



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: IMR Services Corporation

File: B-230586

Date: June 9, 1988

DIGEST

1. A procuring agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal contains significant deficiencies which would require major revision to be considered technically acceptable.
2. Protest alleging improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals is untimely if not filed prior to closing.
3. A protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition.

DECISION

IMR Services Corporation protests its exclusion from the competitive range under request for proposals (RFP) No. DAAL02-87-R-9821, issued by the Department of the Army, Joint Tactical Fusion Program Office (JTFFPO). The RFP requires the contractor to provide system engineering, technical assistance, and program management support to the Joint Tactical Fusion Program Management Office (JTFFPMO) for the development, production, training, testing and fielding of systems assigned to the JTFFPMO.^{1/}

We deny the protest in part and dismiss it in part.

^{1/} This program was established by Congress to satisfy a critical need to upgrade intelligence and electronic warfare/electronic combat and operations security support to Army and Air Force tactical commanders by means of automated intelligence collection, processing and reporting. The ultimate mission is to develop a common system to satisfy the needs of Army and Air Force users.

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The RFP was issued on October 15, 1987. The RFP provided that the government would award a contract to the responsible offeror whose offer conforming to the RFP is the most advantageous to the government, cost and other factors considered. The RFP contemplated the submission of separate technical and cost proposals. The instructions for preparation of technical proposals cautioned offerors that "each and every requirement of the solicitation must be addressed in the proposal and will be evaluated to determine whether sufficient detail is provided by the offeror to demonstrate that the approach taken will result in a timely deliverable product that meets the requirements." Additionally, the RFP specifically stated that significant deficiencies which cause exceptionally low scores on factors or subfactors may be used as a basis for eliminating a proposal from further consideration.

The RFP also specified that proposals should include a discussion of the facilities, personnel, resumes of key personnel and augmentation plans, that the offeror proposes to make available to accomplish the work. The offerors were also required to present responses to two sample problems that would demonstrate the offeror's understanding of the technologies associated with the areas of technical support required by the RFP. The RFP contained the following major evaluation factors for award:

- (1) Technical
- (2) Management
- (3) Cost Realism

Of the three factors, technical was more than twice as important as management. Cost carried no specific weight, but the RFP provided that cost realism would be evaluated with respect to how the types and allocations of cost elements support the asserted technical and management approach.

By the proposal receipt due date of December 7, 1987, eight proposals, including one from IMR, were received by the agency. After the technical evaluation, the contracting officer found four offers to be within the competitive range and four offers, including that submitted by IMR, to be unacceptable and outside the competitive range. IMR's technical proposal had been ranked seventh of eight proposals received. Accordingly, the Army notified IMR that based on the technical evaluation, its proposal was determined to be technically unacceptable and not for further consideration. The notice stated that the evaluation committee felt, among other things, that the proposal lacked

an "in-depth response to the RFP," that is," attention to detail was lacking when success of the program is predicated upon such detail," and that IMR proposed an excessive number of contingent hires for key managerial and technical positions.

IMR disagrees with the agency's evaluation of its proposal and argues that the agency did not properly apply the evaluation criteria specified in the RFP.

Our Office will not disturb an agency's decision to exclude a firm from the competitive range on grounds that it had no reasonable chance of being selected for award when, considering the relative superiority of other proposals, this determination was reasonable. Ameriko Maintenance Co., Inc., B-216406, Mar. 1, 1985, 85-1 CPD ¶ 255. A protester has the burden of proving that the agency's evaluation was unreasonable. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 CPD ¶ 43. Moreover, an agency's decision to exclude an offeror from the competitive range is proper where the offeror's technical proposal is so deficient that it would require major revisions before it could be made acceptable. Ameriko Maintenance Co., Inc., B-216406, supra.

The Army argues that IMR's proposal was evaluated in accordance with the section M evaluation criteria. IMR's proposal was judged against technical subfactors of "understanding the requirement," "adequacy of response," "feasibility of approach," and "completeness." The Army evaluators found significant weaknesses in IMR's proposal in the area of key management, and inadequate responses in the areas of System Engineering, Integrated Logistic Support, Systems Safety and Tempest. IMR's span of control was considered excessive in size and loose in control mechanisms. Additionally, the Army evaluators found that IMR failed to address a number of the statement of work requirements in detail and had dismissed some areas of effort as unnecessary.

