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## Decision

**Matter of:** Najlaa International Catering Services

**File:** B-402434; B-402434.2

**Date:** April 23, 2010

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### **DIGEST**

Protest of agency's evaluation of proposals and award determination is denied where record shows they were reasonable and consistent with the terms of the solicitation.

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### **DECISION**

Najlaa International Catering Services, of Al Sharq, Kuwait, protests the award of a contract to Tamimi Global Co. Ltd., of Al Rai, Kuwait, under request for proposals (RFP) No. W52P1J-09-R-0016, issued by the Department of the Army for dining facilities (DFAC) leasing and food services for soldiers and civilian personnel in Kuwait. Najlaa primarily challenges the agency's evaluation of proposed staffing levels and associated pricing, and contends the agency failed to conduct meaningful discussions with the firm regarding perceived excesses in its proposed staffing plan.

We deny the protest.

The RFP, issued on January 28, 2009, contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a base year and 4 option years for the mobilization (including acquisition and integration of personnel), lease (including equipment and newly constructed dining facilities), operation (including storage, preparation, and serving of food), and demobilization (including facility removal or halted operations ("warm status")) of DFACs. RFP at 34-39. Offerors were advised that the agency could order up to seven DFACs (of varying sizes, defined in the RFP by seating and serving capacity) on an annual basis, as well as monthly surge DFACs, if needed. The RFP advised offerors that due to the changing

nature of the missions in Iraq and Afghanistan, the services contemplated under the RFP's performance work statement (PWS) likely would either expand or decrease during performance of the contract. To provide for greater flexibility and to limit risk to the agency, a fixed-price contract was to be awarded, under which the contractor would assume the risk related to the uncertainty of the agency's food service requirements.

The contract was to be awarded to the firm determined to have submitted the proposal offering the best value to the agency considering the following evaluation factors: mission capability; strategic plans (including quality control plan, transition phase in/out plan, and mobilization/demobilization); past performance; and price. Mission capability was the most important factor and included subfactors for technical capability and management plan—the latter of which, as relevant to this protest, included evaluation of the offeror's capacity to acquire, train, and maintain staffing levels to meet performance requirements and handle surges and drawdowns of personnel. Proposed prices were to be evaluated to determine whether they were complete, fair, and reasonable; the RFP, which did not specifically call for a price realism analysis, advised that proposals deemed unrealistic, or those with inconsistencies in terms of technical approach and price, could be rejected for exhibiting a lack of competence or failure to understand the agency's requirements. Id. at 37.

The PWS provided that the contractor was to be capable of operating the DFACs on a 24-hour, 7-day/week schedule, and was to provide sufficient workforce to prepare, serve, clean, and maintain the facilities based on the "maximum feeding capacity per meal" for each size facility required. The RFP defined maximum feeding capacity per meal as the maximum seating capacity of the facility multiplied by 12 (representing 3 meals per seat in a 4-hour serving period), to be used for meal planning purposes, storage capacity planning, workforce scheduling purposes, and determining equipment requirements; in this regard, the PWS specifically advised that the maximum feeding levels are only infrequently required, but, as stated above, the contractor must provide meal services at those levels if the agency's needs so require during performance. PWS at 14. The PWS provided that, upon 30 days notice from the agency of an increased meal service requirement, the contractor was to augment its workforce to provide sufficient staff to accommodate the maximum feeding levels. Id. at 9. Meal serving hours for the four daily meals (the fourth one being a smaller headcount late night meal) could also be decreased or expanded (up to 24 hours for emergencies, although that was considered atypical), depending on changing mission requirements. Id.

To assist offerors in the preparation of their operations proposals (including workforce staffing), the RFP included technical exhibits showing the current DFAC locations' seating capacities and the potential sizes of the replacement DFACs to be leased under the RFP, historical meal headcounts showing consistent and substantial annual reductions in meals served since 2005, and historical workload data used to project normal headcount levels. This latter technical exhibit reiterates

the RFP's provisions regarding the potential for change in meal service needs during performance, stating that when notified of a need for expanded service to the maximum feeding level, the contractor must be able to augment its staff to meet that need. RFP Technical Exhibits 2-4.

