



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Rice Services, Ltd.
File: B-232610
Date: November 23, 1988

DIGEST

1. Agency decision to eliminate protester from competitive range was reasonable even though it resulted in a competitive range of one. The totality of the major and minor deficiencies found by the evaluators in the protester's proposal provide adequate support for the decision.
2. Protest alleging apparent defects in a request for proposals is untimely where it was not filed prior to the closing date for receipt of initial proposals.

DECISION

Rice Services, Ltd., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DTCG39-88-R-00628, issued by the Coast Guard for full food services at the Coast Guard Academy in New London, Connecticut. Rice argues that the deficiencies the agency identified in its proposal were either minor or incorrect and therefore did not constitute valid grounds for elimination of the proposal from the competitive range. The protester also argues that the RFP's staffing-level requirements were vague.

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

The RFP, which contemplated the award of a firm, fixed-price contract, was issued on June 29, 1988. Technical considerations were to be given more weight than price. The RFP listed seven technical factors, each of which was accorded equal weight; food, personnel, quality control program, sanitation, housekeeping plan, inventory control and business management/corporate experience.

On the August 3 closing date the agency received three proposals. The agency eliminated one of the proposals

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immediately because it failed to address significant portions of the RFP. After evaluating the initial proposals of the remaining two offerors the Coast Guard informed Rice by letter dated August 30 that its proposal was excluded from the competitive range. The letter listed at least one deficiency under the factors of food, personnel, sanitation and business management/corporate experience.

The protester argues that the agency's decision to exclude it from the competitive range is generally incorrect and specifically disputes three of the listed deficiencies. The areas disputed are the proposed staffing levels under the personnel factor, and Rice's experience and its strike contingency plan under the business management/corporate experience factor.

In reviewing protests concerning the evaluation of proposals and the resulting determination of whether a proposal is in the competitive range, our Office's function is not to reevaluate the merits of proposals and make our own determinations. Proposal evaluation is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Tiernay Turbines Inc., B-226185, June 2, 1987, 87-1 CPD ¶ 563. We will not disturb an agency's decision as to who is to be included within the competitive range absent a clear showing that it was unreasonable. BASIX Control Systems, Corp., B-212668, July 2, 1984, 84-2 CPD ¶ 2. We will, however, scrutinize more closely any determination as this one that results in only one offeror being included in the competitive range. Aydin Corp., B-224354, Sept. 8, 1986, 86-2 CPD ¶ 274.

Here, the evaluators identified several major deficiencies in Rice's proposal in four of the seven areas. The evaluators found that Rice's proposal could not be made technically acceptable without major revisions. While we agree with the protester that some of the deficiencies noted seem to be relatively minor, we also find that several of the deficiencies were substantial, and that in totality, the deficiencies identified by the agency adequately justify the determination to eliminate Rice from the competitive range. See Aydin Corp., B-224354, supra.

The record indicates that the evaluators were particularly concerned about the staffing levels Rice proposed. Specifically the evaluators noted that Rice proposed 30.36 hourly employees to staff the cadet dining facility which allowed Rice 5.33 minutes per meal to prepare, cook, serve and clean after each meal. The evaluators believed this to be inadequate in view of the government estimate of 55 full

time equivalents (FTE)^{1/} needed for the cadet facility. This would allow 9.77 minutes per meal. Additionally, the evaluators asked Rice to clarify^{2/} the overall personnel staffing levels it submitted in its initial proposal and to explain how it arrived at the hours and levels indicated. The record shows that in several employee position categories the number of employees Rice specified did not correlate with the total FTE hours per week it specified. For instance, Rice listed 19 full time Cook II employees and 18 part-time; based on 40 hours per week, this equals 760 hours for full time Cook II employees alone, however, Rice listed only 487 hours per week total. Rice argues that it proposed enough employees to meet the total RFP requirement of 74.5 FTE for both the cadet and the enlisted dining facilities. It explains the lower staffing figures by stating that since the RFP also provided that staffing levels could be proportionately reduced during off-peak periods such as when cadets are on vacation, it reduced its staffing to an average figure. The Coast Guard responds, and we agree, that Rice still, however, did not explain as requested by the agency, how it arrived at the reduced hours proposed, in other words, what formula it used to produce the proposed level of effort. The evaluators determined that Rice's failure to clarify this after it was asked to do so left the proposal seriously flawed since the agency was unable to evaluate this portion of Rice's proposal. It also resulted in a conclusion on their part that Rice did not adequately understand the scope of the effort required to perform the services. We cannot conclude from the record that the agency acted unreasonably in determining that Rice's failure to account for the method of reduction was a serious deficiency.

