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Decision

Matter of: Eurest Support Services

File: B-285813.3; B-285813.4; B-285813.5; B-285882.4; B-285882.5; B-285882.7

Date: July 3, 2001

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DIGEST

Protest against award of primarily fixed-price incentive contracts for regional garrison food service at U.S. Marine Corps installations is sustained where agency did not properly assess realism of awardee's low proposed target price, which was the principal basis for determination that awardee's evaluated price was low.

DECISION

Eurest Support Services (ESS) protests the U.S. Marine Corps's (USMC) award of a contract to Sodexho Marriott Management (SMM) under request for proposals (RFP) Nos. M00027-00-R-0001 and M00027-00-R-0002, for regional garrison food service. The protester challenges the evaluation of technical and cost proposals.

We sustain the protest.

BACKGROUND

The RFPs provided for award of two primarily fixed-price incentive contracts for a base period of 5 years, with 3 option years, to provide regional garrison food service at 32 messhalls on the East Coast and 23 messhalls on the West Coast. USMC had previously contracted for full food service at 10 of the messhalls; under the solicitations, the number of full food service messhalls increased to 35. USMC had current contracts for mess attendant services at 29 of the messhalls; under the solicitations, mess attendant messhalls were reduced in number to 18 and will

become management and mess attendant messhalls, with the contractor now also responsible for management of the messhalls. (Food preparation will continue to be performed by USMC cooks at the management and mess attendant messhalls.) The contractor also will be responsible for management and food preparation for several brig messhalls not previously contracted out. In addition, the solicitations provided for the contractor to assume responsibility for the procurement of food (the price of which was to be included in the fixed incentive price per meal) and (after a transition period) maintenance (on a fixed-price basis) and repair (on a time and materials (T&M) basis) of food preparation and serving equipment, previously the responsibility of the government. RFPs at C1.3; Agency Comments, June 22, 2001, Tab 52a. Further, 20 messhalls were set aside under the Javits-Wagner-O'Day Act (JWOD), 41 U.S.C. § 46-48c, for JWOD organizations for the blind or other severely handicapped to operate as subcontractors. RFPs § H.5(f).

Award was to be made to the offeror whose proposal represented the best value to the government. The solicitations provided for proposals to be evaluated based on four criteria: (1) price; (2) integrated organization and management, including subfactors for organization and management plan (including proposed staffing), advanced food technology plan, quality control plan, and phase-in plan; (3) small business subcontracting plan; and (4) past performance. Price was the most important criterion and was equal in importance to the other criteria combined. Integrated organization and management was significantly more important than the small business subcontracting plan and past performance combined, while the small business subcontracting plan was significantly more important than past performance. In addition, proposals were to be evaluated to determine the degree of risk associated with the offeror's approach to the performance requirements and ability to successfully accomplish these objectives; this risk assessment included consideration of proposal risk, associated with the offeror's proposed approach, and performance risk, associated with the offeror's present and past work record.

With respect to price, the focus of this protest, the solicitations provided for an evaluation under the price criterion "to determine that the price . . . is realistic for the work to be performed; i.e., it reflects a clear understanding of the requirement and is consistent with the various elements of the offeror's technical proposal." RFPs § M.3.4.1. (The solicitations indicated that, in addition to consideration under the price criterion, results of the price realism analysis "may be used in performance risk assessments and responsibility determinations." Id.) The solicitations specified that the price realism evaluation would include consideration of the completeness (with respect to required pricing information), reasonableness and realism of the proposed prices. Reasonableness of proposed pricing, included as part of the price realism analysis, was defined as where

[p]rices compare favorably to prices offered by independent market sources or an Independent Government Cost Estimate and are fully justified and documented, (e.g., developed by using appropriate and acceptable methodologies, factual and verifiable data, estimates

supported by valid and suitable assumptions and estimating techniques.)

Id. Realism of proposed pricing was further defined as where

[p]rices are compatible with proposal scope and effect (e.g., proposed prices are related to program scope being neither excessive nor insufficient for effort accomplishment). Price realism is a prerequisite to award. . . . Proposals lacking price realism may indicate, among other things: a lack of understanding of the requirements of the solicitation and the cost implications thereof, or use of inappropriate amounts of labor and materials which unrealistically understate proposed price.

