

*Algeria*

**DECISION**



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

**FILE:** B-220072 **DATE:** December 24, 1985  
**MATTER OF:** Maxima Corporation

**DIGEST:**

1. Protest that agency improperly excluded proposal from the competitive range is denied where GAO's in camera review of the evaluation documents shows that the agency's finding that offeror's technical proposal was unacceptable was reasonable and the record further indicates that offeror's proposed cost was significantly higher than costs proposed by offerors included in the competitive range.
2. When a protester alleges bias, it has the burden of affirmatively proving its case and unsupported allegations of bias do not satisfy this burden.

Maxima Corporation (Maxima) protests its exclusion from the competitive range under request for proposals (RFP) No. N60921-85-R-A183 issued by the Department of the Navy, Naval Surface Weapons Center, for product assurance technical support for naval ships, systems and equipment. Maxima argues that, as a result of procedural irregularities and bias on the part of an evaluator, Maxima's proposal did not receive a fair, impartial evaluation in accordance with stated criteria in the RFP.

We deny the protest.

The RFP solicited a cost-plus-fixed-fee contract. The RFP stated that award would be made to the offeror whose proposal offers the greatest value to the government. Proposals were to be scored on both technical capability and cost with technical factors considered approximately four times as important as cost. The RFP listed capability of employees, past corporate experience, and management as the main technical criteria in descending order of importance. Each of these criteria contained several subcriteria.

Proposals were received from five offerors and were evaluated and scored by a technical evaluation panel (TEP). The TEP also prepared a written critique of each proposal

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intended to substantiate the scoring, and the source selection official was to base his decision on the written narratives. Three of the five firms submitting offers were included in the competitive range. However, by letter dated August 30, 1985, Maxima was notified that it was eliminated from the competitive range due to both technical and cost considerations.

Specifically, Maxima was notified that its proposal was excluded from the competitive range because it was deficient under each of the three major technical criteria and because its cost proposal compared unfavorably to the other proposals considered technically acceptable. Also, the record indicates that Maxima's cost including fee was 30 percent greater than the average of those offers included in the competitive range.

Initially, Maxima complains that its ability to show how the evaluations were improperly conducted is hampered by the Navy's refusal to permit Maxima to have certain source selection and evaluation documents. Maxima requests that it be provided with copies of documents that the Navy provided to GAO, but refused to give to Maxima. It is apparent that the information withheld is considered confidential because this is an ongoing procurement.

The Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553(f) (West Supp. 1985), provides in pertinent part that:

"Within such deadlines as the Comptroller General prescribes, upon request each Federal Agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this Section) that would not give the party a competitive advantage and that the party is otherwise authorized by law to receive."

While the source selection information may not be released to the protester, GAO will review the documents supplied in light of the protest issues raised. Our discussion of the documents is necessarily limited in view of the ongoing evaluation of proposals. See Raytheon Support Services Co., B-219389.2, Oct. 31, 1985, 85-2 C.P.D. ¶ 495.

Maxima argues that it should have been included in the competitive range. Essentially, Maxima argues that since it is presently performing satisfactorily on a comparable contract for the Navy, the fact that it was poorly evaluated under this RFP must reflect a bias against it on the part of one of the proposal evaluators.

The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of accommodating them. Western Graphtec, Inc., B-212971, May 14, 1984, 84-1 C.P.D. ¶ 517. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. See Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74. Further, we have held that, in reviewing an agency's evaluation, we will not evaluate the proposal de novo, but instead will only examine the agency's evaluation to ensure that it had a reasonable basis. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 C.P.D. ¶ 335.

