



Comptroller General
of the United States

Washington, D.C. 20548

150.256
12:2249

Decision

Matter of: International Health Management Corporation--
Reconsideration

File: B-254468.2

Date: September 24, 1993

Sam Zalman Gdanski, Esq., for the protester,
Behn Miller, Esq., and Christine S. Melody, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Request for reconsideration of decision dismissing pro-
tester's challenge to elimination of its proposal from
competitive range is denied since protester's initial
pleadings failed to allege any impropriety in the agency's
determination to exclude protester's proposal from the
competitive range and therefore failed to allege a valid
basis upon which to protest the elimination.

DECISION

International Health Management Corporation (IHMC) requests
reconsideration of our dismissal of its protest under
request for proposals (RFP) No. N00140-93-R-CA25, issued by
the Department of the Navy for health management services.
IHMC contends that we improperly determined that its initial
protest failed to set forth a valid basis for protest.

We deny the request for reconsideration.

By letter dated July 30, 1993, the agency advised the pro-
tester that because its "pricing is significantly higher
than other technically superior proposals . . . your pro-
posal is considered to be outside the competitive range."
On August 11, IHMC filed a protest with this Office which
purported to challenge the exclusion of its proposal from
the competitive range; the entire explanation of its basis
for protest was as follows:

"[IHMC's] proposal was premised on an accurate
survey of the current market conditions of
[h]ealth professionals. The costs are competitive
and are premised on actual utilization. We have
reason to believe that the [g]overnment has
improperly rejected this pricing and cannot

support its proposition that such pricing is outside the competitive range."

An agency's determination to exclude a proposal from the competitive range is unobjectionable where the record shows that lower-priced, technically superior proposals have been received. See Jack Faucett Assocs., B-224414, Sept. 16, 1986, 86-2 CPD ¶ 310; Emerald Maint., Inc., B-221353, Apr. 1, 1986, 86-1 CPD ¶ 308. In this case, because IHMC's protest did not challenge the agency's conclusion that other offerors' lower-priced proposals were technically superior--or in any way assert that it would have lowered its prices had its proposal been in the competitive range--there was no basis to conclude that the agency's elimination of IHMC's proposal was improper; consequently, by decision dated August 13, we dismissed IHMC's protest for failure to state a valid basis of protest. See Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1993).

On September 7, IHMC filed this request for reconsideration. In its request, IHMC claims that "[w]ithin our initial protest was in fact [the] assertion [challenging]" the agency's finding that there were other technically superior offerors.

Bid protests are serious matters which require effective and equitable procedural standards assuring a fair opportunity to have objections considered consistent with the goal of not unduly disrupting the procurement process. Diemaster Tool, Inc.--Recon., 70 Comp. Gen. 339 (1991), 91-1 CPD ¶ 304. To that end, our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest, 4 C.F.R. § 21.1(c)(4), and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(e). This requirement contemplates that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. See Imaging Equip. Servs., Inc., B-247201, Jan. 10, 1992, 92-1 CPD ¶ 50.

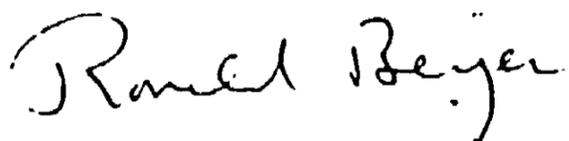
As evidenced by the language of its protest letter set forth above, IHMC's challenge to the exclusion of its proposal from the competitive range was limited to its contention that the agency had improperly rejected its proposal on the basis of its higher pricing; IHMC's protest contained no language which even remotely suggested disagreement with the agency's determination that the other lower-priced offers were technically superior. Further, although IHMC's

¹To the extent IHMC seeks to advance this argument on reconsideration, the challenge is untimely. A protester may
(continued...)

reconsideration request suggests that the scope of its protest was sufficient to "inherently question any determination that any other offeror is in fact technically superior," we will not engage in speculation to create a ground of protest that is otherwise unstated and not apparent from the pleadings or the record. See Alascom, Inc.--Second Recon., B-250407.4, May 26, 1993, 93-1 CPD ¶ 411.

Since IHMC did not challenge the technical superiority of the other lower-priced offerors' proposals, IHMC's protest that the agency had improperly rejected its proposal due to its higher pricing provided no basis from which to infer that the agency had improperly eliminated IHMC's proposal from the competitive range or otherwise violated applicable procurement laws or regulations. Under these circumstances, we conclude that IHMC's original protest was properly dismissed as legally insufficient.

The request for reconsideration is denied.


for Robert M. Strong
Associate General Counsel

¹(...continued)
not introduce a new argument in its reconsideration request that it could and should have made in its original protest, as our Bid Protest Regulations do not contemplate the unwarranted piecemeal development of protest issues. See Border Maint. Serv., Inc.--Recon., B-250489.2, June 21, 1993, 72 Comp. Gen. ___, 93-1 CPD ¶ 473; Woodson Constr. Co., Inc.--Recon., B-221530.2, May 23, 1986, 86-1 CPD ¶ 483; The W.H. Smith Hardware Co.--Recon., B-219327.5, Oct. 30, 1985, 85-2 CPD ¶ 488.