Id. USMC further advised offerors, in response to an offeror's question, that

[w]ith respect to cost realism, each cost proposal will be compared to the approach set forth in the associated technical proposal to assess the realism of the costs proposed (i.e., can the offeror perform as described in the technical proposal within the constraints set by the cost proposal?). Unrealistically low offers, indicative of a potential buy-in, will be considered in determining the risk inherent in awarding the contract to such an offeror, as well as in the evaluation of the responsibility of that offeror.

Question and Answer No. 5, Amend. No. 0004.

The solicitations generally required that proposals "contain sufficient detail for effective evaluation and for substantiating the validity of stated claims," and "demonstrate convincing rationale to address how the offeror intends to meet these requirements." RFPs § L.8.2. For the fixed-price incentive fee contract line item numbers, the RFPs specifically required offerors to furnish detailed cost information, including, for example, the offeror's total proposed labor cost for each specific messhall (including identification of labor category by title or function and hourly rate or salary and the number of direct and indirect labor hours), information on subcontracts, and any costs associated with a central food production facility. RFPs § L.10.2.1. In addition, the RFPs stated that "[t]he total evaluated price will be based on total costs for the basic contract period (5 years) and all option years (3 years) to include potential overrun and underrun scenarios." RFPs § M.3.4.1.

Four offerors submitted proposals. ESS's and SMM's proposals were included in the competitive range for the East and West Coasts (a third proposal, not relevant here, also was included in the West Coast competitive range). After conducting written and oral discussions with the offerors, USMC requested final proposal revisions (FPR). The FPR evaluation results were as follows:

| EAST COAST | | |
|--|--------------|-------------|
| | ESS | SMM |
| Meal Service (Fixed Price Incentive) | | |
| Target Cost Per Meal | \$(DELETED) | \$(DELETED) |
| Target Price Per Meal | \$(DELETED) | \$(DELETED) |
| Total Target Price | \$(DELETED) | \$(DELETED) |
| Share Ratio (USMC/Contractor) | [DELETED] | [DELETED] |
| Ceiling Price Per Meal | \$(DELETED) | \$(DELETED) |
| Meals per Labor Hour | [DELETED] | [DELETED] |
| Maintenance (Fixed Price) | \$(DELETED) | \$(DELETED) |
| T&M | \$(DELETED) | \$(DELETED) |
| Total Price (Target Price+ Maintenance+T&M) | \$(DELETED) | \$(DELETED) |
| Total Price (Ceiling Price+ Maintenance+T&M) | \$(DELETED) | \$(DELETED) |
| Risk (Proposal/Performance) | Low/Moderate | Low/Low |
| Technical Score | 86.2 | 88.8 |

| WEST COAST | | |
|--|--------------|-------------|
| | ESS | SMM |
| Meal Service (Fixed Price Incentive) | | |
| Target Cost per Meal | \$(DELETED) | \$(DELETED) |
| Target Price per Meal | \$(DELETED) | \$(DELETED) |
| Total Target Price | \$(DELETED) | \$(DELETED) |
| Share Ratio (USMC/ Contractor) | [DELETED] | [DELETED] |
| Ceiling Price Per Meal | \$(DELETED) | \$(DELETED) |
| Meals per Labor Hour | [DELETED] | [DELETED] |
| Hour Maintenance (Fixed Price) | \$(DELETED) | \$(DELETED) |
| T&M | \$(DELETED) | \$(DELETED) |
| Total Price (Target Price+ Maintenance+T&M) | \$(DELETED) | \$(DELETED) |
| Total Price (Ceiling Price+ Maintenance+T&M) | \$(DELETED) | \$(DELETED) |
| Risk (Proposal/Performance) | Low/Moderate | Low/Low |
| Technical Score | 84.2 | 84.3 |

Based upon the evaluation of the FPRs, the agency determined that SMM's proposal was the most advantageous under each solicitation. For the West Coast, USMC

determined that, while SMM's and ESS's technical proposals--that is, the proposals as evaluated under the integrated organization and management, small business subcontracting and past performance criteria--were "substantially equal," SMM's FPR pricing, which represented a [DELETED]-percent reduction from its initial pricing, was "clearly the most favorable." Agency Report (AR), Tab 11, USMC Final Summary of Findings and Source Selection Decision Final Summary, Mar. 12, 2001, at 6-8, 10. For the East Coast, USMC determined that SMM's technical proposal was "slightly above" ESS's, and that its pricing, based upon its "proposed [DELETED] reductions in . . . overall pricing structure," was more advantageous than ESS's. Id. at 4-6, 10. Upon learning of the resulting awards to SMM under both solicitations, and after being debriefed by the agency, ESS filed this protest with our Office.