The record indicates that Maxima was determined technically unacceptable under all of the major technical criteria. Under the criterion "capability of employees," the contracting officer reported four deficiencies in Maxima's proposal: (1) proposed personnel did not meet the RFP qualification requirements; (2) not enough personnel were proposed in some elements; (3) personnel were proposed without the breadth and depth of experience required; and (4) personnel were not equipped through academic training or experience to perform professional level product assurance work. Under the technical criterion of "corporate experience," the contracting officer stated that Maxima submitted only a minimum amount of sample data and that over 50 percent of the data was rated unacceptable. Finally, under the criterion of "management" the contracting officer commented that the management plan proposed was not acceptable and it did not demonstrate that the company has the capability to manage contracts of this type.

With regard to the Navy's determination that Maxima's proposal was deficient under the criterion of employee capability, our review of the record indicates that the Navy evaluated proposals in accordance with the RFP evaluation criteria. For example, the RFP provided that required personnel such as the project manager and engineers have specified years of experience in the product assurance work.

required by the contract, have proficiency in disciplines such as engineering and have specific education degrees. The record supports the TEP finding that the majority of Maxima's proposed staff did not meet these stated RFP requirements and that Maxima's proposed personnel did not have the academic training or personnel experience the RFP required to perform product assurance work.

Maxima argues that the personnel it proposed are essentially the same personnel working on the current contract for the Navy which is allegedly "broader in scope than the instant RFP." Maxima contends that it is performing successfully on the current contract and since it has a thorough knowledge of the skills of its people, the number and quality of the personnel proposed are sufficient for the proposed work.

However, the Navy responds that the personnel proposed by Maxima are not essentially the same personnel working on the current contract. The Navy asserts that since a large percent of the current contract is being performed by a subcontractor and Maxima has proposed to use a different subcontractor for the subject contract, the personnel proposed are not those who are currently performing the contract. In this regard, the Navy states, for example, that of the 19 individuals proposed by Maxima under the senior product assurance analyst category, only three have charged any hours to the current contract during the months of May, June and July 1985, and that less than 5 percent of the hours billed under this category reflect work performed by personnel proposed under the instant RFP. The Navy argues, therefore, that, notwithstanding the fact that Maxima is currently performing a similar contract with the use of a subcontractor, the Navy properly concluded that Maxima's proposal reflects an unacceptable level of employee capability. On this record, we have no basis to question the Navy's explanation in this regard.

The RFP also required offerors to propose an adequate number of personnel of the correct professional composition and the correct skills mixture as specified in the estimates of work and personnel assignments. Although Maxima contends that it offered an adequate amount and quality of staff to satisfactorily perform the required work, our review of the record shows that the Navy evaluation in this regard was reasonable. For example, the RFP states that 15 to 25 percent of the work assignments will likely be in the area of integrated logistics support (ILS). The resumes of

Maxima's proposed staff, however, reflect the fact that only one part-time employee has ILS as his primary discipline. We find, therefore, that the Navy reasonably concluded that Maxima's proposal was inadequate in this area.

Concerning the Navy's conclusion that Maxima's proposal was unacceptable under the criterion of corporate experience, Maxima argues that it seems unreasonable for over 50 percent of its sample data to be considered unacceptable when 11 out of 19 of the samples were deliverables to the Navy under Maxima's current contract for similar work.

The record indicates that the sample data were evaluated for soundness, technical excellence, and relevance to work required under the RFP which were the criteria stated in the RFP. The record further indicates that the TEP reasonably found that some of the data were barely relevant to the statement of work subtasks, that some data were considered too simplistic and did not indicate breadth of experience, and that some were only partially prepared by Maxima or its proposed subcontractor.

Although Maxima contends that it should not have been penalized under the stated RFP criteria for the fact that subcontractors or consultants performed some of the work involved in the sample data submitted, we do not agree. Offerors were required to state what percent of the sample work was performed in-house and we think, therefore, that it was logical and reasonable for the Navy to take into consideration the amount of the sample work that was actually performed by the offeror or its proposed subcontractor in evaluating corporate experience. See Columbia Research Corp., B-202762, Jan. 5, 1982, 82-1 C.P.D. ¶ 8.

