



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jonathan Corporation

File: B-230971

Date: August 11, 1988

DIGEST

1. Protester's general and unsubstantiated assurances that no outside work would conflict with work described in the solicitation and that no tradeskills would prove critical to its performance of a contract do not adequately respond to the solicitation requirements calling for the submission of detailed data on both subjects; accordingly, the agency had a reasonable basis in scoring the protester's proposal low with respect to evaluation subcategories involving the availability of manpower resources.
2. Questions concerning the availability of protester's manpower resources to perform work described in the solicitation constituted meaningful discussions because they led protester into the area of its proposal in need of amplification.
3. Agency acted reasonably in using protester's recently negotiated labor rates contained in a forward pricing rate agreement to adjust the protester's proposed costs upwards during a cost realism analysis; the protester has not shown that the forward pricing rates were invalid for this purpose.
4. Questions indicating that protester's proposed labor rates appeared low in comparison to historical data submitted by the protester constituted meaningful discussions because they led protester into the area of its proposal in need of amplification. Agency was not required to advise protester during discussions that its forward pricing rates would be used in a cost realism analysis because this was set forth in the solicitation.

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DECISION

The Jonathan Corporation protests the award of a cost-plus-award-fee contract to the Norfolk Shipbuilding and Drydock Corporation (NORSHIPCO) under request for proposals (RFP) No. N00024-87-R-8502, issued by the United States Navy for the phased maintenance of three vessels. The protester questions both the agency's technical evaluation and cost analysis of its proposal and alleges that meaningful discussions were not held.

We deny the protest.

BACKGROUND

The RFP was issued on September 9, 1987. Award was to be made to the offeror whose proposal was considered most advantageous to the government using the following major evaluation factors, denominated as "categories," listed in descending order of importance, each of which consisted of several subcategories:

Management Capability
Technical Approach
Cost
Resource Availability

Initial proposals were received from Jonathan, NORSHIPCO and the Bethlehem Steel Corporation. The agency evaluators identified deficiencies they found in the proposals; these were the subject of technical and cost questions sent to the offerors on January 21, 1988, in a letter requesting best and final offers (BAFOs). In the resulting BAFOs, Jonathan proposed a cost of \$46,405,272, while NORSHIPCO proposed \$50,692,166. As a result of a cost realism analysis the cost estimates were adjusted so that Jonathan's cost was \$49,405,272 and NORSHIPCO's was \$48,016,177. The results of the final technical and cost evaluation scoring for Jonathan and the awardee were as follows:

<u>Evaluation Category</u>	<u>Jonathan</u>	<u>NORSHIPCO</u>
Management Capability	1106.25	1090.00
Technical Approach	1103.75	1083.75
Cost	830.00	765.00
<u>Resource Availability</u>	<u>552.50</u>	<u>825.00</u>
TOTAL POINTS RECEIVED	3592.50	3763.75

Award was made to NORSHIPCO on March 29 and Jonathan was notified the following day. On April 1, the contracting officer informed Jonathan that, although it received a high score with respect to cost, some adjustments were made during the cost analysis using information from outside the proposal, and that, in the final award analysis, deficiencies in its technical proposal outweighed the relative advantage it held under the cost factor. This protest was filed on April 8.

In the protest, Jonathan questions the Navy's evaluation of its technical proposal and also contends that meaningful technical discussions were not held. Likewise, Jonathan alleges that the Navy performed an improper analysis of its cost proposal and questions the adequacy of the cost discussions.

ANALYSIS

Technical Proposal Issues

a. Technical Evaluation

In the agency's evaluation of the initial proposals and its BAFO, Jonathan's proposals generally received good to exceptional scores in the management capability and technical approach evaluation categories, and Jonathan's BAFO was, in fact, rated higher than either of its competitors in these areas. The central issue here is the evaluation of the protester's proposal with respect to the resource availability evaluation category, and in particular the manpower resource availability subfactors--total manpower, production manpower, planning and engineering manpower, testing and test support manpower, and quality assurance manpower--where the protester received scores indicating that its proposal as written was regarded as deficient.^{1/} Since the protester's BAFO received the highest cost score, it is clear that the evaluation of Jonathan's manpower resource availability was critical to the final award decision.

The agency criticizes the treatment of available manpower resources in Jonathan's BAFO as being far too general to be considered acceptable. More specifically, the Navy argues

^{1/} In the final evaluation, Jonathan received a score of "2" from each of the evaluators on each of these subcategories. On the 0-5 point scale used, this score indicated that the evaluators concluded that the proposal "as submitted does not adequately respond to the requirements set forth in the Solicitation"

that the principal deficiency in Jonathan's BAFO was that it simply did not contain data indicating the specific demands which would be placed on the protester's overall manpower resources by other work during the performance period contemplated by the RFP. The Navy also states that the protester's proposal did not provide meaningful data, broken down by specific labor categories, which clearly indicated which personnel resources were committed to the work effort called for by the RFP. The Navy notes that, in each case, the RFP specifically required the information which it found lacking in Jonathan's proposal; and the agency notes that the net effect of failing to provide information both as to Jonathan's other commitments and to its specific resources was to leave the evaluators without a basis to determine what tradeskills might prove critical to Jonathan's performance of the contract and where manpower shortfalls might likely occur--factors which were regarded as important in comparing competing proposals for the Phased Maintenance Program (PMP), a program which placed great emphasis on the precise scheduling of manpower resources.

1. Outside Work

Jonathan states that it fully responded to the agency's need to know what demands would be placed on its overall manpower resources; the protester calls specific attention to the following statement contained in its BAFO, which, it argues, was the product of an extensive in-house review of available resources:

"3.2.1.3. Impact of Other Ongoing Work or Work Planned for Accomplishment During the [RFP term]"

"No [RFP requirement] will conflict with other Jonathan work. The Corporation is dedicated to the PMP! Jonathan will experience a more level manloading with the continuation of the [RFP portion of the] PMP. Since essentially all of this effort will be Navy cost-type work, the savings resulting from the lowered overhead costs will revert directly to the Navy. There will be other benefits resulting in lower costs and increased efficiencies due to Jonathan's ability to retain a trained work force of experienced trade production personnel."

Further in this regard, Jonathan states that it appended a chart to its proposal, entitled "Total Corporate Manning," which the protester contends portrays the number of employees required to accomplish all scheduled/projected work for the period contemplated by the solicitation.

In considering challenges to the adequacy of the evaluation of technical proposals, this Office will not substitute its judgment for that of the agency evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable. Complere, Inc., B-227832, Sept. 15, 1987, 87-2 CPD ¶ 254. Moreover, we note that the evaluation of a proposal is to be based on the proposal as written and that the offeror has the burden of submitting an adequately written proposal which can stand alone without relying on considerations extrinsic to the evaluation criteria stated in the RFP. Id.

Here, the RFP placed special emphasis on the agency's need to know precisely what demands were being placed on an offeror's manpower resources by outside work. The general instructions concerning proposal preparation stated that resources used to support work under the RFP "should be clearly identified in the Resource Availability section, and the integration of the work of this solicitation with other work you will be performing at the same time should be addressed throughout the proposal. . . ." Indeed, with regard to other work, offerors were required to indicate "the percentage of time used and other pertinent details on the multiple use of . . . personnel for all other current and projected work." Likewise, the instructions for the evaluation category specifically at issue required offerors to "[c]learly indicate . . . which resources are committed to other work efforts . . .," and to provide information, specifically formatted as manning curves, "which cover . . . all other scheduled/projected work."

Jonathan's generalized assurances that its other work would not conflict with work under the RFP are nothing more than blanket offers of compliance which, without further substantiation and explanation, do not satisfy its obligation to prepare a proposal which responds to the RFP requirements. Complere, Inc., B-227832, supra. As substantiation, the protester seems to rely on predictions of cost benefits that will result by virtue of its performance under other contracts it has with the Navy. As stated above, even if true, such considerations are extrinsic to the evaluation criteria stated in the RFP and, therefore, are not relevant. We also find that the "Total Corporate Manning" chart, on which Jonathan places considerable reliance, in no way indicated what demands would be placed on the corporation's manpower resources as the result of work outside the RFP. Such a lack of detailed information regarding manpower resources deprived the Navy of any meaningful basis upon which to evaluate Jonathan's resources to perform the work required by the RFP in comparison to other offerors.

