



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: JoaQuin Manufacturing Corporation

File: B-275185

Date: January 29, 1997

D. Bargas for the protester.  
Albert J. Joyce, Esq., Panama Canal Commission, for the agency.  
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

## DIGEST

1. Protest that agency improperly used unstated evaluation factors (weight, number of footings, and visibility) in evaluating protester's proposal for construction of a signal station cab is denied where these factors were encompassed by the factors stated in that solicitation.
2. Where no protective order was issued during a protest because protester was not represented by counsel, protester was not entitled to receive and review protected information.

## DECISION

JoaQuin Manufacturing Corporation protests the award of a contract for a prefabricated signal station cab to Raiser Construction Company, Inc., under request for proposals (RFP) No. CNC-80151-IIB-29, issued by the Panama Canal Commission.

We deny the protest.

Proposals were evaluated against two technical factors and price, with award to be made to the offeror submitting the proposal most advantageous to the government. Technical factors were significantly more important than price in the award decision. After receiving and evaluating proposals, holding discussions, and receiving and evaluating best and final offers, the agency awarded a contract to Raiser.

JoaQuin protests that the Commission improperly added new requirements to the specifications—such as weight restrictions, footing quantities, and changes to the

windows<sup>1</sup>—after initial offers had been submitted. However, the record shows that the agency did not issue an amendment adding any such requirements. We thus interpret JoaQuin's protest as asserting that, in performing its technical evaluation of JoaQuin's proposal, the agency improperly considered factors not specified in the RFP.

Solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation. Federal Acquisition Regulation §§ 15.605(d) and 15.608 (FAC 90-31). While agencies thus must identify all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. Bioqual, Inc., B-259732.2; B-279732.3, May 15, 1995, 95-1 CPD ¶ 243.

Here, one of the evaluation factors set forth in the RFP was suitability of design, which the RFP described as encompassing layout, size, materials, construction, coating, and finishes. Weight of the cabin, support structure and visibility difficulties are design features which reasonably fall within several of these elements, including construction, the element under which the record shows the agency considered these areas of JoaQuin's proposal. Accordingly, we find nothing improper in the agency's evaluation of JoaQuin's proposal.

In the comments JoaQuin submitted in response to the agency's administrative report, JoaQuin complains that the agency did not provide it with certain documents that it requested during the protest. The agency did not provide these documents to JoaQuin because the agency considered them proprietary or source selection sensitive, and no JoaQuin representative was admitted under a protective order.

Where a protest record will contain protected (proprietary or source selection sensitive) information, our Office will issue a protective order; only individuals admitted to the order may have access to the protected information. Bid Protest Regulations, § 21.4(a),(c), 61 Fed. Reg. 39,039, 39,044 (1996) (to be codified at 4 C.F.R. § 21.4(a),(c)), and only attorneys or consultants retained by attorneys may be admitted under the protective order. Section 21.4(c), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.4(c)). Our Office did not issue a protective order in this case because the protester was not represented by an attorney. The protester

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<sup>1</sup>Specifically, the Commission considered the number of footings JoaQuin planned to use to support the structure, the weight of this structure, and how JoaQuin's proposal to place mullion posts every 4 feet along the glass window section of the cab would affect visibility.

therefore was not entitled to receive or review the protected information, Section § 21.4(b), 61 Fed. Reg. supra (to be codified at 4 C.F.R. § 21.4(b)). In any case, the protest concerns only whether the agency used evaluation factors other than those provided in the solicitation to evaluate JoaQuin's technical proposal. The technical factors were stated in the solicitation, and the protester was informed during a debriefing of the reasons its proposal was downgraded. The protest thus did not depend upon protected information, and the absence of protected information did not diminish JoaQuin's ability to fully argue the matter.

The protest is denied.

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