

113445

#15049 Carter
PCT

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548*[Protest of Navy Contract Award]*

FILE: B-197249

DATE: September 30, 1980

MATTER OF: Joule Technical Corporation

DIGEST:

1. Negative evaluation of both initial and revised proposals is reasonable where proposals contain technical errors and do not provide information specifically requested in solicitation.
2. Traditional responsibility criteria may raise questions of technical acceptability in context of negotiated procurement. Assessment of deficiency for failure of proposed boat crewmembers to hold Coast Guard license is reasonable where license is specifically required as minimum qualification for position.
3. Discussions are adequate which lead offerors to areas in their proposals which are deficient. General advice of deficiency which points to explicit requirement in solicitation for specific information is sufficient to put offeror on notice of failure to address specific area in proposal.
4. No further negotiations are required with offeror who has been given opportunity to submit additional information in areas considered deficient in its proposal and whose revisions do not change offeror's initial ranking with respect to other offerors in competitive range.
5. Exclusion of offeror from competitive range is reasonable where there is a substantial break between the technical scores of the highest and lowest ranked offerors.

~~012234~~
113445

Joule Technical Corporation (Joule) protests the award of a contract to Dynalelectron Corporation in a negotiated procurement conducted by the Naval Air Station (NAS), Patuxent River, Maryland. We find Joule's protest to be without merit.

This procurement was conducted to acquire continuing technical and engineering services for the operation of the Chesapeake Test Range at NAS. Joule had previously performed these services, but in October 1978 was displaced by Dynalelectron. Joule protested the 1978 award of this contract, a protest which we sustained in part. See Joule Technical Corporation, 58 Comp. Gen. 550 (1979), 79-1 CPD 364. In that decision we concurred in the Navy's determination not to exercise the option in Dynalelectron's contract, leading to the current competition.

Five offerors responded to the Navy's request for proposals which contemplated the award of a 1-year contract with two additional 1-year options. The evaluation of proposals was scored on a 100-point basis, with 70 points for technical score and 30 points for cost. The technical evaluation committee established by NAS rated Joule the lowest of all five offerors technically; with cost considered, Joule ranked fourth out of the five competitors. By letter dated October 19, 1979, NAS requested additional information from the offerors. All five offerors submitted revised proposals. After an evaluation of these revised proposals, completed on November 29, the technical evaluation team considered only the two highest-ranked offerors, with technical scores between 57 and 60, to be acceptable; the technical scores of the other three offerors ranged between 41 and 34. Joule was again the lowest ranked technically of the five offerors. The contracting officer solicited best and final offers from only the two highest-ranked firms and advised Joule on December 21, 1979, of its exclusion from the competitive range. The contract was awarded to Dynalelectron while Joule's protest was pending.

Joule contends principally that certain requirements in the request for proposals unduly restricted competition, that the evaluation of its proposal was

deficient, that NAS failed to conduct meaningful discussions, that its elimination from the competitive range was improper and that the award to Dynalectron was both the product of persistent bias and in violation of the rules against award of a contract on which a protest is pending. Since our conclusion below that Joule was properly excluded from the competitive range is dispositive of the protest, we will confine our discussion to only those issues requiring resolution to reach this result. In order to respond more fully and cogently to Joule's various allegations, we will discuss the two evaluations of Joule's proposal and the intervening request for additional information in the order in which the events occurred.

[The request for proposals required offerors to include in the employment commitment letters submitted with their proposals the specific wages and benefits agreed to between the offeror and prospective employees. Joule asserts that this requirement was unduly restrictive of competition.] Joule first raised this objection to NAS after the date set for receipt of initial proposals. Joule submitted substantially the same information in an alternate format in its revised proposal. On December 21, 1979, the contracting officer advised Joule that the technical evaluation team accepted Joule's alternate format and no points were deducted from Joule's score because of its alternate format.

[To the extent that Joule's objection is directed to the requirement itself, Joule's protest of this aspect of the procurement is untimely because it was not filed prior to the date set for initial proposals as required under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), for protests against improprieties apparent in a solicitation. 4 C.F.R. § 20.2(b)(1) (1980). And, to the extent that Joule might be protesting the application of the requirement, we can only conclude that Joule was not prejudiced by its application. Consequently, we see no merit in this argument.]

