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Washington, DC 20548

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## Decision

**Matter of:** J.A. Jones/Bell, A Joint Venture

**File:** B-286458; B-286458.2

**Date:** December 27, 2000

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Joel S. Rubinstein, Esq., and Andrew N. Cook, Esq., Bell, Boyd & Lloyd, for the protester.

William W. Goodrich, Jr., Esq., Matthew S. Perlman, Esq., and David A. Vogel, Esq., Arent Fox Kintner Plotkin & Kahn, for Clark/Guilford, A Joint Venture, the intervenor.

Jerry A. Walz, Esq., and Fred Kopatich, Esq., Department of Commerce, for the agency.

Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest alleging that discussions were not meaningful in two areas is denied where the record shows that in one area, the agency clearly communicated its concerns regarding the protester's proposed approach, and in the other area, which was not raised during discussions, the protester has offered no evidence of how it might have responded to improve its proposal, and thus, has not shown that it was prejudiced by agency's decision not to raise the matter during discussions.

2. Protester's challenge to the evaluation of its proposal is denied where the record shows that the evaluation was reasonable and consistent with the stated evaluation criteria.

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### DECISION

J.A. Jones/Bell, A Joint Venture, protests the award of a contract to Clark/Guilford, A Joint Venture, by the Department of Commerce pursuant to request for proposals (RFP) No. 52SBNBOC1045, issued for the construction of the Advanced Measurement Laboratory at the Commerce Department's National Institute of Standards and Technology campus in Gaithersburg, Maryland. Jones/Bell argues that the agency failed to hold meaningful discussions regarding weaknesses in its proposal, and improperly evaluated the proposal.

We deny the protest.

## BACKGROUND

The National Institute of Standards and Technology develops measurement methods, standards and testing procedures that provide the underpinning to several critical technologies, including semiconductor electronics, manufacturing engineering, development of advanced materials, biotechnology, and information technology. To perform this work, the Institute has developed plans for the Advanced Measurement Laboratory, which, when completed, will consist of five building wings that combine features of close temperature control, vibration isolation, air cleanliness, and power quality into one of the most technologically-advanced laboratory buildings in the world. Agency Report at 2.

After a 1996 attempt to build this laboratory was abandoned for lack of funds, the current RFP was issued on May 19, 2000. The RFP anticipated award of a fixed-price contract “to the offeror whose proposal offers the best value to the Government from a technical and price standpoint.” RFP § M.4. To determine which proposal presents the best value, the RFP identified three technical evaluation factors, and advised that the three factors combined would be approximately equal to price. The three evaluation factors were (1) past performance and experience, (2) management of the project, and (3) small business subcontracting plan. Of these, the RFP advised that the first two evaluation factors would be the most important, and that the past performance factor was slightly more important than the project management factor.

In addition, the RFP provided detailed evaluation subfactors and elements. Under the past performance and experience factor, the RFP identified the following two subfactors of approximately equal value: (1) previous clients’ assessment of the offeror’s and major subcontractors’ performance; and (2) experience constructing projects of comparable size, technical nature, and complexity. Under the project management factor, the RFP identified three subfactors: (1) the offeror’s proposed methodology; (2) key personnel; and (3) project schedule. The first of these subfactors, methodology, was equal to the value of the second two, while the second two were equal in value to each other. Under the management factor’s methodology subfactor, there were four separately-scored, equally-weighted elements: (1) quality assurance plan; (2) building commissioning plan; (3) change order management plan; and (4) safety plan. Under the management factor’s second subfactor, key personnel, there were six separately identified key personnel positions; however, these positions were not separately scored.

By the July 19 due date for submission of proposals, the agency received two initial proposals—one from Jones/Bell, one from Clark/Gilford. After an initial evaluation and review of prices, both proposals were included in the competitive range for award, and the agency provided both offerors written clarification questions. After receipt of responses to these questions, the agency also held face-to-face discussions with each offeror. During these discussions, the agency advised both offerors that

their prices exceeded the agency's estimates for its new laboratory, and issued an amendment providing for deductive options (which is not at issue in this protest). At the conclusion of discussions, the agency received final revised technical proposals on September 14, final price proposals on September 19, and final subcontracting plan revisions on September 20.

