



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Logistical Support, Inc.

File: B-255073.3

Date: March 15, 1994

Donald E. Barnhill, Esq., Joan K. Fiorino, Esq., and John C. Dulske, Esq., East & Barnhill, for the protester. Anita LeBlanc, Esq., and Donald S. Safford, Esq., Department of the Navy, for the agency. Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although the agency determined the competitive range based solely on price, protest is denied because protester was not prejudiced by elimination from the competitive range, since protester would not have lowered its price sufficiently to become the low-priced offeror, and the contract was to be awarded to the firm submitting the low-priced, technically acceptable offer.

DECISION

Logistical Support, Inc. (Logistical) protests the exclusion of its proposal from the competitive range and the subsequent award of a contract to Food Services, Inc. of Gainesville under request for proposals (RFP) No. N00123-93-R-0236, issued by the Department of the Navy for mess attendant services at the Naval Construction Battalion Center, Port Hueneme, California. Logistical alleges that its proposal was improperly eliminated from the competitive range and that the agency failed to properly evaluate the awardee's proposal.

We deny the protest.

BACKGROUND

The RFP, issued as a small business set-aside, contemplated the award of a firm, fixed-price contract for a base year and 3 option years. Under the RFP, offerors were to price their proposals by completing four pricing schedules--one for the base year and one for each option year. Each schedule required estimated monthly prices for three separate requirement levels: level I, serving 30,000 to

40,000 meals per month; level II, 40,000 to 50,000 meals per month; and level III, 50,000 to 60,000 meals per month.¹

In addition to the pricing schedule, offerors were to provide manning charts and complete a cost proposal breakdown chart for the base year. On the cost proposal breakdown chart, offerors were required to specify, among other things, the wage rates, health and welfare contributions, vacation, holiday and sick pay, uniform allowance, pension contributions, workers' compensation insurance (WCI), and tax allowances for two staff positions and three managerial positions for the base year. The chart also required offerors to indicate in monthly figures their general and administrative and overhead costs as well as expected profit.

The manning charts were required to represent--by half-hour increments--the hours and number of staff to be assigned to cleaning, food handling and management tasks for requirement level I. Four charts were required from each offeror: (1) for Monday through Thursday, (2) for Friday, (3) for Saturday, and (4) for Sunday/Holiday. The completed manning charts were required to reflect minimum staffing of 3,970 hours per month as set forth in the specifications. In addition to the hourly breakdown, offerors also were to provide a total hour estimate. According to the RFP, the manning charts were to be reviewed for evidence of the staffing required by the specifications and could be rejected as technically unacceptable.

The solicitation provided for application of the Service Contract Act of 1965 (SCA) to a contract resulting from the solicitation, essentially obligating the successful offeror to pay employees in accordance with wage determinations issued by the Department of Labor. The solicitation also provided that, in the absence of an SCA wage determination, the collective bargaining agreement (CBA) between the incumbent and the union would apply to the contract and that offerors must consider the economic terms of the CBA. Since no wage determination was issued, wages and benefits to be paid under the contract are to be governed by the CBA. The CBA was included in the solicitation and provided the effective hourly wage for food sanitation specialists and vegetable, meat, and salad preparers, and sick leave benefits and WCI rates. As to sick leave, employees were entitled to paid sick leave accruable on the basis of 1 day for every 2 months worked, not to exceed 6 days per year. WCI benefits were to equal those required under California law.

¹According to the pricing schedule, level I will be required for 4 months of the year, level II for 7 months, and level III for 1 month.

The agency was to conduct a price realism analysis using the required 3,970 work hours per month for requirement level I for the base year and the annotated loaded compensation rates submitted on the cost proposal breakdown chart. The RFP stated that "[f]ailure to submit four (4) [m]anning [c]harts as required and annotated loaded compensation rates . . . will remove your offer from further consideration for award." The RFP also stated that an offer would be rejected if the contracting officer determined that the price was unrealistic or if "the information is not provided in the format required to permit an effective price realism analysis." The contract was to "be awarded to the low, realistically priced, responsible offer submitting acceptable [m]anning [c]harts."

The Navy received 38 proposals in response to the RFP, including proposals from Logistical and Food Services. After evaluating the initial offers, the agency awarded a contract to the lowest-priced offeror, Tom's Maintenance Company. Logistical protested this award and, upon review, the agency found the awardee's price to be unrealistic and terminated the contract.

Subsequently, the agency determined the competitive range based on the total price of each offer. Eleven proposals, ranging from a low-price of \$2,181,400 to a high of \$2,446,890, were included in the competitive range. Logistical's offer of \$2,618,610 was the twentieth low proposal submitted and it, along with all other proposals which were priced higher than the eleventh low proposal, were excluded from the competitive range. Although the agency created no initial evaluation documents, it prepared a competitive range memorandum listing all offerors and identifying the 11 competitive range proposals. The memorandum stated that the contracting officer had determined that the 11 low-priced offerors "have a reasonable chance of being selected for award and that higher offerors do not." The record includes no written analysis of the individual proposals; the memorandum stated generally that there were weaknesses in the proposals which "appear to be easily correctable and major cost increases are not expected" in the revised proposals.

The agency conducted discussions by providing each competitive range offeror a list of weaknesses in its manning charts. Generally, offerors were notified that their manning charts reflected too few hours and too few supervisory personnel in specified time frames. Additionally, offerors were questioned concerning the elements on their cost proposal breakdown charts.

Best and final offers (BAFO) were received from 10 of the 11 competitive range offerors. Upon evaluation, the agency

conducted a second round of discussions and notified offerors of continuing problems with their manning charts or cost proposal breakdown charts. Revised BAFOs were submitted and award was made to Food Services at a price of \$2,242,240.

COMPETITIVE RANGE DETERMINATION

Logistical first alleges that the agency failed to evaluate the manning charts before determining the competitive range, as required by the solicitation, and therefore, its proposal was improperly eliminated from the competitive range. According to the protester, because it submitted "complete and acceptable [m]anning [c]harts," its proposed price "would have logically been higher than those offerors submitting unacceptable and deficient [m]anning [c]harts." Since the agency did not evaluate the manning charts before determining the competitive range, Logistical argues that the agency had no basis to determine that Logistical's price was too high and that the firm had no chance for award.

Generally, the competitive range should consist of those offers which have a reasonable chance of being selected for award. US Sprint Comms. Co. Ltd. Partnership, B-243767, Aug. 27, 1991, 91-2 CPD ¶ 201. While a contracting officer necessarily has a considerable range of discretion in making a competitive range determination, we review such a determination to ensure that it has a reasonable basis. Id.

Although the agency excluded Logistical's proposal from the competitive range solely based on its price, the record does not establish that the contracting officer considered whether Logistical's prices or any offeror's initial prices were realistic or reasonable. Indeed, as explained above, the record includes no written analysis of the individual initial proposals. Rather, the contracting officer simply examined the bottom line prices of the offerors and determined that those over a certain price had no reasonable chance for award. No review of the different elements of the offered prices was conducted and there is no explanation and no apparent rationale as to why 11 offerors rather than, for example, 5, 6, 10 or 12 offerors were included in the competitive range.²

²For example, there was no clear price break between the eleventh and twelfth proposals; the prices of these proposals differed by a mere \$1,897. Indeed, there is no significant difference in prices among any of the proposals and Logistical's price was less than 7 percent higher than the highest priced proposal in the competitive range.

Nonetheless, we conclude that Logistical was not prejudiced by the exclusion of its proposal from the competitive range since the record does not show that, had Logistical been permitted to submit a BAFO, it would have lowered its price sufficiently to become the low-priced offeror. Logistical's price was considerably higher (approximately \$376,000) than the awardee's price (\$2,242,240) and, rather than stating that it would have lowered its price, the protester argues that the awardee's price is unreasonably low.³ Since Logistical argues that the eventual award price was "wholly unrealistic," there is no basis to assume that, even if given the opportunity to submit a BAFO, Logistical would have lowered its price to less than the award price. Logistical therefore was not prejudiced by the exclusion of its proposal from the competitive range, and this ground of protest is denied. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306 (competitive prejudice is an essential element of a viable protest).

PRICE EVALUATION

Logistical argues that the agency was required to reject the awardee's proposal, and the other 10 competitive range proposals because, at the time of the competitive range determination, each of those proposals lacked complete, acceptable manning charts or cost proposal breakdown charts or failed to meet requirements of the CBA. In support of this position, Logistical references language in the solicitation stating that "the manning charts must reflect the minimum staffing hours of 3,970 per month" and that "[f]ailure to submit four (4) manning charts as required and annotated loaded compensation rates . . . will remove your offer from further consideration for award."

To be reasonable, an interpretation of solicitation provisions must be consistent with the solicitation when read as a whole and in a reasonable manner. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. The protester's interpretation here is unreasonable.

The language cited by the protester does not mandate automatic elimination of a proposal for minor flaws in manning charts or compensation rates. Indeed, the fact that an initial proposal in a negotiated procurement may not be in full accord with the RFP is not sufficient reason to

³In this respect, in addition to arguing that the awardee's proposal did not meet certain minimum staffing and CBA requirements, Logistical contends that the awardee's "price is wholly unrealistic." As discussed below, we conclude that the agency properly evaluated the price proposals and reasonably found that the awardee's price is reasonable.

reject the proposal where, as here, the deficiencies are reasonably susceptible to correction through negotiations. TS Group, B-249217.2, Nov. 24, 1992, 92-2 CPD ¶ 371. The language cited by the protester simply notifies offerors that in order to be eligible for award they must submit manning charts and that the agency requires a minimum of 3,970 staffing hours per month.¹

Logistical also generally argues that the Navy failed to adequately evaluate the price proposals, particularly the compensation rates set forth in offerors' cost proposal breakdown charts. In addition, Logistical argues that the awardee's proposed fringe benefit costs are lower than required by the CBA and therefore the agency's price realism evaluation was unreasonable. Specifically, Logistical argues that Food Services failed to comply with the WCI and the sick leave requirements stated in the CBA.

