



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** Infrared Technologies Corporation

**File:** B-282912

**Date:** September 2, 1999

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Carlos Ghigliotti for the protester.

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### DIGEST

Agency reasonably made award to the offeror whose proposal was substantially lower-priced and was found technically superior where the record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.

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### DECISION

Infrared Technologies Corporation (ITC) protests the award of a contract to Systems Energy Audit Company, Inc. (SEA) under request for proposals (RFP) No. N32205-99-R-6086, issued by the Department of the Navy, Military Sealift Command (MSC), for thermographic inspection services onboard MSC vessels. ITC, among other allegations, contends that the evaluation of proposals was improper.

We deny the protest.

The RFP, issued on March 30, 1999, as a small business set-aside, sought proposals for the thermographic inspection of shipboard equipment, involving the use of infrared photography to detect system anomalies, such as excess heat or wear. The RFP contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract for a base year and 4 option years. RFP §§ B, L-4. Section M-1 of the RFP provided that award would be made to the offeror whose proposal was determined to provide the best overall value to the government. Section M-1 also advised offerors that “[all] evaluation factors other than cost or price when combined, are approximately equal to cost or price. The Government may award to a higher priced proposal if it affords the Government greater overall benefit.”

The RFP listed the following evaluation criteria, in descending order of importance: past performance; equipment and capabilities; personnel (resumes, training, and experience); and customer satisfaction. Id. § M-4. The RFP instructed offerors as to the information that was required to be included in the proposals for evaluation under each of the stated criteria and provided that:

technical proposals submitted by offerors will be evaluated to determine the offeror's ability to satisfactorily perform the requirements of this solicitation. . . .

\* \* \* \* \*

Omissions and/or inaccurate or inadequate responses will have a negative effect on the overall evaluation and technical proposal rating.

Id., attach. J-1, ¶¶ 1, 3. The RFP, through incorporation by reference of Federal Acquisition Regulation (FAR) § 52.215-1, provided that, since the agency intended to evaluate proposals and make award without discussions, each offeror's initial proposal was to contain that offeror's best terms from a cost or price and technical standpoint. Id. § L-1.

ITC and SEA submitted the two proposals received by MSC by the scheduled April 30 closing time. SEA, the incumbent contractor for these services, submitted the lower-priced proposal, at \$500,655.50. SEA's technical proposal, which received a score of 90.75 (out of 100 points), was considered excellent overall and found to be technically superior to ITC's substantially higher-priced proposal. Source Selection Results Memorandum, May 10, 1999, at 1. SEA's technical proposal was rated higher than the protester's proposal under each of the evaluation factors for award. Id.

ITC's proposal was rated satisfactory overall, with a technical merit score of 75.24. Id. The evaluators concluded that the proposal indicated that ITC was qualified to perform the infrared inspection services, but that insufficient information was provided in the proposal to warrant a higher technical rating. The evaluators downgraded the ITC proposal, for instance, for its failure to sufficiently address the following: the quality of the offeror's past contract performance (e.g., regarding schedule adherence); the offeror's familiarity with certain MSC-specific systems; certain proposal statements regarding personnel (e.g., concerning the availability and qualifications of additional personnel); and ITC's only generally stated assertions of customer satisfaction. Id. at 2-3. Consequently, the ITC proposal was found to present minimal to moderate performance risk. Id. The SEA proposal, on the other hand, was evaluated as presenting no performance risk based on its detailed demonstration of the awardee's qualifications, and substantially similar experience, as well as its documented high level of customer satisfaction. The evaluators also had knowledge of SEA's successful performance of its prior contract with the agency for these services. Id.

On May 28, based on its comparative evaluation of the proposals, MSC awarded a contract under the RFP to SEA, based on its technically superior, substantially lower-priced proposal. ITC's protest of the evaluation of proposals was filed subsequent to a debriefing by MSC.<sup>1</sup>

In reviewing a protest challenging an agency's technical evaluation of proposals, we examine the record only to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria, since the determination of the relative merit of competing proposals is primarily a matter within the contracting agency's discretion. See Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3. As discussed below, we have examined the agency's evaluation record, as well as the offerors' proposals, and conclude that the evaluation and award determination were both reasonable and consistent with the stated evaluation criteria.

### Past Performance

ITC first challenges the evaluation of its proposal under the past performance evaluation factor, the most important technical evaluation factor for award. For the evaluation of past performance, the RFP instructed offerors as follows:

Provide offeror's history on quality of services/products delivered for the past three years. Offerors should specifically address the services/products required by this solicitation. List contracts performed and points of contact (with telephone number) with customer.

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<sup>1</sup>In its protest, ITC also challenges several terms of the RFP, including performance requirements (e.g., regarding certain required inspections) and proposal preparation requirements (e.g., regarding instructions for the offeror to include customer satisfaction letters). ITC contends that the RFP terms were ambiguous or otherwise improper, and unfairly favored the incumbent contractor. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1999), a bid protest which is based upon alleged improprieties apparent from a solicitation, must be filed prior to the closing time for the receipt of initial proposals. Teleport Communications Group, B-277926.2, Sept. 17, 1998, 98-2 CPD ¶ 72 at 6 n.6; Imagineering Sys. Corp., B-228434.2, Feb. 4, 1988, 88-1 CPD ¶ 109 at 2. Here, ITC orally informed the contract specialist of its concerns regarding these RFP provisions on April 29, 1 day prior to the scheduled closing time. Such communication to the agency, however, does not satisfy the requirement for a written protest, and does not serve in any way to toll our timeliness requirements. Mantech Technical Servs. Corp.--Recon., B-244240.5, Dec. 6, 1991, 91-2 CPD ¶ 517 at 3-4. ITC's challenges against the terms of the solicitation, filed after award, are therefore untimely and will not be considered further.

RFP, attach. J-1, ¶ 3. As stated above, the RFP specifically cautioned offerors that proposal omissions and inadequate responses would warrant a downgrade in proposal rating. Id. In response to the past performance information requirement, ITC stated in its proposal that it believed it “would be unrealistic” for ITC to provide past performance information for the hundreds of infrared inspections it has performed over the past 3 years. ITC Proposal, Apr. 30, 1999, Tab 1. Rather, ITC chose to identify two companies for which it had performed infrared inspection services. ITC briefly explained that the infrared inspections for these companies concerned static interruptible power supply systems at data centers and cellular phone sites, and commercial repair work; however, ITC provided no additional performance-related details about the actual contract requirements, work performed, or equipment involved. The ITC past performance proposal also did not provide any information, as required, about the quality of the services provided or the similarities to the current performance requirements. ITC did provide a point of contact at each of the two companies, apparently assuming that the agency would contact the references to obtain the information necessary for evaluation of the firm’s past performance. See ITC Comments, July 19, 1999, at 8. The third reference listed in the ITC past performance proposal was a United States Coast Guard shipyard, but again, no description of the work performed or the quality of that work was provided. The only other information provided in the firm’s past performance proposal was ITC’s identification of a fourth reference, an organization from which ITC’s lead thermographer had received training and certification.

The ITC proposal was evaluated as satisfactory for past performance. In particular, the evaluators credited the proposal for ITC’s shipboard experience, and the firm’s experience in various work environments and with government agencies. The evaluators noted that ITC failed to provide information demonstrating the quality of its past performance in terms of schedule adherence and customer satisfaction; however, the proposal was credited under the past performance factor for ITC’s statement elsewhere in the proposal that the firm had a 96-percent level of repeat business from its customers. Consequently, the evaluators, who decided not to contact any offeror’s references, rated the ITC past performance proposal as satisfactory, with minimal to moderate risk. Source Selection Results Memorandum at 2. The evaluators concluded that a higher rating was not warranted due to the proposal’s informational omissions and inadequacies.

The SEA proposal, on the other hand, was evaluated as providing a solid demonstration of the firm’s proven history of quality work provided to the agency and other customers for substantially similar shipboard-specific infrared inspection services. Id. A significant amount of prior contract work for directly related requirements was provided in the firm’s proposal, with statements by SEA of the relevance and successful performance of those contracts.

It is an offeror’s obligation to submit an adequately written proposal. See Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274 at 3. Our review of the evaluation record and proposals here supports the reasonableness of

the agency's determination that the protester's proposal warranted the reduced score it received under the past performance evaluation factor for its failure to provide the detailed information required for evaluation. In short, our review confirms that, in terms of the quantity and quality of documented, directly relevant experience, the information provided in the SEA proposal far outweighs that provided in the ITC proposal, and, as reflected in the evaluation record, the proposals were properly rated accordingly.

Although ITC contends that the agency should have contacted its references for any additional past performance information necessary for ITC to have received a higher proposal score, there was no requirement for the agency to do so. While the RFP requested point-of-contact reference information from the offerors, it did not state that references would be contacted. Accordingly, it was each offeror's responsibility--not the agency's--to provide sufficient information in its initial proposal in response to the RFP's specific request for information regarding the quality and relevance of the firm's past performance to enable a meaningful review of the offeror's past performance. See Deva & Assocs., P.C., B-281393, Feb. 1, 1999, 99-1 CPD ¶ 41 at 3-4; Geographic Resource Solutions, B-260402, June 19, 1995, 95-1 CPD ¶ 278 at 4. ITC, in an exercise of its own business judgment, and to its detriment, chose not to provide the detailed past performance information required for a more favorable evaluation, and its proposal was reasonably downgraded because of it.

