's project manager on a weekly basis during the first 2 months of the contract and after this period, at least once a month. The RFP explained that the purpose of these meetings is to review the contractor's compliance with the customer satisfaction and cleanliness components of the government's quality assurance plan, to review the monthly accomplishment report, and to resolve issues that adversely impact the contractor's performance.

Finally, the RFP incorporated by reference the clause at Federal Acquisition Regulation (FAR) § 52.246-4, captioned "Inspection of Services--Fixed Price," which reserves the government's right to inspect all services at all times during the contract and, when defects in service cannot be corrected by reperformance, to reduce the contract price for services that do not conform with the contract requirements.

The protester first argues that the RFP used ambiguous terms, for example, "highly defect-free environment" and "world class," to summarize what the agency would consider an "outstanding" level of performance.¹ We disagree, since the protester's position is not supported by the record.

To the extent there was any ambiguity in the RFP as initially issued, the record shows that by amendment No. 1 (containing answers to potential offerors' pre-proposal questions), the agency clearly explained that the quoted terms were defined by the detailed conditions listed in the RFP for the five quality levels. For example, the amendment stated that the terms "highly defect-free environment" and

¹The protester makes the same argument with respect to the term "near defect-free environment" used in the RFP to summarize the conditions evidencing a "very good" performance level and the term "minor level of defects" used in the RFP to summarize the conditions evidencing "fair" and "minimal" performance levels.

"world class" related back to and summarized the RFP's detailed list of conditions (set out above) likely to be evident at the "outstanding" performance level, e.g., waste containers empty of trash and litter, and dust very rarely seen on surfaces.

In light of the detailed information provided in the RFP, we think offerors like the protester, which is currently performing custodial service contracts, have sufficient information to be able to intelligently prepare technical proposals and to submit prices which take into account what they may perceive to be performance uncertainties and risks, thus affording offerors the opportunity to compete on an equal basis. See, e.g., Braswell Servs. Group, Inc., B-276694, July 15, 1997, 97-2 CPD ¶ 18 at 3-4; Sunbelt Properties, Inc., B-249469 et al., Nov. 17, 1992, 92-2 CPD ¶ 353 at 4. On this record, we have no basis to conclude that the RFP's descriptive terms are ambiguous.

The protester next expresses concern with the customer satisfaction component of the government's quality assurance plan as described in the RFP. The protester asserts, based on its reading of the RFP, that the agency intends to make deductions under the contract for defects in contractor performance on the basis of customer complaints without first evaluating the merits of those complaints. In this respect, the protester maintains that customers should not be able to function as government inspectors.

The protester's concern is not supported by a reasonable reading of the RFP. The clause at FAR § 52.246-4 provides, among other things, that if services do not conform with contract requirements and cannot be corrected by reperformance the agency may make deductions under the contract to reflect the reduced value of the services provided. Under the government's quality assurance plan as described in the RFP, the COTR will meet with the contractor's project manager on a regular basis to review the contractor's compliance with the customer satisfaction and cleanliness components of the plan, to review the monthly accomplishment report, and to resolve issues that adversely impact the contractor's performance. There is no language in the quality assurance plan which would authorize the agency to effectively ignore the government's inspection obligations under the clause at FAR § 52.246-4 by relying on unvalidated customer complaints as the basis for imposing a deduction for defective performance.

Contracting agencies are required to verify whether services conform to contract quality requirements and to maintain records regarding a contractor's performance. See FAR § 46.104; Premiere Bldg. Servs., Inc., B-255858, Apr. 12, 1994, 94-1 CPD ¶ 252 at 3 n.2. A customer complaint program used by an agency as part of its quality assurance plan as a means for collecting information regarding the contractor's performance is not objectionable where it is the assessment by the government of the contractor's performance, not unvalidated customer complaints,

which will determine whether contract deductions are warranted. Id.; see Larson Bldg. Care Inc., B-209837, B-209761, June 20, 1983, 83-1 CPD ¶ 671 at 2. There is no support in the record for the protester's concern that under the terms of the RFP the agency will rely on unvalidated customer complaints and not perform its own inspection to assess the contractor's performance.

The protest is denied.

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