ALLEGATION

ESS asserts that USMC did not properly evaluate the realism of SMM's [DELETED] reduced, allegedly unsubstantiated FPR staffing and pricing. In this regard, for the East Coast, SMM's initial proposal offered an evaluated total target price--including target price for meals, fixed price for preventive maintenance, and evaluated T&M cost--of \$[DELETED], based on a maximum full time equivalent (FTE) staffing of [DELETED] employees and a resulting evaluated [DELETED] meals per labor hour. SMM's initial proposal assumed [DELETED] staffing and [DELETED] meals per labor hour than either ESS ([DELETED] meals per labor hour, [DELETED] FTEs) or the agency's pre-solicitation estimate ([DELETED] meals per labor hour, [DELETED] FTEs), and its initial total East Coast target price was [DELETED] than ESS's \$[DELETED]. AR, Tab 26, USMC Initial Summary of Findings, Summary Technical and Price Comparison of Offerors (East Coast). Similarly, for the West Coast, SMM's initial proposal offered an evaluated total target price of \$[DELETED], based on a maximum FTE staffing of [DELETED] employees and a resulting evaluated [DELETED] meals per labor hour. SMM assumed [DELETED] staffing and [DELETED] meals per labor hour than either ESS ([DELETED] meals per labor hour, [DELETED] FTEs) or the agency estimate ([DELETED] meals per labor hour, [DELETED] FTEs), and its initial total West Coast target price was [DELETED] than ESS's \$[DELETED]. AR, Tab 26, USMC Initial Summary of Findings, Summary Technical and Price Comparison of Offerors (West Coast).

During discussions, USMC advised SMM that it "should reassess its productivity levels," since its "overall meals per labor hour rate is [DELETED] percent below our estimate," and that its overall "pricing is high on both the East and West Coasts," such that it had "a significant impact on the rating and ranking of your proposal." AR, Tab 26, Discussion Letter to SMM, Jan. 16, 2001; see AR, Tab 23, USMC MFF of Discussions, SMM, Jan. 29, 2001. In response, SMM [DELETED] reduced its overall pricing, reducing its evaluated East Coast target price from \$[DELETED] to \$[DELETED] and its West Coast target price from \$[DELETED] to \$[DELETED]. See SMM FPR, East Coast/West Coast Revised Pricing Overviews at 1-2.

A substantial portion—at least [DELETED] percent—of the decrease in target pricing resulted from decreases in direct labor [DELETED]. See SMM FPR, East Coast/West Coast Revised Pricing Overviews at 1-2; AR, Tab 49, Price Comparison: SMM Initial vs. Final Proposal Revision. (In addition, the reduction in labor costs led to reductions in other accounts—for example, [DELETED]). USMC Final Summary, Final Price Evaluation Report, at 13; SMM FPR East Coast/West Coast Revised Pricing Overviews at 2.) For the East Coast, SMM reduced its final staffing by approximately [DELETED] percent, from [DELETED] to [DELETED] FTEs, while ESS continued to propose [DELETED] FTEs. As a result, SMM’s evaluated meals per labor hour increased approximately [DELETED] percent, from its evaluated initial [DELETED] to [DELETED]; this was approximately [DELETED] percent [DELETED] than ESS ([DELETED]), and approximately [DELETED] percent higher than the government estimate ([DELETED]). For the West Coast, SMM reduced its final staffing by approximately [DELETED] percent, from [DELETED] to [DELETED] FTEs, while ESS reduced its FTEs from [DELETED] to [DELETED]. As a result, SMM’s evaluated meals per labor hour increased approximately [DELETED] percent, from its initial [DELETED] to [DELETED]; this was approximately [DELETED] percent [DELETED] than ESS ([DELETED]) and [DELETED] percent higher than the government estimate ([DELETED]).

Agency evaluators recognized that the [DELETED] “[r]eductions in [SMM’s] proposed staffing for both coasts raised questions about a possible understatement of labor resources.” AR, Tab 50, Statement of Agency Procurement Analyst, at 4. According to USMC’s Final Price Evaluation Report, however, the contracting officer “verified with the Technical Evaluation Team . . . that the staffing proposed was reasonable for the level of effort required.” AR, Tab 11, USMC Final Summary, Final Price Evaluation Report, at 10, 13. Specifically, the agency reports that a USMC food service officer “was asked to determine if SMM’s proposed FPR staffing was realistic when compared to current FTE staffing, considering projected changes in service.” Agency Comments, May 29, 2001, at 6. After obtaining staffing information from several installations, and based upon what she characterized as a “representative sampling of FTE staffing,” the food service officer reported to the contracting officer that SMM’s final proposed staffing “favorably compared” to current FTE staffing and was “realistic, due to the implementation of [DELETED] and centralization of several services, thereby reducing the number of required FTEs per mess hall below that currently utilized.” AR, Tab 51, SMM FPR Messhall Staffing Review, Apr. 25, 2001, at 4. Further, according to the agency, this “comparison with current messhall staffing levels” was “[o]f particular value in assessing whether SMM’s proposed staffing levels were achievable.” Agency Comments (ESS), May 17, 2001, at 16.

The agency concluded that, given that SMM’s total target prices (\$[DELETED] West Coast; \$[DELETED] East Coast) were lower than ESS’s (\$[DELETED] West Coast; \$[DELETED] East Coast), and that SMM’s staffing, while reduced, had been determined to be realistic (based on a comparison with current staffing), SMM’s overall pricing was more favorable than ESS’s for both coasts. In this regard, although SMM’s ceiling prices (\$[DELETED] West Coast; \$[DELETED] East Coast)

were [DELETED] than ESS's (\$[DELETED] West Coast; \$[DELETED] East Coast), the agency noted in its evaluation that ESS's pricing would be more advantageous than SMM's on the East Coast only in the event of a [DELETED] overrun (beyond [DELETED] percent of the target price) and that, while on the West Coast ESS's overall ceiling price (including maintenance and time and materials items) was [DELETED] than SMM's, ESS's ceiling price for meal service alone (\$[DELETED]) was [DELETED] than SMM's (\$[DELETED]). AR, Tab 11, USMC Final Summary at 5, 7, 10-11.¹

ESS challenges the agency's determination that SMM's FPR staffing was reasonable, asserting that SMM failed to meet the solicitation requirement that offerors justify their proposed pricing, and that the comparison with current staffing used in the agency's review of the realism of SMM's reduced staffing was unreasonable. ESS asserts that, because the agency did not reasonably evaluate the realism of proposed staffing, and failed to determine which of the various overrun and underrun scenarios it examined were most likely, the evaluation was unreasonable.

ANALYSIS

Agencies generally are required by the Competition in Contracting Act of 1984 (CICA) to include cost or price as a significant factor in the evaluation of proposals. 10 U.S.C. § 2305(a)(3)(A)(ii) (1994); see Federal Acquisition Regulation (FAR) § 15.304(c)(1). An evaluation and source selection that fails to give significant consideration to cost is inconsistent with CICA and cannot serve as the basis for a reasonable source selection. See generally Coastal Science and Eng'g, Inc., B-236041, Nov. 7, 1989, 89-2 CPD ¶ 436 at 3. While agencies have considerable discretion in determining the particular method used in evaluating cost or price, that method should, to the extent possible, accurately measure the cost to be incurred under competing proposals. Lockheed, IMS, B-248686, Sept. 15, 1992, 92-2 CPD ¶ 180 at 6.

Here, calculating the cost to be incurred under competing proposals was difficult because of the incentive contracting approach. Under the fixed-price incentive contracts here, the amount of the contractor's profit will be determined by the "share ratio" formula established in the contract, which rewards the contractor with additional profit for efficient performance (resulting in a cost lower than the proposed target cost), and penalizes the contractor for inefficient performance (resulting in a cost higher than the proposed target). The share ratio determines the government's and contractor's relative shares in the overrun or underrun amount.

¹ USMC reports that, assuming that ESS would perform at its target cost, the actual cost to the government of SMM's proposal would exceed ESS's if SMM's cost per meal exceeded [DELETED] percent of its target cost on the East Coast, or [DELETED] percent on the West Coast. Agency Comments, June 14, 2001, at 2, 4.