2. Resource Commitments to the RFP

In addition to information on the outside demands that were being placed on an offeror's manpower resources, the RFP required offerors to submit detailed information as to what resources were committed to the contract. Accordingly, the RFP required offerors to identify which tradeskill categories were considered by the offeror to be critical to its performance. Compliance with this requirement was the subject of a question posed to Jonathan during discussions. The RFP also contained a separate requirement for the provision of detailed data in the form of manning curves, so that the evaluators would be able to test the offeror's conclusions regarding which tradeskills were critical to its performance. These curves were required to show, by tradeskill category, precisely what direct, indirect and subcontracted labor resources were to be committed to the contract and what labor resources were committed to outside work.

The Navy argues that Jonathan failed to respond to the first RFP requirement because its BAFO merely stated that it considered no tradeskill critical to successful performance. Jonathan replies by noting that its conclusion is substantiated by a comparison of the figures contained in its proposal which detail total manning resources to other figures in the proposal which detail the manning resources committed to work under the RFP. We think that the Navy reasonably concluded that such a response was not adequate. Without data in the proposal indicating what demands are being placed on total manning resources by outside work, it is impossible to determine whether those total resources are sufficient to cover the work requirements of the RFP. Since the protester has not provided substantiation for its conclusion that no tradeskills are critical, we do not think that the agency was unreasonable in regarding the assurances contained in Jonathan's proposal as unacceptable blanket offers of compliance.

The Navy also contends that Jonathan failed to provide the required manning curves. The protester replies that the information required by the RFP to be in the curves was in fact included in tabular form in its BAFO. We conclude that the agency acted reasonably in evaluating Jonathan's BAFO as deficient with respect to this requirement. The specific table referred to by Jonathan as containing the required information does not break down indirect and subcontracted labor resources by tradeskills as required and it appears from the BAFO that Jonathan relies to a significant degree on indirect and subcontracted labor. Moreover, we note that the protester has provided no information, in

tabular form or otherwise, which serves as a substitute for the RFP requirement that data on outside work be included in the manning curves.

Finally, with respect to the adequacy of Jonathan's BAFO in detailing the manpower resources it planned to commit to the RFP, the Navy points to several discrepancies between the number of production personnel employed by the firm and the number it planned to use under contract. For example, the BAFO states that Jonathan employs 36 welders but it also states that 39 are committed to the contract. In its comments on the agency report, the protester explains that the difference of three welders will be made up by using qualified workers in another tradeskill--auto burners--an explanation that is not contained in Jonathan's BAFO. Similar explanations are offered for discrepancies involving available boilermakers and machinists. It was the protester's responsibility to insure that these explanations were contained in its BAFO so that they could be considered by the agency's evaluators. Complere, Inc., B-227832, supra.

b. Technical Discussions

Jonathan also argues that the Navy did not conduct meaningful discussions with respect to its technical proposal. The three discussion questions involving manpower resources were:

Technical Question No. 1. "Provide specific details, as requested by the RFP, on manpower in [the subcategories relating to manpower availability]. Include indirect manpower estimates, critical trades, manpower shortfalls, and scheduled/projected work."

Technical Question No. 4. "Chart 3.2.2.2 [depicting work/supervisory ratios for shipyard production tradeskills] and figure 3.2-1 [depicting manpower resources for the entire corporation] do not agree. Provide clarification."

Technical Question No. 5. "Provide manpower curves and charts, as required by solicitation for [the resources availability category] your proposal."