Amendment 9, issued on April 7, 2009, incorporated a series of offeror questions and agency answers, including a question regarding the RFP's design guideline for construction of the DFACs. An offeror had asked for the sizes of the DFACs expected to be ordered per location. The agency confirmed that seven initial DFACs were expected, but that due to changing military operations in Iraq, the exact sizes were not definite--instead, the agency explained, the RFP asked offerors to price each size DFAC so that the agency could later decide which ones to order once more definitive information becomes available about troops' meal needs in Kuwait during the impending redeployment from Iraq. Amendment No. 9 at 2, Q&A No. 1. The agency explained in the amendment that "[t]he Command does not want to get caught committing to small facilities to handle the current headcounts when the future headcounts will probably double or triple." Id. The agency further explained that "[i]t should be less expensive to build an [e]xtra-large facility now and pay for medium operating costs initially than to build one medium facility now and then build another in 6 months that will only be operational for 3 months before we have to start paying warm status fees." Id. The agency concluded that the "PWS is clear on what size of facilities the [government] is expecting to request. Flexibility is key." Id.

The agency received four proposals, one of which was excluded from the competitive range; several rounds of discussions were held with the remaining offerors. Tamimi, an experienced DFAC provider and the incumbent contractor for the agency, submitted the proposal rated highest for technical merit. Specifically, the proposal was rated excellent under the mission capability and strategic plan factors, received a low risk rating under the past performance factor, and offered the lowest price (\$60,262,324.59, which was substantially lower than the other proposals).

During discussions, the agency asked Tamimi for information regarding its pricing assumptions and rationale. Tamimi answered that it recognized the substantial risk put upon the offerors under the RFP, which requires fixed pricing for the lease and operation of the DFACs without a definitive headcount or staffing level, and without a commitment by the agency to lease the facilities for the full 5-year contract period. The firm explained that in developing its prices, it considered the RFP's technical exhibits and projected maximum headcounts, as well as variable component costs such as expendable and consumable supplies, and its assumption that headcounts for meal services will likely decrease substantially in the option years due to the anticipated accelerated withdrawal of troops from Iraq. Tamimi stated that a substantial reduction in meals would lower the firm's operations costs, including the cost of consumable supplies, and lower its costs for building additional DFACs in the latter years of the contract. In Tamimi's view, with a smaller headcount, the agency

may need fewer additional DFACs. Tamimi further explained that, as the incumbent, it has only limited mobilization costs compared to other offerors, since Tamimi's workforce and support structure (including transportation, employee housing, and management team) are already in place. Tamimi also noted that its DFAC lease prices reflect lower prices for construction of the DFACs due to the recent economic downturn, and its partial amortization of construction costs.<sup>1</sup> After discussions with Tamimi, the agency found its proposed price to be reasonable and consistent with its technical approach.

Najlaa's proposal received ratings of excellent under the technical capability subfactor and acceptable for the management plan subfactor of the mission capability factor, for a rating of acceptable overall under that factor, and a rating of excellent for the lesser-weighted strategic plans factor. Since no past performance information had been submitted for the firm, its initial proposal received an unknown risk rating under the past performance factor. Discussions with the firm, as relevant to this protest, included questions about the firm's proposed staffing plan. While the agency found the plan acceptable without significant weaknesses, the agency considered the firm's DFAC staffing excessive for the meal service requirements anticipated by the RFP. Najlaa was asked for its assumptions and rationale for its DFAC operations staffing levels (i.e., for kitchen, dining room, outside cleaners, warehousing, and inventory personnel), and, regarding its maintenance staff, was told its high level of maintenance staffing was considered excessive in light of the fact that newly constructed facilities were being leased.

In response, Najlaa generally noted that its labor quantities are necessary to meet the PWS requirements in light of its staff's scheduled time off and excused absences, the anticipated 24-hour operation of both the DFACs and the firm's warehouse and inventory function, the need for flexibility to extend meal periods and meet surge requirements, as well as an added amount of labor to cover unexpected excessive turnover in staff. In its final proposal revision, the protester decreased its maintenance staff, but increased its kitchen staff at all of the DFACs, for an overall increase in staffing. The evaluators did not raise the protester's technical evaluation score for the management plan subfactor since Najlaa's responses to the discussion questions were considered insufficient to explain and justify the need for the high number of staff it proposed.

While Najlaa's final revised proposal included some past performance information identifying projects it performed, since insufficient qualitative past performance information was received, no change was made to its unknown risk past

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<sup>1</sup> As discussed later in this decision, Tamimi's 5-year price for the mobilization/leasing contract line item number (CLIN), and the demobilization/warm status CLIN (which are separate from the operation CLIN protested here), is approximately \$[deleted] less than Najlaa's.

performance rating. Najlaa's final proposed price was \$157,617,400; Najlaa's total price for the operations CLIN for the 5-year contract period is approximately \$[deleted] higher than Tamimi's.