The final cost to the government therefore can vary, and is limited at the upper end only by the agreed ceiling price. See FAR §§ 16.403, 16.403-1. Since the ultimate cost to the government depends upon whether the contractor meets its target cost, the reliability of the price evaluation for purposes of comparing proposals depends to a large extent on the realism of that target cost; it follows that use of this contract type requires a realistic target cost estimate. See generally Universal Techs., Inc., B-241157, Jan. 18, 1991, 91-1 CPD ¶ 63 at 10. The RFPs here seem to have recognized the importance of price realism; as quoted above, the RFPs contained several provisions indicating that realism would be considered in the evaluation. In our view, the agency could not meaningfully evaluate the realism of the proposed pricing without determining whether, and to what extent, offerors were likely to meet their target costs; this determination was particularly important here in light of the [DELETED] reductions in SMM's FPR.

USMC maintains that assessing the likelihood of offerors meeting their target cost would have been tantamount to violating the Federal Acquisition Regulation (FAR) § 15.404-1(d)(3) prohibition against adjusting proposed prices based on the results of a cost realism analysis where competitive fixed-price incentive contracts are to be awarded. We disagree. While the FAR precludes adjustments to fixed prices as a result of a cost realism analysis, it does not preclude agencies from performing a critical price evaluation that takes into account the extent to which a proposed price reflects the ultimate cost to the government. Again, the RFPs fully provided for such an evaluation. As noted, the statement of evaluation criteria included as part of section M of the RFPs specifically provided for consideration of price realism under the price criterion, and warned that “[p]rice realism is a prerequisite to award.” RFPs § M.3.4.1. As also noted, Question and Answer No. 5, included in amendment No. 0004, indicated that “[u]nrealistically low offers, indicative of a potential buy-in, will be considered in determining the risk inherent in awarding the contract to such an offeror, as well as in the evaluation of the responsibility of that offeror.”

USMC asserts, alternatively, that it conducted a proper price evaluation. We disagree. We find that USMC failed to consider the realism of the offerors' target costs; its price evaluation therefore did not provide a valid basis for concluding that SMM's proposal would result in the lowest cost to the government.

The record indicates that, because of SMM's failure in its FPR to comply with the solicitation requirement to substantiate and explain its proposed approach, USMC lacked the information necessary to understand SMM's FPR approach. As noted above, the RFPs generally required that proposals “contain sufficient detail for effective evaluation and for substantiating the validity of stated claims,” and “demonstrate convincing rationale to address how the offeror intends to meet these requirements.” RFPs § L.8.2. Further, for the fixed-price incentive fee contract line item numbers, the RFPs specifically required offerors to furnish, among other information, the total proposed labor cost for each specific messhall, including identification of labor category by title or function and hourly rate or salary, number of labor hours in each direct labor category, and number of hours in each indirect

labor category. In its initial proposals, SMM furnished a detailed description of its approach to performing the work at the messhalls, including detailed staffing information and a detailed plan for applying and achieving savings through the use of advanced food technology such as central food production and [DELETED]. See SMM Initial Technical Proposal (East Coast) at 133-229; SMM Initial Price Proposal (East Coast) at 1-18; SMM Initial Technical Proposal (West Coast) at 135-223; SMM Initial Price Proposal (West Coast) at 1-18. SMM discussed in detail its messhall staffing methodology, explaining how particular required tasks would be performed; listed and described the responsibilities and qualifications of [DELETED] categories of labor to be deployed at the messhalls (including [DELETED]); listed by messhall the FTEs in each labor category which would be used in performing the contract; and described for a selected messhall [DELETED] for each labor category. SMM Initial Technical Proposal (East Coast) at 145/146-166, 411-21; SMM Initial Price Proposal (East Coast), Overview, at 3-6; SMM Initial Technical Proposal (West Coast) at 146/147-164, 404-414; SMM Initial Price Proposal (West Coast), Overview, at 3-6.

