



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Howard Johnson  
**File:** B-260080; B-260080.2  
**Date:** May 24, 1995

Sam Zalman Gdanski, Esq., for the protester.  
Phillip E. Johnson for The Royal Inn, an interested party.  
Joseph DiGiacomo and Dominick A. Palermo, Department of the Navy, for the agency.  
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency estimates for an indefinite quantity contract for lodging services are not realistic is denied where record shows that agency based estimates on best historical and current information; protester's own data support the agency estimates; and there is no basis to assume that the agency's needs will change significantly during the term of the contract.

### DECISION

Howard Johnson protests the terms of request for proposals (RFP) No. N62381-95-R-0001, issued by the Military Sealift Command, Atlantic (MSCLANT) for lodging for civilian mariners assigned to the agency and visiting the facility in Bayonne, New Jersey, for administrative purposes, such as assignments, pay, training and other routine personnel actions. The protester contends that the terms of the solicitation exceed the agency's minimum needs and are unduly restrictive of competition.

We deny the protests.

On October 28, 1994, the agency issued the solicitation for an indefinite quantity contract for lodging and transportation for a 1-year base period, with a 1-year option period. The solicitation provided that the contractor would be paid for a guaranteed minimum of 20 rooms per night and would be obligated to furnish up to 60 rooms per night; the solicitation allowed the agency the option of splitting the award 60/40--with one contractor guaranteed 12 rooms and obligated to furnish 36 rooms, and another contractor guaranteed 8 rooms and obligated to furnish 24 rooms.

Receipt of initial offers, originally scheduled for November 29, was indefinitely extended by amendment; two subsequent amendments, Nos. 0002 and 0003, extended the date for receipt of offers to January 25, 1995. On January 20, Howard Johnson filed this protest, asserting that the structure of the procurement exceeded MSCLANT's minimum needs and thus unnecessarily limited competition.

In its original protest, Howard Johnson argued that the terms of the solicitation created an unreasonable risk because the contractor would be required to hold the maximum number of rooms available for an indefinite period. The protester submitted examples of similar solicitations where other agencies had provided for a cutoff period after which the contractor could make its rooms available to the general public. During the pendency of the protest, on February 24, the agency issued amendment No. 0004 to the RFP, which among other things, established a 6 p.m. cutoff time for arrivals; after that time, the contractor is obligated to hold only five rooms for late arrivals. Since this amendment reasonably addresses the protester's argument in this regard, and the protester has articulated no specific objections to the amendment, we consider this issue academic.<sup>1</sup> See Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139.

The protester also contends that the maximum quantities specified in the solicitation are not realistic estimates of MSCLANT's potential needs. The protester questions why the agency guarantees only 20 rooms per night, when historical data indicate that an average of 40-45 rooms per night were used in the last year, and the agency anticipates that as many as 60 rooms per night might be needed. The protester also suggests that MSCLANT staff may be severely reduced and that the agency's projection of its lodging needs, based on current staffing levels, is overstated, pointing to a recent

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<sup>1</sup>The protester contends that, to the extent amendment No. 0004 was intended as corrective action in the face of its protest, it is entitled to costs pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.6(e) (1995). We will find such entitlement, however, only where the agency unduly delays taking corrective action; where, as here, the agency takes prompt corrective action, there is no basis for determining that the payment of protest costs is warranted. See Dynair Elecs., Inc.--Entitlement to Costs, B-244290.2, Sept. 18, 1991, 91-2 CPD ¶ 260.

news article speculating about the future of the Bayonne terminal in view of recent base closings by the Department of Defense.<sup>2</sup>

An indefinite quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period, and it is inadvisable for the government to commit itself for more than a minimum quantity. Federal Acquisition Regulation (FAR) § 16.504(b). The contracting officer may obtain the basis for the maximum from previous records, but estimated maximum quantities should be realistic and based on the most current information available and minimum quantities should not exceed what the government is fairly certain to order. FAR § 16.504(a)(1), (2). These estimates need not be precise; rather, such estimates are unobjectionable so long as they were established in good faith, based on the best information available, and accurately represent the agency's anticipated needs. International Technology Corp., B-233742.2, May 24, 1989, 89-1 CPD ¶ 497. As explained below, the estimates here, based on MSCLANT's historical experience, appear reasonable, and the protester has submitted no evidence of any better information from which to project the agency's needs.

MSCLANT states that the estimated quantities in the solicitation are based on actual numbers used during the current contract and designed to handle expected fluctuations. The agency's data show a monthly average of 1,416 rooms, or 47 per night; this was rounded to an estimate of 50 rooms per night, which, because of recently experienced difficulty in finding rooms for late arrivals, was increased by 20 percent, for a maximum requirement of 60 rooms. Data submitted by the protester, who asserts that there has been a trend towards lower numbers, in fact support MSCLANT's position, indicating average room use rising steadily from 34 in November 1994, to 40 in January 1995. The protester's data indicate that maximum use has fluctuated from 55 in October to 52 in November, 46 in December, and back up to 53 in January 1995. The data contained in the record, including that submitted by the protester, thus support the agency's estimates.


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<sup>2</sup>The protester states that the facility is on a list of bases "targeted for closing," which was published in March 1995, and that the Pentagon has confirmed that the "Army installation" will be closed. The protester offers no corroboration and fails to identify the installation to which it refers or its relationship to operations at Bayonne.

The news article submitted by the protester actually concerns the closing of other military bases in New Jersey; with respect to Bayonne, the article describes the situation at Bayonne as "optimistic" in contrast to other facilities. The agency advises our Office that there are no official plans to close the facility; further, the agency points out, no such decision would be likely to have an effect during the 2-year term of the contract. We agree with the agency that the protester has produced little more than speculation to support its arguments, and the record does not support the protester's doubts about the reliability of the agency's historical figures and anticipated needs.

Shortly after receipt of the agency report, Howard Johnson filed a second protest, asserting that amendment No. 0004 to the RFP was "ambiguous"; that it was unsigned; and that it failed to provide a date for submission of best and final offers (BAFO). Aside from its general assertions, however, the protester has failed to point to any portion of the amendment that it considers ambiguous, and we have no basis to consider this contention further. See Automated Power Sys., Inc., B-257178; B-257178.2, Sept. 2, 1994, 95-1 CPD ¶ 76. Further, as the agency points out, the solicitation, issued on standard form 30 (Solicitation, Offer and Award), specifically provided that the contracting officer's signature would not be required on solicitation amendments; any objection to this provision filed after the receipt of initial offers is untimely under our Bid Protest Regulations. See 4 C.F.R. § 21.2(a)(1). Similarly, issues related to the date set for submission of BAFOs are academic, since the agency has since requested revised offers and expects to set a date for receipt of BAFOs shortly.

The protests are denied.

  
for Robert P. Murphy  
General Counsel