



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: International Marketing Services Enterprises
Inc.
File: B-246232
Date: February 24, 1992

Abdullah A. Al-Ghamdi, Douglas Lamothe, and J.W. Sharp, for the protester.
John W. Howard for Talon Corporation, an interested party.
Herbert F. Kelley, Jr., Esq., Gerald P. Kohns, Esq., and Sam W. McCahon, Esq., Department of the Army, for the agency.
Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the exclusion of a proposal from the competitive range as technically unacceptable is denied where the record shows that the agency reasonably determined that the proposal contained numerous technical deficiencies, and that a complete revision of the proposal would be required to render it technically acceptable.

DECISION

International Marketing Services Enterprises, Inc. (IMSE) protests the exclusion of its offer from the competitive range under request for proposals (RFP) No. DASA01-91-R-0111, issued by the Department of the Army for explosive ordnance disposal (EOD) at the Faisal Range in Saudi Arabia. The protester contends that its firm is technically superior to the awardee, and its proposal was \$700,000 less expensive than the awardee's, and concludes therefore that it should have been afforded an opportunity to submit a best and final offer (BAFO).

We deny the protest.

The RFP was issued on August 9, 1991, contemplating a fixed-price contract for EOD services over a 3-month period to detect, locate and destroy all unexploded Multiple Launch Rocket submunitions within a defined area of the Faisal Range in accordance with a detailed statement of work (SOW) which emphasized special characteristics attendant to EOD in desert sand conditions. Award was to be made to the offeror whose proposal was determined to be most advantageous to the government based on three evaluation factors listed in

descending order of importance: (1) technical excellence, (2) management capability, and (3) price. Offerors were cautioned that each proposal would be evaluated "strictly in accordance with its content."

Technical proposals were to consist of narratives and supporting data that addressed all requirements of the SOW including a discussion of the methodology for all work described in the solicitation. All personnel performing EOD functions were required to be identified and offerors were required to provide resumes of their experience, training, education, certifications, licensing, and other pertinent data; this information was described as an "important evaluation factor." The RFP also required the submission of resumes for key personnel with the proposals and provided that the on-site supervisor for each shift have a minimum of 5 years EOD supervisory experience and be a graduate of an accredited EOD school with standards and requirements comparable to those of the United States Navy EOD School located in Indian Head, Maryland.

Separate management proposals were required to be submitted and were also to be supplemented by materials supporting the narrative covering SOW requirements so that the agency "could fully understand the management proposal." Among other things, the management proposals were to include a discussion of plans and procedures to implement a safety program covering "all levels of operations required by the SOW."

Eight proposals were received by the closing date of September 11. Technical evaluations concluded on September 15. Arabian FAL, the awardee, was ranked third and IMSE fourth. The evaluation record reflects that, except for the three highest rated offerors who were included in the competitive range, the evaluation team concluded that the other firms, including IMSE, did "not have either the management capabilities and/or technical excellence to complete the contract in a timely, safe manner." The contracting officer concluded that these proposals could not be rendered technically acceptable without significant revisions.

The agency reports that the most significant problems with the protester's proposal lie in the technical area. In particular, the Army notes that IMSE's proposal stated that the firm had developed safety plans, work plans, and quality plans which it promised to forward to the contracting officer's representative for approval after award. The absence of detailed information about such plans precluded a technical evaluation and contributed to the protester's low score. More specifically, the Army notes that the proposal promised to adopt standard operating procedures it had

already agreed to with other contracting agencies but did not provide any documents by which those procedures could be evaluated.

The Army also was critical of the lack of information contained in IMSE's description of the methodology it proposed to use to clear the Faisal Range and found that the firm's discussion of safety plans was generic in nature and not tailored to the types of munitions and range conditions described in the RFP.

Finally, the Army found that IMSE's identification of personnel was insufficient. Instead of identifying specific supervisory and other on-site personnel, IMSE merely attached a "representative list" of personnel from which it intended to select employees after award. In addition, the agency notes that the resume information which IMSE provided was sketchy and not accompanied by evidence that its personnel met the EOD education requirements set forth in the SOW.

Discussions were conducted with the three offerors in the competitive range; BAFOs were submitted and rescored. As a result of the BAFOs, Arabian FAL increased its score and was ranked second technically and, in view of a substantially lower price than the highest ranked firm, was awarded a contract on September 26.

In its protest, IMSE generally alleged that its proposal was superior to Arabian FAL's based on the protester's "track record"; the protester also questioned why it was not afforded an opportunity to submit a BAFO and pointed out that its price was approximately \$700,000 lower than that of the awardee.

In response, the Army stated that the evaluation was conducted in accordance with the criteria set forth in the RFP and concluded that the serious deficiencies found by the evaluators in IMSE's proposal warranted the firm's exclusion from the competitive range since, to be made acceptable, its proposal would have required almost complete revision.

In its comments on the agency report, IMSE provided little in the way of substantive rebuttal to any of the deficiencies found by the agency evaluators which formed the basis for the rejection of its proposal. The firm admitted that it submitted "generic" safety and operating procedures for dealing with unexploded ordnance in the United States, while noting that under previous procurements it was never required to submit detailed safety, work, or quality plans. In this regard, the protester conceded that its proposal was not up to "normal standards," and attributed the insufficiencies to the quick response time which

necessitated IMSE--a Saudia Arabian firm--to prepare the document itself with what it refers to as an "attendant language problem." IMSE did not comment at all upon the personnel deficiencies found by the Army and merely reiterated its earlier contention that it submitted a lower price than the awardee.

The evaluation of technical proposals and the resulting determination as to whether an offer is in the competitive range is a matter within the discretion of the contracting agency since that agency is responsible for defining its needs and the best method of accommodating them. TCS Design & Mgmt. Servs., B-241348, Feb. 4, 1991, 91-1 CPD ¶ 109. Consequently, we will question the agency's technical evaluation only where the record shows that it lacked a reasonable basis or that it was inconsistent with the evaluation criteria in the RFP. Color Ad Signs and Displays, B-241544, Feb. 12, 1991, 91-1 CPD ¶ 154.

As noted above, IMSE did not attempt to rebut the points raised by the Army concerning the evaluation of its technical proposal. Our review of the record confirms that the agency's findings regarding the deficiencies in the protester's proposal were reasonable. In large measure, the protester agrees that its proposal lacked sufficient detail and was not up to "normal standards." Based on the deficiencies found by the Army--many of which are not addressed by the protester--we find that it was reasonable and consistent with the RFP evaluation criteria for the Army to have concluded that the protester's proposal was technically unacceptable and that there was no reasonable expectation that it could be made acceptable through discussions and the submission of a BAFO. Thus, we find that it was appropriate for the contracting officer to exclude the protester from the competitive range and, under the circumstances, the agency was not required to request a BAFO from IMSE. TCS Design & Mgmt. Servs., supra.

Finally, although the protester believes that its low price should have been factored into the agency's decision with respect to its proposal, it is appropriate to exclude a technically unacceptable offer from the competitive range irrespective of its lower proposed price. American Technical & Analytical Servs., Inc., B-240144, Oct. 26, 1990, 90-2 CPD ¶ 337.

The protest is denied.


for James F. Hinchman
General Counsel