



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Aerostat Services Partnership

**File:** B-244939.2

**Date:** January 15, 1992

Paul Shnitzer, Esq., and Robert P. Davis, Esq., Crowell & Moring, for the protester.  
William L. Walsh, Jr., Esq., J. Scott Hommer, III, Esq., and Wm. Craig Dubishar, Esq., Venable, Baetjer and Howard, for Vitro Services Corporation, and E. G. Carideo for Loral Aerospace Corporation, interested parties.  
John Pettit, Esq., Lt. Col. Dennis Shaw, and Col. John C. Duncan, Jr., Department of the Air Force, for the agency.  
Susan K. McAuliffe, Esq., Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

1. Protest against agency's use of undisclosed manning model in evaluation of proposals for firm, fixed-price contract for aerostat operation and maintenance services is denied where manning model, which was developed by individuals with substantial technical aerostat experience on the basis of available historical and current contract information, was reasonable and agency used model as an evaluation tool which remained reasonably flexible in application.
2. Rejection of proposal as technically unacceptable for failure to propose adequate manning to meet solicitation requirements, which reasonably caused agency to question protester's understanding of requirements, is upheld where protester's written responses to agency's clarification requests and deficiency reports did not cure deficiency pointed out to offeror and protester has not shown that agency's determination of unacceptability was unreasonable.
3. Contracting agency reasonably communicated its concern with protester's proposed site manning and satisfied the requirement for meaningful discussions when it issued several deficiency reports to the offeror stating that its site manning was considered inadequate to meet all of the solicitation's performance requirements and offered the protester a reasonable opportunity to explain why its manning was adequate or to revise its approach.

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## DECISION

Aerostat Services Partnership (ASP) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. F44650-91-R-0026, issued by the Department of the Air Force for the operation and maintenance of the Tethered Aerostat Radar System (TARS) at sites located along the southern border of the United States and in the Caribbean Sea.

We deny the protest.

The RFP, issued on May 9, 1991, contemplated the award of a firm, fixed-price contract for operation and maintenance services for aerostats at 15 TARS sites. The aerostats, unmanned, lighter-than-air vehicles that are launched to heights of 2-3 miles and called to the ground, carry electronics and telecommunications equipment which create an airborne receiver, transmitter and antenna. The aerostats to be operated and serviced under the contract are used primarily for surveillance and communications purposes. The RFP provided for a competitive negotiated two-step procurement under which offerors were to submit technical proposals to be evaluated for technical acceptability. Only those offerors that submitted proposals found to be within the competitive range would be requested to submit price proposals for evaluation. The RFP provided for award to the technically acceptable offeror submitting the lowest price.

Section M of the solicitation provided the following evaluation factors for award: technical merit, management, manning, and transition program. The RFP advised all offerors that their proposals would be evaluated against the technical requirements of the solicitation and that the proposed approach must demonstrate the offeror's understanding of, and ability to meet, the requirements of the RFP's performance work statement. Regarding the manning criterion, the RFP advised that the proposals "must demonstrate how well the offeror understands the criticality of providing an adequate complement of experienced, qualified personnel at all times" and informed offerors that their proposals "shall be compared to a manning model to assure that manpower proposed is within the parameters of the effort." Six subfactors constituted the manning criterion--operations, communication-electronics maintenance, civil engineering, logistics and services, aerostat system maintenance, and security. The RFP instructed offerors to submit technical proposals that were "specific, detailed, and complete to clearly and fully demonstrate that the offeror has a thorough understanding of the requirements of the effort." Section M further provided that discussions would be held with offerors as considered necessary by the

contracting officer to determine technical acceptability and that "[a]t the conclusion of discussions, a [c]ompetitive [r]ange determination will be made. All offerors determined to be within the [c]ompetitive [r]ange will be asked to submit cost and pricing proposals."

Three technical proposals were received by the June 24 closing date. Discussions were conducted with each of the offerors through the issuance of clarification requests and deficiency reports, and by direct communication, from July 1 through July 22. On July 23, the protester was notified that its proposal was determined to be technically unacceptable and would not be considered further. The agency found the protester's proposed manning levels inadequate and that the protester failed to demonstrate its understanding of the RFP's requirements and its ability to meet all of the requirements of the performance work statement. ASP protests the rejection of its proposal as technically unacceptable.

ASP, a partnership consisting of three contractors with substantial aerostat experience, including several of the current contracts for these services, challenges the agency's use of an undisclosed manning model in its evaluation of proposals. ASP alleges that the agency's manning model is inaccurate and that its rigid application (i.e., merely counting the number of "bodies" proposed) to the protester's proposed manning levels was improper since it did not permit alternative approaches to meeting the RFP's manning requirements. In this regard, ASP contends that the agency failed to fully consider the protester's proposed "innovative" manning approaches (concerning ASP's proposed use of its labor mix) to meet the RFP's requirements.<sup>1</sup> ASP further alleges that if the agency's determination of required manning levels--specifically, the number of individuals stated in the manning model and required by the agency--were of such a crucial nature, it should have been identified in the RFP. The protester contends that the elimination of its proposal from the competitive range was improper because its proposed manning

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<sup>1</sup>The coverage of the protective order issued by our Office in this protest extends to the information contained in the protester's technical proposal and written responses to the agency's clarification requests and deficiency reports, including the specific manning levels and approaches proposed by the protester. Although our Office has conducted a comprehensive review of the record, including all protected materials, our discussion here is necessarily limited and generalized in order to prevent any release of protected information in violation of the terms of the protective order.

was addressed adequately and, if not, then there was a lack of meaningful discussions. The protester maintains that it should have been alerted to the problem before its proposal was rejected.