SMM did not provide the same detail with its FPR. Although SMM in its FPR reduced its final staffing for the East Coast by approximately [DELETED] percent (from [DELETED] to [DELETED] FTEs), resulting in an increase in evaluated meals per labor hour of approximately [DELETED] percent (from [DELETED] to [DELETED]), and reduced its final staffing for the West Coast by approximately [DELETED] percent (from [DELETED] to [DELETED] FTEs), resulting in an increase in meals per labor hour of approximately [DELETED] percent (from [DELETED] to [DELETED]), SMM did not explain how it would achieve [DELETED] higher levels of productivity and perform the contract requirements with [DELETED] fewer staff at the messhalls. Further, while SMM continued to list the FTE staffing at each messhall, without explanation it consolidated the number of labor categories, [DELETED]. SMM FPR East Coast/West Coast Revised Pricing Overview. SMM's explanation of its [DELETED] FPR reduction in messhall staffing was limited to the following:

Revisions reflect appropriate staffing based on workload data provided by the [USMC] Corps. The messhalls are staffed to meet workload in [Technical Exhibit-2] of the RFP. Staffing levels are appropriate to provide required service levels at indicated meal counts by meal period, meal serving hours, operating days, building capacity, specialty bars, cashier/headcount stations and messhall configurations.

SMM FPR East Coast/West Coast Revised Pricing Overviews at 1.²

² SMM also generally noted with respect to labor costs that [DELETED]. SMM FPR East Coast/West Coast Revised Pricing Overviews at 1. There was no indication in the FPR that these changes facilitated lower messhall staffing.

In addition, SMM's FPR, with little substantiation, [DELETED] reduced the costs included in its initial proposal for use of central food production facilities on each coast. Its FPR reduced by [DELETED] percent (\$[DELETED]) the East Coast costs associated with its proposed [DELETED] central food production facility, explaining simply that "[DELETED]. These efficiencies will be passed on to the [USMC] in reduced costs." SMM FPR East Coast Revised Pricing Overview. Likewise, SMM reduced by [DELETED] percent (\$[DELETED]) the West Coast costs associated with its proposed [DELETED] central food production facility, explaining simply that "[DELETED]. These efficiencies will be passed on to the [USMC] in reduced costs." SMM East Coast/West Coast Revised Pricing Overview. In neither case did SMM detail the [DELETED] basis for its calculation of savings to USMC.

The absence of a rationale for its reduced staffing is particularly significant in light of the fact that SMM's resulting higher meals per labor hour ([DELETED] meals per labor hour on the East Coast and [DELETED] on the West Coast) not only represented a [DELETED], unexplained increase from its own initially assumed productivity, and [DELETED], but also [DELETED] exceeded USMC's own estimate ([DELETED] East Coast and [DELETED] West Coast), which was based on its June 2000, pre-proposal Economic Analysis (EA), characterized by the agency as the basis for the government cost estimate's (GCE) productivity numbers. According to USMC, its EA estimate "for meals per labor hour was based on projected estimates the USMC expects in the future with the utilization of advanced food technology. . . . All of this was based on the USMC analysis of industry standards, as applied to USMC messhall operations." Agency Comments, May 29, 2001, at 5-6, 12-13. Furthermore, it appears that the productivity assumed in SMM's FPR even exceeded SMM's own commercial experience. In this regard, the agency's EA indicated that, in connection with a study of USMC messhalls undertaken by SMM, "Marriott [SMM] claims an [DELETED] [meals per labor hour] benchmark in all their commercial food service contracts, as compared to the USMC's [DELETED] [meals per labor hour]." Significantly, while recognizing the potential for increased productivity, including using advanced food technologies to achieve a [DELETED] percent productivity gain, USMC's June 2000 EA characterized SMM's claims of the savings possible from converting base messhall contracts to regional food service contracts, much of which involved increased labor productivity, as "highly exaggerated savings estimates" that failed to account for the particular USMC circumstances. AR, Tab 47, EA, at 1, 3.

In addition, it appears that the review undertaken by the USMC food service officer "to determine if SMM's proposed FPR staffing was realistic when compared to current FTE staffing, considering projected changes in service," and relied on by the agency as evidence of the realism of SMM's FPR staffing, contained significant flaws. These flaws call into question the validity of its conclusion that SMM's proposed FTE "numbers were realistic, due to the implementation of [DELETED] and centralization of several services, thereby reducing the number of required FTEs per mess hall below that currently utilized." Agency Comments, May 29, 2001, at 6-8; AR, Tab 51, SMM FPR Messhall Staffing Review, Apr. 25, 2001, at 4. In this regard, the review's

conclusions were based on only limited actual information as to current staffing. The food service officer did not seek information from the 15 messhalls currently staffed exclusively by Marines and “for which FTE information is not reasonably available or useful to the analysis.” Agency Comments, May 29, 2001, at 6-8. The food service officer obtained staffing data from only 32 of the remaining 40 messhalls which currently have contractor support, and then declined to use the data for the 11 messhalls at Camp Pendleton in California on the basis that the data was inherently unreliable because it originated from the current contractor, which had submitted an initial proposal (that had not been included in the competitive range).

Further, the food service officer’s derivation of FTEs from reported total messhall employee numbers is based on undocumented assumptions. Of the 21 messhalls actually considered in the review, 12 at Camp Lejeune, North Carolina reported total messhall employees rather than FTE numbers. For those 12 messhalls, the food service officer calculated FTEs by (1) subtracting four employees for full food service messhalls and three for mess attendant messhalls, to represent the messhall manager, assistant manager and supervisors, all of whom were apparently assumed to work full time; (2) assuming that the remaining messhall employees worked part time; and (3) assuming that each part-time worker worked 25 hours per week, since “[b]ased on my 20+ years of military experience with food service, 25 hours represented the average number of hours part time mess attendant workers perform in Marine Corps mess halls.” (In addition, based on her experience as the food service officer at [DELETED], the food service officer apparently provided the number of FTEs for the four messhalls at that installation.) Thus, it appears that only [DELETED] FTEs were considered in the review, approximately 30 percent of the [DELETED] FTEs in the agency estimate, and that, of these, the [DELETED] assumed at Camp Lejeune were derived based on the food service officer’s calculations described above rather than on actual reported FTEs.

Although requested by our Office to furnish any written documentation supporting the assumptions as to the proportion of messhall employees that work full time and the average hours worked by part-time employees, the agency has been unable to do so. (Indeed, the agency to date has failed even to furnish actual data on the FTEs at all messhalls.) Further, while the agency relies on the food service officer’s experience as support for assuming 25 hours per week for part-time messhall employees, we note that the food service officer’s report included an e-mail received from Camp Pendleton, reporting total messhall employees (not FTEs) at its messhalls, which bore the annotation: “X30÷40=” below the list of reported staff at each messhall. In the context of the e-mail, this annotation suggests that the food service officer intended to multiply the reported number of employees by 30/40 in order to derive the number of FTEs. That is, the annotation seems to suggest that, notwithstanding her claim that her experience supports 25 hours per week, the food service officer assumed, at least for Camp Pendleton, that part-time messhall employees worked 30 hours per week. Had it been assumed that part-time messhall employees worked an average of 30 hours per week, this of course would have

increased the number of current FTEs used in the comparison with SMM's FPR staffing.

In addition, the available data as to actual FTE staffing indicates that the food service officer's review may have been based on significantly understated numbers as to current FTE staffing. Specifically, USMC's June 2000 EA included and was partially based on reported fiscal year 1997 data—including information on direct labor costs, labor hours, and meals served—for nine messhalls, including three at Camp Lejeune considered in the food service officer's review on the basis of FTE numbers derived from reported total messhall employees numbers. While the agency's actual data in the EA indicated that there currently were [DELETED] FTEs at these three messhalls, the food service officer's derivation indicated only [DELETED] FTEs, an approximately 33-percent understatement. AR, Tab 47, EA, and Tab 51, SMM Messhall Staffing Review.

In its most recent submission to our Office, USMC notes that, absent the significant difference between ESS's and SMM's proposed staffing for [DELETED], where ESS proposed [DELETED] FTEs compared to SMM's [DELETED] FTEs in its FPR (and the EA government estimate of [DELETED] FTEs), the overall difference between ESS's proposed staffing for the East Coast ([DELETED] FTEs) and SMM's ([DELETED] FTEs) would be reduced to only [DELETED] FTEs. USMC suggests that, because the messhalls at [DELETED] will continue to be serviced by JWOD subcontractors, the difference in FTEs simply reflects differing approaches to the JWOD requirement; that is, [DELETED]. Agency Comments, June 22, 2001, at 1-2.

USMC's argument does not demonstrate that SMM's FPR reduced staffing was realistic. As an initial matter, the government productivity estimates were based upon the June 2000 EA, Agency Comments, May 29, 2001, at 13, and it does not appear that these estimates varied with respect to whether a JWOD or other contractor was operating a particular messhall; [DELETED]. SMM Initial Price Proposal (East Coast), Overview, at 13-14; SMM Initial Price Proposal (West Coast), Overview, at 12-13; RFPs § H.5. Further, the fact that SMM's FPR [DELETED] reduced staffing in nearly all messhalls (other than the brigs), whether or not JWOD-operated, indicates that its unexplained and unsupported FPR staffing reductions were unrelated to its JWOD approach.

In any case, SMM's assumption of [DELETED] was not fully supported in its proposal. In this regard, while SMM indicated in its initial proposal that [DELETED]. In this regard, after acknowledging in its proposal that the JWOD Committee has authority to approve price changes and economic adjustments and to decide disputes, SMM provided as follows:

In the event that Committee action results in any increased cost to the contractor based upon circumstances that are beyond SMM's control, SMM will be entitled to an equitable adjustment in the prime Contract Price and any other affected Prime Contract terms and conditions.

SMM anticipates treating these changes as we would any other FAR permitted request for equitable adjustment.

SMM Initial Price Proposal (East Coast) at 13; SMM Initial Price Proposal (West Coast) at 13. To the extent that SMM committed itself in its proposals to [DELETED], its commitment was substantially undercut by this qualification and reservation. The record thus does not support the conclusion that SMM's FPR reductions in staffing and the resulting staffing levels were attributable to differences in [DELETED] the JWOD work.

SMM argues that ESS, in addressing pricing for preventive maintenance and the possibility of changes in the meal count, failed to offer firm target or ceiling pricing for food service or firm pricing for maintenance, such that its pricing could not reasonably be compared to SMM's. In this regard, SMM refers to ESS's response to the observation during discussions that its rates for preventive maintenance were low; ESS in its FPR revised its rates, adding that "[b]ased on Preventive Maintenance information that is gathered by the [USMC] and [ESS] during the first contract year, we welcome a cost realism review that may or may not result in adjusted pricing that could result in savings for the [USMC]." ESS FPR, ESS Responses to Cost/Price Questions. With respect to the possibility of a variation between the actual meal count and the solicitation estimate, although USMC had advised ESS in its written preliminary discussion letter that it could not agree to ESS's stated intention in its initial proposal to seek recovery of cost increases resulting from a significant drop in meals, during oral discussions the agency "agreed that the scenario outlined by ESS [—a large percentage drop below the estimates set forth in the RFP—] would call for a pricing adjustment." AR, Tab 21, USMC MFF of Discussions with ESS. In its FPR, ESS "request[ed] the opportunity to verify the base bid numbers that have been used to produce our bid price before the commencement of the contract"; stated that "[w]e would need to also agree to a mechanism for price adjustment should the base meal count be below the stated 27,550,000"; and indicated that "[i]n relation to any significant changes to meal attendance numbers in the future, [ESS] is delighted to note that the [USMC] is prepared to negotiate with us when and if individual messhall or overall circumstances alter." ESS FPR, ESS Responses to Cost/Price Questions.

It is not apparent how ESS's discussions response rendered its pricing any more uncertain than the above JWOD qualification rendered SMM's pricing. In fact, it appears that ESS's discussions response may have had a lesser effect than SMM's. While SMM's qualification insulated it from the risk associated with [DELETED], ESS's discussions response seems to have merely confirmed an agency position that could have applied to any contractor, that is, that a significant reduction in the meal count could entitle the contractor to a price adjustment.

CONCLUSION

We conclude that USMC's price evaluation did not reasonably account for SMM's [DELETED] FPR reduction in staffing and consequent [DELETED] increase in assumed productivity. Nor did the price evaluation adequately consider that SMM largely failed to substantiate a [DELETED] FPR reduction in the costs associated with its central food production facilities. In these circumstances, USMC lacked a reasonable basis to conclude that SMM's evaluated price represented the lowest cost to the government. Given the agency's conclusion that ESS's and SMM's technical proposals for the West Coast were substantially equal, and that SMM's East Coast proposal was only slightly above ESS's, there was a reasonable possibility that the agency's defective price evaluation resulted in competitive prejudice to ESS. Accordingly, we sustain ESS's protest against the awards to SMM for both the West and East Coasts.

We recommend that the agency reopen discussions with offerors in the competitive range and request revised proposals. If SMM is no longer in line for award after evaluation of revised proposals, we recommend that its contracts be terminated and that award be made consistent with the evaluation results. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2001). The protester's certified claim for costs, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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