

61 39

K. Baker  
Page II

**DECISION**



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

**FILE: B-189660 DATE: April 25, 1978**  
**MATTER OF: Chemical Technology Inc.**

**DIGEST:**

1. Inconsistency between invitation for bids (IFB) and first solicitation amendment regarding required direct labor manhours and supervisory personnel was remedied by second amendment which made clear that stated manhours were not required minima but were estimates to be used in assessing responsibility.
2. Agency acted reasonably in not basing its man-hour estimates on the number of manhours used by prior contractor because prior contractor's performance was unsatisfactory and thus the number of manhours it used was not necessarily sufficient to obtain compliance with the specifications.
3. Provision requiring the services of not less than three supervisors is a minimum, not an estimate, and thus is not objectionable merely because more supervisors may prove to be necessary to adequately perform the contract. Protester has offered no proof of contention that Government's specified minimum number of supervisors is inconsistent with applicable agency regulations and manuals.
4. Provision in contract which stated that the supervisor would "provide direct continuous inspection and supervision" unambiguously required full-time supervisors.
5. Request for bids to perform required work at any time of day except during daylight hours, was a request for an "alternative" bid, not an option item, because the Government clearly did not intend to have the same work performed twice. There is nothing in the solicitation which

reasonably supports the protester's contention that the agency should have evaluated the combined total of bid prices for all alternative items.

7. Incumbent contractor's contention that an agency should exercise a contract option rather than award a new contract to another firm is not for consideration under GAO's bid protest procedures.

Chemical Technology, Inc. (CTI) protests the award of a contract for janitorial services under invitation for bids (IFB) No. F34650-77-B0013, issued by Tinker Air Force Base, Oklahoma.

Initially, CTI, the incumbent contractor, argued that the solicitation's estimates of minimum direct labor manhours and supervisory personnel were erroneous, and misleading. The protester claims that the contracting officer possessed the incumbent's confidential operating data which show the labor resources for this work to be substantially different from that stated in the solicitation. The protester also argues that the specified number of supervisors necessary to manage the workforce is not consistent with Air Force regulations or manuals which provide formulas for determining the number of supervisors required. In addition, the protester believes it is unclear whether part-time or full-time supervisors are required and whether the supervisors must be non-working supervisors or may be working team leaders.

Subsequently, the Air Force amended the solicitation to clarify its position regarding the labor resources for the performance of the contract. As amended, the solicitation provision in question provides, as follows:

- C-31. Pre-Award Survey of Prospective Contractor (AFLC ASPR Supplement 2-201(a) C (1)).

"(a) If your response to this solicitation is favorably considered, a survey team may contact your facility to determine your ability to perform. Current financial statements and other pertinent data should be available for Government review at that time \* \* \*. Examples of the areas that may be investigated and evaluated are listed below:

\* \* \* \* \*

11. Labor resources

\* \* \* \* \*

"(c) Pursuant to C-31(a) 11, Labor Resources, above, the Government sets forth an estimate of 110,855 on the job, performing, direct janitorial manhours annually exclusive of vacations and holidays and other absences. This estimate may be required to perform the necessary services under the contract. The Government's man-hour estimate set forth above is furnished to assist in your understanding of the job requirement and for use in establishing bidder responsibility. The Manhour estimate herein shall in no way minimize, limit or relieve the contractor's obligations to satisfy the requirements of performance of the contract and to provide as many manhours as are necessary to fulfill all requirements.

"The burden of proof in justifying a fewer or greater number of manhours will be upon the bidder. Failure to provide adequate justification that the proposed manhours are sufficient to satisfy all requirements may subject a bidder to a determination of non-responsibility during technical review and evaluation of the bid.

"NOTE: The above clarification supersedes any and all representations, both oral and written, regarding manhour evaluation criteria."

CTI's initial ground for protest was that the Government misled potential bidders by stating in paragraph C-31(c) of the solicitation that 110,856 janitorial performance hours plus three supervisors were the "absolute minimum acceptable" to the Government. CTI asserted that this provision was inconsistent with the first solicitation amendment which stated there was no minimum manhour requirement. However, as a result of the second amendment, which revised subparagraph C-31(c) of the solicitation by deleting the reference to "minimum" performance hours, CTI's argument regarding an inconsistency in the solicitation has become moot.

CTI also contends that the Government was aware that the necessary manhours were substantially different from the estimate in the solicitation, because the Government possessed actual operating data of the incumbent contractor, CTI, which confirmed such difference.

The Air Force states that the "operating data" to which CTI refers consists of payrolls of CTI for a 9-month period from January to September 1976. These payrolls, when extended over a twelve-month period, reflect substantially less man-hours utilized by CTI in the performance of its contract than estimated in the solicitation. The Air Force states that this data was not relied upon due to CTI's marginal to unsatisfactory performance during the subject contract period. The Air Force states that it has no documentation of CTI's unsatisfactory performance during the January to September 1976, period due to its failure to monitor the contract during that period. However, it has submitted copies of twelve

letters from the Air Force to CTI during the period January to September 1977, in which numerous deficiencies in CTI's performance were pointed out.

We find that the agency acted reasonably in not relying on historical data concerning the number of manhours used by CTI. Recent evidence in the agency's possession indicated that CTI was not fully performing in accordance with the specifications. Furthermore, communications between the Air Force and CTI indicated that CTI's performance could be improved by adding personnel. A letter from the President of CTI to Tinker Air Force Base, dated August 29, 1977 states that:

"An additional 22 employees were assigned during August to expand our custodial services commensurate with the level of service imposed by the Government during the last series of inspections. We believe these actions will achieve the expected performance standards."

The Air Force states that, in the absence of reliable historical data, it based its estimates of direct janitorial manhours on time standards in Air Force Manual (AFM) 91-2 established for the type of services involved in the present contract. The Air Force has submitted item-by-item estimates and sample calculations showing how its estimates were based on Chapter 2, Table 1 of AFM 91-2. On the basis of this record, we have no reason for concluding that the estimates prepared by the Air Force were unreasonable.

CTI also contends that the number of supervisors required by paragraph 1.12.1 of the specification does not represent the Government's best estimate because it is inconsistent with CTI's experience under prior contracts. Paragraph 1.12.1 of the solicitation states that: "The services of not less than three competent experienced custodial services supervisors

shall be provided." This provision is not an estimate of the number of supervisors required to adequately perform the contract, but is a statement of the minimum acceptable number of supervisors which may be provided. Such a provision is not inconsistent with CTI's statement that more supervisors may be necessary to perform the contract. Consequently, we have no reason to object to this minimum requirement.

CTI also contends that the number of supervisors specified in the solicitation does not conform with Air Force regulations or manuals. However CTI has offered no proof that the minimum number of supervisors required by the Government is inconsistent with Air Force regulations or manuals applicable in these circumstances. Consequently, we have no basis upon which to question the number of supervisors specified in the solicitation.

CTI next contends that the solicitation is unclear as to whether part-time or full-time supervisors are required and whether the supervisors must be non-working supervisors or may be working team leaders. Paragraph 1.12.1 states that:

"1.12 CONTRACTOR SUPERVISION:

"1.12.1 The services of not less than three competent experienced custodial services shall be provided. The supervisor is responsible for instructing and training of contractor personnel in proper and specified work methods and procedures. He will direct, schedule and coordinate all custodial services and functions to completely accomplish the work as required. The supervisor will provide direct continuous inspection and supervision of the work for not less than the eight-hour period of time within which the greatest amount of custodial work is performed in any one 24-hour period of time. \* \* \* (Emphasis added.)

We interpret the underlined phrase to mean that three full-time supervisors were required. Consequently, we do not find the specifications to be ambiguous in this respect.

CTI further contends that the Air Force did not evaluate bids in accordance with the IFB because three bid items listed in the IFB were not included in the total evaluated price. The IFB contained a number of blanks to be filled in with item prices. The first group of blanks were for the initial contract period and the second group for the follow-on period covered by Option II. The controversy involves items 0001a, 0101a, and 0201a. Each of these items is followed by the description: "Perform Item No. 0001 anytime within the day other than the times specified in the Technical Specification." In other words these items requested a price for performing the same work at an alternate time, that is, other than during "daylight hours."

Although CTI recognizes that an award would not be made for both alternative periods of performance, the firm argues that for evaluation purposes these bid items must be included in a single total evaluated price. CTI cites Section D-3(b)A of the IFB which states:

"Bids \* \* \* will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity."

The Air Force asserts that items 0001a, 0101a, and 0201a are not primarily option quantities but, rather, are alternate items. These items were included to determine if it would be advantageous to the Government to permit the identical work specified in items 0001, 0101 and 0201 to be performed at other times. The Air Force states that the solicitation envisioned award of either 0001 or 0001a, 0101 or 0101a, and 0201 or 0201a. The Air Force cites the note to Section E which states:

"The Government further reserves the right to make award of the alternate item as set forth in the solicitation, when it is determined that the alternate item is in the best interest of the Government, price and other factors considered."

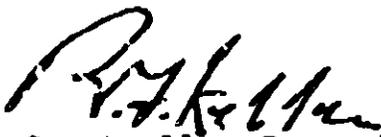
Option quantities relate to continued performance for periods of time subsequent to the basic contract performance period specified in the contract, during which the Government may obtain continued contract performance by renewing the contract. "Alternate" items, in contrast, are items upon which bids are requested by the Government to determine whether the work required by the Government could be performed for a lower price using alternate methods of performance. In this case, items 0001a, 0101a, and 0201a were "alternate" items.

The protester alleges only that its bid would be low if the combined total of all alternative items is evaluated. However, such an evaluation would be duplicative and not reflective of the true cost to the Government. In our opinion there is nothing in the solicitation that reasonably suggests that the Government would effect such an evaluation method.

This Office has held that the lowest bidder must be measured by the total and actual work to be awarded. Any measure which incorporates more or less than the work to be contracted for in selecting the lowest bidder does not obtain the benefits of full and free competition required by the procurement statutes. Chemical Technology Inc., B-187940, February 22, 1977, 77-1 CPD 126; 50 Comp. Gen. 585 (1977). We have held that a request for alternate bids is solely for the benefit of the Government. 42 Comp. Gen. 61 (1962); 34 *id.* 633 (1955). Consequently, we find no merit to the protester's contention that the low bidder should have been determined by combining the total of all alternative bid items irrespective of the items actually to be awarded.

CTI finally contends that the Air Force should have exercised an option in its prior contract with CTI rather than award a new contract while a protest was pending. This Office will not consider an incumbent contractor's contention that an agency should have exercised a contract option rather than conduct a competitive procurement. See C. G. Ashe Enterprises, 56 Comp. Gen. 398 (1977). In any event, as explained above there is no merit to the protest and the protester, therefore, was not prejudiced by the award.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States