[Joule's challenges to the evaluation of its proposal and the adequacy of its discussions with NAS is based at least partially on what appears to be a misunderstanding by Joule of the record reflecting

the events leading to its exclusion from the competitive range. In this connection, Joule repeatedly contends that a specific technical deficiency noted as a basis for its exclusion from the competitive range was not mentioned in the October 19 request to Joule for additional information. The bulk of the specific deficiencies to which Joule refers, however, were introduced with Joule's proposal revisions and were not present in its original proposal on which the October 19 request for additional information was based. Also, Joule has characterized a memorandum dated January 8, 1980, from the technical evaluation team to the contracting officer providing details of the reasons for rejection of Joule's proposal, as the "product of a zealous January 8 reevaluation of its proposal prepared specifically to support the Navy's adversarial position;" Joule contends that the information in this memorandum could not have formed the basis for its earlier exclusion from the competitive range. We find this allegation to be wholly without merit, however, because the January 8 memorandum was not the product of a reevaluation, but was, as the first paragraph of the memorandum states: "additional information * * * from the team member's individual score sheets to show the rationale as to why the Joule proposal was considered technically unacceptable."

[With regard to Joule's contention that its initial and revised proposals were unfairly evaluated, we note at the outset that it is neither our function nor practice to make an independent determination of the acceptability or relative merit of technical proposals. [Our review is limited to examining whether the agency's evaluation was fair and reasonable.] [We will question contracting officials' assessments of the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations.] E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192; INTASA, B-191877, November 15, 1978, 78-2 CPD 347; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. [We find no such problems here with either evaluation of Joule's proposals.]

Initial Evaluation

The request for proposals required that offerors furnish sufficient "specific, detailed and complete" information to "clearly and fully demonstrate" their understanding of the scope of work with particular attention to the operation, test, and maintenance of electronic equipment and the offeror's proposed approach in each of the task areas defined in the statement of work. The NAS evaluators were critical of Joule's initial proposal because it was very general, did not address specific task areas, and only minimally demonstrated an understanding of NAS's requirements. The evaluators' conclusion that Joule's presentation falls far short of establishing Joule's understanding of the Navy's requirements appears reasonable. We note, for instance, that Joule provided a breakdown of task elements for the Chesapeake Test Range in which the first element is "Operate, test, maintain, repair and have always operational the range equipment" with no narrative expansion indicating either how Joule intended to accomplish this task or that Joule appreciated the complexities involved. This statement in Joule's proposal is a mere paraphrase of an almost identical statement in the scope of work, as are other statements in Joule's task breakdowns.

Offerors were required to establish the related technical experience and commitment of proposed personnel to the performance of the contract. The technical evaluation team was critical of the qualifications of personnel proposed by Joule because Joule failed to propose any personnel with the specific experience needed to operate NAS's older and more complicated radars which are essential for day-to-day project support. The technical evaluation team estimated that personnel lacking this experience would require at least 1 year's training before the equipment could be efficiently operated and maintained. The evaluation team also noted that only one of the four boat crews proposed by Joule had the required Coast Guard license. The evaluation team believed that these deficiencies could cause severe operational problems in the first contract year.

Joule ignores the evaluation teams' comments concerning its failure to propose radar technicians with specific experience on the types of radar used at the test range and instead suggests that the evaluators' principal objection to Joule's proposed personnel results from three boat crewmembers' lack of appropriate Coast Guard licenses. Joule argues that this is a misapplication of responsibility criteria which Joule could have fulfilled at any time prior to award.

We are not persuaded by Joule's arguments that NAS was either unfair or unreasonable in its assessment of Joule's proposed personnel. The principal purpose of the Chesapeake test range is to provide ground support for the in-flight testing of naval aircraft. The successful accomplishment of this mission is heavily dependent on the efficient operation of the range's radar equipment. Therefore, we find nothing unreasonable in the evaluators' conclusion that Joule's failure to propose personnel with specific experience on the range's radars was a serious deficiency.