After reevaluating both proposals using a 1,000-point scale, the Clark/Gilford proposal had an overall score of 754 and a price of \$173.5 million, compared to Jones/Bell's score of 696 and price of \$177.9 million. A summary of these scores by evaluation factor and subfactor is set forth below:

EVALUATION FACTOR	MAX. POINT VALUE	JONES/ BELL SCORE	CLARK/ GILFORD SCORE
PAST PERFORMANCE AND EXPERIENCE			
-- Previous Clients' Assessment of Offeror's and Primary Subcontractors' Performance	225	173	178
-- Experience Constructing Projects of Comparable Size, Technical Nature and Complexity	225	<b>153</b>	182
MANAGEMENT OF THE PROJECT			
-- Offerors Proposed Methodology			
1. Quality Assurance Plan	<b>50</b>	38	41
2. Building Commissioning Plan	50	38	37
3. Change Order Management Plan	50	34	34
4. Safety Plan	50	40	41
-- Key Personnel	100	62	72
-- Project Schedule	100	60	76
SMALL BUSINESS SUB. PROGRAM	150	98	93
<b>TOTAL POINT SCORE</b>	<b>1,000</b>	<b>696</b>	<b>754</b>
<b>TOTAL PRICE</b>		<b>\$177.9 million</b>	<b>\$173.5 million</b>

Agency Report, Tabs 34-35.

After reviewing these evaluation results, the agency concluded that the proposal submitted by Clark/Gilford was both higher-rated and lower-priced than the proposal submitted by Jones/Bell, and award was made to Clark/Gilford on September 27. This protest followed.

## DISCUSSION

Jones/Bell argues that, in several evaluation areas, the agency failed to hold meaningful discussions and/or improperly evaluated its proposal. The decision below addresses Jones/Bell's contentions in three of those areas: project schedule, prior experience, and key personnel.<sup>1</sup>

The protester's contention that discussions were not meaningful applies to the areas of project schedule and prior experience. In the area of project schedule, the agency raised the issue during discussions, but Jones/Bell complains that the discussions were not adequate to provide notice of the problem; in the area of prior experience, the agency did not raise the issue at all.

The Federal Acquisition Regulation (FAR) requires that contracting officers discuss with each offeror being considered for award "significant weaknesses, deficiencies, and other aspects of its proposal . . . that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." FAR § 15.306(d)(3). The statutory and regulatory requirement for discussions with all competitive range offerors (41 U.S.C. § 253b(d)(1)(A) (1994); FAR § 15.306(d)(1)) means that such discussions must be meaningful, equitable, and not misleading. While the discussions should be as specific as practical considerations will permit, the agency is not required to "spoon-feed" an offeror as to each and every item that could be revised so as to improve its proposal, however. Du & Assocs., Inc., B-280283.3, Dec. 22, 1998, 98-2 CPD ¶ 156 at 7-8.

With respect to the area of project scheduling, the protester explains that it used a module approach to scheduling, and that—even though the agency asked questions about its approach—the agency did not "criticize" the approach. Protester's Comments at 3. Presumably, in Jones/Bell's view, by not criticizing its approach the agency did not provide the company with sufficient notice of its concerns, and thus failed to hold meaningful discussions. We disagree.

Under this solicitation, offerors were required to submit a project schedule detailing when major activities would be completed. The proposed schedule was evaluated as a separate subfactor under the project management evaluation factor, and was worth

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<sup>1</sup>Since, as discussed below, we deny the protester's challenges in these three areas, we need not address its challenges in the four remaining areas. In these four areas—related to each of the four elements under the methodology subfactor within the project management factor (see table above)—even if Jones/Bell received every available point under all four elements, it would remain the lower-rated, higher-priced proposal. Thus, in these four areas Jones/Bell cannot make the requisite showing of prejudice required in this forum, see McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3, and we need not consider these issues further.

100 points. Upon reviewing Jones/Bell's schedule, the evaluators concluded it was overly cumbersome and complex, and did not demonstrate a clear understanding of the project. In addition, the evaluators noted that Jones/Bell's references also expressed concerns about its performance in this area. See Source Evaluation Board, Final Report, Sept. 22, 2000. As a result, the evaluators awarded Jones/Bell's proposal only 60 of the 100 available points under this subfactor.

With its letter advising Jones/Bell that its proposal would be included in the competitive range, the agency appended three pages of clarification/discussion questions. Agency Letter to Jones/Bell, Aug. 3, 2000. Under the heading "project schedule," the letter stated:

You used modules/letters to further breakdown the building subprojects. Do you plan to use the module concept during construction? Please clarify your reasoning for this approach.

Id., attach. at 2. During face-to-face negotiations, the agency revisited its concern. Specifically, the discussion minutes of August 16 show that (among other questions on this subject) Jones/Bell was asked "to provide further clarification of the 'module' concept in their proposal revision." Agency Report, Tab 20, at 3.

In our view, the initial exchange quoted above, buttressed by the subsequent exchange on August 16, should have been sufficient to communicate a concern about the proposed approach, and to communicate that the agency was not yet convinced that the proposed approach to project scheduling was ideal. While the protester correctly notes that this exchange stops short of expressly criticizing this portion of the proposal, we cannot agree that these questions were legally insufficient to provide notice to Jones/Bell about this weakness in its proposal. The exchange led the protester directly to the precise area of agency concern and reasonably communicated that the approach had not yet passed muster with the evaluators. Since agencies are not required to spoonfeed offerors during discussions, Du & Assocs., Inc., supra, we deny Jones/Bell's contention that discussions in this area were inadequate.

