

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

27211

FILE: B-212358

DATE: January 17, 1984

MATTER OF: Information Management, Inc.

## DIGEST:

1. The record does not support the protester's contention that its lack of a Washington representative became a critical factor in the agency's decision to reject its offer in favor of a higher priced one. Moreover, in weighing the advantages of one proposal over another, the agency properly could give some consideration to the protester's lack of a Washington representative since it was reasonably related to the evaluation factors contained in the solicitation.
2. GAO will not object to an agency's conclusion that selection of the offeror which received the highest total technical and cost score was not in the best interests of the Government where technical proposals were not rescored after receipt of best and final offers because no changes in the proposals were solicited or expected, but the offeror nevertheless changed its proposal in a manner which raised serious concerns about the acceptability of the proposal.
3. Where an agency found no uncertainties in those offers included in the competitive range and determined that no oral or written discussions were necessary because of the high level of acceptability of offers, the agency's request for best and final offers was sufficient to satisfy the requirement for discussions in a negotiated procurement.
4. A change made in protester's best and final offer was not subject to resolution through mere clarification of the offeror's intent, but instead would have required the reopening of discussions, and the agency was not required to reopen discussions for this purpose.

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Information Management, Inc. (IMI) protests the U. S. Customs Service's award of a contract to Hadron, Inc. under request for proposals (RFP) No. CS83-21 for a technical assessment of the Customs Service air support program. We deny the protest.

IMI contends that the Customs Service based its final award decision on a factor which was not contained in the RFP as a criterion for proposal evaluation. The protester also argues that the Customs Service improperly used an IMI unsolicited proposal as a basis for the RFP. In addition, IMI claims that it is entitled to recover the costs of preparing its proposal.

#### Background

The RFP contemplated the award of a cost-plus-a-fixed-fee type contract and contained the following evaluation and award factors: "Cost (40%)," "Experience and Demonstrated Capability of Bidder (40%)" and "Technical Content of Proposal (20%)." In accordance with these criteria, the evaluation panel point scored the initial technical and cost proposals received from each offeror. IMI, which submitted the low cost proposal, received a score of 81.43--41.43 for technical (experience/capability and technical content combined) and 40 for cost. Hadron's scores were 51.30 for technical and 35.83 for cost, for an overall score of 87.13. A third offeror, SRI, Inc., received a score of 47.49 for technical and 32.65 for cost, for a total of 80.14. These three offerors were included in the competitive range, while a fourth offeror with significantly lower scores was excluded.

No oral or written discussions were held with any of the offerors, but a request for best and final (B&F) offers was made. The contracting officer states that discussions were not considered necessary because of the high level of acceptability of the proposals included in the competitive range. The request for B&Fs received by IMI specifically stated that no changes in the proposal were required.

After evaluation of B&Fs, the point scores of each offeror in the competitive range were as follows:

	<u>Technical</u>	<u>Cost</u>	<u>Total</u>
Hadron	51.3	26.4	77.7
IMI	41.43	40	81.43
SRI, Inc.	47.49	26	73.49

As reflected in these scores, the technical proposals were not rescored after receipt of B&Fs.

Hadron was recommended for contract award even though IMI received a higher overall point score than Hadron. This recommendation was based on the superiority of Hadron's technical approach and the fact that a 762 hour manpower reduction made in IMI's B&F proposal was considered to be unrealistic and inadequately explained. Although the technical proposals were not rescored after B&Fs were received, the agency viewed the manpower reduction as having a very negative impact on IMI's technical proposal.

#### Merits

According to IMI, it was informed during a debriefing that although its proposal received the highest total point score, its lack of a "Washington, D. C. area-based presence" was viewed as raising a question as to IMI's ability to respond quickly to the agency's questions and requirements. IMI states that it was told that lack of a Washington representative became a critical factor in the award determination. It asserts that this was improper because the RFP contained no requirement for a Washington presence, and asserts that it would have offered to establish such a presence had it known of the requirement.

