



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Resources Corporation

File: B-251001.2

Date: March 22, 1993

Robert M. Cambridge, Esq., for the protester.
James J. Miller for Team Incorporated, an interested party.
Herman J. Narcho, Esq., Department of Labor, for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest raising same arguments that were resolved in a recent decision on a protest involving the same procurement is dismissed as no useful purpose would be served by further consideration of the arguments.

2. Protest that agency's use of undisclosed estimates was unreasonable because agency downgraded proposal for low staffing level estimates without regard to proposed state of the art cleaning equipment is denied where the protest proposed more, not fewer, hours than the agency deemed necessary to perform services in which such equipment could be used and where the agency did in fact take labor savings due to state of the art equipment use into account.

3. Protest that agency's use of undisclosed estimates was unreasonable because agency downgraded proposals for low staffing levels without regard to training of personnel is denied where the record shows that agency took training into account and the protester fails to show that its low proposed manhour levels resulted from the training of its personnel.

4. Protest that agency improperly downgraded proposal for failure to include cleaning job assignment forms is denied where the solicitation specifically advised offerors to provide a detailed proposed cleaning schedule and, thus, evaluation was reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

International Resources Corporation protests the award of a contract to Federal Services, Inc. under request for proposals (RFP) No. L/A 92-11, issued by the Department of Labor (DOL) for janitorial services. International alleges that the agency improperly evaluated its proposal.

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

The RFP, issued on April 10, 1992, as a total small business set-aside, sought prices and technical proposals for janitorial services at the Frances Perkins Building in Washington, D.C. The RFP described the types of duties under the contract as nonperiodic basic services (routine cleaning tasks such as dusting and damp mopping scheduled to be performed on a bi-weekly basis or more frequently); periodic basic services (services such as stripping and finishing floor surfaces, to be performed on a less frequent basis than bi-weekly); utility services (basic services other than snow removal that are unscheduled, such as responding to complaints about slippery floors or the absence of supplies); and additional services, which the Building Manager's Office orders via work orders. The solicitation advised that award was to be made to the offeror whose proposal was determined to be the most advantageous to the government, considering technical merit and price. Technical and price factors were weighted equally. The technical evaluation was to be based on the following factors with their relative weights: (1) the offeror's experience and qualifications (41 points); (2) the qualifications, experience, and availability of the offeror's personnel (12 points); and (3) the offeror's technical approach (47 points). Each technical evaluation factor contained subfactors, having maximum point values ranging from 1 to 10. The technical approach factor contained subfactors requiring information about the offeror's proposed minimum number of labor hours to perform each type of service under the contract.

By the May 13 closing date, 23 firms submitted proposals. After its initial review of the proposals, the technical evaluation panel determined that 11 proposals, including International's and Federal Services's, were within the competitive range; specifically, the panel concluded that Federal Services's proposal was technically superior to all the other proposals and that International's technically unacceptable proposal was susceptible of being made acceptable. Best and final offers (BAFO) were due on August 26.

The agency received BAFOs from 10 offerors, including International and Federal Services. Of the 10, International submitted the low-priced offer of \$8,025,099 and was rated tenth technically; Federal Services submitted a higher priced offer at \$9,065,965, which was rated as the technically superior offer. Based on International's low rating, the agency found its proposal technically unacceptable. On September 30, the contracting officer concluded that Federal Services's proposal was the most advantageous to the contracting agency and, thus, should be selected for award. International filed a protest with our Office on November 20.

Generally, the agency found that while International's proposal rated "high" to "medium" in the experience areas, it rated "low-medium" overall in the technical approach area. The agency found that International's estimated minimum labor hours for utility services were substantially lower than the labor hours the agency estimated were necessary; specifically, International's proposed productive hours were approximately one-eighth of the agency's estimated minimum labor hours. The agency also found that International's proposed productive labor hours for nonperiodic basic services were substantially (more than 15 percent) lower than the labor hours the agency deemed necessary.

International contends that the agency improperly used undisclosed minimum staffing level estimates to evaluate proposals. The protester also alleges that the agency's staffing estimates were based on current staffing levels, which afforded the incumbent an unfair advantage over all the other offerors.

