

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

PL-11  
Mr. Notopoulos  
12033

FILE: B-195762

DATE: November 16, 1979

MATTER OF: Duroyd Manufacturing Company, Inc.

*[Protest of Determination that Proposal Was Technically Unacceptable]*  
DIGEST:

1. Where request for proposals required technical proposal to be sufficiently detailed to demonstrate offeror's thorough understanding of contemplated effort, proposal was properly rejected as technically unacceptable where offeror failed to cure, after provided with opportunity, material informational deficiencies in its proposal indicating lack of understanding of scope of work.
2. Even if offeror possesses superior technical qualifications, that does not, in and of itself, entitle offeror to award if those qualifications have not been demonstrated to contracting agency in offeror's technical proposal.
3. Low price proposed by offeror is not for consideration where proposal is technically unacceptable.
4. There is no requirement to perform preaward survey of offeror whose proposal has been determined technically unacceptable.
5. Although protester was not provided opportunity prior to award to protest size of awardees, this procedural deficiency does not affect validity of otherwise proper award. Further, no evidence exists that protester was prejudiced by agency's shortcoming, particularly where protester does not allege awardees are not small business concerns.

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6. Allegation that solicitation should have been issued on an advertised rather than negotiated basis is untimely where not filed prior to closing date for receipt of proposals as required by 4 C.F.R. §20.2 (b)(1).
7. Where protester requested contracting agency, prior to proposal due date, to clarify RFP and extend due date, subsequent protest based on agency's failure to do so is untimely where not filed within 10 working days after agency received proposals as originally scheduled without amending RFP.
8. Acceptability of successful offeror's first article testing and performance in general under its contract are matters of contract administration properly for resolution by contracting parties and not by GAO under its Bid Protest Procedures.

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Duroyd Manufacturing Company, Inc. (Duroyd) protests the rejection of its proposal as technically unacceptable and the selection of Lockley Manufacturing Company, Inc. (Lockley) and Welbilt Electronic Die Corporation (Welbilt) for award under request for proposals (RFP) N00019-79-R-0006, issued as a 100 percent small business set-aside by the Naval Air Systems Command (Navair).

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Duroyd contends that it should have been selected for award under the RFP's award criteria since it was the low responsible offeror, price and other factors considered. Acknowledging that Navair construed "other factors" to mean technical qualifications, Duroyd states that it is "technically equal if not superior" to those offerors selected for award. Duroyd further maintains

that Navair failed to perform a preaward survey of its company, and that Navair failed to comply with Defense Acquisition Regulation (DAR) provisions requiring the contracting officer, prior to award, to furnish unsuccessful offerors the names of the intended awardees and an opportunity to protest their small business size status.

Duroyd also asserts that the RFP's requirement for submission of a technical proposal was unnecessary and designed to "preclude an advertised bid" since the items to be furnished were readily available from a number of sources. The protester alludes to its letter of April 6, 1979, to Navair, prior to the scheduled April 23, 1979 due date for receipt of proposals, in which Duroyd requested clarification of provisions in the RFP. Finally, Duroyd alleges that Welbilt, which had already received a contract for a portion of the total quantity at the time Duroyd's protest was filed, failed its first article test and was experiencing other difficulties in the performance of its contract. For the reasons set forth below, these latter allegations are ineligible for our consideration on the merits.

Navair sought technical and cost proposals for the supply of BSU-32/B fin assemblies for the Sidewinder AIM-9L missile, and instructed offerors to submit cost proposals on a firm fixed price basis. The RFP stated that it was Navair's intent to establish dual industrial readiness sources for these items and to award two contracts under the RFP; but that Navair reserved the right to award one contract to the low responsible offeror, price and other factors considered.

