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DECISION



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

40343

FILE: B-179174

DATE: January 15, 1974

MATTER OF: Chemical Technology, Inc. - Checker Service Division

DIGEST: In RFP for mess attendant services which requires offerors to justify submission of offers proposing less than 95 percent of Government's estimated manning requirement, rejection of sub-95-percent offer upon failure to submit justification, while going to offeror's ability to perform contract is not determination of nonresponsibility. See 52 Comp. Gen. 198 (1972).

In procurement of mess attendant services, where successful offeror's price supports its offered hours primarily because vacation and holiday benefits were not included in establishing offeror's costs, solicitation is defective for failure to state and use a realistic figure for this factor. However, award need not be canceled since GAO is unable to say that successful offeror's basic labor expense would have exceeded its dollar/hour rate had a proper factor been used. See 53 Comp. Gen. \_\_\_\_ (B-179171, November 30, 1973).

On May 10, 1973, the Naval Air Station, Corpus Christi, Texas, issued request for proposals (RFP) N00216-73-R-0109. Award of a contract thereunder was subsequently made to ABC Management Services, Inc. The subject RFP sought proposals for furnishing mess attendant services at Chase Field, Beeville, Texas.

The 10 proposals submitted in response to the RFP were evaluated pursuant to section D.4 of the solicitation. That section states:

"EVALUATION OF OFFEROR'S MANNING CHARTS AND PRICES:

"(a) The Manning levels reflected in the offeror's Manning charts must be sufficient to perform the required services. For the purpose of evaluating proposals and establishing a competitive range for the conduct of negotiations, the Government estimates that satisfactory performance will require total Manning hours (including management/supervision) of approximately 150 on a representative weekday and approximately 140 on a representative weekend day/holiday. Submission of Manning charts whose total hours fall more than 5% below

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these estimates may result in rejection of the offer without further negotiations unless the offeror clearly substantiates the manning difference with specific documentation demonstrating that the offeror can perform the required services satisfactorily with such fewer hours.

"(b) Further evaluation of the offerors' manning charts will be based on the following criteria:

"(1) the manning distribution in space/job categories prior to, during, and after meal hours and at peak periods must represent an effective, well planned management approach to the efficient utilization of manpower resources in performing the services required; and

"(2) the hours shown in the manning charts must be supported by the price offered when compared as follows. The total hours reflected in the manning charts for the contract period (i.e., based on a contract year containing 252 weekdays and 113 weekend days/holidays) will be divided into the total offered price (less any evaluated prompt payment discount) to assure that this dollar/hour ratio is at least sufficient to cover the following basic labor expenses:

"(i) the basic wage rate;

"(ii) if applicable, fringe benefits, (health and welfare, vacation, and holidays); and

"(iii) other employee-related expenses as follows:

"(A) FICA (including Hospital Insurance) at the rate of 5.2%;

"(B) Unemployment Insurance at the rate set forth by the offeror in the provision in Section B of this solicitation entitled 'Offeror's Statement as to Unemployment Insurance Rate and Workmen's Compensation Insurance Rate Applicable to His Company'; and

"(C) Workmen's Compensation Insurance at the rate set forth by the offeror in the provision referred to in (B) above.

"Failure of the price offered to thus support the offeror's manning chart may result in rejection of the proposal without further negotiations.

"(c) Award will be made to the responsible offeror whose proposal, meeting the criteria set forth in (a) and (b) above, offers the lowest evaluated total price.

"Note to Offeror: The purpose of the above price-to-hours evaluation is to assure:

"(i) that manning charts submitted are not unrealistically inflated in hopes of securing a more favorable proposal evaluation; and

"(ii) that award is not made at a price so low in relation to basic payroll and related expenses established by law as to jeopardize satisfactory performance.

"Nothing in this Section D shall be construed as limiting the contractor's responsibility for fulfilling all of the requirements set forth in this contract."

Checker's proposal, offering 49,387.5 man-hours, was found not to be in accordance with section D.4 since it offered less than 95 percent of the Government's estimate without offering any specific documentation to demonstrate that performance could be accomplished at that figure. Consequently, Checker's offer was not acceptable but was considered reasonably susceptible of being made acceptable if the manning charts were either revised upward or Checker substantiated its manning differences. Checker was thus considered to be within the competitive range.

Upon Checker's subsequent failure to justify its low manning figure, the contracting officer exercised his discretion and rejected Checker's proposal.

In other circumstances our Office has noted that an offeror may be ousted from the competitive range, where its evaluated offer is determined to be such that performance of the contract would be jeopardized if award was made to that offeror on the basis of his proposal. 52 Comp. Gen. 198 (1972).

In 52 Comp. Gen., supra, at page 206, we held that:

"\* \* \* Whether a proposal is initially determined to be within the competitive range or whether the proposal is initially rejected, the contracting agency should not be required to hold discussions with an offeror once it is [sic] been determined that his proposal is outside the acceptable range. See B-174436, April 19, 1972, and B-173967, February 10, 1972, where we upheld administrative determinations to exclude firms initially determined to be within the competitive range from further award consideration after their

revised proposals were found to be technically unacceptable and no longer within the competitive range."

Checker contends that the award to AEC was improper since ABC's manning charts are inflated and not supported by its price. AEC offered 52,207.5 hours at a net price of \$139,048.20. Therefore, its dollar/hour ratio is \$2.66. We compute its basic labor expense to be \$2.58 absent allowance for vacation and holidays (basic wage rate - \$2.27; health and welfare - \$0.12; FICA - \$0.12; Unemployment - \$0.02; Workmen's Compensation - \$0.05). If vacation and holiday benefits were to have been evaluated at the normal rate of 5 percent of the basic wage then ABC's basic labor expense becomes \$2.69. Such a computation was not made, however.

In a similar situation also involving your firm (53 Comp. Gen. (B-179171, November 30, 1973)), we stated that:

"MBM's dollar/hour ratio (\$2.69) covers its calculated basic labor expense less vacation and holiday benefits (\$2.67). However, unless vacation and holiday benefits were figured at or less than .36 percent of the minimum wage rate, MBM's dollar/hour ratio would not cover its total basic labor expense as required by the RFP. As noted above, it is customary to compute vacation and holiday benefits at approximately 5 percent of the minimum wage. While the application of this 5 percent figure is in no way mandatory in computing these expenses, we think some realistic figure should have been stated in the RFP to advise offerors of the factor that would be used to compute each offeror's basic labor expense. We have been advised that in this instance no labor expense computation has been made utilizing any figure for vacation and holiday benefits.

"We believe that this procurement was defective for the reasons indicated above. However, we are unable to determine whether or not MBM's dollar/hour ratio really covered its total basic labor expense. Therefore, we cannot conclude that its basic labor expense would have exceeded its dollar/hour ratio if a percentage factor had been stated in the RFP and had been applied to the MBM offer. Parenthetically, we observe that all offerors were treated alike with respect to the failure to apply any figure. Further, we note that the purpose of the evaluation criteria is to prevent unrealistically inflated manning charts and an award at a price so low that satisfactory performance would be jeopardized. In this connection, although the criteria were not strictly applied, it would appear that the purpose of the criteria has been met in that MBM apparently is performing the contract satisfactorily at its offered price."

We find the reasoning expressed in B-179171, supra, is equally applicable to the present case. Indeed, in this situation we further note that vacation and holiday benefits could be figured at or below 3.5 percent of the minimum wage and ABC's offer would still be within the section "D" criteria.

Checker also asserts the award was arbitrary and capricious as the same evaluation criteria were used to reject its offer and to accept ABC's offer. Specifically, it contends that all offerors were not treated equally since both ABC and Checker offered acceptable weekday manning levels (Checker's was 94 percent of the Government's estimate and ABC's was 100 percent) and both submitted weekend manning levels below 95 percent (Checker's was 87 percent and ABC's was 91 percent); yet, only Checker was rejected while ABC got the award.

Section D.4(a) of the RFP specifically states that:

"\* \* \* Submission of manning charts whose total hours fall more than 5% below \* \* \* [the Government's] estimates may result in rejection of the offer without further negotiations \* \* \*"

While there is uncertainty in the interpretation to be given this language, we believe that the most logical and reasonable construction to be made of it contemplates making a comparison of each offeror's proposed manning level for each representative day with the Government's estimate for that respective representative day. The tenor of the section sought to require the submission of offers which demonstrated adequate staffing (manning levels close to the Government's estimates) on a representative weekday and a representative weekend/holiday.

However, we note that the Navy generally has made a comparison of the offeror's total offered man-hours for the year vis-a-vis the Government total estimated man-hour needs for the year. See 53 Comp. Gen. \_\_\_\_ (B-178707, October 2, 1973). This method is not a proper one to achieve what we find to be the desired end of section D.4(a)--assuring sufficient manning at all times--since it can lead to distorted offers which technically comply with the total 95-percent level. Indeed, it is possible that an extremely low man-hour figure for representative weekend/holiday may in essence be counterbalanced by a relatively high weekday figure; thus seemingly assuring adequate weekday performance but casting doubt on the offeror's weekend capabilities.

While we disagree with the interpretation given this section by the Navy, we note that our interpretation is not the only reasonable one. Reading the RFP as a whole, we can see how the agency concluded that a comparison of total offered manning with total estimated need was contemplated. As such, while we would caution against continued utilization of such an improper method, we will not recommend cancellation of the present solicitation for we cannot say that the

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contracting officer acted improperly in rejecting Checker's offer (92 percent of the total Government estimate) and accepting ABC's offer (97 percent of the total Government estimate).

For the reasons set forth above, the protest is denied.

  
R.M. Lerner  
Deputy Comptroller General  
of the United States