



Comptroller General  
of the United States  
Washington, D.C. 20548

1133411

## Decision

**Matter of:** Jacob Caspi Ltd.  
**File:** B-257740  
**Date:** November 4, 1994

Melvin Rishe, Esq., and Richard L. Larach, Esq., Sidley & Austin, for the protester.  
Gadi Sassower for J. Sassower Ltd., an interested party.  
Cornelius J. Collins, Jr., Esq., and Anita M. LeBlanc, Esq., Department of the Navy, for the agency.  
C. Douglas McArthur, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Where solicitation directed offerors to submit information describing their personnel, facilities, and management approach, protest that agency did not evaluate proposals in accordance with solicitation is denied where proposal was found unacceptable because the protester failed to submit the required information regarding management approach.
2. Where, prior to receipt of initial proposals, the protester alleged to the procuring activity that a competitor had pressured potential subcontractors to provide unreasonable quotations to the protestor, protest that the contracting officer's investigation of the allegation was inadequate should have been raised within 10 days of when the protester learned that the competitor had received award notwithstanding allegation.
3. Allegations pertaining to evaluation of the awardee's proposal and execution of certificate of independent price determination, first raised in comments on agency report, are untimely where not filed within 10 days of learning the basis for protest.

### DECISION

Jacob Caspi Ltd. protests the award of a contract to J. Sassower Ltd. under request for proposals (RFP) No. N68171-94-R-0005, issued by the Department of the Navy regional contracting center in Naples, Italy, for husbanding

services in the ports of Haifa and Ashdod in Israel. Caspi contends that its proposal was unfairly evaluated.

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

The agency issued the solicitation on November 9, 1993, for services for U.S. Sixth Fleet and Military Sealift Command ships, such as obtaining necessary stores and services; administration and coordination with contractors; interpreter service; trash and sewage removal; water; and the services of water taxis, tugs, linehandlers, and berthing ships. The solicitation provided for award without discussions based on the proposal most advantageous to the government, price and other factors considered.

Other factors to be considered included, in descending order of importance, personnel, facilities, and management approach, as well as husbanding services experience. The solicitation instructed offerors as to the information needed to evaluate the technical factors, to be included with their technical proposals, including personnel qualifications and:

" . . . the location of Contractor offices and facilities in relation to the port(s) and proposed subcontractors' locations. Describe the extent of available telephone and telefax facilities and indicate any special capabilities."

The solicitation specifically advised offerors to describe their management approach, including: the pre-arrival plan for Navy vessels; plans for dissemination of information to ships and for processing ships' requirements; and plans for arranging, managing, and ensuring timely and satisfactory performance of each item of work. Offerors were warned that a proposal found unacceptable under any evaluation factor might be found unacceptable overall.

On January 31, 1994, 4 days prior to the scheduled time for receipt of offers, Caspi complained to the agency that the incumbent contractor, Sassower, was pressuring subcontractors not to cooperate with other potential offerors. The agency advised the protester that such allegations should be brought to the attention of Israeli authorities; further, the agency concluded, after examining the prices submitted, that there was no evidence of pricing irregularities since several offerors, including Caspi, had apparently obtained prices lower than those offered by Sassower.

The agency received six proposals on February 4; one offeror did not submit a technical proposal and was not rated. Two proposals, those of Caspi and Jordan L. Gilliam, were found

marginal and ineligible for award without revision. Caspi failed to provide the required information regarding its management approach and was found unacceptable under the evaluation factor for management approach; in addition, the proposal received a "marginal" rating for facilities because it did not address the offeror's telecommunications capabilities as requested, or discuss the location of Caspi's offices in relationship to either the ports or subcontractors.

On June 1, the Navy awarded a contract to Sassower, as the offeror with the lowest-priced, acceptable proposal (the three acceptable proposals received identical overall ratings of "good"). On June 19, Caspi protested to the agency the selection of Sassower's higher-priced offer. Following a debriefing, which the Navy provided to Caspi on June 27, the protester filed this protest with our Office on June 28.

