



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-179042 (1)

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OCT 26 1973

Southeastern Services  
511 Yazoo Street  
Jackson, Mississippi 39201

Attention: Mr. John L. Swindle  
President

Gentlemen:

Reference is made to your letter dated July 6, 1973, protesting the award of a contract under request for proposals (RFP) No. N00140-73-R-0934, by the Naval Regional Procurement Office, Philadelphia, Pennsylvania.

The subject RFP, issued May 9, 1973, solicited offers for furnishing labor and materials to perform mess attendant services in Food Service Buildings 502 and 2 at the Naval Training Center, Bainbridge, Maryland, during the period July 1, 1973 through June 30, 1974. Southeastern was the incumbent contractor at the time of the solicitation. Its contract contained an option, exercisable by the Government, for the existing annual contract price of \$336,106.03. Southeastern did not submit a proposal under this RFP, although its contract option was available to the contracting officer had the new solicitation failed to produce a better offer.

Section E22 of the RFP provided that:

"Requirement for Submission of Manning Charts"

- "(a) All offerors are required to submit manning charts with their proposals, in the format of Attachment E, showing the number of personnel proposed in each space each half hour of a representative weekday and of a representative weekend day/holiday.
- "(b) The manning charts are required in order to foster evaluation of:
  - (1) the offeror's understanding of Navy food service operations in general and of the specific services required; and

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(ii) the soundness and acceptability of the offeror's approach to performance of the services required.

"(c) The evaluation of manning charts will be in accordance with the criteria set forth in the provision in Section D entitled 'Evaluation of Offerors' Manning Charts and Prices.'"

With respect to evaluation of the manning chart, Section D6 of the RFP provided, in part, that:

"EVALUATION OF OFFEROR'S MANNING CHARTS AND PRICES"

(a) The manning levels reflected in the offeror's manning charts must be sufficient to perform the required services. For the purpose of evaluating proposals and establishing a competitive range for the conduct of negotiations, the Government estimates that satisfactory performance will require total manning hours (including management/supervision) as follows:

	<u>Representative Weekday</u>	<u>Representative Weekend day/holiday</u>
Bldg. 502 (General Mess)	approx. 283.50	approx. 203
Bldg. 2 (Tune Inn)	approx. 119.00	approx. 79
Camp Concern (noon meal only)	approx. 75	(Camp Concern to operate 6 days per week - Monday thru Saturday inclusive)

"Submission of manning charts whose total hours fall more than 5% below these estimates may result in rejection of the offer without further negotiations unless the offeror clearly substantiates the manning difference with specific documentation demonstrating that the offeror can perform the required services satisfactorily with fewer hours."

These figures indicate an estimate of 235,390 manning hours for the year.

The following revised final offers were received from the original respondents:

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<u>OFFERORS</u>	<u>YEARLY AMOUNT (NET)</u>	<u>TOTAL MANNING HOURS OFFERED YEARLY</u>
Military Base Management	\$238,327.20	88,214
Tropical Enterprises	273,250.46	no response
Integrity Management	290,801.69	91,060
Dyneteria, Incorporated	299,719.33	130,148
Old Atlantic Services	362,638.80	136,896
Jet Services, Incorporated	383,234.00	130,106
Broken Lance Enterprises	437,785.51	129,386

On June 27, 1973, the contract was awarded to Military Base Management of New Jersey, Incorporated (MEM).

You contend that the contract price is so low as to jeopardize adequate performance of the services. You state that in order to be in the "competitive range", a minimum proposal price of \$354,000 would be required, and that MEM does not have the resources to sustain the losses it will necessarily incur in complying with the contract. You also contend that MEM's proposal is neither responsive nor responsible in failing to meet solicitation requirements respecting manning chart submissions.

The contracting officer has the duty of determining the responsibility of prospective contractors. It is well established that his administrative determination of responsibility will be upheld unless it is shown to be arbitrary, capricious or not supported by substantial evidence. See 38 Comp. Gen. 778 (1959); 45 Comp. Gen. 4 (1965).

The fact that MEM's price is below the Government's estimate does not automatically warrant a determination that the bidder is not responsible. Manning charts are used as a aid to the contracting officer in determining responsibility, not responsiveness, and as with the Government's price estimates, they do not present an exact formula for the exercise of the contracting officer's authority. See 51 Comp. Gen. 308 (1971). As indicated in the RFP, offerors who submit manning charts whose total hours fall more than 5 percent below the Government's estimates must demonstrate that they can perform the services satisfactorily with fewer hours. The contracting officer reports with respect to MEM's offer:

" \* \* \* The proposal plainly acknowledged that the total hours on the manning charts were more than five percent below the Government's estimate. However, MEM called attention to the fact that it had provided satisfactory performance of mess attendant services at NTC Bainbridge in the past (July 1967 to June 1970) and had performed literally dozens of similar contracts in an acceptable manner."

Specifically, MEM stated in a letter accompanying its proposal that "we as former contractors at Bainbridge, operated that portion of the mess hall covered by this RFP within the man-hours contained on our enclosed manning charts." The contracting officer found that MEM's satisfactory contract performance from July 1967 to June 1970 substantiated its man-hour estimate based on this prior experience.

Therefore, in making his determination, the contracting officer considered those factors which manning charts are intended to help evaluate as stated in Section B22 of the RFP, supra. This use of manning charts accords with prior decisions of this Office: "We think that once it has been determined that an offeror's manning chart indicates his understanding of, and his ability to fulfill, the contract requirements, including wage rates, number of workers and total estimated labor hours, he should be considered to be in the competitive range for negotiation purposes." 51 Comp. Gen. 204, 207 (1971). For this reason, we find no basis on the record for concluding that there was an abuse of administrative discretion in the determination that MEM's proposal was acceptable.

You contend that the Government should have amended its man-hour estimate and reopened negotiations, since man-hour estimates so much below those of the Government were acceptable. We are of the opinion that the use of published Government man-hour estimates does not contemplate a reduction in the responsibility of an offeror to make an independent determination of the number of hours necessary to fulfill the contract requirements. In this case, the Government's estimate was substantially the same as the one contained in the request for proposals for the prior contract. Offerors were free to conclude, as did MEM, that they could perform the necessary services with 35 percent fewer man-hours, and assume the burden of rebutting such prima facie evidence of responsibility. Furthermore, none of the offerors have contended that they were misled by the Government's man-hour estimate. Therefore, we are unable to conclude that the contracting officer's failure to revise the man-hour estimate set forth in the RFP or to advise offerors of a revision in the man-hour estimate during the course of negotiations was improper.

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Accordingly, we see no adequate basis for cancellation of MM's contract, and therefore, your protest is denied.

We have enclosed a copy of our decision of today regarding the protest of this procurement by Manpower Incorporated of Providence.

Sincerely yours,

Paul G. Dembling

For the  
Comptroller General  
of the United States