Further, Joule misreads the application of the license requirement in the evaluation of its proposal. We note that this is a negotiated procurement, unlike that in Thermal Control Inc., B-190906, March 30, 1978, 78-1 CPD 252, cited by the protester, and that criteria which traditionally relate to responsibility, i.e., an offeror's ability to perform, may raise questions of technical acceptability in the context of negotiated procurements. See Exide Power Systems Division, ESB Inc., 57 Comp. Gen. 653 (1978), 78-2 CPD 106. The request for proposals included the Coast Guard license requirement in a statement of the minimum experience and educational requirements for crewmembers. Coast Guard licenses are granted only upon a satisfactory evaluation of the applicant's knowledge, experience, and character. See, generally, 46 C.F.R. part 10 (1980). Here the requirement was used to determine the technical acceptability of the personnel proposed. The failure to propose personnel meeting this requirement is a legitimate basis for the assessment of a deficiency. Therefore, NAS's evaluation of this aspect of Joule's proposal was reasonable.

Offerors also were required to establish and demonstrate their current capability in the management of programs of the nature described in the solicitation by describing their experience in the last 3 years on similar contracts. Contact points were required for all references. In response to this requirement, Joule's proposal incorporated a rather extensive listing of contracts (some older than 3 years) and tasks which Joule had either performed or participated in with a sketchy description of each. No contact points were provided. The NAS evaluators considered Joule's information to be inadequate.

The evaluator's assessment was reasonable. While Joule's thumbnail sketches of these contracts and tasks are fairly extensive and unquestionably suggestive, at least, of activities paralleling tasks in the statement of work, few of the sketches describe the activity in sufficient detail to determine its specific relevance to NAS.

Last, the NAS evaluators found the adequacy of Joule's management controls and techniques, area supervision, and personnel motivation to be questionable. Offerors were to be evaluated on these factors with particular regard to their management controls and techniques for task and cost control and the "nature and extent of the offeror's internal controls and procedures to ensure timely, responsive and [professional] completion of the task assignment." Joule's discussion of its management plan, while extensive, is generally lacking in specificity. Joule, for instance, describes in general terms the managerial and accounting information available from its home office business information system (such as percentage completion, accumulated costs, etc.), but does not disclose either how the raw data gets to the system or how the information is to be either returned to or used by the on-site manager. And, while Joule discusses in abbreviated terms the collection of employee performance data, employee motivation is not mentioned except in the context of safety programs. Joule's assignment of responsibilities and lines of authority, fairly distinct at the top levels, are obscure at lower supervisory levels. Therefore, the evaluation of this aspect of Joule's proposal was also reasonable.

Request for Additional Information

We believe the October 19 letter to Joule requesting additional information was sufficiently informative and specific to afford Joule a fair and reasonable opportunity to upgrade its proposal. The relevant text of the letter is as follows:

"a. Supporting evidence must be furnished which demonstrates an understanding of the statement of work. Repeating tasks or statements from the statement of work in the solicitation does not adequately demonstrate an understanding of the statement of work. Information provided must demonstrate an understanding of the work required in individual work centers.

* * * * *

"c. Resumes of personnel proposed must demonstrate the capability of those personnel to perform in accordance with the statement of work and must give evidence that these personnel meet the minimum qualifications stated in the statement of work. For those labor categories where incumbent employees are not proposed, provide information regarding employee indoctrination and training in the work area and minimization of disruptions normally associated with a turnover of personnel.

* * * * *

"e. Information which demonstrates recent experience and capability in all types of work relating to the statement of work must be provided. Points of contact for all reference experience must be provided.

"f. Information must be provided that demonstrates the adequacy of your proposed management controls and techniques, area supervision, and personnel motivation."

Joule discusses several of our decisions which Joule argues have established a requirement for meaningful discussions to incorporate a disclosure of deficiencies in an offeror's proposal sufficiently specific to leave no doubt as to the exact nature and identification of the alleged deficiencies. Joule contends that the October 19 letter falls short of this standard.

