

A. Benyam



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: HLJ Management Group, Inc.

File: B-242201.3

Date: March 4, 1992

Jay L. Cohen, Esq., for the protester.
William R. Purdy, Esq., Ott, Purdy & Scott, for American Service Contractors, L.P., an interested party.
Herbert F. Kelley, Esq., and Capt. Gerald P. Kohns, Department of the Army, for the agency.
Aldo A. Benyam, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contention that agency improperly required protester during discussions to change its proposed method of operation and increase manning levels for certain positions related to a food services contract, causing the protester to increase its proposed cost, is denied, where the record shows that the agency properly pointed out during discussions staffing deficiencies in the protester's proposal; any resulting increase in the protester's cost was necessary to cover the cost of manning the required positions to meet the agency's stated needs.

DECISION

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HLJ Management Group, Inc. protests the award of a contract to American Service Contractors (ASC) under request for proposals (RFP) No. DABT35-90-R-0018, issued by the Department of the Army to staff, manage, and operate various dining facilities at Fort Dix, New Jersey. The protester contends that, during discussions, the agency improperly required HLJ to change its proposed method of operation and increase its manning levels, causing HLJ to increase its cost in its best and final offer (BAFO), so that HLJ's final cost was higher than the awardee's.

We deny the protest.

BACKGROUND

The RFP was issued on September 5, 1990, as a total small business set-aside, contemplating the award of a cost-plus-award-fee contract for a phase-in period, and a base period,

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with up to three 1-year options. Section M of the RFP, as amended, listed the following technical evaluation factors: (1) organization and staffing; (2) quality control; (3) general management; and (4) phase-in. Cost realism was listed as a separate evaluation factor. The RFP explained that factor No. 1 was considerably more important than factor Nos. 2 and 3, which were equal in weight, and that factor No. 4 was least important. The RFP further stated that technical excellence and cost realism would be considered more important than proposed cost, and that technical proposals would receive numerical scores while cost would be evaluated for realism but not point-scored. Offerors were required to submit separate cost and technical proposals. Award was to be made to the responsible offeror whose proposal offered the best value to the government.

Section C-1 of the RFP generally described the scope of work under the contract, and specified personnel categories required to perform the contract. Sections C-4 through C-7 of the RFP described in detail specific contractor tasks including full food services, dining facility attendant (DFA) services, and management and food preparation services.

As relevant to HLJ's protest, for example, section C-1 of the RFP required offerors to provide dining facility managers for each dining facility covered under the contract to oversee and manage the food services operation. The RFP required the dining facility managers or designated assistants to be present during all operating hours of their respective dining facility, including weekends, and also called for DFA supervisors for each covered facility. Section C-1 of the RFP further required cooks and bakers who would be required to prepare complete meals and baked goods in high volumes.

Technical exhibit No. 1 to the RFP set forth estimated workload data for the phase-in, base year, and three option periods, and contained relevant information for each dining facility covered by the RFP. The technical exhibit briefly described each facility and its capacity; included the work schedule (e.g., 7 days Sunday through Saturday, or 5 days Monday through Friday), and the serving times for breakfast, lunch, and dinner; and the average number of individuals estimated to be served at each meal. Offerors were required to propose personnel for each facility and for each category designated by the RFP, and at the levels necessary to successfully perform the contract at all dining facilities identified in the RFP.

Based upon the results of an evaluation of the 11 initial proposals by a source selection evaluation board (SSEB), the contracting officer determined that 3 proposals, including

the protester's and the awardee's, were in the competitive range. The contracting officer provided to each offeror within the competitive range a written "Error, Omission, and Clarifications" (EOC), pointing out deficiencies identified by the SSEB in their respective proposals, and requested responses to the EOCs from each.

HLJ received 87 pages of EOCs, most of which concerned deficiencies concerning HLJ's organization and staffing--the most important evaluation factor. For example, some of the EOCs asked HLJ to justify the staff hours shown in its proposal for various positions required by the RFP, such as cook and cook supervisor; other EOCs asked HLJ to substantiate its ability to perform cashier tasks, or to prepare various food products within the proposed hours in accordance with the RFP's statement of work; several EOCs asked HLJ to substantiate its ability to provide DFA and DFA supervisory services, and food servers in specific facilities covered by the contract. Only the protester and the awardee (who received 81 pages of EOCs) responded to the EOCs; the third offeror withdrew from the competition without responding to its EOCs.

After a review of HLJ's and ASC's responses to the EOCs by the SSEB, the contracting officer held oral discussions with HLJ and with ASC to discuss areas in each offeror's proposal that were not satisfactorily addressed in the offerors' written responses to the EOCs. The contracting officer then requested and received BAFOs from the two offerors by the August 12 cut-off date. On October 16, following an evaluation of BAFOs by the SSEB, the contracting officer awarded the contract to ASC. This protest followed.