In its second challenge to the adequacy of discussions, involving the area of experience, Jones/Bell complains that the agency failed to advise it that the evaluators concluded that it lacked experience building laboratories requiring a high degree of temperature control, vibration isolation, cleanliness, and power quality. Jones/Bell argues that its proposal contained information about several projects that should have addressed these concerns, and claims that if the agency had raised these issues during discussions it could have alleviated any concerns.

In response, the agency answered that it did not have "concerns" about Jones/Bell's experience building complex laboratories, but countered that the protester's experience was limited to laboratories considerably smaller—i.e., less than

\$50 million—than the approximate \$170 million size of this project. Agency Report, Nov. 16, 2000, at 17-18. In the agency's view, it was not required to discuss this matter with Jones/Bell because it considered the experience acceptable, it understood the protester's submissions regarding its experience, and it could not see how discussions on this subject could improve the company's experience.

The record shows that under the evaluation scheme here, an offeror's experience was considered under the second subfactor within the past performance and experience evaluation factor. This subfactor, entitled "experience constructing projects of comparable size, technical nature and complexity," was worth 225 points. The evaluators awarded the Jones/Bell proposal 153 points after concluding that the joint venture's experience was acceptable, but that it lacked experience with projects that were similar in both size and complexity. Put simply, the evaluators concluded that Jones/Bell's large projects (over \$100 million) were not complex, and its complex projects were not large. See Source Evaluation Board, Final Report, Sept. 22, 2000.

In our view, even if we agree that the agency should have raised this matter during discussions, there is no evidence in this record to support a conclusion that the protester was prejudiced by the agency's failure to do so. The protester's initial filing on this issue identified four projects that it argues should have been sufficient to establish its experience with similarly complex work. Supplemental Protest, Oct. 25, 2000, at 2. In response, the agency acknowledged that the protester had experience building complex projects, but stated that none of the complex projects exceeded \$50 million, and thus, were not of the magnitude of the \$170 million laboratory project here. Agency Report, Nov. 16, 2000, at 16-17. In reply to the report—and to the accompanying evaluation materials which were provided to counsel for the protester under the coverage of a protective order issued by our Office—Jones/Bell offered no information or argument to counter the agency's evaluation conclusions, other than to reiterate the fact that it lost a significant number of points in this area. Nor did the protester explain what other information it would have provided, if asked, that might have changed the agency's assessment of its experience. Comments at 1-2. Given this record, we cannot conclude that the protester was prejudiced by the agency's decision not to discuss the assessed weakness in this area. See Microeconomic Applications, Inc., B-258633.2, Feb. 14, 1995, 95-1 CPD ¶ 82 at 10-11.

Finally, Jones/Bell argues that its proposal was improperly evaluated under the key personnel subfactor, where it received 62 of 100 possible points. As above, the protester complains that its project manager was wrongly downgraded for not having experience with large, complex projects.<sup>2</sup>

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<sup>2</sup>For the record, Jones/Bell also complains that the agency changed its position about the company's proposed project manager since the debriefing, when the protester  
(continued...)

Our standard in reviewing a protester's challenge to an evaluation is to examine the record to determine whether the agency's judgments were reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Here, we find no basis for concluding that the agency unreasonably evaluated Jones/Bell's proposal under the key personnel subfactor.

As an initial matter, our review of the record shows that any problem with Jones/Bell's proposed project manager was only one of several contributing reasons for its rating under this subfactor, and that the protester has offered no argument regarding the other negative conclusions in this area. With respect to the proposed project manager, however, the agency concedes that he has experience with large projects (over \$100 million), but concludes that those projects, such as major airports, did not involve the complexity of the state-of-the-art laboratory here. In our view, there was nothing unreasonable about this assessment, and the protester has offered our Office no basis for any conclusion to the contrary, other than its disagreement. See Comments at 4. In addition, the evaluators noted that they were concerned that some of the proposed key personnel were committed to other major federal projects, while some appeared to possess only average (or below-average) qualifications for the positions for which they were proposed. Also, the agency explains that it raised these issues during discussions, and ended the negotiations with less confidence in the proposed project team, not more. Under these circumstances, we have no basis to conclude that Jones/Bell's score of 62 of 100 available points under the key personnel subfactor was unreasonable.

The protest is denied.

Anthony H. Gamboa  
Acting General Counsel

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says it was advised only that its project manager lacked experience with large, complex projects, whereas in the agency report, the basis was changed to a lack of experience on large, complex, and technologically-challenging projects. In our view, there is no basis for distinguishing between the terms "complex," and "technologically-challenging" as they are used in this record. The protester's focus on minor word changes between the debriefing and the written agency report does not provide a basis for overturning the agency's judgment about the qualifications of the project manager.