However, the degree of specificity necessary in the disclosure of deficiencies to meet the requirement for meaningful discussions is not a constant, but varies with the context of individual procurements. For instance, it would be unfair for an agency to help one offeror to bring an inadequate proposal up to the level of other proposals by pointing out those weaknesses which are the result of the offeror's own lack of competence, diligence or inventiveness. 51 Comp. Gen. 621 (1972). Moreover, an agency is not required to remind an offeror to submit certain information with its final offer when that information is specifically called for in the solicitation. Value Engineering Company, B-182421, July 3, 1975, 75-2 CPD 10. On the other hand, if the solicitation is not as specific in its identification of the Government's requirements or omits reference to one of the evaluation factors to be employed in the evaluation of proposals, the agency's discussions should be more specific in their identification of deficiencies. Logistic Systems Incorporated, B-196254, June 24, 1980, 80-1 CPD 442; Checchi and Company, 56 Comp. Gen. 473 (1977), 77-1 CPD 232; Nationwide Building Maintenance, Inc., 55 Comp. Gen. 693 (1976), 76-1 CPD 71; Teledyne Lewisburg; Oklahoma Aerotronics, Inc., B-183704, October 10, 1975, 75-2 CPD 228.

The real question here is not whether the October 19 letter, standing alone, described the deficiencies perceived in Joule's proposal in such intimate detail that there could be no doubt as to their identification and nature, but whether the letter imparted sufficient information to Joule to afford it a fair and reasonable opportunity in the context of this procurement to identify and correct the deficiencies in its proposal. We believe that it did.

We note that:

1. Paragraph "a" of the letter specifically drew Joule's attention to the two major objections the evaluators had to Joule's proposal: Joule's failure to discuss specific work centers, as explicitly required in the request for proposals, and Joule's repetition of tasks and descriptions from the request for proposals without indicating how it intended to satisfy these requirements.
2. Paragraph "b" of the letter both expressed concern over personnel qualifications and drew (or should have drawn) Joule's attention to the nonincumbent personnel it proposed. Minimum personnel qualifications were both detailed and specific in the request for proposal. Joule's discussion of training was limited largely to a catalogue of Joule's training resources, including a library of videotapes, without indicating how this resource would be employed to assist Joule in meeting NAS's requirements.
3. Paragraphs "e" and "f" are sufficiently self-explanatory and require no additional comment except to note that they adequately reflect the evaluators' concerns with Joule's discussion in these two areas.

Requests for clarification or amplification which lead offerors into areas of their proposals that are unclear are sufficient to alert offerors to deficiencies in their proposals. E-Systems, Inc., supra. The letter of October 19 adequately achieved its purpose, in the first instance, by directing attention to the more specific requirements of the solicitation where Joule's proposal evidenced deficiencies and, in the second instance, by expanding or clarifying the agency's informational requirement regarding training which was not so explicitly stated in the solicitation. Therefore, Joule's contention that it was not advised of the deficiencies in its proposal is without merit.

Evaluation of Revised Proposal

Joule's proposal revisions corrected some of the deficiencies noted above but introduced others. We will discuss these deficiencies in the order we did above.

The NAS evaluators still questioned Joule's understanding of the statement of work; they noted that, while Joule did discuss the requirements of the various work centers in its resubmission, the revisions contained numerous technical errors and indicated that Joule did not understand the work. Joule contests their assessment. For the reasons stated below, the evaluation of Joule's understanding of the work was reasonable.

Joule's principal objection to this aspect of the evaluation of its proposal is premised on the assertion that most of the technical comments of which NAS was critical were either concerning potential improvements to NAS facilities and were beyond the scope of the request for proposals, or were omissions where the absent material was self-evident and should not have been required. We disagree.

The request for proposals specifically required offerors to clearly and fully demonstrate their understanding of the statement of work, including specified NAS equipment and operational test procedures. Where, as here, the burden is clearly and explicitly on offerors to establish their expertise, there is nothing wrong in considering deficient any erroneous technical discussion, whether gratuitous or otherwise, which adversely reflects on that offeror's knowledge or understanding of the subject matter of the procurement.

Furthermore, the record here provides us no basis to question the evaluators' response to the errors noted in Joule's proposal. In one instance of which NAS was critical, Joule simply repeated a paragraph from the request for proposals which states that the use of beacon tracking (using an aircraft-mounted transponder) would normally increase the radar range by a factor of about 4 to 1. NAS thought that Joule should have inferred from this material and stated in its proposal

that beacon tracking was necessary when the mission required an extended-range capability. It was not unreasonable for the evaluators to conclude that the repetition of the description or specification with no evidence of any understanding of its implications detracted from the offeror's understanding of the work, particularly where the repetition follows specific advice in both the solicitation and discussions that mere parroting of the specifications is inadequate.

Joule's personnel submissions with its revised proposal did not correct the deficiencies noted in its initial proposal. The evaluators also detected certain discrepancies in the resumes submitted with Joule's revisions and noted that Joule furnished resumes for three employees who had left the area which further reduced the evaluators' confidence in Joule's proposed personnel.

Joule characterizes the evaluators' judgment as a determination that "Joule's proposal is fatally deficient because three proposed technicians do not reside in the immediate vicinity" and suggests that NAS imposed a geographic requirement not contained in the solicitation. We believe the evaluation was reasonable.

The record amply demonstrates that the overwhelming concern of the evaluators with Joule's personnel centered on Joule's failure to propose staff meeting the minimum specified requirements for the positions for which they were proposed. We find no evidence that the additional errors introduced and impressions created with Joule's personnel revisions were either fatal to Joule's proposal or did anything other than simply detract from the evaluators' confidence in Joule's proposal without materially influencing Joule's technical score.

Joule's proposal revisions incorporated additional evidence of relevant experience in the form of a list of projects in which Joule had participated under a similar contract with the National Aeronautics and Space Administration and a list of nongovernmental contracts which Joule had performed involving activities similar to those envisioned in the request for proposals. Joule also submitted a list of the various pieces of equipment

with which it had become familiar in the performance of these tasks. The evaluators' could not ascertain the extent of Joule's responsibility or participation in these tasks and felt that this information did not correct Joule's earlier deficiencies, although Joule's score was increased minimally. We think this conclusion was reasonable.

As we noted above, the request for proposals was very specific in its indication of the content and quality of information NAS was seeking from offerors to establish their experience. Joule's revised information suffers from the same deficiency as its original submission; Joule's list of contracts does not state whether it had sole responsibility for the performance of the indicated tasks or whether it merely participated as an observer. We think the evaluators were reasonable in their assessment of this factor also.

The evaluators also considered Joule's revised proposal to be too general and unclear concerning management controls, supervision and personnel motivation to permit them to conclude that Joule had a clear understanding of NAS requirements in this area. Joule responds that it specifically treated each of these areas in its proposal and suggests that this determination has no reasonable basis. However, Joule misses the point; the evaluators were critical of Joule's proposal for what it did not say and not for what it said.

The request for proposals specifically advised offerors of NAS's particular interest in the offerors' management controls and techniques to accomplish the "timely, responsive and [professional] completion" of assigned tasks. Joule's proposal revisions clarify in some degree Joule's lines of authority through the use of organizational charts and also expand on Joule's information and reporting functions. Joule's revised proposal does not, however, address such fundamental subjects as levels of decision-making authority, or problem recognition and solution, except to state that its reports will enable Joule to anticipate and quickly resolve any problems and to identify potential areas for productivity improvement. Joule does not indicate how these problems/areas are to be recognized, what

is to be done about them, or who is to do it. In sum, Joule's revised proposal discusses some of the management tools and information available to its staff without indicating either how or by whom they are to be used. We think the evaluators' conclusions concerning this portion of Joule's proposal were reasonable.

Failure to Conduct Discussions

Joule contends that, if the evaluators were dissatisfied with Joule's revised proposal, they were obligated to conduct discussions with Joule and point out the deficiencies. We have held, however, that no further negotiations are required with an offeror who has been given the opportunity to submit additional information in areas considered inadequate in its proposal and whose revisions do not change the offerors initial ranking with regard to others in the competitive range. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10; Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61. We think this rule is applicable here.

Exclusion from Competitive Range

After evaluation of the revised proposals submitted by all of the offerors, NAS redetermined the competitive range to include only the two top-ranked offerors. Joule contends that it should not have been excluded from the competitive range.

The determination of the competitive range is primarily a matter of administrative discretion which we will not disturb absent a clear showing that the determination is unreasonable. A.T. Kearney, Inc., B-196499, April 23, 1980, 80-1 CPD 289; Electrospace Systems, Inc., 58 Comp. Gen. 415 (1979), 79-1 CPD 264. Given the substantial break in scores between the two highest-ranked and the other offerors, we cannot conclude that NAS was unreasonable in excluding Joule from the competitive range.

The protest is denied.



For the Comptroller General
of the United States