



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jones & Company
File: B-228870
Date: November 23, 1987

DIGEST

1. GAO finds no basis to question exclusion of protester's proposal from the competitive range where proposal reasonably was found deficient in some areas to the extent that major revisions would have been necessary in order for the proposal to have been considered competitive.
2. Protest that contracting officials were biased against Indian-owned firms is denied where allegation is based solely on inference or supposition.

DECISION

Jones & Company protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. BIA-M00-87-23, issued by the Bureau of Indian Affairs, Department of the Interior for a "Comprehensive Surface Water Hydrologic Study of the Colorado River System." The purpose of the study is to develop evidentiary support for use in court by the United States to quantify and prove the amount of water available within the river basin for use by the Hopi and Navajo tribes.

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

The RFP, issued on May 28, 1987, was a set-aside for Indian-owned firms and other qualified small businesses. The RFP advised offerors that consideration for award first would be given to 100 percent Indian owned and controlled firms and secondly to other small businesses. Two Indian-owned firms, Jones and the Council of Energy Resource Tribes (CERT), in addition to two non-Indian-owned firms, submitted proposals by the June 29, 1987, closing date for receipt of initial proposals.

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The RFP advised offerors that technical proposals (which were to be evaluated separately from cost proposals) would be evaluated upon "the propriety, adequacy and completeness of the written response demonstrating an overall understanding of the contract effort." The solicitation set forth technical evaluation criteria worth a total of 100 points. The evaluation criteria required offerors to demonstrate their knowledge and experience in water supply studies; theoretical and applied surface water hydrology; drainage analysis and sediment transport; surface water investigations; development of computer programs and the application of such programs concerning surface water resources; and Indian water rights claims. The evaluation criteria also required evidence of performance of similar work in a satisfactory manner and experience as a professional expert witness in all areas mentioned above. The RFP further advised offerors that "in the relationship of merit versus cost, overall cost of contract performance will not be considered as controlling."

The technical evaluation committee initially evaluated technical proposals from the Indian-owned firms. Jones received a technical score of 52 points out of the possible 100 points allowed for technical factors. Interior determined that both Jones' and CERT's proposal would require major revisions to become acceptable and, based on this finding, these firms were excluded from further consideration for award and proposals from non-Indian-owned firms were evaluated.

Jones essentially argues that there was no reasonable basis for excluding its proposal from the competitive range and that the rejection of its proposal was the result of discrimination against Indian firms such as Jones'. In this regard, Jones maintains a comparison of the proposals from non-Indian-owned firms with Jones' proposal will show that Interior "unfairly discriminated against Jones."

Interior reports that Jones' proposal would require a "complete rewrite" to have a chance for award and, therefore, the proposal was excluded from the competitive range. Interior reports that Jones' offer failed to meet several RFP requirements. Interior found that Jones' proposal inadequately addressed the RFP requirement that the offeror's technical proposal include a list of all computer codes (programs) along with a detailed narrative of the codes' use and applicability to the work under the contract. In this regard, the agency explains that in order to successfully perform the solicited study, it is necessary to use computers to perform calculations and analyses in the areas of engineering hydrology, sedimentation and water quality work.

Interior also found that Jones' technical proposal did not include the manhours required for each proposed work item. Interior further states that Jones' proposal was vague and incomplete in describing the required work, although the RFP required offerors to completely define and detail all engineering work envisioned to be necessary to meet the solicitation requirements and, therefore, the agency could not adequately evaluate the firm's understanding of the work. Finally, Interior states that Jones' failed to identify proposed subcontractors and state their expertise as required by the RFP.

The evaluation of proposals and resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best method of accommodating them. Harbert International, Inc., B-222472, July 15, 1986, 86-2 C.P.D. ¶ 67. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. Twin City Construction, Co., B-222455, July 25, 1986, 86-2 C.P.D. ¶ 113. Rather, the burden is on the offeror to submit an initial proposal that is adequately written. Twin City Construction, Co., B-222455, supra. Further, we have held that in reviewing an agency's evaluation, we will not evaluate the proposals de novo, but instead will only examine the agency's evaluation to ensure that it had a reasonable basis. Harbert International, Inc., B-222472, supra.