The protester argues that the contracting officer should have made a greater effort to check Caspi's ability to perform notwithstanding deficiencies in the written proposal. Caspi asserts that it was unreasonable to rate its management approach as "unacceptable," since the protester believes that its proposal as a whole was sufficient to demonstrate that Caspi could effectively manage a contract. The protester further contends that there was sufficient information in the certifications portion of its proposal from which the agency could determine that it had offices in Haifa and Ashdod, and that the agency had no real need to know the exact distances of those offices from the ports and subcontractors. Caspi asserts that it was unreasonable to assign the same rating to its proposal as to the Gilliam proposal, contending that its proposal was significantly better than the Gilliam proposal. Caspi also objects that the agency failed to adequately investigate Caspi's complaint regarding the pricing pressure allegedly applied to potential subcontractors. Finally, Caspi suggests that it would have been in the government's best interest to conduct discussions and a site visit to verify its ability to perform, in order to take advantage of the protester's significantly lower price.

An offeror in a negotiated procurement must demonstrate within the four corners of its proposal that it is capable of performing the work upon terms advantageous to the government, and an offeror disregards at its peril a solicitation's instructions to provide specific information with its written proposal. Allenhurst Indus., Inc., B-256836; B-256836.2, July 8, 1994, 94-2 CPD ¶ 14. Paragraph M-19 of the solicitation advised offerors of the Navy's intention to award a contract without discussions;

the burden was on Caspi to submit an initial proposal that adequately demonstrated its merits, and the protester could not presume that it would have a chance to correct weaknesses and deficiencies through discussions. Scientific-Atlanta, Inc., B-255343.2; B-255343.4, Mar. 14, 1994, 94-1 CPD ¶ 325. Caspi failed to provide the information necessary to evaluate its management approach in accordance with the solicitation instructions; the agency's determination that this rendered the entire proposal unacceptable was both reasonable and consistent with the solicitation, which warned that an unacceptable rating under any evaluation factor would render the entire proposal unacceptable.


Caspi's attempt to distinguish between levels of technical unacceptability in its proposal as compared with the other unacceptable proposal is irrelevant; the agency properly compared proposals to the evaluation criteria listed in the solicitation, not with one another. Since the evaluation of proposals was both reasonable and consistent with the solicitation, the agency's decision to reject Caspi's lower priced proposal and award instead to Sassower, as the offeror with the lowest-priced technically acceptable proposal, was proper. See CTA, Inc., B-244475.2, Oct. 23, 1991, 91-2 CPD ¶ 360.

Caspi's contention that the contracting officer did not adequately investigate its complaint concerning alleged pressure on subcontractors regarding pricing pressure by Sassower is untimely. Caspi was obligated to protest this issue, at the latest, within 10 days of June 7, 1994, when the agency advised Caspi that it had awarded a contract to Sassower; Caspi did not raise this issue in its agency-level protest of June 19, and its protest of this issue filed with our Office on June 28, thus is untimely. See 4 C.F.R. § 21.2(a) (2) (1994).

Caspi has raised several other untimely grounds of protest. Caspi acknowledged receiving the agency report on August 8; on August 22, the protester requested and was granted an extension of time to comment, in order to obtain the assistance of counsel. Such extensions of time do not however, relieve a protester of the obligation to timely raise any additional grounds of protest based on material from the agency report. Westinghouse Elec. Corp., B-250486, Feb. 4, 1993, 93-1 CPD ¶ 229. On August 29, 15 days after receiving the agency report, the protester first raised allegations that the Navy's business clearance memorandum was unreasonably skewed towards Sassower and that the Navy had failed to consider whether Sassower had fraudulently executed its certificate of independent price determination.

These grounds of protest are untimely because they were filed more than 10 days after Caspi knew or should have known the basis for protest. See 4 C.F.R. § 21.2(a)(2). We also note that an allegation that a bidder has violated Federal Acquisition Regulation § 32.203-2, the certificate of independent price determination, is not for resolution by our Office, but is a matter for the contracting officer to consider in determining the offeror's responsibility. U-Liners Contracting Co., Inc., B-245179.2, Oct. 24, 1991, 91-2 CPD ¶ 370. Nor is Caspi, whose proposal was found technically unacceptable, an interested party to challenge the evaluation of Sassower's proposal, since there are other acceptable proposals that would be in line for award if Sassower's proposal were not selected. Hughes Technical Servs. Co., B-245546.3, Feb. 12, 1992, 92-1 CPD ¶ 179.

The protest is denied in part and dismissed in part.

  
for Robert P. Murphy  
Acting General Counsel