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Decision

Matter of: J W Holding Group & Associates, Inc.

File: B-285882.3; B-285882.6

Date: July 2, 2001

Daniel Koch, Esq., Paley, Rothman, Goldstein, Rosenberg & Cooper, for the protester.

Mathew S. Perlman, Esq., Richard J. Webber, Esq., and Natalie S. Walters, Esq., Arent Fox, for Sodexho Marriott Management, an intervenor.

Julius Rothlein, Esq., Headquarters U.S. Marine Corps, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Regulation requiring source selection authority (SSA) to exercise “independent judgment” does not preclude SSA from acting as head of the price evaluation team.

DECISION

J.W. Holding Group & Associates, Inc. (JWH) protests the U.S. Marine Corps’s (USMC) award of a contract to Sodexho Marriott Management (SMM) under request for proposals (RFP) No. M00027-00-R-0002, for regional garrison food service on the West Coast. The protester challenges the conduct of the evaluation.

We deny the protest.

The RFP provided for award of a primarily fixed-price incentive contract for a base period of 5 years, with 3 option years, to provide regional garrison food service at 23 messhalls on the West Coast. Award was to be made on a best-value basis, with proposals to be evaluated under four criteria: price, integrated organization and management, small business subcontracting plan, and past performance. Price was the most important criterion and was equal in importance to the other criteria combined.

Four offerors submitted proposals. SMM’s, JWH’s and a third offeror’s (Eurest Support Services (ESS)) proposals were included in the competitive range. After

conducting written and oral discussions, USMC requested final proposal revisions (FPR). The FPR evaluation results were as follows:

	JWH	ESS	SMM
Meal Service (Fixed Price Incentive)			
Target Cost per Meal	\$(DELETED)	\$(DELETED)	\$(DELETED)
Target Price per Meal			
Total Target Price	\$(DELETED)	\$(DELETED)	\$(DELETED)
Share Ratio (USMC/ Contractor)	[DELETED]	[DELETED]	[DELETED]
Ceiling Price Per Meal	\$(DELETED)	\$(DELETED)	\$(DELETED)
Meals per Labor Hour	[DELETED]	[DELETED]	[DELETED]
Hour Maintenance (Fixed Price)	\$(DELETED)	\$(DELETED)	\$(DELETED)
Time & Materials (T&M)	\$(DELETED)	\$(DELETED)	\$(DELETED)
Total Price (Target Price+ Maintenance+T&M)	\$(DELETED)	\$(DELETED)	\$(DELETED)
Total Price (Ceiling Price+ Maintenance+T&M)	\$(DELETED)	\$(DELETED)	\$(DELETED)
Risk			
Proposal	Moderate	Low	Low
Performance	Moderate	Moderate	Low
Technical Score	66.23	84.2	84.3

Based on this evaluation, the agency concluded that SMM had submitted the most advantageous offer. USMC determined that, while SMM's and ESS's technical proposals 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 6-9, 10-11. The agency viewed JWH's pricing as "close to," or "roughly equivalent to" ESS's, but "much less attractive" than SMM's, and its technical proposal as "much less favorabl[e]" than either SMM's or ESS's. *Id.* at 7-9. Upon learning of the resulting award to SMM, and after being debriefed by the agency, JWH filed this protest with our Office.

JWH asserts that it was improper for the source selection authority (SSA) to serve as head of the price evaluation team, since Federal Acquisition Regulation (FAR) § 15.308 provides that "the source selection decision shall represent the SSA's independent judgment." This argument is clearly without merit. While FAR § 15.308 requires the source selection decision to be based on the SSA's exercise of independent judgment, it does not expressly preclude the SSA from participating in the evaluation process, and we see nothing in an SSA's doing so that is inherently

inconsistent with the exercise of independent judgment. We are aware of no other applicable prohibition in this regard.

JWH generally alleges that the price evaluation improperly focused only on the proposed target pricing, and specifically challenges the evaluation of the price realism of SMM's FPR. USMC maintains that JWH is not an interested party to pursue these allegations because it was not next in line for award. We agree. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-56 (Supp. IV 1998), only an "interested party" may protest a federal procurement. See Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2001). Here, JWH has not shown any basis to question the evaluation of either its own proposal or ESS's; again, JWH's technical proposal was viewed as "much less favorabl[e]" than ESS's, while its pricing was evaluated as only roughly equal to ESS's. (Indeed, while JWH's total target price was lower than ESS's, its ceiling price was higher and its share ratio was much less favorable to the government in the event of an overrun.) AR, Tab 11, USMC Final Summary, at 6-9, 10-11. JWH has not demonstrated, and it is not apparent, how a different approach to evaluating target pricing would have changed the price standing of its proposal relative to ESS's sufficiently to offset ESS's evaluated technical superiority. In these circumstances, there is no basis to question USMC's position that ESS, not JWH, would be in line for award in the event that we found merit to JWH's challenge to the evaluation of SMM's proposal. A protester is not an interested party where it would not be in line for award if its protest were sustained. Avondale Technical Servs., Inc., B-243330, July 18, 1991, 91-2 CPD ¶ 72 at 2.

The protest is denied.

Anthony H. Gamboa
General Counsel