

Vodraska



Comptroller General  
of the United States

314207

Washington, D.C. 20548

## Decision

**Matter of:** ASAP Services, a division of ACM, Inc.

**File:** B-260803

**Date:** July 18, 1995

Timothy H. Power, Esq. for the protester.  
Theodore M. Bailey, Esq., for Speedy Food Service, Inc., an interested party.  
Jeffrey A. Mansfield, Esq., Department of the Navy, for the agency.  
Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency reasonably determined protester's proposal to be technically unacceptable where the protester's proposed staffing for dining facilities was below the minimum man-hours required by the solicitation's statement of work; contrary to the protester's assertions, the minimum staffing requirements were clearly stated in the solicitation.

### DECISION

ASAP Services, a division of ACM, Inc. protests the award of a contract under request for proposals (RFP) No. N00123-94-R-5273, issued by the Department of the Navy, Fleet and Industrial Supply Center, San Diego, California, for mess attendant and cashier services at dining facilities at six Navy bases in the San Diego area.<sup>1</sup> ASAP contends the Navy improperly rejected its proposal as technically unacceptable through a misinterpretation of the RFP requirements regarding the required minimum total man-hours.

We deny the protest.

The RFP contemplated a firm, fixed-price contract for a base period with 2 option years for the necessary management,

<sup>1</sup>The dining facilities are located at the Submarine Base (Sub-base), the Naval Air Station Miramar (Miramar), the Naval Training Center (NTC), the Naval Amphibious Base Coronado (NAB), the Naval Station (NAVSTA), and the Naval Air Station North Island (NASNI).

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labor, and support services to perform the required mess attendant and cashier services in accordance with the RFP's statement of work (SOW) and technical exhibits, including manning charts.

Paragraph 1.2.1 of the SOW requires the contractor to furnish managerial, administrative, and direct labor personnel to accomplish all work required, and to maintain and adequately supervise the work force at all times. Paragraph 1.2.2.2 states that during normal duty hours, the contractor's facility supervisor or alternate shall be available for a minimum of 2 hours daily at the facility as scheduled by the contracting officer's representative to meet to discuss problem areas. Paragraph 1.2.2.3 requires that the facility supervisor or alternate be present during all hours contract employees are working.

The initial RFP required that offerors submit 2 manning charts for each facility (one for weekdays and one for weekends/holidays) showing the number of personnel proposed for each category of work--cashiers, cleaning, food handling, and supervision--per half hour period on a daily basis, with totals for the number of man-hours proposed. As issued, the RFP contained no minimum manning requirements.

Because of the wide range of man-hours proposed by offerors in their initial proposals, the contracting officer issued Amendment 0005, which required offerors to complete revised manning charts for each facility. At the top of each revised manning chart, a minimum daily staffing level was established by the Navy. Amendment 0005 also added paragraph 1.6.8 to the SOW, which states:

"1.6.8 Minimum Man-hour Requirements. The contractor shall provide the following minimum man-hour requirements at each facility:

FACILITY	WEEKDAY MAN-HOURS PER DAY	WEEKEND/HOLIDAY MAN-HOUR PER DAY
Sub-base	55	45.5
Miramar	188	155
NTC	205	147
NAB	143.5	125
NAVSTA	182	142.5
NASNI	148.5	129.5

"1.6.8.1 This chart reflects only the MINIMUM requirements at each facility per day. The contractor shall provide any additional manning required to perform under the terms and conditions listed in [the SOW] and the technical exhibits of this solicitation."

The minimum man-hour requirements listed in paragraph 1.6.8 were identical to the minimum man-hours listed on the corresponding manning charts also issued with Amendment 0005.

The RFP's evaluation criteria, as amended by Amendment 0005, states in pertinent part:

"[t]he government has established the minimum required manhours per day at each facility, indicated at the top of each manning chart, which will be used as a basis for cost realism evaluations.<sup>[2]</sup> The manning charts will be evaluated . . . for evidence that the proposed staffing is in accordance with the [SOW]. The manning charts will be evaluated as either technically acceptable or technically unacceptable."

After issuing Amendment 0005, the Navy sent offerors a written response to a question as to whether the minimum man-hour requirement established by Amendment 0005 included supervisory personnel. The Navy stated that the hours allocated for the supervisor were not included in the required minimum hours.

Subsequently, the Navy again revised the manning charts in Amendment 0007. The Navy listed the minimum "direct" hours required at the top of each manning chart. The instructions for the revised manning charts required the proposed man-hours to be broken down into direct and indirect labor so that cost realism could be evaluated. The instructions further noted that the direct labor hours do not include supervisor hours, and that indirect labor is any labor attributed to the contract not covered in the direct labor categories listed on the manning charts, such as supervisor labor hours. The minimum direct hours established on the

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<sup>2</sup>A cost realism analysis allows the agency to ascertain whether all offerors fully understand the services required as well as the staffing necessary to maintain the continuity of services in a solicitation for a firm, fixed-price contract for mess attendant services. See Southwestern Enters., Inc.--Recon., B-244989.2, Apr. 20, 1992, 92-1 CPD ¶ 371.

manning charts by Amendment 0007 were less than the minimum man-hours that had been established earlier in paragraph 1.6.8 by Amendment 0005. Amendment 0007 did not change or otherwise modify the minimum hours specified by paragraph 1.6.8.

In response to additional questions from offerors regarding the requirements, the Navy issued Amendment 0008. Question 1 of Amendment 8 asked whether, in light of the most recent manning charts issued under Amendment 0007, the hours allocated for supervision were not included in the minimum man-hours required by Amendment 0005. The Navy stated that its previous answer to the question regarding "Amendment 0005 was incorrect"; that the manning charts included by Amendment 0007 listed "the minimum direct labor required at each facility" (emphasis in original); and that "[t]he total of direct labor and indirect labor added together should be the same as the minimum man-hours required as listed in Amendment 0005."

ASAP's best and final offer contained manning charts meeting the minimum direct hours established on the Amendment 0007 manning charts. However, the total hours--the sum of the direct and indirect hours--listed by ASAP on each of its manning charts were less than the minimum man-hours required by Amendment 0005's paragraph 1.6.8. Since ASAP's proposed indirect labor did not make up the full amount of the difference between the manning chart hours and those required by paragraph 1.6.8, the agency found that ASAP's proposed man-hours would result in considerable understaffing of the mess facilities. Therefore, the agency rejected ASAP's proposal as technically unacceptable.

ASAP protests that its manning charts were improperly evaluated on the basis of the minimum man-hours established in paragraph 1.6.8, which ASAP argues are inconsistent with, and effectively superseded by, the minimum direct hours set forth at the top of the revised manning charts by Amendment 0007.

When a dispute exists as to the actual meaning of a solicitation provision, we will resolve the dispute by reading the solicitation as a whole and in a manner that gives effect to all its provisions. A Plus Servs. Unlimited, B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52.

As noted by the protester, the RFP's instructions and evaluation criteria state that the agency will consider the minimum direct man-hours established at the top of each manning chart in evaluating the minimum man-hours to be technically acceptable. However, the RFP's evaluation criteria and instructions also refer to compliance with the SOW, which includes the minimum total man-hours listed in

paragraph 1.6.8. When Amendment 0005 was issued, the minimum total man-hours were identical to those on the manning charts. This changed with the issuance of Amendment 0007, which reduced the minimum hours on the manning charts, but designated the revised hours as only applying to direct labor. Nonetheless, Amendment 0007 did not in any way alter the minimum man-hours still required by paragraph 1.6.8.

When read as a whole, we find that the solicitation clearly require that offerors both propose the minimum direct hours specified on the revised manning charts and propose the minimum of total man-hours established by paragraph 1.6.8, which were more than those on the revised manning charts. In order to comply with both minimums, additional man-hours beyond the minimum direct hours indicated on the manning charts must be proposed. The higher paragraph 1.6.8 minimum could be satisfied by proposing sufficient indirect labor hours to make up the difference, or by proposing enough indirect labor to satisfy the requirements of paragraphs 1.2.2.2 and 1.2.2.3--and ensure adequate supervision--plus additional direct labor to bring the total up to at least the paragraph 1.6.8 minimum.<sup>3</sup>

Any remaining doubt of the RFP requirements was settled by the Navy's response in Amendment 0008 that "[t]he total of direct labor and indirect labor added should be the same as the minimum man-hours required as listed in Amendment 0005," which included paragraph 1.6.8. The fact that Amendment 0008 does not specifically reference paragraph 1.6.8 makes no difference because the minimum man-hours established by Amendment 0005 were the same both on the manning charts and in paragraph 1.6.8. ASAP argues that because the clarifying language of Amendment 0008 used the word "should," rather than mandatory language such as "must" or "shall," compliance with the minimum man-hours set forth in paragraph 1.6.8 was discretionary. However, it is clear,

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<sup>3</sup>The agency informs us that ASAP was the only 1 of 20 offerors who did not interpret the solicitation in this way. To the extent that ASAP objects to the additional man-hour requirements of paragraph 1.6.8 as unnecessary in light of the supervisor requirements of paragraphs 1.2.2.2 and 1.2.2.3, or incompatible with another part of the solicitation, such as the direct labor man-hours established on the revised manning charts, ASAP's protest is untimely because, under our Bid Protest Regulations, protests based on alleged improprieties in the solicitation, incorporated, as here, after the initial submission of offers, must be filed prior to the next closing date after the change was made to the solicitation. 4 C.F.R. § 21.2(a)(1) (1995); see S and T Servs., B-252359, June 15, 1993, 93-1 CPD ¶ 464.

given the context, that compliance with the minimum man-hours set forth by Amendment 0005, which included paragraph 1.6.8, was mandatory in that paragraph 1.6.8 itself states that offerors "shall" provide the minimum hours so specified--to conclude otherwise would read paragraph 1.6.8 completely out of the solicitation. See All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294.

Since ASAP's proposal offered less than the required labor hours, the Navy properly rejected it as unacceptable. See Martin Marietta Corp., 69 Comp. Gen. 214, 219 (1990), 90-1 CPD ¶ 132.

The protest is denied.

*Ronald Berger*  
Sr Robert P. Murphy  
General Counsel