



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: BioClean Medical Systems, Inc.

File: B-239906

Date: August 17, 1990

David A. Brent, Ph.D., for the protester.
Kang P. Lee, Ph.D., for Aspen Systems, Inc., an interested party.
Jonathan H. Kosarin, Esq., and Stephen H. S. Tryon, Esq., Department of the Navy, for the agency.
Catherine M. Evans, and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's determination that protester's proposal was technically unacceptable and therefore outside the competitive range was reasonable where proposal contained significant informational deficiencies and represented a high degree of risk.
2. Agency is not required to conduct discussions with offeror whose proposal properly was determined to be outside the competitive range.

DECISION

BioClean Medical Systems, Inc. protests the rejection of its proposal under request for proposals (RFP) No. N61533-90-R-0019, issued by the Department of the Navy, David Taylor Research Center, for development and fabrication of a prototype shipboard plastic waste processing system. BioClean challenges the technical evaluation of its proposal and alleges that the Navy should have addressed deficiencies through discussions.

We deny the protest.

The prototype shipboard plastic waste processor (PWP) contemplated by the solicitation is part of the Navy's effort to bring its ships into compliance with the Marine Plastic Pollution Research and Control Act of 1987, Pub. L. No. 100-220, which by 1994 will prohibit discharge of plastic waste from all public vessels. Contract performance

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consists of three phases: Phase 1 contemplates design and assembly of a pre-prototype experimental unit; Phase 2 involves fabrication of an engineering development model that will be evaluated by the Navy; and Phase 3 requires construction of two pre-production prototype PWPs and a complete design package. Phases 2 and 3 are options exercisable upon successful completion of Phase 1.

The RFP called for technical, management, and cost proposals. The technical proposal was to contain three sections, in descending order of importance: conceptual design, tradeoff study, and plan of actions and milestones (POA&M). The management proposal was to address corporate experience, key personnel, and facilities. The technical proposal was accorded 50 percent more weight than the management proposal. The technical and management scores were to be combined into a merit rating. The RFP advised that award would be made to the offeror whose combined merit rating and cost evaluation scores resulted in the highest overall score. In this regard, the merit rating was worth 60 percent of the combined score and cost was worth 40 percent.

After BioClean's technical and management scores were combined, its proposal ranked fourth highest of the six proposals, receiving only 49 out of 100 possible points. The evaluators noted generally that BioClean's proposal was poorly written and redundant, and therefore difficult to evaluate. Specifically, the Navy found that BioClean's proposal lacked detail in a number of areas it was required by the RFP to address. For example, the tradeoff study failed to provide a comparison of various PWP methods with regard to certain aspects such as processing rates and manpower requirements. Moreover, BioClean proposed an alternative technology in the event that its primary technology proved infeasible, giving the evaluators the impression that BioClean lacked confidence in its proposed primary method. Finally, BioClean presented itself as a "startup" company with only one full-time employee, and did not propose certain key personnel as required. As a result, the Navy determined that BioClean's approach involved an unacceptable degree of risk.

In addition to the technical and management deficiencies, BioClean's proposal offered a higher price than did the three proposals with higher merit scores. When BioClean's merit and cost scores were combined, its proposal remained in fourth place at 39.96 points, approximately 13 points below the third-ranked offeror. As a result, the contracting officer determined that BioClean had no reasonable chance of being selected for award, and rejected the

proposal as outside the competitive range by letter dated May 23.

BioClean takes issue with each deficiency identified by the Navy in the rejection notice and in the agency report, arguing that the evaluation was arbitrary as its technical and management proposals fully addressed all of the Navy's essential requirements. BioClean also contends that all identified weaknesses were readily capable of being corrected through discussions. The Navy responds that the proposal addressed many requirements only minimally, without sufficient detail to convince the evaluators of its understanding of the requirement or the merits of its proposed approach.

An offeror must submit an initial proposal that is adequately written and that affirmatively states its merits, or run the risk of having its proposal rejected as technically unacceptable. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range for discussion purposes. W.N. Hunter & Assocs.; Cajar Defense Support Co., B-237259, B-237259.2, Jan. 12, 1990, 90-1 CPD ¶ 52. In reviewing whether a proposal was properly rejected as technically unacceptable for informational deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies, for example, whether they tended to show that the offeror did not understand what it would be required to do under the contract. DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47.

