



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: General Exhibits, Inc.  
File: B-225721  
Date: May 5, 1987

### DIGEST

1. Agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal ranked fifth of seven proposals received and where the agency reasonably considered the offeror's technical proposal to be so deficient as to require major revisions before it could be made acceptable.
2. Protest based on alleged deficiencies in a solicitation is untimely and will not be considered on the merits when not filed with General Accounting Office or the contracting agency prior to the closing date for receipt of initial proposals.

### DECISION

General Exhibits, Inc. protests its exclusion from the competitive range under request for proposals (RFP) No. 263-87-P(84)-0016, issued by the National Institutes of Health (NIH), Department of Health & Human Services. The RFP requested proposals to design interactive exhibits at the NIH Visitor Information Center. The work includes developing a detailed conceptual plan for design of interactive exhibits, building prototype exhibits, and furnishing graphics and space plans, as well as identifying audiovisual and computer software to be developed and acquired under separate contracts.

We deny the protest in part and dismiss it in part.

The RFP was issued on December 12, 1986 and prospective offerors were "urged and expected" to attend a site visit on December 16. Twenty-four firms sent representatives to the site but General Exhibits did not. The RFP provided that the government would award a contract to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the government, cost or price and other factors considered. The RFP contemplated the submission of separate technical and cost proposals. The solicitation's

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instructions for preparation of technical proposals cautioned offerors that technical proposals should be "in as much detail as you consider necessary to fully explain your proposed technical approach or method" and that the technical proposal should reflect a clear understanding of the nature of the work. Further, the RFP also stated that information as to how the offeror intends to meet each requirement must be provided "in sufficient detail to substantiate the claim that the offeror is able to meet all requirements."

The RFP specified that various areas of information were required to be addressed by each offeror in its proposal, generally including a detailed work plan, project organization, staffing, and management, and names and resumes of important technical personnel. The RFP contained the following evaluation factors for award:

	<u>Points</u>
(1) Past experience in design of interactive science exhibits	(35 points)
(2) Qualifications of Project Director and Staff	(30 points)
(3) Soundness of Management Plan including Statement of Work	(35 points)

Concerning cost, the solicitation stated that "paramount consideration" would be given to technical evaluation of proposals rather than cost or price.

By the proposal receipt due date of January 12, 1987, seven proposals, including one from General Exhibits, were received by the agency. After the technical evaluation report was issued, the contracting officer found three offers to be within the competitive range and four offers, including that submitted by General Exhibits, to be unacceptable and outside the competitive range. General Exhibits' technical proposal had been ranked fifth of seven proposals received. Accordingly, NIH notified General Exhibits that based on a review of the proposal's technical merit, it was not among those selected for further consideration. The notice stated that the evaluation committee felt that the proposal "lacked specificity to the NIH Visitor Information Center" (was not tailored to the specific circumstances and needs of the visitor center) and that the General Exhibits supporting staff lacked experience in the area of interactive exhibits.

General Exhibits disagrees with the agency's evaluation of its proposal and argues that the rejection of its proposal

was not justified. While our Office has been furnished the evaluation reports and other relevant exhibits concerning this protest, the agency, which still has not made an award, considers these documents to be privileged and has not provided them to the protester. Although we therefore are unable to reveal technical and cost details concerning the evaluation, our decision is based on a review of all relevant reports and exhibits submitted to our Office by NIH.

Our Office will not disturb an agency's decision to exclude a firm from the competitive range on grounds that it had no reasonable chance of being selected for award when, considering the relative superiority of other proposals, this determination was reasonable. Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255. A protester has the burden of proving that the agency's evaluation was unreasonable. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43. Moreover, an agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal is so deficient that it would require major revisions before it could be made acceptable. Ameriko Maintenance Inc., B-216406, supra.

NIH evaluators found the project management plan proposed by General Exhibits to be "generic," that is, lacking specificity to the unique work required by the RFP. According to NIH, the plan failed to provide an estimate of the time for project completion and contained no suggestions or ideas which would be incorporated into project performance. Further, the General Exhibits proposal lacked an evaluation plan for the prototypes as required by the RFP. In response, General Exhibits argues that the solicitation did not specify the level of technical detail apparently required by NIH.

Here, despite General Exhibits' assertions and, as we have already stated, the RFP called for sufficiently detailed information with which offerors were required to demonstrate a clear understanding of the requirements. After an independent evaluation of General Exhibits' proposal, we see nothing unreasonable in NIH's evaluation of the protester's project management plan. We find that the General Exhibits' project management plan is completely general in nature, setting forth general principles that would be followed if General Exhibits were awarded the contract. There is no discussion of NIH's unique circumstances or unique needs in the proposal. Apparently, because General Exhibits failed to attend the pre-bid site visit, it was unable to tailor its proposal for the specific requirements of NIH. We

simply note that it is incumbent on an offeror to demonstrate the acceptability of its proposal. See, e.g., Electronics Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 107. Here, we find that General Exhibits failed to do so.

NIH also found that General Exhibits' project director had extensive experience but that "some of the support staff were still attending school completing degrees." Further, NIH found that the resume for the consultant responsible for interactive devices was not submitted. In response, the protester states that the experience of the project director and the key consultant for interactive devices exceeds those of anyone in the country and that its support staff has worked with these two people on other past projects.

We again find no basis for a conclusion that the agency was unreasonable in its evaluation. Our review of the "Key Personnel" section supports the agency's finding that the firm's president is well qualified by extensive experience in the design of exhibits. However, the proposal listed J. Graham as a consultant for interactive devices and included the name of John Graham on an organizational chart but the consultant's resume enclosed was that of John H. Gregory. As the evaluators could not find Mr. Gregory's name listed in the proposal, his qualifications were apparently not considered. While this may be, as asserted by General Exhibits, the result of a typographical error, we find that the responsibility for this error rests with the protester. In any event, we find that General Exhibits' project management plan, discussed above, was so deficient, requiring a complete rewrite, that the proposal was properly rejected for that reason alone. Thus, there is no basis to conclude that any miscalculation under this criterion (qualifications of project director and staff) could have prejudiced General Exhibits by depriving the firm of an award to which it was otherwise entitled. See Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715; Lingtec, Inc., B-208777, Aug. 30, 1983, 83-2 CPD ¶ 279. We therefore deny this protest ground.

Finally, General Exhibits also contends that the RFP was defective because it did not give adequate information for pricing its proposal, for the preparation of a realistic development plan, and because it failed to define the term "interactive exhibits," and failed to disclose the agency's budget for this project. All of these alleged deficiencies were apparent on the face of the RFP but were not protested prior to the closing date for receipt of initial proposals. These issues are therefore untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a) (1986), which require that protests based upon alleged improprieties in an RFP which

are apparent prior to the closing date for receipt of initial proposals shall be filed prior to that date. General Exhibits concedes that it made no protest prior to the submission of proposals but explains that it was unaware that it had to, and that it may have been "misdirected in submitting a proposal by erroneous [assurances orally] provided by NIH," which allegedly encouraged General Exhibits to submit a proposal even though the firm had not attended the pre-bid site visit. Protesters are, however, charged with constructive knowledge of the contents of our regulations since they have been published in the Federal Register and appear in the Code of Federal Regulations at 4 C.F.R. Part 21 (1986). B&B Boat Building Inc.--Reconsideration, B-220852.4, Jan. 22, 1986, 86-1 CPD ¶ 69. Thus, these issues will not be considered on their merits. See Ratcliffe Corp.--Request for Reconsideration, B-220060.2, Oct. 8, 1985, 85-2 CPD ¶ 395.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel