



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Mark Dunning Industries, Inc.

File: B-289378

Date: February 27, 2002

Karl Dix, Jr., Esq., Smith, Currie & Hancock, for the protester.
Maj. Ralph J. Tremaglio, III, and Col. Michael R. Neds, Department of the Army, for the agency.

Louis A. Chiarella, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a solicitation for trash collection services, requirements that offerors employ an individual household weighing system (in order to provide the agency with data on the trash and recycling habits of family housing residents) and utilize a specific landfill site are not unduly restrictive where the requisite weighing system and the landfill site are available to all prospective offerors.

DECISION

Mark Dunning Industries, Inc. protests the terms of request for proposals (RFP) No. DAKF23-01-R-0204, issued by the Department of the Army for trash collection services at Fort Campbell, Kentucky. Dunning asserts that the requirements for an individual household trash weighing system and the mandatory use of a particular landfill site are unnecessary to meet the agency's needs.

We deny the protest.

The RFP contemplates the award of a fixed-price contract for a base year, with four 1-year options, to provide refuse collection and recycling services at Fort Campbell, Kentucky. The solicitation's scope of work includes the installation's industrial complex, hospitals, and training locations, as well as the on-post Army Family Housing (AFH) areas. The RFP provides offerors with estimated quantities of work,

and states the Army's objective to reduce by 40 percent by 2005 the volume of solid waste that is disposed in landfills.¹ RFP, tech. exh. 2; amend. 3, § C.1.

On November 21, 5 days before the amended RFP's closing date for receipt of proposals, Dunning protested various aspects of the solicitation to our Office as unduly restrictive or in excess of the agency's needs.²

Dunning first challenges the solicitation requirement for an individual household trash weighing system. The RFP requires offerors to provide trash trucks equipped with an on-board computerized weighing system capable of automatically recording the amounts of refuse and recycling produced by each AFH household. RFP amend. 3, § C.4.2. Specifically, the contractor is to install both indicating elements and radio frequency transponder devices in each of the 4,886 96-gallon refuse containers and 4,240 64-gallon recycling containers used by AFH residents.³ *Id.*; RFP amend. 3, §§ B.0002AA-AD; B.0002AF. As the trash truck's rear tipper raises each refuse container, the scale mounted to the body of the truck weighs the full container. The weight is then recorded and transmitted by the container's radio frequency transponder to the computer system in the truck's cab. After emptying the contents of the refuse container into the truck, the container is then again weighed empty, so that a net weight can be computed and recorded, before returning the container to the ground (a process requiring 6 to 9 seconds). Agency Report, Tab D.8, Specification for Rear Tipper Scale System, at 1. An identical weighing and recording process is used for the recycling containers. The on-board computerized weighing system must also generate reports listing each container, the weight of the refuse or recyclable materials, the date and time of collection, and the disposition (*e.g.*, landfill, recycle station). The contractor is to provide the reports, unaltered, to the agency on a daily basis. RFP amend. 3, § C.4.2.

¹ The impetus for the agency's trash reduction goal is a May 13, 1998 Department of Defense (DOD) policy memorandum establishing that "[b]y the end of [fiscal year] 2005, ensure the diversion rate for non-hazardous solid waste is greater than 40%, while ensuring integrated non-hazardous solid waste management programs provide an economic benefit when compared with disposal using landfilling and incineration alone." The DOD policy also requires each military installation to report annually its total solid waste diversion rate. Agency Report, Tab D.7, DOD Pollution Prevention Measure of Merit (May 13, 1998), at 1.

² On November 26, the agency again amended the RFP and extended indefinitely the proposal closing date, pending our Office's resolution of Dunning's protest. RFP amend. 5.

³ The numerical disparity between refuse and recycling containers results from the fact that the larger AFH households are provided more than one refuse container.

The protester argues that this requirement is costly and unnecessary because the pricing schedule provides that the contractor will be paid on the basis of total refuse disposed of, as calculated by the landfill, and not upon the individual weights of trash collected.⁴ Dunning points to the fact that the agency can determine the total amounts of AFH refuse and recycling, and thus the associated diversion rate, from the information generated under the current contract without this new requirement. Dunning also contends that there are methods far easier and cheaper than an individual household weighing system to discern the recycling efforts of AFH households.⁵

In response, the agency maintains that the requirement for an individual household trash weighing system is an essential part of the installation's waste management program. The agency acknowledges that the pertinent DOD policy applies only to the military installation as a whole, and does not dictate the method by which installations achieve the established trash reduction goal. Nevertheless, as part of its waste management efforts, the Army has decided at Fort Campbell to attempt enforcement of the 40 percent recycling goal on each on-post household by monitoring each household's trash and recycling habits. By gathering information on the amounts of refuse and recycling of each family residing on post, the Army can then know specifically those households where recycling rates are low. Weighing only the total amounts of AFH refuse and recycling does not achieve this same result. The Army finally notes, and the protester does not dispute, that the individual household trash weighing system is readily available to all offerors.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. However, in preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 10 U.S.C. § 2305(a)(1)(A)(i), (B)(ii) (2000). Where a protester challenges a specification as unduly restrictive, the procuring agency has the responsibility of establishing that the specification is reasonably necessary to meet its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the

⁴ Dunning contends that the cost for the challenged requirement is approximately \$750,000, a figure based on the purchase of the system's components and the expenses associated with the additional trucks and crews necessary to offset the slowness of the individual container weighing system. The Army contends, based upon the assumption that no additional trash trucks and crews would be necessary, that the cost for the individual household weighing system requirement is approximately \$229,575. Memorandum to Contracting Officer 2-3 (Jan. 18, 2002).