ITC also asserts that it was unfair for the evaluators to consider their knowledge of SEA's successful past performance as the incumbent contractor for these services, and that, because the evaluators used that knowledge, the evaluators were obligated to contact ITC's references for the past performance information ITC omitted from its proposal. There is no requirement that an agency equalize a competitive advantage that a firm may enjoy because it gained experience under a prior government contract, which experience was known to the evaluators, provided those advantages do not result from a preference or unfair action by the government. See Information Ventures, Inc.; Harris Consultive Servs., B-219989, B-219989.2, Dec. 16, 1985, 85-2 CPD ¶ 668 at 3. Further, since the evaluation record shows that the SEA past performance proposal was evaluated as excellent based primarily upon the quality of that proposal's documentation of its successful, relevant past performance--whereas ITC simply failed to provide the required information--ITC's challenge regarding the evaluators' knowledge of SEA's prior performance provides no basis to question the propriety of the evaluation.<sup>2</sup>

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<sup>2</sup>ITC also contends that the agency improperly used undisclosed criteria for evaluation of past performance (e.g., schedule adherence) and double-counted under that factor some of the same weaknesses found in its proposal (e.g., the omission of any customer satisfaction documentation) under the customer satisfaction evaluation factor. Neither of these contentions provides a valid basis to question the  
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## Customer Satisfaction

ITC also challenges the evaluation of its proposal under the customer satisfaction criterion. For evaluation under this factor, offerors were required to submit the following information in their proposals:

Identify point(s) of contact to address customer's technical questions and complaints. . . .

Provide the level of satisfaction of offeror's customers services/products delivered for the last three years. Provide copies of letters from the offeror's customers evaluating services/products delivered during this period.

RFP, attach. J-1, ¶ 3.

In its proposal, ITC provided point-of-contact information for its lead thermographer (the sole thermographer identified in the proposal) and stated only that:

ITC has a 96 [percent] repeatability of [its] customers requesting additional services, therefore ITC has never had a need to send letters to our customers evaluating our services. The individuals ITC has provided in [the past performance proposal section] can be used to confirm our claim.

ITC Proposal, supra, Tab 4.

ITC provided no customer satisfaction letters. The evaluators rated the ITC proposal as marginal under the customer satisfaction criterion, with moderate risk. The evaluators noted that, since the sole point of contact for company complaints was the lead thermographer performing the work, there was a concern as to whether

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evaluation. First, since the alleged undisclosed evaluation factors are reasonably within the scope of the past performance evaluation factor, they serve as logical and related aspects of assessing and distinguishing between the proposals, even though the RFP did not list them as specific subfactors of the past performance factor for review. See TESCO, B-271756, June 24, 1996, 96-1 CPD ¶ 284 at 2. Second, an agency is not precluded from considering an element of a proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered. Source One Management, Inc., B-278044.4, B-278044.6, June 12, 1998, 98-2 CPD ¶ 11 at 6. Accordingly, since documented customer satisfaction is a relevant indicator of the quality of performance, it was a proper element in the evaluation of past performance, as well as in the evaluation of the proposal under the customer satisfaction factor.

complaints would be readily resolved. Although the proposal was credited slightly for ITC's statement of customer satisfaction in terms of its repeat business from its customers, the proposal was downgraded under this factor for the failure to provide any letters of customer satisfaction, as required by the RFP.<sup>3</sup> Source Selection Results Memorandum, supra, at 3.

Our review of the record provides no basis to question the propriety of the evaluation of the ITC proposal under the customer satisfaction factor. Although information regarding the offeror's complaint procedures was not specifically requested by the RFP, the ITC proposal provided no information for the agency to evaluate its customers' satisfaction with the resolution of complaints, and thus, we find it reasonable for the agency to have questioned the proposal on the basis of a reasonable concern regarding the potential risk in this area. Moreover, although the evaluators gave some credit to the proposal for its unsupported statement regarding repeat business, there is no reason to conclude that a higher rating was warranted given that the protester simply did not provide the requisite documentation of customer satisfaction. As stated above, it is the offeror's obligation to submit an adequately written proposal. Education Computer Corp., supra. Our review of the record also confirms that SEA's proposal, in contrast, included a substantial number of letters attesting to high levels of customer satisfaction, and that that proposal was reasonably evaluated as excellent based on the quality of the submission. Source Selection Results Memorandum, supra, at 3.