According to Logistical, the CBA required WCI benefits of 7.65 per cent, or \$.62 per covered employee, yet Food Services proposed a rate of only \$.33. Similarly, the protester argues that a food sanitation specialist earning \$8.05 per hour should accrue \$386.40 worth of sick leave a year, based on 2,080 working hours. Food Services offered only \$187.20 worth of sick leave per year. According to the protester, since Food Services did not conform its fringe benefits to the CBA and since the agency failed either to bring the matter to the awardee's attention during discussions or to consider the impact of those low benefits upon the awardee's proposed prices, the agency's price realism analysis was unreasonable.

The record shows that the Navy used cost analysis techniques and a comparison of offerors' prices to analyze the realism

¹Logistical also alleges that the RFP manning charts constitute a definitive responsibility criterion and, because the awardee did not initially submit manning charts which reflected the minimum required hours, the agency should have found the awardee nonresponsible. A definitive responsibility criterion is a specific objective standard that has been established by a procuring agency in a solicitation to measure an offeror's ability to perform-- such as a requirement for 5 years of specific experience-- with which an offeror must be found to comply as a precondition to receiving award. Clamshell Bldgs., Inc., B-250520, Dec. 11, 1992, 92-2 CPD ¶ 408. The manning charts do not establish a standard relating to an offeror's ability to perform the contract; rather, they describe the services offerors are to perform if they are awarded the contract. Thus, the manning charts are specification requirements--not a definitive responsibility criterion. Id.

of each proposal. The agency also compared the prices supplied by each offeror on its cost proposal breakdown chart with the requirements of the CBA and the offeror's pricing schedule. Additionally, the payroll burdens of all offerors were compared to determine realism. Accordingly, we conclude that, contrary to Logistical's contention, the agency performed the cost and price analyses required by the RFP.

We also conclude that the agency reasonably evaluated Food Services' proposal to determine compliance with the required CBA benefits. Originally, the agency questioned the amount of WCI included by Food Services. However, Food Services explained that the required WCI amount for its clerical workers is significantly lower than the required amount for food services workers, and that, in its proposal, the firm averaged the required amounts of WCI between the two types of employees. Therefore, the average amount of WCI in the proposal was lower than the straight percentage required by the CBA for food service employees. The record shows that the agency investigated this claim, found that the two rates are significantly different, and reasonably accepted Food Services' explanation.

Concerning sick leave, our review of the record shows that the awardee's proposed rate was lower than that set forth in the CBA. Nonetheless, the awardee is obligated to pay the wages and benefits set forth in the CBA since the SCA, 41 U.S.C. § 353(c) (1988), obligates a successor contractor to pay service employees the same wages and benefits provided for in a predecessor's CBA. Leamington Motor Inn--Recon., B-227927.2, Aug. 20, 1987, 87-2 CPD ¶ 189. On a firm, fixed-price contract such as this, where the awardee is required to pay the actual SCA wages and benefits out of whatever price it offers and the proposal contains no indication that the firm will not meet its statutory obligations, labor rates or benefits that are less than the SCA required rates or benefits may simply constitute a legally unobjectionable below-cost offer. Allen-Norris-VanS. Enters., Inc., B-243115, July 5, 1991, 91-2 CPD ¶ 23. Thus, unless it is clear that the offeror does not intend to be bound by the requirements of the SCA, the offer can be accepted as is. See S&S, Inc., B-247596.2, Aug. 7, 1992, 92-2 CPD ¶ 90. Here, there is no indication that Food Services did not intend to comply with its obligations under the SCA.

In addition, the agency compared the offerors' proposed wage rates and payroll burdens to determine realism. Although Food Services' sick leave rate was low compared to some of the other offerors, the agency did not question that rate. Sick leave is not a significant cost in relation to the

total contract price, and we have no basis to disagree with the agency's conclusion that Food Services' proposed wages and benefits were reasonable. We therefore have no basis upon which to object to the agency's fixed-price award.'

CONCLUSION

As explained, although Logistical argues that the awardee's price was unreasonably low, we conclude that the agency performed the price and cost analyses required by the RFP and we have no basis to challenge the agency's conclusion that the awardee's price was reasonable. Under the circumstances, since Logistical does not state that it would have lowered its price, but rather argues that the awardee's low-price was too low, we conclude that Logistical was not prejudiced by its exclusion from the competitive range since its BAFO price would not have been as low as the awardee's and the contract was to be awarded to the firm submitting the low-priced technically acceptable proposal.

The protest is denied.

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Robert P. Murphy
Acting General Counsel

'Additionally, the protester complains that Food Services intends to compensate its employees at a higher "composite" rate, meaning the basic wage rate plus fringe benefits, than its supervisors and argues that this "wage structure is clearly unrealistic." Professional employees, however, are not covered by the CBA and, therefore, there is no basis on which to object to this compensation plan.