



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Industrial Maintenance Services, Inc.;
Logistical Support, Inc.

File: B-235717; B-235717.2

Date: October 6, 1989

DIGEST

1. Where offeror fails to furnish pricing documentation expressly requested and necessary for agency to conduct price realism analysis, agency properly rejected proposal on ground it could not find proposed price realistic despite offeror's assertion that it could perform the required work at that price.
2. Where offeror fails to furnish information specifically requested by agency in request for best and final offers (BAFOs), the agency need not reopen negotiations and request another round of BAFOs to afford the offeror another opportunity to submit the requested information.

DECISION

Industrial Maintenance Services, Inc., and Logistical Support, Inc., protest the Department of the Navy's award of a contract to United Food Services under request for proposals (RFP) No. N00612-89-R-0047. Both protesters question the Navy's rejection of their respective proposals and the subsequent award to a higher-priced offeror. We deny the protests.

The solicitation contemplated the award of a firm, fixed-price contract to provide mess attendant services at the Naval Air Station, Memphis, Tennessee. The solicitation, as initially issued, contained a detailed description of the services to be performed and included the applicable Department of Labor wage determination, the wages and fringe benefits under which were prescribed by the predecessor contractor's collective bargaining agreement. The solicitation also required the submission of manning charts indicating the personnel the contractor would employ to perform the work. Award was to be made to the low, responsive--that is, technically acceptable--offeror.

Twenty-seven firms responded to the RFP, submitting proposals ranging from a low monthly price of \$39,485 to a high of \$286,100. The Navy solicited best and final offers (BAFOs) by amendment, and in view of the wide disparity in initial prices, also cautioned offerors that proposals found unrealistic in terms of price would be rejected. The BAFOs submitted by the offerors, however, varied in price by more than \$150,000 per month, and the Navy, concerned that this continued disparity in price reflected a lack of understanding of the solicitation requirements, decided to issue an amendment reopening the competition for a second round of BAFOs. Now offerors also were requested to include in their new BAFOs a breakdown of the projected daily man-hours necessary to perform the contract, as well as an annotated, loaded compensation rate specifying the wage rates, fringe benefits and insurance to be paid employees as determined by the applicable wage determination. The Navy also advised offerors that the estimated minimum staffing level for contract performance was 14,000 man-hours per month, and warned that proposals containing less than 98% of this estimated manning level would be rejected as unrealistic.

Only 16 of the original 27 competitors responded to this request for revised BAFOs; all but one of these firms, including both protesters and the awardee, proposed to perform the work with the requisite staffing levels. Industrial Maintenance submitted the third low revised offer at a price of \$114,540 per month, Logistical Support was fourth low at a monthly price of \$123,167, and United Food Services was seventh low at a price of \$126,585 per month. The Navy rejected as unrealistic the proposals of the six low offerors, finding that each had failed to make provision for paying all of the wages and fringe benefits required by the applicable wage determination, and that it thus could not determine that the proposed prices in fact were realistic; the Navy thus made award to United as the low, acceptable offeror.

Specifically, the Navy found that Industrial Maintenance's monthly price of \$114,540 did not include costs for cashiers, shift differential pay requirements, employee vacation and sick pay, uniform allowances and amounts for overhead, general and administrative expenses and profit; the Navy thus determined that either Industrial Maintenance's price did not include amounts to pay employees according to the terms of the wage determination, or that if it planned to abide by the terms of the wage determination, its price was insufficient to support its proposed staffing level. Similarly, the Navy found that Logistical Support's proposal did not include costs for uniform allowances as

well as amounts for overhead, general and administrative expenses and profit.

INDUSTRIAL MAINTENANCE PROTEST

While conceding that its offered price did not include amounts for such items as shift differentials and holiday and vacation pay--Industrial Maintenance denies that its price similarly did not contain a uniform allowance--Industrial Maintenance contends that this omission did not warrant the rejection of its offer. Industrial Maintenance argues that the solicitation only required the contractor to provide its employees with these fringe benefits, not that the contract expressly include costs for these items in its proposed price. Industrial Maintenance states that it did not take exception to this requirement and thus maintains that its proposal was fully responsive to the terms of the solicitation. The Navy's rejection of its offer, Industrial Maintenance asserts, therefore must have been based on a finding that it was nonresponsible--i.e., that it was not capable of performing the required services; given its status as a small business, Industrial Maintenance contends that this determination should have been referred to the Small Business Administration under its certificate of competency (COC) procedures. Finally, Industrial Maintenance alternatively argues that if the Navy properly rejected its proposal as unrealistic, the Navy failed to conduct meaningful discussions in that the Navy did not mention the need to account for such items as shift differential pay, vacation and holiday pay, overhead and profit.

We find the proposal was properly rejected.