The Air Force explains that it used the manning model, which was based upon the agency's aerostat experience, manhour data derived from prior and current similar contracts and an increase in time-consuming requirements in the comment RFP, as an evaluation tool and not as a rigid minimum number of required personnel. The agency states that although it uses the manning model as an estimate of the required number of personnel to meet the RFP's terms, a proposal (as was the case with at least one other offeror) may still have been found technically acceptable even if it proposed a slightly lower number of individuals than was provided in the manning model so long as the offeror adequately demonstrated the sufficiency of its manning approach.

Initially, we do not agree with the protester that the agency was required to disclose in the RFP the manning model or estimates. Generally, an agency is not required to disclose in the solicitation a manning level developed by the agency's evaluators and technical personnel to assess whether proposed personnel were adequate. See Intelcom Support Servs., Inc., B-222547, Aug. 1, 1986, 86-2 CPD ¶ 135. Further, where such model is reasonably based on tasks in the solicitation and reflects the agency's judgment concerning the minimum number of personnel necessary to perform the work, it may properly be used to aid the evaluation of proposals. See Intelcom Support Servs., Inc., supra. Here, the RFP specifically advised all offerors, as required, that their proposed site manning would be reviewed and compared to a manning model. Further, our review of the agency's determination of its minimum manning requirements, as reflected in the manning model, and its development and use of the manning model, reveals that the model was reasonably based upon its experience at the TARS sites, historical manhour data derived from prior and current aerostat service contracts, and its manning expectations in light of the increased detail of the comment RFP's performance work statement. Although the protester disputes the agency's conclusions as to the proper manning levels, we find nothing unreasonable in the Air Force's relying on its estimates for the purpose of evaluating proposed manning; the Air Force estimates more closely conform to actual historical manning levels. Based upon our finding that the manning model was reasonably reflective of the agency's needs, use of this model as an evaluation tool was proper.

In reviewing protests of allegedly improper evaluations, our Office will examine the record to ensure that an agency's evaluation was fair and reasonable and consistent with the

evaluation criteria stated in the RFP. A protester's disagreement with the agency's evaluation is itself not sufficient to establish that the agency acted unreasonably. Technology Concepts and Design, Inc., B-241727, Feb. 6, 1991, 91-1 CPD ¶ 132.

The agency's main problem with the protester's offer was its proposed reduction in personnel to meet what the agency considers more detailed and additional performance requirements than those being performed by the protester under its current contracts.<sup>2</sup> The protester asserts that its "innovative" use of its labor mix, including the overlapping of duties among its personnel, satisfies the RFP's performance requirements. We find, however, that the agency reasonably determined that the protester's proposal failed to adequately substantiate that its limited overall site manning (which proposed a total of 21 less individuals than anticipated by the agency) will provide sufficient personnel or manhours to perform all of the necessary services without compromising performance.

The record contains documentation from the Air Force, which the protester has not refuted, that shows the agency performed manhour calculations for each of ASP's proposed "innovative" approaches and did not find that the proposed approaches offered acceptable manning. Although some overlapping of duties was contemplated by the agency and permitted by the manning model, the Air Force's main concern was with the magnitude and frequency of the multiple duties to be performed by a limited number of ASP personnel. Our review of the record supports the reasonableness of the agency's concerns about whether certain individuals would be able to perform their originally assigned duties if they were also required to assume other operational tasks on a regular basis. This is especially evident in the instance where the proposed multiple use of personnel would cause an individual to have to perform additional duties which would clearly impede or compromise the performance of originally assigned tasks (as where, for example, a task is required to be performed on a 24-hour basis and individuals required to perform that task would also regularly be required to

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<sup>2</sup>In fact, one of the Aerostat partners in its comments on the draft performance work statement, stated that the extensive documentation and reporting requirements specified in the work statement would require increases in manpower, time and expenses for compliance above the existing operation and maintenance contracts. The protester, however, actually proposed less manhours per site under this solicitation than it has under current contracts. The protester now contends that the work requires "very little effort beyond what was currently being provided."

perform unrelated operational tasks that would necessarily divert that individual's attention, time and energy away from his ongoing core duties).