While conceding that these questions were very specific and directly related to the resource availability section of its proposal, the protester argues that they did not constitute meaningful discussions because they did not convey the seriousness with which the chairman of the evaluation panel apparently viewed deficiencies found in Jonathan's initial technical proposal. In this regard, the chairman stated in a memo for the record that "Jonathan would have to

effectively rewrite its resources section of the technical proposal to become acceptable." In view of this harsh criticism, the protester argues that, in lieu of the questions posed, the Navy should have informed it that the resources section of its technical proposal was weak overall for discussions to have been meaningful.

Initially, we note that the seriousness with which the evaluators viewed deficiencies in Jonathan's initial proposal is not, in itself, relevant to the question of whether or not meaningful discussions were held. The requirement for meaningful discussions includes advising offerors of deficiencies in their proposals and affording them an opportunity to satisfy the government's requirements through the submission of revised proposals. Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Discussions generally must lead offerors into areas of their proposals which require change or amplification. Associated Chemical and Environmental Services et al., B-228411.3 et al., Mar. 10, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 248.

In our view, it is clear that the agency's questions more than adequately led Jonathan into the area of its proposal in need of amplification--the availability of its manpower resources to perform the work set forth in the RFP. The problem was, as discussed above, that the agency did not find the protester's responses to the questions to be satisfactory. Further, we do not understand the protester's suggestion that a general discussion question would have been preferable to the specific questions posed. It is not clear how the protester would have responded differently in its BAFO to a discussion question which merely indicated that Jonathan's resources section was weak.

Cost Proposal Issues

a. Cost Analysis

In the cost analysis of Jonathan's proposal, the Navy made use of certain labor rates contained in a forward pricing rate agreement negotiated between the agency and Jonathan and approved for use shortly after the submission of initial proposals under the RFP. The forward pricing rates were higher than the labor rates contained in Jonathan's proposal. Accordingly, the Navy believed that the more recent rates in the agreement were more accurate predictors of costs the government could expect to incur if it awarded a contract to Jonathan under the RFP; and, therefore, the agency adjusted the protester's proposed costs upward. No audit was performed on Jonathan's proposed rates under the RFP by the Defense Contract Audit Agency (DCAA).

While the protester still received the highest cost score of all offerors after the cost analysis was complete, Jonathan maintains that its cost score would have been even higher had the Navy conducted a proper cost analysis using the rates contained in its proposal in lieu of the forward pricing rates.

Jonathan's principal argument in support of its contention that the Navy acted unreasonably in conducting its cost analysis is that the forward pricing rates were invalid and the Navy knew this before it used them. In this regard, the protester argues that, during the negotiation of the forward pricing rates, Jonathan had specifically limited their application to noncompetitive pricing actions. The protester also relies on the record of two telephone conversations of the agency's contracting specialist to establish that the Navy knew that the forward pricing rates were invalid before it used them.

The Navy responds by stating that the limitation placed on the application of the forward pricing rates as a means to price noncompetitive contract actions does not diminish the value of those rates as tools in conducting a cost analysis. As to the telephone conversations cited by the protester, the agency submits that the significance of both has been taken out of context, and that the substance of one of them was simply mischaracterized by Jonathan.

Generally, in a cost reimbursement contract the risk of loss as the result of cost overrun is assumed by the government. Consequently, it is necessary to analyze an offeror's proposed costs in terms of realism, since regardless of the costs proposed by the offeror, the government is bound to pay the contractor actual and allowable costs. Kinton, Inc., B-228260.2, Feb. 5, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 112. Moreover, when an agency finds that an offeror's proposed labor rates are understated, the contracting agency has an obligation to adjust those rates for the purposes of evaluation. Hardman Joint Venture, B-224551, Feb. 13, 1987, 87-1 CPD ¶ 162. A contracting agency's method of adjusting a particular cost proposal for realism involves the exercise of informed discretion and we will not disturb an agency's cost realism determination absent a showing that it lacks a reasonable basis. DDL Omni Engineering, B-220075 et al., Dec. 18, 1985, 85-2 CPD ¶ 684.

We have specifically approved the use of rates contained in a forward pricing rate agreement as a basis upon which to determine the actual cost the government in performing an analysis of an offeror's proposed costs. Hoboken Shipyard, Inc., et al., B-219428 et al., Oct. 17, 1985, 85-2 CPD ¶ 416. While we recognize, as the protester argues, that such

rates were negotiated for use in noncompetitive contract actions, we do not think that that limits their usefulness as a cost analysis tool. See Hoboken Shipyard, Inc., et al.--Request for Reconsideration, B-219428.2 et al., Nov. 21, 1985, 85-2 CPD ¶ 582. In any event, in this case the Navy states that its concern about Jonathan's low labor rates was also based on a general trend towards escalation of these rates.

As to the telephone conversations which Jonathan cites as evidence that the Navy knew that the forward pricing rates were invalid, the agency concedes that during the first of those conversations a DCAA employee voiced an opinion to the effect that the rates were overstated; but, the agency urges that this one informal opinion should be placed in perspective by reference to the rest of the record. We agree. The record shows that the Navy had a reasonable concern about the realism of the labor rates in the proposal based both on the escalation trend in Jonathan rates under other contracts and on the forward pricing rates. We do not think that one DCAA employee's opinion necessarily invalidates the Navy's concerns.

As to the second conversation, we note that the protester has, as suggested by the agency, mischaracterized its substance in stating that it contained a recommendation that the forward pricing rates should not be used in any cost analysis. All that the second telephone conversation indicated was that the subject rates were "currently under revision," and it appears from the rest of the record that any possible revision to those rates would have served to raise them even higher. This circumstance would merely enhance the contrast between Jonathan's forward pricing rates and those contained in its proposal--a circumstance which tends to support, rather than detract from, the reasonableness of the agency's basic conclusion that Jonathan's proposed rates were too low. Consequently, the protester has not shown that the agency acted unreasonably in adjusting the protester's labor rates in its proposal to conform to the higher labor rates that it agreed to in its forward pricing rate agreement with that same agency. In this regard, we find the protester's attempts to discredit the very rates it agreed to under the forward pricing rate agreement to be particularly unconvincing.

b. Meaningful Cost Discussions

The protester's basic concern in this regard involves the contracting officer's view that Jonathan's proposed labor rates were low when specifically compared to its current

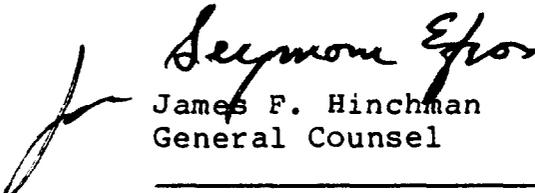
negotiated forward pricing rates.^{2/} The Navy contends that its own concerns were accurately conveyed to the protester in the following cost discussion question:

Cost Question No. 4. "Contractor's proposed direct labor rates appear to be low in comparison to the historical data the company has provided. Offeror is requested to provide rationale for the projected direct labor rates during each year of the performance period."

Jonathan maintains that the question failed to specifically reveal the agency's true concern--a perceived discrepancy between its proposed rates and its current forward pricing rates. The protester also states that the question failed to disclose the Navy's intention to use the current forward pricing rates during the agency's cost analysis.

As stated above, all that is required for discussions to be meaningful is that the agency generally lead offerors into areas of their proposals in need of amplification. Associated Chemical and Environmental Services et al., B-228411.3 et al., supra. In our view the cost discussion question more than adequately conveyed the contracting officer's view that Jonathan's proposed rates were too low. No more specificity was required. Id. Finally, we do not agree with the protester's argument that discussions were not meaningful because the Navy did not disclose that forward pricing rates would be used in the cost realism analysis since the RFP required offerors to include current forward pricing rate agreements in their proposals and it specifically informed offerors that the cost data they submitted would be used to analyze their proposed costs.^{3/}

The protest is denied.



James F. Hinchman
General Counsel

^{2/} We note that the contracting officer also relied on historical data for 4 previous years indicating an upward trend in such rates in concluding that Jonathan's proposed rates were too low.

^{3/} In its initial proposal, the protester submitted its forward pricing rates that were then in effect. It did not substitute its more current rates which were approved shortly thereafter, and which the Navy actually used in its evaluation.