Clause C-23 of the RFP stated that each technical proposal should be sufficient to enable technical personnel to "make a thorough evaluation", and required that the proposal be "sufficiently specific, detailed, and complete so as to clarify and fully demonstrate" the offeror's "thorough understanding of the requirements for, and the technical problems inherent in, use of the equipment here involved." Among the information requested was a description of the offeror's

understanding of the critical process factors and proposed technical approach to the fabrication, assembly and testing of the articles; a flow plan to show the sequence of each manufacturing operation; a manufacturing management plan for in-house manufacture or major subcontracting, overall schedule in months of effort, allocation of facilities and availability and competence of key personnel; quality assurance plans; tooling and test equipment; and the offeror's experience in each of the manufacturing processes and proposed testing methods.

Offerors were informed of the technical evaluation criteria in descending order of importance, and that technical capability (as evidenced by the technical proposal) was more important than cost. The RFP further stated that in determining the combination of quantities to be awarded (in the event that more than one offeror was selected for award), Navair would consider, in descending order of importance, the combination best serving Navair's interest in maintaining the mobilization base, and the combination resulting in the lowest total cost to the Government.

By letter of May 8, 1979, Navair advised Duroyd that its technical proposal failed to present sufficient information to permit evaluation and specified those areas in which it was informationally deficient. Navair directed Duroyd's attention to the requirement of Section C-23 of the RFP for detailed information, and Duroyd was advised that failure to satisfy that requirement could result in the disqualification of its proposal from further consideration. Duroyd was admonished that prior experience in the manufacture of an identical or similar item did not relieve it of the responsibility of submitting a sufficiently detailed technical proposal, and the protester was afforded until May 22, 1979 to submit supplemental information curing the specified deficiencies.

By letter of May 18, 1979, Duroyd supplied some additional technical information, but admitted that its

subcontractor did not furnish Duroyd with the subcontractor's detailed technical proposal, thereby rendering it impossible for Duroyd to furnish Navair with this manufacturing information. Duroyd explained that subcontractor independence made it "almost impossible" to obtain this information, and contended that its existing proposal should suffice to demonstrate its understanding of the effort "without going into expensive proposal preparation costs."

Revised offers, including Duroyd's limited proposal, were evaluated by Navair personnel in accordance with the established technical evaluation criteria. Out of 100 possible points, Lockley and Welbilt received 85.4 and 76.6 points, respectively, and were considered within a competitive range for the purpose of submitting best and final offers. Duroyd, which received 50.8 points, was considered technically unacceptable, and not within the competitive range. Evaluators explained that Duroyd's score reflected an insufficient communication of its understanding of the solicitation requirements and of its capabilities to meet these requirements, which led them to believe that Duroyd apparently lacked experience in producing complex airfoil shapes to a Government specification and managing the associated requirements.

Lockley and Welbilt, having been determined technically acceptable, were selected for award on the basis of price. Navair has informed our Office that it is proceeding with award to Lockley, prior to resolution of Duroyd's protest, pursuant to DAR § 2-407.8 (b)(3) on the basis of urgency. Navair has undertaken this action due to a critical shortage of the fins which has delayed assembly of the Sidewinder missiles for introduction into the fleet.

It is the responsibility of offerors to provide adequate information for the evaluation of their proposals under the established criteria where a solicitation requires that information to be extensively

detailed. See Joanell Laboratories, Inc., 56 Comp. Gen. 291 (1977), 77-1 CPD 51; Servrite International, Ltd., B-187197, October 8, 1976, 76-2 CPD 325. In reviewing the rejection of proposals as technically unacceptable for informational deficiencies, this Office examines the record to determine, inter alia, how definitely the RFP called for the detailed information, and the nature of the informational deficiencies, e.g., whether they tended to show that the offeror did not understand what it was required to do under the contract. Century Brass Products, Inc., B-190313, April 17, 1978, 78-1 CPD 291.

As noted above, Clause C-23 of the RFP expressly requested, among other things, full and complete information regarding the critical manufacturing processes of these items to demonstrate for Navair an offeror's understanding of these techniques. However, the correspondence in the record between Navair and Duroyd clearly establishes that, among other deficiencies, Duroyd was unable to furnish Navair with the technical approach to that segment of the manufacturing process under subcontract, notwithstanding that the protester was afforded an opportunity to cure this key informational deficiency through a proposal revision.

Under these circumstances, we do not consider as arbitrary the procuring activity's conclusion that the informational deficiencies precluded a finding that Duroyd had an adequate understanding of the critical manufacturing processes involved. Century Brass Products, Inc., supra. The fact that Duroyd may possess superior technical qualifications, as it believes, does not confer it with legal entitlement to a specific award since it failed to demonstrate those qualifications to the contracting agency through its proposal. Servo Corporation of America, B-193240, May 29, 1979, 79-1 CPD 380.

Consequently, we do not object to the determination to exclude Duroyd from further consideration for award notwithstanding its lower price, since an offeror's low

cost is irrelevant where the offer has been found technically unacceptable. Pacific Training and Technical Assistance Corporation, B-182742, July 9, 1975, 75-2 CPD 22. The reason, of course, is that a proposal which is unacceptable from a technical standpoint is of no value to the Government regardless of the lower price associated with it. See 52 Comp. Gen. 382 (1972).

DAR § 1-905.4(b) provides for the performance, under certain circumstances, of a preaward survey to determine the responsibility of a "prospective contractor". Since Duroyd's proposal was technically unacceptable, thereby rendering Duroyd ineligible for award, that firm cannot be considered a "prospective contractor" as contemplated by DAR § 1-905.4. Where, as here, a bid or offer has been rejected on technical grounds, there is no requirement that either a preaward survey or a responsibility determination be made. Seal-O-Matic Dispenser Corporation, B-187199, June 7, 1977, 77-1 CPD 399.

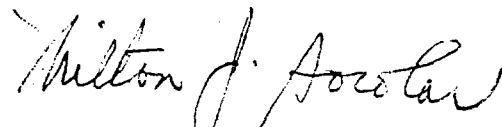
Navair has admitted that due to an administrative oversight, it did not comply with DAR § 1-703(b)(1). Under this regulation, all offerors should have been permitted 5 days' notice prior to award to protest the small business size status of the successful offerors. However, the failure to provide such notice is merely a procedural matter which does not affect the validity of an otherwise proper award. See Columbia Research Corporation, B-193154, May 15, 1979, 79-1 CPD 353. Moreover, since Duroyd has not alleged that either of the two firms selected for award is other than a small business, Duroyd does not appear to have been prejudiced by the Navy's oversight.

Duroyd's other allegations are either untimely or otherwise inappropriate for our review. First, concerning the allegation that the requirement for the submission of a technical proposal was improper and merely a subterfuge to avoid an advertised procurement, our Bid Protest Procedures require that protests based on alleged improprieties in any type of solicitation

which are apparent prior to the closing date for receipt of proposals must be filed prior to such date. 4 C.F.R. § 20.2 (b)(1) (1979). In this instance, this allegation was not filed until well after proposals had been received and evaluated, and the two successful offerors selected for award. Second, while the alleged need for RFP clarification was mentioned in Duroyd's letter of April 6, 1979 to Navair, that letter does not appear to have been a protest, nor was any other protest on the point filed prior to the closing date. Even if we consider the April 6 letter to be a protest, however, Navair's receipt and opening of proposals on April 23 as scheduled constituted adverse agency action on that protest, necessitating a protest to this Office within 10 days thereafter. 4 C.F.R. 20.2(a). Duroyd did not protest here until August 13. Consequently, we view these matters as untimely.

Finally, the acceptability of Welbilt's first article test and its performance in general under its contract are matters of contract administration properly for resolution by the contracting parties and not by this Office under our Bid Protest Procedures, which are reserved for considering whether an award or proposed award of a contract complies with statutory, regulatory or other legal requirements. See Orthopedic Equipment Company, Inc., B-192287, October 19, 1978, 78-2 CPD 288.

The protest is therefore denied in part and dismissed in part.



For The Comptroller General  
of the United States