Award was made to Tamimi based on the agency's determination that its low-priced, low-risk, technically superior proposal offered the best value. Najlaa then filed an agency-level protest, which was denied. This protest followed.<sup>2</sup>

Najlaa challenges the reasonableness of the agency's evaluation of Tamimi's staffing. The protester essentially contends that the RFP required all offerors to propose DFAC operation staffing, and associated DFAC operation prices, at the maximum feeding levels for all facilities for the full 5-year performance period. Najlaa basically contends that because Tamimi's staffing levels are lower than its own,<sup>3</sup> the awardee failed to propose to handle the maximum feeding levels, as Najlaa believes is required by the RFP. The protester further alleges that the agency failed to reasonably evaluate Tamimi's ability to augment its staff to meet surge requirements and instead relaxed the surge requirements for Tamimi by accepting Tamimi's assumption that the anticipated drawdown of troops in Iraq would substantially decrease the agency's need for DFAC services in the option years; in this regard, Najlaa, which offered the same prices for each year of performance, contends in its protest that the agency indicated that its meal service requirements will probably increase, not decrease.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's

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<sup>2</sup> As an initial matter, Najlaa challenges the agency's determination that Tamimi is a responsible firm, arguing that the agency failed to consider that while Tamimi certified in its proposal that none of its principals had been convicted of criminal activities within the previous 3-year period, a former director of the firm had recently been convicted of crimes related to bribery to obtain a contract. The agency reports that it knew of, and considered, the criminal activity information, as well as the fact that the individual involved had been determined to have acted independently, was dismissed by Tamimi in April 2006, and Tamimi had not been debarred or suspended. Based on the record here, we see no basis to further review Najlaa's challenge to the agency's affirmative responsibility determination. See Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2009); Precision Standard, Inc., B-310684, Jan. 14, 2008, 2008 CPD ¶ 32 at 4.

<sup>3</sup> Tamimi's proposal was evaluated as offering a staff of [deleted] for DFAC meal service operations, another competitive range offeror proposed a DFAC staff of [deleted], and Najlaa proposed a DFAC staff of [deleted].

judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. Here, we see no basis to object to the agency's evaluation.

As a preliminary matter, in our view, Najlaa's challenge is premised on an unreasonable interpretation of the PWS, namely, that the PWS required the contractor to provide staffing to handle the maximum feeding levels at all times. While the PWS did require the contractor to provide staffing at the maximum feeding levels when the agency's needs so required, the protester's interpretation clearly fails to take into consideration the PWS provisions that emphasize the uncertainty of the agency's actual meals service requirements, and that explain that surge activity requiring the maximum feeding levels was anticipated to be infrequent and atypical. In addition, the RFP provided projected normal meal service levels. Reading the PWS as a whole, we do not find reasonable Najlaa's assumption that offerors were required to propose operations at the maximum feeding levels for the entire 5-year period, or that Tamimi's alleged failure to do so renders that firm's proposal unacceptable.<sup>4</sup>

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<sup>4</sup> As noted above, in response to an offeror's question regarding the likely sizes of DFACs to be ordered, the agency in amendment No. 9 stated that it did not want to commit to ordering the smaller sizes since "future headcounts likely will double or triple." Contrary to the protester's suggestion, we do not read the agency's response as advising offerors to assume that there will be specific surge requirements. The agency was responding to a DFAC design question, not a headcount question, and in that context, was providing examples illustrating the need for offerors to remain flexible with regard to the DFAC sizes that will be required, in light of the uncertainty regarding future headcounts. In fact, in the same response, the agency also referred to the possibility of a decrease in requirements, noting that it preferred to avoid ordering a new facility that "will only be operational for 3 months before we have to start paying warm status fees." Amendment No. 9 at 2. As a result, we think the agency's response in amendment No. 9 is consistent with the solicitation as a whole, which clearly and repeatedly advised all offerors that requirements could expand or decrease during the contract period, and also advised offerors to take that uncertainty into account in proposing to perform the work. Given the uncertainty of the agency's requirements, we cannot find unreasonable the agency's conclusion that the offerors' assumptions and approaches to staffing the DFACs reflect each firm's exercise of business judgment in determining the acceptable level of risk in performing this fixed-price contract.