PROTESTER'S CONTENTIONS AND AGENCY'S POSITION

HLJ contends that the Army required it to increase its cost by indicating during discussions that HLJ must change its proposed method of operation, and by allegedly insisting that HLJ increase certain manning levels in its proposal. Specifically, the protester alleges that during oral discussions, the Army insisted that HLJ needed to add assistant dining facility managers in each of the buildings covered by the contract; that HLJ needed to hire additional DFAs; and that HLJ needed to provide food servers for more staff hours than it proposed.

According to the protester, the Army's alleged "insistence" during oral discussions that HLJ increase its manning levels was arbitrary and capricious, and made solely for the purpose of eliminating HLJ from the competition. The protester asserts that had the Army permitted HLJ to maintain the manning levels it initially proposed, HLJ rather than ASC would have been the successful offeror.

The Army argues that it properly pointed out during discussions staffing deficiencies in HLJ's proposal, and denies ever directing HLJ to change its method of operation or to increase its proposed cost. The agency explains that the staffing shortage concerning the lack of assistant dining facility managers for every full service facility stemmed from its experience that the lead cook simply could not perform his assigned duties and also adequately perform management functions as HLJ proposed. With regard to servers, the agency states that if servers were scheduled only and precisely during the shifts that meals were to be provided in accordance with technical exhibit No. 1 as HLJ proposed, then the servers would have insufficient time for other tasks required to be performed prior to and after the meal shifts. Concerning DFAs, the agency asserts that HLJ simply did not propose sufficient hours to allow for these individuals to perform all of their required duties, which are critically related to health and sanitation.

DISCUSSION

When an agency requires goods or services by means of a negotiated procurement, the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(B) (1988), as reflected in Federal Acquisition Regulation § 15.610(b), requires that, with a narrow exception not relevant here, written or oral discussions be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, and in order for discussions to be meaningful, agencies must point out weaknesses, excesses, or deficiencies in proposals. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425.

The record shows that HLJ did not propose assistant dining facility managers for every full food service facility. In fact, contrary to the RFP's requirements, HLJ did not propose any assistant dining facility managers who would be present during weekends. A comparison of HLJ's proposal with the independent government estimate (IGE) for personnel needed in all of the dining facilities covered by the base year of the RFP reveals that the protester understaffed by approximately 7,000 hours the assistant manager position. The agency therefore reasonably viewed this aspect of HLJ's proposal a significant deficiency, particularly since most of Fort Dix's primary mission--support of Army Reserve units--is accomplished on weekends when HLJ proposed no assistant managers. The agency properly pointed out this deficiency during discussions.

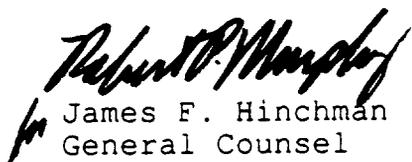
A comparison of HLJ's proposal with the IGE for personnel in all dining facilities covered by the base year of the RFP reveals that HLJ understaffed by approximately 24,000 hours the DFA positions, and understaffed server positions by an

approximately equal amount. The agency estimated that HLJ understaffed DFAs for several dining facilities during the base period alone by over 4,000 man-hours. The agency further estimated that HLJ understaffed the server category in two facilities during the base year by over 800 and 1,400 hours. We think the agency also reasonably viewed these staffing aspects of HLJ's proposal as deficient and properly pointed them out during discussions. See, e.g., Diversified Contract Servs., Inc., B-224152.2, July 27, 1987, 87-2 CPD ¶ 90. The fact that HLJ may have successfully performed other contracts for similar services using the method of operation and manning levels comparable to what it proposed here, as the protester asserts, does not render the agency's actions here unreasonable.

To the extent that HLJ contends that the Army treated it unfairly during discussions, our review of the record reveals no evidence that the agency favored the awardee or treated HLJ differently or inconsistently. The record shows that the agency compared both HLJ's and ASC's proposed manning levels to the government manning estimate for each building and for each required position to determine whether the offerors adequately allocated technically qualified personnel to accomplish the requirements of the RFP. See, e.g., PanAm World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446 (a comparison of proposed staffing to government staffing estimates is an appropriate evaluation technique). Based on that comparison, the agency developed 87 pages of EOCs for HLJ and 81 pages for ASC, and properly pointed out weaknesses and deficiencies in proposed manning levels during discussions with both offerors.

Although HLJ contended that it could satisfactorily accommodate the agency's needs with a level of staffing below the government's estimate, the agency's final judgment was that additional staffing was required for certain buildings and positions. If HLJ disagreed with the agency's judgment, it should have provided sufficient evidence in support for its proposed manning levels in its responses to the EOCs or in its BAFO. HLJ simply failed to do so then, and failed to provide any evidence in the course of these protest proceedings to establish as unreasonable the agency's legitimate concern that HLJ's proposed staffing levels were inadequate.

The protest is denied.


for James F. Hinchman
General Counsel