We cannot conclude that Interior acted unreasonably in excluding Jones' proposal from the competitive range because the proposal failed to address several material RFP requirements. Jones' proposal does not include a list of computer codes to be used in performing the required work and a description of the codes' use and applicability as required by the RFP. Jones states in its protest comments that it intends to use the "widely acceptable HEC computer programs" and that its proposal specifically references these programs. However, Jones' proposal, in discussing watershed modelling, merely references the "HEC-1" program without explaining anything further about the code and generally notes under the "equipment" section of its proposal that "various software packages are available including HEC-1 and HEC-2." No further explanation is provided. The proposal also indicates that Jones has developed software for analyzing stream flow and sediment yield, but does not identify or discuss the applicability of this software to the specific tasks. While Jones states that it thought it would be more meaningful to provide this information during discussions, an offeror runs the risk of

having its proposal rejected without discussions where, as here, it does not submit an adequately written proposal which shows compliance with the RFP requirements. Harbert International, Inc., B-222472, supra.

Jones also states that it did not include a list of computer codes in its proposal because it maintains that such codes are proprietary. Jones' protest that the RFP requirement for computer codes is improper, filed after the closing date for receipt for proposals is untimely.
4 C.F.R. § 21.2(a)(1) (1987).

Jones also did not include in its technical proposal the manhours necessary for each proposed task as required by the RFP. Jones argues that it included proposed manhours in its cost proposal where, according to Jones, this information properly belongs. Jones maintains that the requirement for manhours in the technical proposal is simply an attempt to determine estimated cost before cost proposals are opened. As stated above, the primary technical evaluation criteria under this solicitation are knowledge and experience in performing surface water studies of this type. Here, Jones' failure to include in its technical proposal manhours for the proposed work items deprived the technical evaluation committee of a basis to evaluate Jones' understanding and expertise to perform the required work. See, Twin City Construction, Co., B-222455, supra.

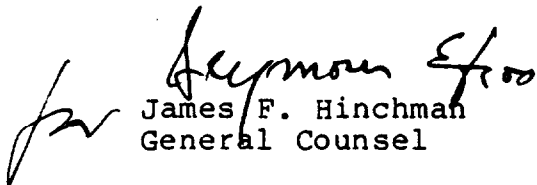
The record shows that Interior reasonably found that Jones' proposal was vague and incomplete in describing much of the work to be performed. The agency found that in several places the firm's proposal referred to the use of appropriate equations or techniques without further explanation. Jones states that the precise equations cannot be provided before actual data is collected and measured. However, the RFP specifically required detailed approaches to performing the work and we cannot conclude that Interior's determination was unreasonable.

Interior states that Jones failed to identify its subcontractors. In this regard, the RFP requires that the prime contractor perform no less than 75 percent of the contract work. Jones states that it will perform 100 percent of the required work and, therefore, no subcontractors are identified in its proposal. However, the resumes of the technical personnel which Jones submitted indicate that at least one of the three proposed technical personnel is a professional consultant. The resume indicates that this individual provides professional consulting services in the area of hydrology. While Jones, in its protest comments, states that it intends to employ this

individual on a part-time basis, there is no way to determine this from Jones' proposal and, thus, Jones' compliance with the RFP subcontracting requirements. ^{1/} Based on this record, we find that Interior had a reasonable basis for excluding Jones' proposal from the competitive range. We note that Interior reports several deficiencies in Jones' proposal in addition to those discussed here. Based on the above findings, it is not necessary to discuss any further alleged deficiencies.

Finally, Jones has alleged that the exclusion of its proposal from the competitive range was the result of discrimination against Indian-owned firms. The firm argues that the comparison of its proposal with the non-Indian firms' proposals will confirm this. As noted above, we conclude that Interior did not act unreasonably in excluding Jones' proposal from the competitive range. While Jones alleges discrimination against Indian firms, it has failed to provide any evidence supporting this allegation. Further, we have reviewed the procurement record, including those proposals submitted by non-Indian firms which currently are being evaluated by Interior, and find no evidence to support Jones' allegation of prejudice. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. B&W Service Industries, Inc., B-224392.2, Oct. 2, 1986, 86-2 C.P.D. ¶ 384.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel

^{1/} Jones, prior to the June 29 closing date for receipt of proposals, filed an agency-level protest alleging that the requirement that the prime contractor perform 75 percent of the work was unfair to Indian firms and an attempt by Interior to by-pass the Buy Indian Act. Interior proceeded with the procurement in the face of Jones' protest and by letter of August 6, denied the protest. To the extent that Jones' is protesting this solicitation requirement in its August 25 protest to this Office, the protest filed more than 10 working days after initial adverse action on its agency-level protest (proceeding with the closing date for receipt of proposals without taking action on the protest) is untimely. 4 C.F.R. § 21.2(a)(3), McAllister Brothers, B-223888, Aug. 27, 1986, 86-2 C.P.D. ¶ 235.