The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Master Security, Inc.

File: B-232263

Date: November 7, 1988

DIGEST

1. Protest that request for proposals did not contain labor escalation provision clause to provide for increased Service Contract Act wage determinations in option years is without merit where the Federal Acquisition Regulation does not require the clause.

2. It was reasonable to omit from request for proposals the general economic price adjustment clause that would make government responsible for added cost of wage increases in contract option years, where, considering current and future market conditions, agency determined that offerors should be able to calculate with reasonable certainty any future wage and other cost increases, and include those projected costs in their proposed fixed prices.

3. Agency is not required to release incumbent contractor's personnel information to aid protester in preparing proposal, since such information is an advantage of incumbency that the government has no obligation to eliminate.

DECISION

Master Security, Inc. (MSI) protests the award of any contract under request for proposals (RFP) No. SSA-RFP-88-0149, issued by the Social Security Administration (SSA), Department of Health and Human Services, for armed guard services at two separate locations in Baltimore. The RFP sought technical and pricing proposals for a firm, fixed-price contract for 1 year commencing on Nov. 1, 1988, and two 1-year option periods. MSI protests the SSA's failure to include labor escalation clause in the RFP to provide for possible contract price increases in the option years resulting from increased wage determinations under the Service Contract Act of 1965. MSI also contends that the

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contracting officer should have released personnel information about the incumbent contractor's employees. We deny the protest.

Instead of a labor escalation provision to account for potentially higher wages in the option years, the RFP included a clause advising all prospective offerors that when pricing their proposals they should: ". . . consider any projected changes (increases or decreases) in labor/materials when computing prices and submitting offers for Option Years I and II. There are no provisions for price adjustments (escalation) during the term of the basic contract or any option period."

MSI argues that the absence of a price adjustment provision restricts competition and leads to higher prices, because offerors are left to speculate as to the likely Department of Labor wage rate increases during the contract's option years. Similarly, offerors would have to guess at the likely new terms of a collective bargaining agreement incorporated in the RFP, but due to expire in October 1989. MSI points out that although current regulations do not require inclusion of an EPA provision for option years, Federal Acquistion Regulation §§ 52.222-43 and 22.1006(c)(1), currently in draft form, will require such a labor escalation provision when adopted in the future.

The basic purpose of an EPA clause is to protect the government in case of a decrease in the cost of labor or material, and the contractor in the event of an increase. Galaxy Custodial Services, Inc., et al., B-215738, et al., 64 Comp. Gen. 593 (1975), 85-1 CPD ¶ 658. As the protester points out, the FAR does not require that solicitations include labor escalation clause for possible option year wage increases. The omission of the clause therefore is not contrary to the FAR, notwithstanding the draft provisions that may take effect in the future.

The FAR does currently provide for inclusion of such an economic price adjustment (EPA) clause in a fixed-price contract where the contracting officer determines that it is necessary either to protect the government against significant fluctuations in labor or material costs, or to provide for contract price adjustment in the event of changes in the contractor's established prices. FAR § 16.203-3. Based on this regulation, we have held that the contracting officer has discretion to include the EPA clause for option years in a fixed-price contract; we will only question a decision regarding use of the clause where it is shown to be arbitrary and capricious. Kings Point Mfg. Co., Inc., B-220224, Dec. 17, 1985, 85-2 CPD ¶ 680.

SSA's decision to omit the EPA clause here was not arbitrary or capricious. The contracting officer specifically determined that the market conditions for these services would not change significantly in the option years, and that offerors thus could make realistic estimates of probable future costs; this determination was based upon available price comparisons of prior competitive purchases for guard and janitorial services and industry trends regarding labor and materials. The contracting officer also reasoned that competition would tend to keep prices low, while practical individual financial considerations would dissuade offerors from proposing unrealistically low prices. The contracting officer points to the seven proposals received a further evidence that omission of the clause was not restrictive.

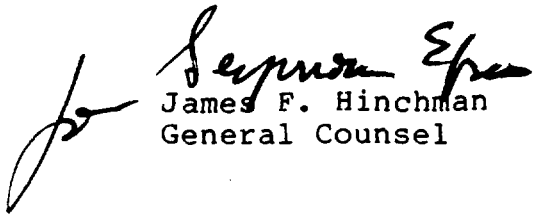
SSA obviously has considered the ramifications of omitting a price adjustment clause from this RFP, and we find the explanation for its determination to be reasonable. We point out, for the protester's information, that it has been our view that offerors have the responsibility in offering on a fixed-price contract to project costs and to include in their proposed fixed-prices a factor covering any projected cost increases. Risk is inherent in most types of contracts and offerors are expected to allow for that risk in computing their offers. Kings Point Mfg. Co., Inc., B-220224, supra.

MSI also contends that the contracting officer's refusal to release information as to which incumbent guards meet the requirements in the RFP is unreasonable and prejudicial to the protester. The RFP requires offerors to submit a list of at least 150 to 160 guards who meet specific height, weight, and training requirements. Master Security states that, in order to plan on hiring the incumbent guards if awarded the contract, an offeror would have to include in its proposal any costs for retraining unqualified incumbent guards and training new guards who make up any shortfall. Master Security thus argues that the incumbent contractor has an unfair competitive advantage by already possessing this information on the incumbent guards.

This argument is without merit. The government has no obligation to eliminate an incumbent contractor's perceived competitive advantage so long as it was not the result of preferential treatment or other unfair action by the government. Burnside-Ott Aviation Training Center, B-229793, Mar. 4, 1988, 88-1 CPD ¶ 236. In our view,

knowledge as to the nature of the incumbent contractor's work force is strictly an advantage of incumbency, and the government thus has no obligation to disseminate that information to Master Security or other offerors.

The protest is denied.



James F. Hinchman
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