The Customs Service states that IMI's lack of a Washington representative was not addressed as an evaluation factor. The record does show, however, that after the proposals were point scored but before Hadron was selected for contract award, the chairman of the evaluation panel sent a memorandum to the contracting officer and recommended selection of Hadron over IMI and SRI. That recommendation was based in part on Hadron's knowledge of and access to key military and federal agency contacts in the Washington, D.C. area, which the other offerors were found to lack.

Nevertheless, the memorandum also cites several other reasons for selecting Hadron, including the fact that the evaluation panel rated Hadron technically superior to IMI and SRI. Moreover, the contracting officer's subsequent award recommendation contains no mention of either a Washington representative or access to military and federal contacts as a basis for choosing Hadron over IMI. Rather, as noted above, it emphasizes the superiority of Hadron's overall technical approach, expresses grave concern over IMI's manpower reduction, and concludes that award to Hadron is in the best interest of the government, price and other factors considered.

Thus, while the record shows that some consideration was given to offerors' access to military and federal agency contacts, nothing indicates that it became a crucial factor in the award selection. We recognize that IMI claims to have been told in the debriefing that its lack of a Washington representative was critical, but conclude that the evidence does not support this assertion. At best, the record shows that the absence of a Washington representative became one consideration among many taken into account in weighing the advantages of one proposal over another.

In any case, it is well established that although agencies are required to identify the major evaluation factors applicable to a procurement, they need not explicitly identify the various aspects of each which might be taken into account, provided that such aspects are reasonably related to the stated criteria. Bell & Howell Corporation, B-196165, July 20, 1981, 81-2 CPD 49. Here, the stated evaluation factors included "experience and demonstrated capability." We believe that evaluation of an offeror's capability could reasonably include some consideration of whether that offeror had a representative in Washington.

In addition, we conclude that despite IMI's overall high score, the decision to award to Hadron was reasonably based. It appears from the record that IMI's total score remained high only because the technical scores were not revised after B&Fs and therefore did not reflect the agency's serious concerns about the manpower reduction made

in the protester's B&F offer.<sup>1</sup> More importantly, the manpower change, which reduced the original level of effort proposed by one-third, obviously raised serious concerns about the continued acceptability of IMI's revised proposal. The agency specifically found that the change was not accompanied by an adequate explanation of its impact, was unrealistic and likely to result in a cost overrun. Under these circumstances, we will not object to the Customs Service's conclusion that selection of IMI for award was not in the best interests of the government.

IMI suggests that the Customs Service acted improperly by not contacting IMI to "clarify" its concerns over the manpower reduction. The protester asserts that since its initial proposal was considered highly acceptable, a "qualified reduction" of total manhours and cost should not have raised significant questions for the evaluators. It also argues that the reasons for this reduction were fully explained in its proposal.

In order to address IMI's allegations, we think it is first necessary to discuss the agency's failure to hold oral or written discussions before requesting B&Fs. In negotiated procurements, such discussions are generally required to be conducted with all offerors within the competitive range. Federal Procurement Regulations § 1-3.805-1 (1964 ed.).

While we have recognized that there is no precise rule as to what constitutes discussions, we have stated that at a minimum, an offeror within the competitive range should be afforded the opportunity to revise or modify its proposal. Food Science Associates, Inc., B-183054, April 30, 1975, 75-1 CPD 269. Thus, we have held that the mere request for

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<sup>1</sup> Evidently, the proposals were not rescored because the agency did not solicit and did not expect to receive any changes to the offerors' technical approaches. An agency's failure to rescore revised proposals generally is not a matter for objection by this Office. See CRC Systems, Inc., B-207847, May 2, 1983, 83-1 CPD 462; Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365.

best and final offers is sufficient to satisfy the requirement for discussions. Dyneteria, Inc., B-181707, February 7, 1975, 75-1 CPD 86. We have also held, however, that such a request is not adequate where uncertainty exists with respect to technical aspects of a proposal. Decision Sciences Corporation, B-196100, May 23, 1980, 80-1 CPD 357.

In this case, the agency states that no oral or written discussions were held because of the high level of acceptability of the offerors within the competitive range. This was tantamount to a conclusion that no uncertainties existed with respect to any of the proposals. Therefore, we conclude here that the agency's request for best and final offers was sufficient to satisfy the requirement for discussion with all offerors in the competitive range. See The BDM Corporation, B-202707, October 28, 1981, 81-2 CPD 354.

Turning to IMI's assertion that the agency should have given it the opportunity to clarify the manpower reduction in its B&F, we do not agree with IMI's premise that this was a simple matter which could be resolved through clarification of its intent. Clarification of an offer contemplates an inquiry to an offeror for the sole purpose of eliminating minor uncertainties or irregularities in a proposal. Centennial Systems, Inc., B-201853.2, April 16, 1982, 82-1 CPD 350. If, however, the inquiry is essential to determine the acceptability of the proposal or affords the offeror an opportunity to change its proposal, then what is occurring is not clarification, but the conduct of discussions. Id. An agency is not required to reopen discussions to remedy defects introduced into a previously acceptable technical proposal by a best and final offer. Systems Sciences Incorporated, B-205279, July 19, 1982, 82-2 CPD 53.

The Customs Service obviously regarded the manpower reduction in IMI's proposal as a substantial change in its proposed approach, and one which raised serious questions about the acceptability of the revised proposal. As such, it was not properly subject to resolution through proposal clarification, but instead would have required the reopening of negotiations. As previously noted, the agency was not required to reopen negotiations under these circumstances.

Although IMI contends that the manpower reduction was fully explained in its proposal, we believe the agency reasonably could view this explanation as inadequate to justify the changes. In support of the reduction IMI stated that:

"[T]he changes made are due primarily to the decrease in the available time allowed for the study. Our rationale for not adding additional personnel was due to our experience that a group of more than five individuals would fragment the study and in the short time frame allowed, a coherent analysis would be extremely difficult to produce. IMI believes that the five proposed personnel will be able to accomplish the assessment in the revised number of manhours."

(The reference to a decrease in the time available for the study refers to a reduction in the available time for contract performance from 3 1/2 months to 2 1/2 months.)

Essentially, IMI's explanation of its manpower reduction states why it made the reduction, but fails to substantiate its stated belief that the same amount of work can be accomplished in a reduced time frame with significantly fewer manhours than previously proposed. We have little difficulty in understanding how such a change could raise serious doubts in the minds of the evaluators, and conclude that they could reasonably assess the change as unrealistic and inadequately explained.

We also find no merit to IMI's contention that the manpower reduction should not have raised significant questions about its B&F since its initial proposal was found acceptable. Regardless of the merits of IMI's initial proposal, the fact remains that the protester changed that proposal. The change was not solicited by the agency but instead was made purely on the protester's own initiative. It therefore assumed the risk that the change might raise serious questions in the minds of the evaluators despite the initial proposal's high level of acceptability.

IMI also argues that the RFP was improperly based on an unsolicited proposal which it had previously submitted to the agency. We find this allegation to be untimely.

Our Bid Protest Procedures require that protests based upon alleged improprieties apparent on the face of an RFP must be filed with this Office or the contracting agency prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983). IMI asserts that it objected to the contracting officer about the use of its unsolicited proposal immediately after it received the RFP. Assuming that these objections were sufficient to constitute a timely protest to the agency, any subsequent protest here had to be filed within ten working days of actual or constructive knowledge of adverse agency action on the initial protest. 4 C.F.R. § 21.2(a). The agency's receipt of initial proposals without taking any action in response to IMI's protest constituted initial adverse agency action. The Art Production, Co., B-191470, April 5, 1978, 78-1 CPD 273. Since IMI's protest to this Office was not filed until nearly three months later, it is clearly untimely on this issue.

IMI's protest is denied in part and dismissed in part.

Claim for Proposal Preparation Costs

IMI claims reimbursement for the costs of preparing its proposal. Since we have denied IMI's protest, its claim for proposal preparation costs is also denied. See Architectural Preservation Consultants; Resource Analysts, Inc., B-200872; B-200872.2; B-200955.4, December 8, 1981, 81-2 CPD 446.

*Milton F. Dowler*

Acting Comptroller General  
of the United States