We note that procurements for mess attendant services historically have posed problems for the Navy. Differences in proposals often have evidenced a lack of understanding of the solicitation requirements and the effort necessary to perform these services. In such circumstances, where award selection is to be based on price alone, the performance of a price realism analysis allows the Navy to ascertain whether all offerors fully understand the services required as well as the staffing necessary to maintain the continuity of services. See Military Base Management, Inc., 66 Comp. Gen. 179 (1986), 86-2 CPD ¶ 720. Further, where a solicitation makes clear that an offeror must furnish adequate information to permit an effective realism analysis and places offerors on notice that offers may be rejected if prices are not realistic, proposals that do not establish that proposed prices are realistic may be rejected.

The Navy's realism analysis of Industrial Maintenance 's proposal and the eventual rejection of its proposal were consistent with the solicitation which, as amended, placed offerors on notice of the Navy's intent to evaluate proposals for realism based on the required information; as acknowledged by Industrial Maintenance in its revised BAFO,^{1/} the amended solicitation expressly required offerors to itemize costs for wages and fringe benefits and to specify proposed staffing levels for contract performance, and also cautioned that proposals not including this information could be rejected. Industrial maintenance did not comply with this requirement, and its revised price did not include costs for such required items as cashiers, shift differential pay and vacation and sick pay, as well as amounts for overhead, general and administrative expenses and profit; we thus agree with the Navy that it was unclear whether Industrial Maintenance in fact intended to comply with the terms and conditions of the applicable wage determination, and whether it understood, and would in fact provide during performance the staffing levels necessary to fulfill the contract requirements.

Industrial Maintenance argues that it planned to utilize supervisory personnel (not subject to the terms and conditions of the wage determination) to perform portions of the contract, and that by absorbing certain overhead costs, it could have met the contract requirements at its offered price. However, while the proposal listed some management personnel on its manning chart, it did not explain how this arrangement offset any of the omitted cost elements. This being the case, we think the Navy reasonably concluded that the realism of the offered price was not demonstrated in the firm's proposal. Realism determinations are necessarily judgmental, and unless they are clearly unreasonable they are not subject to objection. See Ocean Data Equipment Div. of Data Instruments, Inc., B-209776, Sept. 29, 1983, 83-2 CPD ¶ 387.

We also reject Industrial Maintenance's argument that the Navy failed to conduct meaningful discussions. As stated above, the revised BAFO request expressly required offerors to itemize costs for wages and fringe benefits and cautioned that proposals would be rejected if not realistic. The

^{1/} Industrial Maintenance's revised BAFO, in pertinent part, states that "offeror[s] will show wage rates, fringe benefits and insurance [and] [a]ny offeror who does not include these items should be ruled nonresponsive."

Navy was not required to reiterate this clear requirement in further discussions. Picker Int'l, Inc., 68 Comp. Gen. 265 (1989), 89-1 CPD ¶ 188.

LOGISTICAL SUPPORT PROTEST

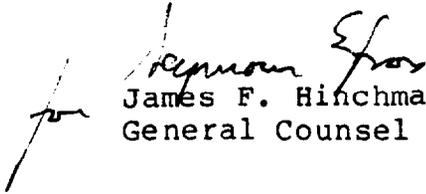
Logistical Support similarly contends that its proposal should not have been rejected on grounds that its offered price failed to contain amounts for uniform allowances, overhead and profit. Logistical Support concedes that its proposal did not include costs for uniform allowances, but essentially argues that its failure to include such costs stemmed from an ambiguity in the solicitation. In this regard, Logistical Support states that the wage determination as initially included in the solicitation, provided for payment of a uniform allowance in the amount of \$.35 per hour only in instances where employees were not furnished "wash and wear" uniforms. When this wage determination was subsequently amended to comply with the governing collective bargaining agreement, which in all instances requires payment of a uniform allowance in the amount of \$.10 per hour, the "wash and wear" exception to payment of this allowance inadvertently was not deleted. Since it was not furnished a copy of the collective bargaining agreement and it otherwise had no knowledge of its contents, Logistical Support argues, its proposal should not have been rejected as unrealistic based essentially on its failure to comply with the terms of this agreement.

The failure to amend the wage determination in accordance with the governing collective bargaining agreement does not excuse Logistical Support from complying with the terms of the agreement. It is the responsibility of all prospective offerors to ascertain the details of any collective bargaining agreement and consider them in calculating their offers. See Kime-Plus, Inc., B-229990, May 4, 1988, 88-1 CPD ¶ 436. Thus, Logistical Support was responsible for becoming familiar with the collective bargaining agreement, and its failure to do so is not reason for questioning the agency's rejection of the firm's offer for failure to include certain cost elements from that agreement.

Moreover, we think the firm's failure to provide for profit and overhead gave the agency sufficient cause to question whether the firm would perform as agreed, given the obvious incentive the firm would have to reduce performance costs. Therefore, for the same reasons as stated above, we have no reason to question the Navy's determination regarding the

realism of Logistical Support's proposed price; we conclude that the Navy's rejection of Logistical Support's offer was proper.

The protests are denied.


James F. Hinchman
General Counsel