



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: HB&A, Inc.
File: B-245897
Date: February 10, 1992

James H. Roberts, III, Esq., Manatt, Phelps & Phillips, for the protester.
David R. Gleason, Esq., JL Associates, Inc., an interested party.
Michael Trovarelli, Esq., Defense Logistics Agency, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency modified truck-loading schedule in the current solicitation for only awardee based on the results of an experimental truck-loading schedule under awardee's incumbent contract for the same services is denied where there is no evidence that schedule was changed for awardee and, in fact, awardee's proposal shows that it will perform in accordance with the truck-loading schedule set forth in the current solicitation.

DECISION

HB&A, Inc. protests the award of a contract to JL Associates, Inc. (JLA) under request for proposals (RFP) No. DLA13H-91-R-2030, issued by the Defense Subsistence Office (DSO), Defense Logistics Agency, for refrigerated warehouse services. HB&A maintains that JLA was the only offeror permitted to base its proposal on a truck-loading and delivery schedule different from the one in the RFP, and that HB&A would have been able to lower its offered price sufficiently to move into line for award had it been permitted to compete on a similar basis.

We deny the protest.

The RFP, issued on May 13, 1991, solicited proposals for government-owned, contractor-operated warehouse services to receive, store, assemble, and distribute food products at Cheatham Annex, Williamsburg, Virginia. The solicitation included a truck-loading and delivery schedule, which indicated the types of food products to be picked up and

delivered by carriers at a specified time and location. The solicitation contemplated award of a 1-year, indefinite delivery requirements contract with two 1-year options. At the time of the solicitation, JLA was the incumbent contractor providing the services.

The RFP required offerors to submit separate technical and cost proposals and advised that technical merit was more important than price. The technical proposals were to be comparatively evaluated on the basis of three factors, all of equal weight: experience/past performance, technical plan, and quality assurance plan. The RFP stated that between substantially equal technical proposals, price would become more important. Award was to be made to the responsible offeror whose proposal conformed to the RFP and was determined to be most advantageous to the government, price and other factors considered. Four firms, including JIA and HB&A, submitted proposals by the July 9 initial closing date. After evaluation, the agency concluded that the proposals of all four firms were in the competitive range.

In a separate development relevant here, subsequent to the competitive range determination, DSO allowed JLA, on an experimental basis, to revise the truck-loading and delivery schedule under the firm's ongoing contract for these services. The experimental schedule, which became effective on September 2, resulted from several requests by commissary stores for earlier delivery of produce to provide for more lead time for its set-up in the stores.

On September 3, one day after implementation of the experimental schedule under JLA's contract, the technical evaluation panel under the current solicitation held discussions with the competitive range offerors. On September 6, the contracting officer solicited for and received best and final offers (BAFO). JLA slightly reduced in its BAFO both the number of personnel in each of the three shifts proposed and its price; HB&A did not make any changes in its BAFO. In the subsequent evaluation, JLA's BAFO received a higher overall adjectival rating than HB&A's; JLA's price was also slightly lower than HB&A's. The contracting officer made award to JLA based on its superior technical rating and lower price.

HB&A asserts that JLA improperly was permitted to base its proposal on the experimental truck-loading and delivery schedule instituted under its incumbent contract, rather than on the requirements under the RFP. HB&A alleges that this is significant because under the experimental scheduling, JLA reduced its third shift from six personnel--one supervisor, one quality assurance person, and four warehousemen--to only two warehousemen, and thereby

materially reduced its performance cost. HB&A maintains that JLA knew this experimental schedule would be carried over to the new contract and thus was able to build these savings into its low cost. Since HB&A and other offerors were not advised of the experimental schedule, HB&A concludes, the result was a material revision of the RFP that gave JLA an advantage in the competition.

It is a fundamental principle of federal procurement law that contracting agencies must treat offerors equally by, for example, furnishing all offerors with identical statements of the agency's requirements in order to provide a common basis for the preparation and submission of competitive proposals. Computek Inc.; Ontel Corp., 54 Comp. Gen. 1080 (1975), 75-1 CPD ¶ 384.

The record contains no evidence supporting HB&A's assertion that DSO did not treat offerors equally here. First, there is no evidence that JLA was able to reduce its third shift staffing under its incumbent contract based on the experimental schedule, the premise on which the protest is based. In this regard, both DSO and JLA state that while the experimental schedule permitted delivery of the produce at an earlier time, thus apparently reducing the amount of third shift work, it did not result in a reduction of its staff in the third shift. While HB&A states that it would have reduced its third shift staff by four employees, HB&A has furnished no other evidence of a staffing reduction by JLA.

Moreover, even if the protester were correct that the experimental schedule permitted a reduction in staffing under JLA's prior contract, there is no evidence that JLA based its proposal on a continuation of the experimental schedule rather than on the schedule in the RFP (which would necessitate a fully staffed third shift). In fact, JLA's proposal shows that HB&A's speculation in this regard is unfounded. Both JLA's initial proposal and BAFO reflect a fully staffed third shift. Although there was a slight staffing reduction in each of the three shifts in JLA's BAFO, there simply were no reductions of the magnitude suggested by HB&A. We note, furthermore, that even with these reductions JLA's overall staffing was considerably higher than HB&A's.

We conclude that JLA's proposal was based on the scheduling and other requirements set forth in the RFP, and that the

agency adhered to those requirements in determining that JLA was the technically superior, lowest cost offeror and as such was entitled to the award.

The protest is denied.

A handwritten signature in black ink, appearing to read "Robert F. Murphy". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

for James F. Hinchman
General Counsel