Here, the RFP generally requested proposals in sufficient detail to permit a complete and accurate evaluation of the proposal from a technical standpoint. In addition, the instructions for each section of the technical proposal clearly indicated the level of detail required. For example, the instructions for the conceptual design section provided in part,

"The Offeror will provide a conceptual design and narrative description of the entire Plastic Waste Processor (PWP) system in enough detail to evaluate its potential suitability for use aboard Navy ships. The ability of the design to meet equipment specifications and performance requirements as outlined in Appendix A of the Statement of Work shall be emphasized and clearly explained."

The record supports the Navy's view that BioClean's proposal lacked this level of detail. The Navy noted a number of deficiencies in BioClean's conceptual design, all of which BioClean disputes. In particular, BioClean takes issue with the Navy's conclusion that its technology is potentially unsafe due to the likelihood that melting plastic at the temperatures BioClean proposes will produce toxic gases. Our review of the record supports the Navy's view that BioClean did not address this safety concern; nowhere in its proposal does BioClean mention the possibility that its high-temperature process will produce toxic fumes, or how any such fumes will be contained. BioClean now asserts that if it had been given the opportunity to remedy this defect through discussions, it would have offered to provide charcoal filters. Again, however, this solution was not stated in the initial proposal.

In response to the Navy's comment that its technology is overly labor-intensive, BioClean asserts that it is "no more labor-intensive than taking out the garbage after supper." Even assuming that this is the case, the RFP expressly required an automated process, and cautioned that the Navy did not intend to provide manpower to perform sorting of plastic waste by type prior to processing. However, BioClean's proposal specifically stated that plastic waste would be pre-sorted, without explaining how this would be accomplished without manpower allocated to the task. While BioClean now argues that its process involves "pre-segregating" rather than pre-sorting, it does not explain--in its proposal or its protest--what difference this makes in terms of the labor intensity of its proposed approach.

The Navy also expressed concern about BioClean's proposed use of fresh water in its process. While BioClean correctly states that the RFP permitted the use of fresh water, that use was expressly conditioned upon a demonstration by the offeror during Phase I that significant cost savings would be realized by selecting materials compatible with use of fresh water instead of materials compatible with use of sea water. BioClean proposed to use fresh water in connection with a shredding process, but failed to justify the use of fresh water instead of sea water as required or to indicate how much fresh water would be required. In view of this informational deficiency, the Navy apparently was unable to determine whether BioClean's proposed use of fresh water

conformed to the RFP requirement for significant cost savings.^{1/}

The evaluators also found the tradeoff study section of the technical proposal lacking in detail. The purpose of this section was to afford the offeror the opportunity to justify its choice of technology by comparing it to other methods of processing plastic waste. Our review of BioClean's proposal supports the Navy's finding that BioClean failed to do so, and its conclusion that BioClean did not understand the requirement. While the RFP required that the tradeoff study compare the proposed technology with other technologies in terms of 10 different considerations such as manpower requirements, processing rates, and safety, BioClean's general description of conventional methods (including a discussion of incineration, which was expressly prohibited by the RFP) and summary of its own technology only briefly touched on some of the required considerations.

In the PCA&M section, offerors were required to provide completion dates and proposed resource allocation, a breakdown of manpower categories, and a discussion of engineering approaches in order to demonstrate the offeror's capability to formulate technical approaches to production. The evaluators found BioClean's proposal merely parroted the RFP milestone requirements, without discussing manpower categories or resource allocation. With regard to engineering approach, BioClean referred to bench-scale tests of its proposed technology in a hospital waste context, but did not reveal details of those tests, leading the Navy to conclude that the approach was risky. BioClean now argues that it was reluctant to disclose the test data because it is proprietary. However, the solicitation contained Federal Acquisition Regulation (FAR) clause 52.215-12, which provides for marking of proposals containing proprietary information. Indeed, BioClean took advantage of this provision by placing a restrictive legend on the title page of its proposal, and marking each page of its proposal "use or disclosure of this proposal data is subject to the

^{1/} In its rejection letter to BioClean, the Navy stated that the use of fresh water was "expressly prohibited" unless cost savings would result from the use of fresh water instead of salt water. BioClean argues that this misstatement of the RFP requirement improperly prejudiced the Navy's evaluation of BioClean's proposal. Our review of the evaluation worksheets indicates that the evaluators did not downgrade BioClean's proposal because it contemplated the use of fresh water, but rather because it did not properly justify such use.

restrictions on the title page of this proposal." Thus, the proprietary nature of the test data does not excuse BioClean's failure to provide the Navy with sufficient detail in its proposal to permit a proper evaluation.