The next area of disagreement is corporate experience. Here, the evaluators concluded that Rice did not have the minimum RFP requirement of 5 years experience in managing food service programs of comparable size and scope to that solicited. Rice maintains that since it has been in business for over 25 years and is currently successfully performing three of the largest food services operations in

^{1/} The solicitation calculated the number of employees on the basis of full-time employee equivalents. For example, two part-time employees both working 20 hours per week or one full-time employee working 40 hours a week both equate to one FTE.

^{2/} While not denominated discussions, the agency did contact Rice after the submission of its proposal in order to "clarify" its proposed level of effort.

the Army that this alleged deficiency must be erroneous. The Coast Guard responds that through telephone contact it determined that Rice's experience did not include family style dining or the type of special events and functions that are a part of the Coast Guard Academy requirement. Additionally, the agency determined that of the numerous contracts Rice listed in its proposal to evidence its experience, all but one were contracts where the food and supplies were furnished by the government whereas this contract will require that these items be furnished by the contractor. The one exception noted was not, according to the agency, comparable in scope and complexity to this requirement. Other than to insist that it can easily accommodate these differences, the protester does not refute the agency's position. Consequently, we have no basis upon which to disagree with the agency's judgment in this regard.

The final deficiency which the protester specifically disputes concerns Rice's strike contingency plan. While this does not appear to be a particularly significant deficiency, the protester has chosen to dispute it. The evaluators concluded that six of the seven steps in the protester's plan could not be implemented within 1 day as Rice proposed. The protester argues that it could easily adjust the plan during discussions and argues that in any event it has a union agreement that prohibits strikes and the government is protected by a performance bond.

According to the agency, the requirement for the strike contingency plan was in part to enable the agency to determine whether the offeror has the expertise to minimize disruption of the food service in an emergency situation. In the evaluators' view, Rice's plan which must be completely implemented in the day before the work stoppage, was impractical and did not demonstrate that Rice had the requisite expertise in this area. This conclusion is not refuted by the protester's insistence that in its view such a plan will not be needed. Its proposal did not explain that the plan offered was based on the premise that it would not have to be implemented. Consequently, the protester has not shown that the agency evaluators' view in this regard was unreasonable.

The protester does not specifically respond to the remaining deficiencies listed in the agency's August 30 letter other than to generally argue that they are minor and easily correctable. In this regard, the record shows that the evaluators found Rice's menus to be repetitious, not in conformance in many instances to the RFP portion size and preparation specifications and comprised of generally inexpensive and/or canned and frozen items when fresh food

was readily available. Additionally, the record shows that the evaluators considered Rice's proposal deficient because it did not submit 6 weeks of breakfast menus for the enlisted dining facility as required by the RFP. This made the evaluation of their nutritional content impossible.

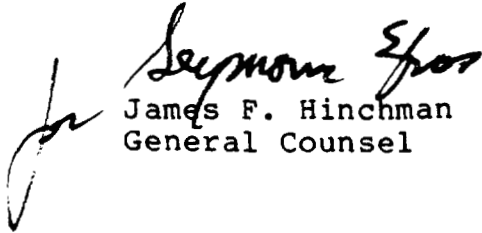
The evaluators also listed as deficiencies the failure of Rice's dietitian to meet the RFP's 3-year experience requirement, and the designation of the lead cook as supervisor of sanitation staff in the absence of managers. We do not agree that by their nature these problems are necessarily minor and easily correctable.

It is an offeror's obligation to submit an adequately written initial proposal in order to establish that what it proposes will meet the government's needs. Educational Computer Corp., B-227285.3, Sept. 18, 1987, 87-2 CPD ¶ 274. We find that the Coast Guard reasonably determined that substantial significant information was either omitted or not clearly set forth in Rice's proposal and that its proposal consequently was deficient in several areas. Rice disagrees with the agency's conclusion that the revisions required to make its initial proposal acceptable are of such magnitude as to be tantamount to the submission of a new proposal but offers no evidence other than its mere disagreement with the judgment of the contracting officials which is not sufficient to show the agency acted unreasonably. The Camarillo Group Ltd., B-227926, Sept. 14, 1987, 87-2 CPD ¶ 246.

Rice also alleges that the RFP's staffing-level requirements were vague. It believes the RFP did not clearly explain how the FTE requirements were to be met and states that the agency failed to adequately clarify the requirements despite Rice's requests concerning this subject. The record shows that the agency and the protester had extensive discussions concerning these matters prior to the final closing date for receipt of proposals. If the protester was not satisfied with the solicitation as amended, it was incumbent upon it to either protest to the agency or our Office prior to the solicitation's closing date. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). Its current protest of these matters was not filed with our Office until well after that

time and it is untimely and will not be considered. IMR
Services Corp., B-230586, June 9, 1988, 88-1 CPD ¶ 548.

The protest is denied in part and dismissed in part.

James F. Hinchman
General Counsel