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

B-179102

December 19, 1973

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Sellers, Conner & Cuneo
1625 K Street, NW.
Washington, D.C. 20006

Attention: C. Stanley Dees, Esq.

Gentlemen:

This is in reply to your letter of October 31, 1973, and prior correspondence, protesting on behalf of ABC Management Services, Incorporated, against rejection of its proposal and award of a contract to another firm under RFP N00123-73-R-1700, issued by the Naval Regional Procurement Office, Los Angeles, California.

The solicitation requested offers to provide mess attendant services for the Naval Training Center at San Diego, California. The 13 offers received in response to the RFP were evaluated and 4, including the ABC offer, were determined to be in the competitive range. After a period of negotiations and a review of best and final offers, the Navy decided that acceptance of your low offer (in the amount of $585,077.79) would be contrary to the terms of the RFP and a contract was awarded to Federal Food Service, Incorporated (Federal), in the amount of $622,056.96.

The RFP required offerors to submit manning charts to reflect the proposed use of man-hours to perform the tasks called for by the contract. The RFP also set forth the Government's estimates of the total manning hours required for satisfactory performance, and provided that the submission of manning charts reflecting total hours falling more than 5 percent below the Government estimates "may result in rejection of the offer without further negotiations unless specific justification for the fewer proposed hours was provided. Section D of the RFP further stated:

> "(b) Further evaluation of the offeror's manning charts will be based on the following criteria:"

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[Proposal Rejection and Contract Award Protest]

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"(2) the hours shown in the manning charts must be supported by the price offered when compared as follows. The total hours reflected in the manning charts for the contract period (i.e., based on a contract year containing 252 weekdays and 113 weekend days/holidays) will be divided into the total offered price (less any evaluated prompt payment discount) to assure that this dollar/hour ratio is at least sufficient to cover the following basic labor expenses:

"(i) the basic wage rate;

"(ii) if applicable, fringe benefits, (health and welfare, vacation, and holidays); and

"(iii) other employee-related expenses as follows:

"(A) FICA (including Hospital Insurance) at the rate of 5.85%

"(B) Unemployment Insurance at the rate set forth by the offeror in the provision in Section D of this solicitation entitled 'Offeror's Statement as to Unemployment Insurance Rate and Workmen's Compensation Insurance Rate Applicable to His Company'; and

"(C) Workmen's Compensation Insurance at the rate set forth by the offeror in the provision referred to in (B) above.

"Failure of the price offered to thus support this offeror's manning chart may result in rejection of the proposal without further negotiations.

"(c) Award will be made to the responsible offeror whose proposal, meeting the criteria set forth in (a) and (b) above, offers the lowest evaluated total price.

"Note to Offeror: The purpose of the above price-to-hours evaluation is to assure:

"(i) that manning charts submitted are not unrealistically inflated in hopes of securing a more favorable proposal evaluation; and

"(ii) that award is not made at a price so low in relation to basic payroll and related expenses established by law as to jeopardize satisfactory performance."

The contracting officer computed the minimum possible dollar per hour wage cost by adding to the basic wage rate (established by a Department of Labor wage determination) amounts for health and welfare benefits, various payroll taxes (set forth in section D(b)(2)(iii) above), and paid vacations and holidays. The record indicates that an exact figure for computing the cost of vacations and holidays was not available, but that the contracting officer determined that 5 percent of direct labor costs (basic wage rate plus health and welfare benefits) was a valid minimum figure, and he used that figure in computing the minimum possible cost per hour for each best and final offer received. As a result, the offers were analyzed as follows:

Offeror	Total hours	Total net price	Average dollar per hour price	Minimum possible average dollar per hour price
ABC	187,653.5	$585,077.79	3.118	3.329
Federal	187,679.5	622,056.96	3.310	3.326
Integrity	192,489.5	627,348.98	3.259	3.308
Tidewater	192,023.5	698,310.76	3.636	3.337

ABC's offer was rejected because this analysis revealed that it proposed price fell short of supporting the proposed number of hours by more than 21 cents per hour. Although this analysis also indicated that Federal's price was insufficient to support its proposed hours, the Navy viewed this deviation as an insignificant one and awarded the contract to Federal.

In rejecting ABC's offer, the Navy noted that its June 12, 1973, letter submitting its best and final offer stated that actual labor costs would differ from that indicated by its manning charts because the charts were structured at half hour intervals while ABC scheduled labor to the quarter hour, at a claimed savings of 28 hours per day. The Navy regarded this assertion as "highly speculative" and further regarded consideration of 15-minute scheduling as contrary to the RFP and unfair to the other offerors whose proposals were based solely on the half hour intervals established by the manning charts included with the RFP. It therefore considered only the hours shown on the manning charts in determining whether the ABC proposal could be accepted.

We agree with the Navy that it did not act unreasonably in rejecting ABC's proposal. While the Navy concedes the possibility that some man-hour savings were possible through 15-minute scheduling, there is no indication in the record that the Navy's view of the specific claimed savings as "speculative" is incorrect. Accordingly, the contracting officer was under no duty to reopen negotiations in order to consider ABC's claim that significant savings were possible through quarter-hour scheduling. If such a savings is plausible, we think ABC should have suggested that approach well prior to its submission of its best and final offer, so that the contracting officer could have considered the validity of that approach during the course of the negotiations that were conducted.

With respect to the award of a contract to Federal, the RFP provided that award would be made to the offeror whose proposal met the two basic evaluation criteria, that is, a proposed manning level within 5 percent of the Government estimate (unless justification was provided for a different level) and a price to support the direct labor costs involved in that manning level. Federal's average per hour price was $3.31 while the computed minimum required price was $3.326, a difference of $.016. (Your assertion that the difference was nearly $0.04 is erroneous.) As noted above, in computing the minimum required price, the contracting officer used a factor of 5 percent to represent vacations and holidays. Although this figure was not stated in the RFP, it was based on the contracting officer's reasonable estimate of what vacations and holidays should cost, and not on any requirement of the RFP. We note also that the RFP explained that the purpose of the second criterion was to prevent unrealistically inflated manning charts and an award at a price so low that satisfactory performance would be jeopardized. As the Navy points out, Federal's furnishing of its proposed 187,879.5 man-hours would result in an annual loss of only $2,005.07, while it would need to furnish only 606 fewer hours during the year to offset that loss. Under these circumstances, it appears that the contracting officer could have reasonably concluded that the purpose of the RFP criterion would be met by acceptance of Federal's proposal.

It is our belief, however, that the solicitation should have advised offerors of a precise, realistic figure that would be used for factoring vacation and holiday costs into the basic labor expense computation. See 53 Comp. Gen. _________ (B-179171, November 30, 1973). Accordingly, we are bringing this matter to the attention of the Secretary of the Navy.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States