In response, IMR contends that a thorough technical and management analysis of its proposal would demonstrate that in virtually every case proper and complete answers were provided. IMR argues that the 150 page limitation imposed by the RFP made it impossible for an offeror to address all the issues in sufficient detail, unless the writer knew what the reader specifically wanted to see.

After our independent review of IMR's proposal, we see nothing unreasonable in the Army's evaluation of the protester's proposal. Despite IMR's assertion, the RFP called for sufficiently detailed information with which

offerors were required to demonstrate a clear understanding of the requirements.

We find that the IMR proposal is very general in nature, setting forth general principles that would be followed if IMR were awarded the contract. For example, in the area of System Engineering, the majority of IMR's discussion concerned the definition of system engineering with little detail as to how this was to be accomplished with respect to the JTFPMO requirements. Further IMR only discussed, with any detail, Long-Range Planning which is only one of the three sub-tasks of System Engineering. IMR consistently referred to its System Engineering Management Plan and what it would accomplish with little detail as to how it would actually function. This is also true for IMR's discussion of the Master Integrated Schedule. In IMR's detailed response to the Army's letter of January 22, 1988, stating the specific reasons for rejection of IMR's proposal, IMR admits that because of the highly classified nature of the program and due to the overall page limitation, it presented a "generic" discussion of the Master Integrated Schedule. In fact, with respect to several of the areas in which the agency found IMR deficient, IMR consistently states that clarifying details would be provided upon request. We simply note that it is incumbent on an offeror to demonstrate the acceptability of its proposal. See e.g., Electronics Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD ¶ 15. Here, we find that IMR failed to do so.

The Army also found that IMR's proposal contained an excessive number of contingent hires in key positions which the Army felt represented a high risk for both management and technical areas. In response, IMR argues that less than 12 percent of their full-time personnel for this project are contingent and that contingent hires are necessary to perform the contract since no small business can afford to have the necessary workforce "standing by" in anticipation of some future contract. However, the Army states that it is concerned primarily with the number of contingent hires proposed for key positions such as the Program Manager and Deputy Program Manager. Additionally, the Army found that IMR's proposed management organization, management control and approach were weak. According to the Army, the staff did not appear adequate to the task and the span of management control was unknown. In response, IMR lists its key personnel and their relevant experience.

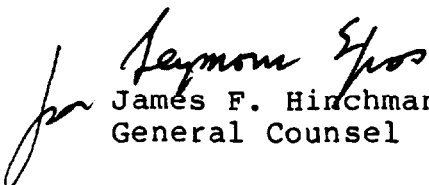
We find no basis to conclude that the agency was unreasonable in its evaluation. A review of IMR's proposal indicates that three of IMR's key personnel are in fact contingent hires, i.e., the Program Manager, Deputy Program Manager and Engineering Functional Leader. Another key

employee has only been with IMR for a few months. Our review of the Management and Control section also supports the agency's finding that the proposed management organization appears weak. For example, the Program Manager, a contingent hire, is also a functional leader and a site manager at a different location whose total span of control includes 14 people. We do not find it unreasonable for the Army to conclude that an organization that proposes a key personnel, the program manager, who is situated geographically away from the center of activity would be unable to maintain the necessary interface with the senior management at JTFPMO and supervise the 14 member staff. For these reasons, we find that IMR's proposal was reasonably considered as deficient and was properly rejected.

Finally, IMR contends that there were original "flaws" in the RFP which demonstrated bias on the part of the agency and resulted in IMR's exclusion from the competition. IMR's allegation of "flaws" concerns solicitation provisions regarding the military security requirement, the software application program, the requirement for small business set-asides and size classification. To the extent IMR is now objecting to these provisions of the solicitation, these issues are untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), which require protests based upon alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals to be filed prior to that date and alleged improprieties subsequently incorporated into the RFP to be protested not later than the next closing date for receipt of proposals. IMR's allegations concerning these solicitation provisions should have been raised prior to the closing date.

Furthermore, to the extent IMR is asserting these allegations of solicitation improprieties in an attempt to show bias either against it or for the incumbent contractor, we point out that the protester has the burden of affirmatively proving its case, and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Cryogenics Consultants, Inc., B-225520, Mar. 4, 1987, 87-1 CPD ¶ 249. There is no support in the record for the allegation of bias. In fact, a review of the record indicates that some of the alleged original "flaws" were subsequently modified, through amendments, to the protester's benefit.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel