



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Delta Food Service

File: B-245804.2

Date: February 11, 1992

Theodore M. Bailey, Esq., for the protester.
P.E. Zanfagna, Jr., United States Marine Corps, for the agency.
Glenn G. Wolcott, Esq., and Paul I. Lieberman, 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 protester failed to submit required letter of intent for key personnel and proposed staffing well below the government estimate.

DECISION

Delta Food Service protests the United States Marine Corps' rejection of its proposal submitted in response to request for proposals (RFP) No. M00264-91-R-0025, to provide full food service operations for four messhalls at the Marine Corps Combat Development Command, Quantico, Virginia. Delta contends that the Marine Corps improperly evaluated its proposal as technically unacceptable.

We deny the protest.

The solicitation was issued on August 7, 1991, and contemplated performance for a 1-year period beginning October 1, 1991. By the August 23 closing date, the agency received 12 proposals, including Delta's. The agency's evaluation panel subsequently concluded that Delta's initial proposal was technically deficient because Delta failed to: (1) show that its proposed project manager satisfied the qualification requirements under the solicitation; (2) propose an adequate level of staffing for one of the messhalls (messhall 5000); and (3) adequately address inventory management and control. The agency included Delta's proposal in the competitive range on the basis that it was susceptible to being made acceptable. On

September 7, the agency conducted discussions with all offerors in the competitive range; these discussions were followed by letters confirming the substance of the matters discussed. The letter sent to Delta stated:

"As discussed, your proposal has been . . . found to be questionable because of the staffing proposed for Messhall 5000 during the summer season, key personnel, and inventory procedures. You are expected to review your proposal accordingly and explain your methodology for accomplishing peak season feeding requirements with the level of staffing proposed or to submit a revised proposal addressing changes proposed. Your proposal lacked depth on how inventory transition will take place and issues of accountability. The resume submitted for the Project Manager did not show qualifications required by the solicitation."

Best and Final Offers (BAFOs) were submitted by September 12. Delta made several changes in its BAFO including increasing the staffing level for messhall 5000; however, its final proposed staffing level was still substantially below the agency's estimate for adequate staffing. In its BAFO, Delta also changed the individual proposed to fill the position of project manager, shifting the individual initially proposed as assistant project manager to the position of project manager. Delta did not submit a letter of intent for either of these two individuals in its initial proposal or in its BAFO.

Following evaluation of Delta's BAFO, the agency concluded that the proposal was technically unacceptable because of Delta's failure to submit a letter of intent for its proposed project manager, and the low level of staffing proposed for messhall 5000.¹ By letter dated September 16, the agency advised Delta of the reasons for rejecting its proposal. This protest followed.

Delta first challenges the agency's determination that its proposal was unacceptable due to its failure to submit a letter of intent for the proposed project manager. Delta argues that a letter of intent should not have been required because this individual was a current employee. Further, Delta asserts that the agency failed to call this deficiency to Delta's attention during discussions.

¹In its BAFO, Delta provided more information regarding inventory management and control which made its proposal acceptable in that regard.

The solicitation clearly required that letters of intent be submitted for all "key personnel."² Section L-1.2 of the solicitation specifically stated:

"Offerors shall submit resumes for personnel proposed by the offeror to fill key positions as defined in Section C-1.2 and Clause H-1. The proposal shall clearly identify the experience and qualifications of the individual, the position they will fill if awarded the contract, and the Letter of Intent from the individual." (Emphasis added.)

The agency was particularly concerned by the lack of the letter of intent from Delta's proposed project manager because the proposal indicated a distant (Hawaiian) home address for him, and Delta had provided the required letters of intent for other proposed key position personnel who were current Delta employees. The solicitation provided no exemption for submission of letters of intent from individuals who were current employees of the offeror at the time proposals were submitted, and, under the circumstances, we have no basis to object to the agency's belief that it could not waive the requirement.

With regard to the adequacy of the discussions conducted, agencies are not obligated to afford offerors all-encompassing discussions; rather, agencies must lead offerors into areas of their proposals which require correction. See, e.g., Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231. While the agency could have been more specific in directing Delta to its concern, the Marine Corps did advise during discussions that the proposal was deficient with regard to the key personnel, and, where specific information is requested in a solicitation, an agency is not required to specifically remind an offeror to submit that information during discussions. Electronic Assocs., Inc., B-240666.2, Oct. 11, 1991, 91-2 CPD ¶ 327; Huff & Huff Serv. Corp., B-235419, July 17, 1989, 89-2 CPD ¶ 55; Eagan, McAllister Assocs., Inc., B-231983, Oct. 28, 1988, 88-2 CPD ¶ 405. We do not find that the Marine Corps was required to be more precise in its discussions with Delta. Accordingly, we find no merit to Delta's contention that the agency improperly rejected its proposal for failure to submit a letter of intent for its project manager.

²The positions of project manager and assistant project manager both fall within the solicitation's definition of "key personnel."

Delta also takes exception to the determination that its proposal was unacceptable due to the proposed staffing level for messhall 5000. Essentially, Delta disagrees with the agency's determination regarding the manning level required, stating:

"[During discussions, Delta] discussed its proposed manning and how it would differ from the Government's estimate, since the Government's estimate [was] based primarily on the number of people per headcount fed, [the estimate] had a lot of nonproductive time built in . . . because it was geared to staffing at peak periods. . . ."

"During the meeting, Delta felt it had satisfactorily answered the Government's concerns, since Delta had shown that it was fully manning the mess hall when the workers were actually needed."

The agency responds that, although Delta's BAFO increased the manning level proposed for messhall 5000, the staffing proposed was still substantially below the government estimate and was viewed by the agency as inadequate.⁴

The evaluation of technical proposals and the determination of their relative desirability is primarily a function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and the agency that must bear the burden of any difficulties resulting from a defective evaluation. Dimensions Travel Co., B-224214, Jan. 13, 1987, 87-1 CPD ¶ 52. Our Office will not substitute its judgment for the agency's with regard to the evaluation of proposals but, rather, will examine the proposals and the agency's evaluation to ensure that the evaluation was reasonable. Travel Centre, B-236061.2, Jan. 4, 1990, 90-1 CPD ¶ 11. The fact that the protester disagrees with the agency's conclusion does not itself establish that the agency acted unreasonably. Id.

³The solicitation provided a great deal of detailed information regarding the number of meals that had been provided during the last 12 months and that would likely be required during the contract period.

⁴A protective order has been issued in this protest and, pursuant to that order, Delta has designated its proposed manning levels as proprietary; accordingly, our decision does not discuss the specific manning levels proposed.

Here, the agency's estimate of the required manning level was based on its recent experience with the requirements of this contract. The record shows that the need to solicit the interim contract at issue here resulted from the unsatisfactory performance of the prior contractor due, in part, to inadequate levels of qualified personnel performing the contract requirements. Although Delta 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. While Delta disagrees with the agency's judgment, it did not provide sufficient evidence in its proposal or in the course of the protest proceedings to establish as unreasonable the agency's legitimate concern that Delta's proposed staffing levels were inadequate.

The protest is denied.


for James F. Hinchman
General Counsel