These arguments are identical to those advanced in connection with this procurement by another protester in Laro Serv. Sys., Inc., B-251001, Mar. 3, 1993, 93-1 CPD ¶ _____. In that decision, we concluded that the use of undisclosed estimates was proper and that any advantage the incumbent had was derived from its familiarity with the building and the agency's requirements by virtue of its performance on the current contract; such an advantage is often enjoyed by incumbents and is not unfair, since it does not result from preferential treatment or other unfair action by the agency.¹ See Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67. We see no useful

¹We also noted that the record established that the agency's estimates were not based exclusively on the incumbent's current staffing level; rather, the agency also took into account labor hour data from prior janitorial contracts dating back to 1982 and its estimation of hours necessary to accomplish additional work that was not in the previous contracts.

purpose to be served by further consideration of these arguments here. RMS Indus., B-247465; B-247467, June 10, 1992, 92-1 CPD ¶ 506.

The protester also argues that the agency's use of the undisclosed estimates was unreasonable because the agency downgraded proposals for low staffing level estimates without regard to proposed timesaving, state of the art cleaning equipment or "other methods of achieving manhour savings" such as training.²

The protester's argument lacks merit. The protester proposed more, not fewer, hours than the agency deemed necessary to perform periodic services, the category of services for which it appears that state of the art, laborsaving equipment could be used.³ As a result, the protester was not prejudiced by the agency's alleged failure to properly evaluate offers that proposed state of the art equipment and fewer labor hours. Moreover, the records shows that agency did take into account labor savings due to state of the art equipment use.⁴

²Although International's challenge to the agency's evaluation of its proposal is limited primarily to the fact that the agency downgraded its proposal after comparing it with the agency's labor hour estimates, the agency's negative evaluation comments were not limited to this area. For example, the agency found that International's proposal was incomplete in certain areas in which the RFP called for listings of all items necessary to perform the work called for under the contract. Miscellaneous pieces of janitorial equipment were missing from its equipment inventory; several key items were missing from its listing of supplies; and the distribution of nonperiodic hours were illogically proposed showing conflicts in day/night estimates. The protester does not refute any of these findings.

³The contracting agency defined state of the art equipment as floor burnishers and riding floor polishers; these devices clearly could be used to perform the periodic services called for under the RFP. The other two categories of services--nonperiodic services, such as dusting, and utility services, such as taking care of a slippery floor--do not lend themselves to the use of such equipment. Although on notice of the agency's definition of state of the art equipment, the protester does not argue otherwise.

⁴An offeror's score for technical approach--specifically, its score under the evaluation subfactor "minimum number of productive and supervisory hours proposal for periodic basic/snow removal services"--was increased if the following conditions were met: (1) the offeror otherwise received a "low" (continued...)

As for training, which was separately evaluated under the second evaluation factor--qualifications, experience and availability of the offeror's personnel--and for which International received "high" ratings, the agency did not increase low manhour scores based on high training ratings. The protester, however, has failed to provide any evidence that its low proposed manhour level resulted from the training of its personnel. Accordingly, we have no basis to find that the protester was prejudiced by the agency's evaluation in this regard.⁴

Finally, the protester contends that the agency improperly downgraded its proposal for failure to include cleaning job assignment forms. In the technical approach area, the solicitation specifically advised offerors to provide a "proposed schedule for performing nonperiodic basic services, which should include specific areas of the building; the day of week the work would be accomplished; the time of day the work would be accomplished; and a descriptive statement of the work to be performed." Despite this explicit requirement, International's proposal merely stated that it would perform "thorough cleaning" of a minimum of 168,367 square feet, Monday through Friday. With regard to periodic services, the agency concluded that International's proposal omitted more than three services, including the requirement that the contractor strip and seal the day care area on a monthly basis. The protester does not refute the agency's findings in these areas. Rather, the protester argues that these


⁴(...continued)

rating under that evaluation subfactor; (2) the offeror received a "high" rating under the evaluation subfactor for equipment; and (3) the offeror proposed state of the art equipment.

⁵As stated above, the solicitation advised offerors that the technical evaluation was to be based in part on the qualifications, experience, and availability of the offeror's personnel, which was worth 12 out of a possible 100 points. To the extent the protester suggests that the agency should have allocated more points for training, such a challenge in effect is a challenge to the terms of the RFP which, to be timely, had to be filed before closing. See 4 C.F.R. § 21.1(a) (1) (1992).

assignment forms are "little more than restatements of the [s]tatement of [w]ork requirements found in the solicitation." The protester is in effect objecting to the fact that the solicitation required this information. Such a challenge, to be timely, had to be filed before the closing date, not after the award of a contract.⁶ See 4 C.F.R. § 21.2(a)(1).

The protest is dismissed in part and denied in part.


for James F. Hinchman
General Counsel

⁶In any event, the protester was not prejudiced even if-- assuming for the sake of argument--the agency's evaluation in this area was unreasonable. At most, the protester would receive an additional 6 points, which would have the minimal effect of raising the technical ranking of its proposal from 10th to 8th.