PIETROVITO

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eagle Management, Inc.

File: B-237685

Date: January 5, 1990

DIGEST

1. Protest allegation that solicitation provision, which requires contractor to lodge its employees in a privately operated facility, places undue cost risk on offerors is denied where the solicitation provides that the contractor's costs of lodging will be reimbursed by the government and any other costs to the contractor are easily calculable.

2. Protest that operator of lodging facility has a competitive advantage is denied where protester does not show what advantage the operator is alleged to have or that the alleged advantage was caused by any unfair action by the government.

DECISION

Eagle Management, Inc., protests the terms of request for proposals (RFP) No. N68836-89-R-0275, issued by the Department of the Navy for mess attendant services at the Naval Station and Naval Air Station at Guantanamo Bay, Cuba. Eagle argues that the solicitation requirement that the contractor lodge its employees at a privately operated facility subjects offerors to undue costs and risk, and that the operator of the facility has a competitive advantage and should be excluded from the competition.

We deny the protest.

The RFP contemplates the award of a firm, fixed-priced contract for mess attendant services for a base year and two option years. Offerors were informed that the lowest priced, technically acceptable offer for all items would be selected for award. The RFP also informed offerors that the contractor's employees would be lodged at a floating facility, which is being operated for the Navy by Kellogg Plant Services, Inc. A copy of Kellogg's lease agreement with the Navy was provided with the RFP, and offerors were

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informed that the contractor would be required to enter into a lodging agreement with Kellogg, subject to the stated room rates and conditions.

Eagle principally objects to the requirement that the mess attendant contractor lodge its employees at this floating facility. Eagle, the incumbent contractor, states that under its current contract the Navy furnished rent-free housing in government barracks.1/ Eagle argues that it cannot estimate its lodging costs because the floating barge room rates are based upon occupancy and are subject to quarterly adjustment. Eagle contends that the costs of lodging will fluctuate over the term of the contract. In addition, Eagle objects to various requirements in the lodging agreement, for example, that the contractor provide a security deposit for each employee berthed at the facility and that the contractor indemnify Kellogg against claims arising out of the lodging agreement and obtain liability insurance. Eagle argues that these provisions put inordinate risk in cost of performance on the successful contractor.

Eagle's arguments are without merit. The RFP provides that the contractor will invoice the Navy on a monthly basis for costs of lodging at the facility. Thus, the solicitation contemplates that the contractor will receive this lodging rent-free, and the potential fluctuation of room rates will not entail any additional cost or risk to the contractor. Furthermore, the RFP sets out maximum room rates for each category of lodging and provides that offerors need only estimate the amount of staff required to be lodged to calculate their lodging costs. Accordingly, the possible fluctuation of room rates should pose no risk to Eagle.

Also, while offerors must bear the expense of obtaining liability insurance and the costs associated with "fronting" the room rent and deposits and invoicing the Navy, these requirements do not present any undue risk since Eagle should be able to reasonably project these costs based upon its estimated staffing needs. In any event, there is no

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1/ Eagle, however, admits that the availability of the government furnished on-base housing has never been adequate to meet the housing requirements of the various base contractors and that these facilities were provided on an "as is" basis, requiring the contractor to bear the costs of minor repair and utilities.

requirement that a solicitation eliminate all performance uncertainties and risk; rather, offerors properly may be left to exercise some business judgment in projecting their costs and preparing their proposals. See AAA Eng'g & Drafting, Inc., B-236034, Oct. 31, 1989, 89-2 CPD ¶ 404.

Eagle also argues that Kellogg should not be allowed to compete for award under the RFP. Eagle apparently believes that Kellogg would have a competitive advantage because Kellogg operates the lodging facility for the Navy. Eagle, however, has not shown what advantage Kellogg allegedly has, and we fail to see any advantage since the mess attendant contractor will be reimbursed for its lodging costs by the Navy. Furthermore, the Navy and Kellogg state that Kellogg, like any other contractor, would be required to enter into a lodging agreement at the facility, subject to the same room rates and conditions. In any event, since Eagle does not argue that Kellogg's alleged advantage has resulted from unfair action on the part of the government, there is no basis to require the Navy to exclude Kellogg from the competition. See Advanced Sys. Technology, Inc., B-235327, Aug. 29, 1989, 89-2 CPD ¶ 184.

The protest is denied.

for Seymour Efros

James F. Hinchman
General Counsel