BioClean's management proposal was considered deficient in all three areas--experience, key personnel, and facilities --because BioClean did not demonstrate corporate experience in the production area, did not propose all of the key personnel required by the RFP, and did not have any facilities available. BioClean merely stated that it would hire key personnel and rent a facility upon award of a contract. This clearly did not satisfy the RFP requirements for details regarding similar experience on other government contracts, qualifications of proposed key personnel, and a discussion of production facilities, and BioClean does not argue otherwise.

BioClean alleges that the Navy improperly evaluated its cost proposal because it included the costs of both BioClean's primary technology and its proposed alternative in the evaluation, artificially lowering its cost score. This argument is without merit. As BioClean proposed parallel development of the two technologies, the Navy properly considered the costs of both in the evaluation. Moreover, BioClean did not allocate its costs between the two technologies, so the Navy could not have discerned how much each cost even had the proposal indicated that the costs of the two approaches should be evaluated separately. Moreover, our review of BioClean's proposal supports the Navy's finding that BioClean was so uncertain of its primary technology as to require parallel development of the alternative approach. Specifically, the required discussion of technical uncertainties included numerous potential problems with the primary technology, followed by a fairly detailed plan for implementing the alternative method should the primary method fail. Because simultaneous development of both technologies appeared to be essential to BioClean's approach, the Navy properly included BioClean's entire proposed cost in the evaluation.

We have addressed just some of the numerous deficiencies that the evaluators found in BioClean's proposal, but we have reviewed all of BioClean's allegations and the entire record in reaching our conclusion that the evaluation had a reasonable basis. BioClean's inattention to detail required by the RFP, its proposal of alternative technologies, and its failure to offer key personnel and facilities reasonably indicated to the Navy a lack of understanding of the requirement, a lack of confidence in its primary technology, and an unacceptably high degree of risk. Even assuming

BioClean's technically unacceptable proposal was susceptible of being made acceptable through discussions, the Navy acted properly in excluding BioClean from the competitive range because, relative to the other acceptable offers, it had no reasonable chance of being awarded the contract. See Cook Travel, B-238527, June 13, 1990, 90-1 CFD ¶ _____. As BioClean's technical score was far lower than that of the next higher-scoring offeror and its price was higher than that of any of the offerors in the competitive range, the Navy properly determined that BioClean had no reasonable chance of receiving the award.^{2/}

BioClean argues that the Navy nonetheless was required by FAR § 15.610 to offer it the opportunity to clarify its proposal through discussions before rejecting the proposal as technically unacceptable. However, FAR §§ 15.609 and 15.610 permit the agency to reject offers that are technically unacceptable as submitted before initiating discussions with offerors in the competitive range.^{3/} Because, as we have determined, BioClean's exclusion from the competitive range was proper, the Navy was not required to hold discussions with it. V.N. Hunter & Assocs.; Cajal Defense Support Co., B-237259, B-237259.2, supra.

Finally, BioClean complains that the Navy's May 23 rejection letter improperly failed to notify BioClean of certain deficiencies. However, there is no requirement for an agency to notify an offeror of all deficiencies when its proposal is rejected. See FAR § 15.1001(b). To the extent that the Navy was required to provide BioClean with notice of the deficiencies so that BioClean could effectively

^{2/} BioClean contends that the Navy's admission that it made an arithmetic error in calculating the score of another offeror is by itself grounds for sustaining its protest. As the record shows that the Navy's error did not affect the evaluation of BioClean's proposal or its exclusion from the competitive range, the error does not provide a basis for sustaining BioClean's protest.

^{3/} BioClean incorrectly argues that our decision in Bay Tankers, Inc., B-238162, Apr. 13, 1990, 90-1 ¶ 389, in which we held that the protester should not have been excluded from the competitive range, compels a similar finding here. The basis for our holding in Bay Tankers, however, was that the agency improperly had failed to consider price in the competitive range determination. That is not the case here.

pursue its protest, the Navy did so when it released copies of evaluation documents to BioClean in connection with the agency report.

The protest is denied.


for James F. Hinchman
General Counsel