⁵ Dunning suggests that a digital camera would be sufficient to document those AFH locations where recycling efforts are low. Protester's Comments at 5.

explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. See AT&T Corp., B-270841 et al., May 1, 1996, 96-1 CPD ¶ 237 at 7-8.

Here, Dunning is essentially challenging the agency's decision that it needs to weigh each household's refuse and recyclables. While we understand that the protester believes that the agency's decision is irrational (that the weighing of each household's trash is costly, inefficient, and ineffective), this assertion does not state a valid basis of protest. In our Office's review of solicitations, as explained above, we consider whether there is an undue restriction on competition. Here, Dunning has made no showing that the agency's challenged requirement is restrictive of competition, given that the trash weighing system is equally available to all potential competitors.⁶ As such, Dunning's challenge is not for resolution by our Office.⁷ See APTUS Co., B-281289, Jan. 20, 1999, 99-1 CPD ¶ 40 at 4; AT&T Corp., supra.

Dunning also challenges the RFP requirement that offerors use only the Bi-County Regional Landfill for refuse disposal. The protester argues that there is no basis for this requirement and that it eliminates the competitive pressure on landfills to keep rates low.

We find that the agency's decision to require that offerors use a specific landfill site is unobjectionable because it is reasonably necessary to satisfy a legitimate need of the government. It is undisputed that the disposal of Fort Campbell's refuse occasionally results in the unintended disposal of unexploded ordnance. This situation necessitates the dispatch of an Army explosive ordnance disposal unit to handle the situation. The Bi-County Regional landfill is located approximately 6 miles from post, and is 34 miles closer than the next nearest landfill. The close proximity permits the Army to respond quickly, while preserving the ability to respond to other exigencies that may arise. The agency also references "established

⁶ Dunning also reasons that the data generated by this weighing system will be inaccurate and not entirely usable because large volumes of refuse located outside of the containers will not be weighed. However, the RFP requires the contractor to refill and reweigh the container with any refuse within 10 feet of the container. RFP amend. 3, § C.5.2.3.6.

⁷ Dunning also argues that the Army has not complied with the economic benefit analysis as required by the same DOD policy upon which the agency relies for its weighing system requirement. However, we do not review a protest alleging violation of an internal agency policy, since this is a matter of compliance with executive branch policy, rather than statute or regulation. Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81 at 15.

partnerships for training of munitions handling and recycling support” with this landfill site. Contracting Officer’s Statement at 6. Additionally, as all prospective offerors have equal access to the required landfill site, the agency’s requirement is not restrictive of competition.⁸

Dunning finally objects to the RFP’s pricing schedule for landfill disposal fees. The protester asserts that, as the solicitation requires offerors to bid a lump sum amount, but will base payment on the basis of the actual landfill fees invoiced, the RFP is defective because offerors could “bid low” and “get reimbursed high.”

This argument is based on a misapprehension of the RFP. The solicitation, as amended prior to the filing of the protest, requires that offerors use predetermined or “plug-in” figures for the landfill disposal fees, although contractors will be reimbursed only the actual fees charged by the Bi-County Regional Landfill. RFP amend. 3, §§ B.0001AA-AB. The required use of plug-in figures, when combined with the agency’s determination to make payment to the contractor based on the actual landfill fees invoiced, precludes the potential problem that Dunning advances in its protest.

In its comments on the agency report, the protester contends that the RFP’s required use of plug-in figures for the landfill disposal fees is also improper essentially because it neutralizes a competitive advantage that Dunning currently possesses vis-à-vis its competitors in using this facility and that “normalizing” the prices offered for landfill fees violates the statutory requirement that price be considered in every evaluation. These arguments are untimely because this requirement was unchanged from when Dunning filed its protest, yet these arguments were not made until Dunning filed its comments. Our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation of protest issues. PCB Piezotronics, Inc., B-254046, Nov. 17, 1993, 93-2 CPD ¶ 286 at 5. A protester may not delay raising additional protest grounds, where, as here, the protester should have been aware of those grounds at the time of filing its initial protest, notwithstanding that such arguments were filed prior to the closing date for receipt of proposals because the agency had extended the closing date because of the protest. Marine Indus., Ltd., B-225722.3, July 10, 1987, 87-2 CPD ¶ 30 at 2.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁸ To the extent that Dunning argues that the Army may incur additional costs because of the absence of competition between landfills, this does not state a valid basis of protest, since there is no apparent attendant competitive prejudice.