#### Personnel and Equipment/Capabilities

ITC also protests the evaluation of its technical proposal under the personnel and equipment/capabilities factors. Additionally, ITC contends that the agency failed to evaluate the "miscellaneous section" of the ITC proposal (including information regarding additional capabilities, equipment, and descriptive literature) under the personnel and equipment/capabilities factors. We need not review these

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<sup>3</sup>ITC challenges the RFP requirement for the submission of customer satisfaction letters; that challenge, however, is untimely filed, since apparent improprieties in a solicitation must be protested prior to the closing time for submission of proposals. 4 C.F.R. § 21.2(a)(1). ITC also argues that, if the agency perceived weaknesses in the protester's proposal regarding a lack of documentation or otherwise, it should have conveyed that to ITC for correction or supplementation. However, an agency generally has no obligation to conduct discussions where, as here, the solicitation authorizes award without discussions. See FAR § 15.306(a)(3); Robotic Sys. Tech., B-278195.2, Jan. 7, 1998, 98-1 CPD ¶ 20 at 11-12. While the contracting officer's discretion to make award on the basis of initial proposals is not unfettered, it is quite broad and has been expanded in recent years. Robotic Sys. Tech., supra. Here, there is no basis to object to the agency's decision not to conduct discussions, particularly in view of the technical superiority of SEA's proposal and its substantially lower price.

contentions, however, in light of the above findings regarding the reasonableness of the evaluation of the ITC proposal under the past performance and customer satisfaction factors. The record shows that, even if the ITC proposal had been awarded the maximum amount of points available under both of these remaining evaluation factors, ITC's proposal simply would not have had a higher overall technical score than that received by the SEA proposal. Thus, under the RFP's evaluation scheme, ITC would not otherwise be in line for award, since the protester proposed a substantially higher price than SEA. Id. at 1; Source Selection Plan, Jan. 8, 1999, at 4. Competitive prejudice is a critical element of any viable protest. Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 5-6. ITC has not shown, nor does the record show, that, but for the agency's action in evaluating its proposal under the personnel and equipment/capabilities factors, ITC would have a substantial chance of receiving the award.<sup>4</sup> See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

In any event, we have reviewed each of the allegations raised by the protester, and the evaluation record, including the proposals, and we note briefly that our findings show that the agency's downgrading of the protester's proposal, and assignment of a higher rating to the awardee's proposal under the personnel and equipment/capabilities factors, were reasonably based. For instance, under the personnel factor, the agency reasonably credited the ITC proposal for its sole resume (submitted by ITC for the lead thermographer) due to that individual's documented extensive experience with infrared inspections. However, the proposal reasonably did not warrant a higher rating for personnel due to the protester's failure to provide resumes for evaluation of the additional two thermographers ITC stated it could provide in the event that performance at concurrent work sites would be required, as contemplated under the RFP. Our review of the record also confirms that SEA's proposal, on the other hand, included detailed resumes documenting the qualifications and experience of its proposed thermographers (including information as to the individuals' extensive experience and availability for concurrent work

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<sup>4</sup>The agency reports that it cannot locate the supplemental proposal information submitted by both offerors, including the ITC proposal's miscellaneous section. The agency states, however, that the supplemental information was received by the agency at the time of closing, and, based upon the post-protest recollection of the evaluators, was reviewed. Agency Supplemental Report, Aug. 3, 1999, at 1-2. Given the above discussion showing that, even if the ITC proposal were given the maximum amount of points available under the personnel and equipment/capabilities evaluation factors, it still would not be in line for award, we do not see how ITC could have been prejudiced by the alleged failure of the agency to credit its proposal under these factors for information contained in its proposal's miscellaneous section.



under the contract) for which it reasonably received a higher technical rating for personnel.

Additionally, under the capabilities factor, our review of the record, including a comparison of the proposals, shows that SEA's extensive MSC-specific experience, and documented capabilities as the incumbent for these services, reasonably warranted a higher evaluation rating than that received by the ITC proposal. As stated above, an incumbent's experience may offer genuine benefits to an agency, and therefore may reasonably be considered in the evaluation of proposals, especially, as here, in distinguishing the proposal from one offering less specifically related experience.<sup>5</sup> See Dr. Carole J. Barry, B-271248, June 28, 1996, 96-1 CPD ¶ 292 at 3.

The protest is denied.

Comptroller General  
of the United States

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<sup>5</sup>ITC contends generally that the agency unfairly favored SEA in awarding that firm the contract. Because government officials are presumed to act in good faith, we do not attribute unfair or prejudicial motives to them on the basis of inference or supposition. Ameriko Maintenance Co., B-253274, B-253274.2, Aug. 25, 1993, 93-2 CPD ¶ 121 at 5-6. Here, as discussed above, the evaluation of proposals is reasonably supported by the record and there is no credible evidence of bias. Although ITC alleges that the contracting officer was not truthful in statements he allegedly made to ITC (regarding when he would award the contract, the source of the information to be included in the agency's answers to ITC's post-debriefing questions, and regarding his possession of the offerors' proposals during the debriefing), we do not see how these allegations regarding actions subsequent to the award determination present valid bases to challenge the award to SEA in a protest to our Office.