We also agree with the agency that the protester's general assurances provided in discussions, that after award it would provide as many people as necessary for contract performance at no additional cost to the agency or that its personnel could effectively balance the multiple tasks that could not be performed simultaneously, cured the manpower deficiency. Regardless of the promise to balance conflicting staffing demands and provide additional unidentified staff after award, the protester's proposal, which offers a reduction in personnel from its current force, fails to explain who will be performing certain required duties while the individual responsible for those duties is performing unrelated tasks. At best, we find that the protester's proposal suggests that the performance of certain RFP requirements would necessarily be compromised, if not precluded, by the extent of the proposed overlapping of duties. Accordingly, we find reasonable the Air Force's determination that ASP's proposed site manning was inadequate to demonstrate the protester's understanding of and ability to meet the RFP's performance requirements--a valid consideration in the evaluation of proposals here--and that the protester's proposal was reasonably found technically unacceptable.

ASP next alleges that the Air Force failed to conduct meaningful discussions with the firm since the agency never pinpointed the specific deficiency regarding its overall site manning--the extent of ASP's proposed overlapping of personnel duties--that led to the rejection of its proposal as technically unacceptable. The protester also states that since the agency raised several other deficiencies in much greater detail during discussions the agency was required to state with similar detail the perceived deficiency regarding ASP's site manning.

In order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. The Faxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. However, it is not necessary for an agency to furnish information in any particular form or manner, provided that it finds some means which reasonably communicates the nature and gravity of its concerns. See Creativision, Inc., 66 Comp. Gen. 585 (1987), 87-2 CPD ¶ 78.



Here, we find that the Air Force conducted sufficient discussions concerning the inadequacy of ASP's proposed site manning. Although the agency questioned the extent of ASP's proposed multiple use of personnel, the agency's ultimate concern was ASP's overall site manning, since, in the agency's view, ASP failed to demonstrate how its limited number of personnel could perform all of the performance requirements of the RFP. The record shows that the agency identified the protester's site manning in three successive deficiency reports and two telephone discussions. In the first of these deficiency reports, the Air Force notified ASP that its site manning was inadequate, except for one particular site (for which the type of overlapping of duties proposed by the protester elsewhere was expressly prohibited and therefore not offered). In response to this deficiency report, the protester increased its site manning and again explained its proposed multiple use of personnel to meet the solicitation's requirements. In the second deficiency report issued to ASP regarding its site manning, the agency stated "[t]he offeror's manning is still inadequate to satisfy the requirements of the [performance work statement.]" In this report, the agency also stated, regarding the personnel the protester targeted for multiple use, that the proposal "does not reflect an understanding of the [performance work statement.]" In response to this second site manning deficiency report, ASP again reiterated its proposed multiple use of personnel, stated its confidence in its proposed site manning, and generally offered to provide additional personnel at no cost if required to perform the RFP's requirements. In the third deficiency report issued to ASP on this subject, the agency stated:

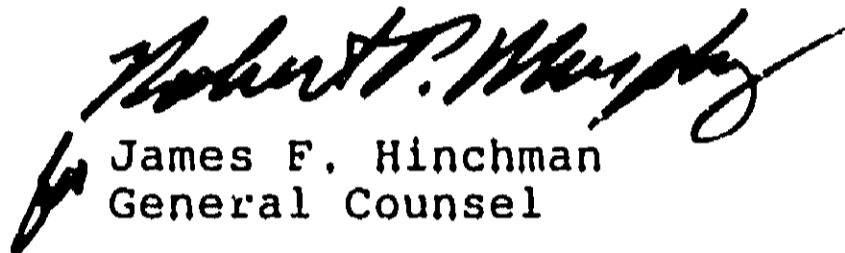
"Please acknowledge that the government still considers your site manning [except for the one site mentioned above] inadequate to provide the [operation and maintenance] services required by the [performance work statement.]"

In its written response to this report, ASP acknowledged the agency's finding of inadequacy regarding the protester's proposed site manning and did not change its proposed site manning; ASP did, however, propose changes to another deficiency cited in that report.

We do not agree with the protester's contention that it was not accurately apprised of the seriousness or the nature of the deficiency in its proposal. The protester received three written deficiency notices (and had two telephone discussions) indicating that its site manning was considered inadequate and was given repeated opportunities to address this concern. We believe the protester should have reasonably deduced from these discussions that the number of

its proposed personnel and the level of its multiple use of personnel were considered inadequate since the only site for which ASP's manning was found to be acceptable did not allow the multiple use of personnel proposed for the other sites. Despite ASP's repeated explanations in its deficiency report responses of its proposed multiple use of its personnel and its confidence that such manning was adequate, the agency continued to notify ASP that its overall site manning was still considered inadequate. Given the agency's repeated deficiency reports on this matter, we believe ASP should have realized that the agency considered its reduction in personnel, resulting from its proposed multiple use of its staff, the basis for finding its site manning inadequate. The Air Force therefore satisfied the requirement to conduct meaningful discussions.<sup>3</sup>

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>3</sup>To the extent the protester contends that since the Air Force held successive rounds of discussions with all offerors concerning site manning, the agency conducted an improper technical leveling of offers, our review of the record shows that discussions were held with all offerors regarding their proposal weaknesses relative to the agency's requirements and were not an attempt to bring a proposal up to the level of other proposals such as to constitute technical leveling. See Federal Acquisition Regulation § 15.610(d) (FAC 90-7).