Based on the record here, we find the agency's evaluation of Tamimi's staffing plan reasonable and consistent with the solicitation's terms regarding evaluation of an offeror's capability to acquire staff and augment that staff, as needed. In this regard, the record shows that the agency gave reasonable consideration to Tamimi's incumbent experience at the current DFACs with similar staffing levels successfully performing similar requirements, including during surge periods. The record shows that the agency also reasonably considered the firm's ability to augment its staff to handle maximum feeding levels when required, by, for example, its cross-utilization of staff, offering overtime benefits to personnel choosing to perform additional work, and rescheduling personnel leave to non-surge periods. While the record shows that Tamimi's proposed approach includes fewer personnel than Najlaa proposed to meet the 24-hour operation and surge provisions of the RFP, the protester has not shown that the Tamimi proposal took exception to those provisions, or that the agency failed to reasonably assess the firm's ability to meet those requirements.

Najlaa next contends that the agency failed to adequately evaluate the realism of Tamimi's price. Where, as here, a fixed-price contract is to be awarded, providing for a definite price and placing upon the contractor the risk and responsibility for all contract costs and resulting profit or loss, an agency need not conduct a price realism evaluation unless it is required by the solicitation. See Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17. No specific price realism evaluation was called for in the RFP here, and offerors were not required to provide cost or pricing data; rather, the RFP provided that unrealistic proposals could be rejected for a firm's failure to understand the requirements. As explained below, we think the record shows that the agency's consideration of the realism of Tamimi's price was reasonable and consistent with the RFP.

The agency reports that, in light of Tamimi's substantially lower price, the agency conducted a risk assessment that included a review of the realism of the firm's prices in terms of confirming the firm's understanding of the requirements and the consistency between its technical and price proposals; the review also included a per meal price analysis which showed Tamimi's proposed prices to be similar to the pricing in its most recent contract. The agency's review also noted additional price advantages reflected in Tamimi's proposal, such as its low mobilization costs as a result of being the incumbent contractor with an established staff in place at the DFAC locations. For example, for the base year mobilization of an extra-small DFAC, Tamimi proposed a price of less than \$[deleted], compared to Najlaa's proposed price of \$[deleted] for the same size facility. Tamimi's lower price also was found to reflect equipment cost advantages available to an incumbent with equipment on-hand, that can be transferred from its current DFACs to the new DFACs. As stated above, during discussions, the firm had also reported pricing advantages related to the fact that lower prices for construction material and labor are expected due to the economic downturn, as well as its expectation that the drawdown of troops in Iraq will substantially reduce the agency's meal service and

DFAC construction needs in Kuwait during the option years. Our review of the record supports the reasonableness of the agency's price evaluation for this fixed-price award; while Najlaa expresses its disagreement with the evaluation, the protester has not shown that the analysis, including the agency's acceptance of the awardee's explanations regarding its lower prices, Tamimi's assumption of the risk related to its pricing, and the determination that the pricing was consistent with the firm's proposed approach, was unreasonable or inconsistent with the solicitation's terms.

Najlaa also contends that the agency failed to conduct meaningful discussions with the firm regarding any concerns about perceived excessive staffing in its proposal. Najlaa contends the agency should have been more specific in pointing out concerns about excessive staffing for all of its DFAC staff positions, rather than simply asking for elaboration regarding its operations staffing levels, and indicating only that its maintenance personnel staffing level was excessive for the newly constructed facilities.

We need not resolve this issue since it is clear from the record that the protester has not suffered any competitive prejudice from the allegedly improper discussions; in short, the record here does not support a finding that, but for the agency's action, the protester would have had a substantial chance of receiving the award. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest). First, Najlaa has not explained with any specificity how it would have changed its proposal to decrease its staffing levels so significantly as to overcome the \$[deleted] difference between the firms' proposed DFAC operation prices. Second, even if Najlaa's proposed management plan (including its staffing plan) was rated excellent and thus, technically equal to Tamimi's, and even if its price for DFAC operation (including staffing) was equal to Tamimi's, there is no basis in this record to suggest that Najlaa would be in line for award; the protester's proposal was rated as having unknown risk for past performance (compared to Tamimi's evaluated low risk), and the protester has not challenged the approximate \$[deleted] price advantage presented by the awardee's proposal under the remaining CLINs for mobilization/leasing and demobilization/warm status requirements.

The protest is denied.

Lynn H. Gibson  
Acting General Counsel