With regard to the Navy's finding that Maxima submitted an unacceptable management plan which did not demonstrate that Maxima had the capability to adequately manage contracts of this type, Maxima argues that such a conclusion must be unreasonable because Maxima is currently managing a similar contract for the Navy.

The Navy contends, however, that although Maxima is the incumbent contractor, it cannot rely on the government's knowledge of its abilities, but must clearly delineate its capabilities in its proposal. Barber-Nichols Engineering Co., B-216846, Mar. 25, 1985, 85-1 C.P.D. ¶ 343. In this connection the Navy TEP found that Maxima did not address, or addressed superficially, areas of management of one of the Navy sites under the RFP--the White Oak facility.

Specifically, Maxima did not address the need for an on-site manager for White Oak. Also, the TEP found that Maxima's selected subcontractor, which had vital contract performance responsibilities, had an out-of-state operations office and no commitment for a local office, and that the proposal did not address adequately the coordination of work with the subcontractor, Maxima and the Navy. Based on these deficiencies in Maxima's offer, we cannot object to the Navy's finding that Maxima's management plan was unsatisfactory. The Navy's knowledge of Maxima's capabilities based on its current contract, however, would not establish how Maxima proposed to manage this particular contract.

The record indicates that Maxima failed through its offer to propose staffing which met RFP requirements, to demonstrate its corporate capabilities through the required work product samples, or to provide an adequate management plan. Under these circumstances, we find that the Navy reasonably concluded that Maxima's proposal would require major revisions to become technically acceptable. Given this determination and the fact that Maxima's proposed cost was not competitive with those offers included in the competitive range, we think the Navy reasonably excluded the proposal from the competitive range.

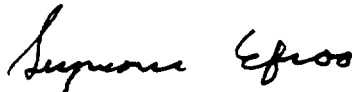
Finally, Maxima alleges that one member of the TEP, who has been the contracting officer's technical representative (COTR) under Maxima's current contract with the Navy, is biased against Maxima. Maxima suggests that this allegedly biased evaluator influenced the TEP to score Maxima's offer low. As evidence of bias, Maxima alleges that the COTR stated publicly that Maxima's work on the current contract was not acceptable.

When a protester alleges bias, it has the burden of affirmatively proving its case; unsupported allegations do not satisfy this burden, J. L. Associates, Inc., B-201331.2, Feb. 1, 1982, 82-1 C.P.D. ¶ 99, nor does establishing the mere potential for improprieties. Computer Sciences Corp., B-201800, Apr. 17, 1984, 84-1 C.P.D. ¶ 422. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. See Architectural Preservation Consultants; Resource Analysts, Inc., B-200872, et al., Dec. 8, 1981, 81-2 C.P.D. ¶ 446.

The Navy denies that the evaluation was biased. In response to Maxima's allegation that the COTR publicly criticized Maxima, the Navy states that there was never any public criticism, but rather the criticism was made privately to members of Maxima's management team. In any event, with regard to the evaluation of proposals under this

RFP, Maxima has failed to show that the COTR was biased against Maxima in the evaluation of Maxima's proposal. The TEP, which included the COTR, scored the proposals prior to preparing a written narrative of the evaluation of each offer and recommending a competitive range to the contracting officer. The contracting officer, not the COTR, made the final determination to exclude Maxima. We also note that although a number of subcriteria were scored by a panel which included the COTR, Maxima received its highest score under the subcriterion that was solely scored by the COTR who was allegedly biased against Maxima.

Also, there is no indication from the record that removal of the COTR from the TEP would have affected Maxima's standing in the competition. Even where bias is shown, we will deny a protest if there is no indication that the bias adversely affected the protester's competitive standing. Ted L. Bidy and Associates, Inc., B-209297; B-209297.2, Apr. 22, 1983, 83-1 C.P.D. ¶ 441.

*for*   
Harry R. Van Cleve  
General Counsel