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20747 Wyle

**DECISION**



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

FILE: B-205110

DATE: February 9, 1982

MATTER OF: NKF Engineering Associates, Inc.

**DIGEST:**

1. Protester disagrees with procuring agency's determination that its proposal was technically unacceptable. Where the protester has not shown that the agency's specific reasons for the determination are unreasonable, arbitrary or violative of law, GAO has no basis to object to the procuring agency's determination.
2. Contention--that the procuring agency's selection of the awardee was unduly influenced by the procuring agency's past contractual association with the awardee--is without merit where (1) GAO's examination of specific allegations regarding the evaluation of the protester's proposal and the awardee's proposal provides no basis to disturb the procuring agency's conclusions and (2) the protester's contention is only based on speculation.

NKF Engineering Associates, Inc. (NKF), protests the award of a cost-plus-fixed-fee contract to Wyle Laboratories (Wyle) under request for proposals (RFP) No. N60921-81-R-0178, issued by the Navy for a report on possible design improvements in shipboard physical security. NKF objects to the Navy's determination that its proposal was technically unacceptable and NKF contends that the Navy's selection of Wyle was unduly influenced by the Navy's past contractual association with Wyle. We find that NKF's protest is without merit.

The Navy received and evaluated 12 timely proposals; the relevant overall technical ratings follow:

<u>Offeror</u>	<u>Technical Rating</u>	
Wyle	Superior	530.0
Vendor A	Superior	522.5
Vendor B	Acceptable	492.5
Vendor C	Acceptable	492.5
Vendor D	Acceptable	480.0
NKF	Unacceptable	455.0
Vendor E	Unacceptable	437.5
(there were 5 other vendors)	(All were unacceptable; scores ranged from 422.0 to 147.5)	

Wyle's evaluated cost-plus-fixed-fee (\$42,089) was the lowest of the superior and acceptable proposals. Thus, based on the evaluation of initial proposals, Wyle was selected for award. Wyle's evaluated cost proposal was 38 percent higher than NKF's cost proposal.

The Navy considered NKF's proposal to be technically unacceptable and ineligible for award, because: (1) NKF's description of the work to be performed was too broad in scope and cast grave doubt on NKF's understanding of the RFP's requirements; (2) NKF's proposal did not include a discussion of ship classes, as required by the RFP; (3) NKF's proposal did not satisfactorily demonstrate a knowledge of the complexity of physical security ship design; (4) NKF's demonstrated capability regarding physical security and NKF's demonstrated experience in conceptual studies were unsatisfactory; (5) NKF's proposal did not adequately address on-schedule, on-budget performance on similar contracts; and (6) NKF's milestone chart was not sufficiently detailed.

NKF's assessment of its proposal differs substantially from the Navy's in each of the above areas except (4). NKF does not take exception to the Navy's conclusion

that NKF's demonstrated capability regarding physical security and NKF's demonstrated experience in conceptual studies were unsatisfactory.

Regarding NKF's understanding of the RFP's requirements, NKF concedes that its proposal was broader in scope than Wyle's, but NKF states that Wyle's past association with the Navy may have given Wyle the inside track on what the evaluators wanted to see in the proposal. The Navy's conclusion was based on NKF's proposal to expand the scope of the study to include (1) obtaining information from sources (Fleet contacts) outside those documents to be provided by the Navy and (2) ascertaining compliance of nuclear-capable ships with Navy regulations and directives, which was outside the scope of the work described by the RFP. The Navy reports that Wyle has no current contracts related to the subject matter of this RFP, Wyle was an unsuccessful offeror on another RFP concerning shipboard nuclear weapons security, and there was no advance notice or discussion with Wyle about this procurement. In rebuttal, NKF states that, based on its experience, the information would not be available as indicated in the RFP and outside sources would have to be contacted to timely acquire the information. Further, NKF states that our Office should investigate all Navy contacts with Wyle personnel to remove any doubt about the Navy's bias in favor of Wyle.

Regarding NKF's discussion of ship classes, NKF contends that the RFP did not require an explicit discussion of ship classes, but the personnel proposed by NKF had experience with the ship classes, which implied a thorough knowledge of the subject matter. Further, NKF notes that its proposal contained a statement that its personnel had experience with the ship classes listed. In NKF's view, Wyle's proposal was not better than NKF's in this area. In response, the Navy states that one of the RFP's technical factors was a demonstrated knowledge of ship classes listed in the RFP's statement of work and that the RFP advised offerors to provide clear and sufficiently detailed information to permit evaluation of each technical factor. The Navy reports that Wyle's brief separate discussion of ship classes was satisfactory while NKF's treatment of the topic was not as complete as Wyle's.

Regarding NKF's demonstrated knowledge of physical security ship design, NKF argues that the information on this subject in NKF's proposal was comparable to Wyle's. In response, the Navy explains that NKF's proposed method of inserting physical security into the design process did not include all of a ship's vital functions. On the other hand, Wyle's proposed approach was similar to an approach which the Navy has determined to be suitable.

Regarding NKF's on-schedule, on-budget performance on similar contracts, NKF admits that Wyle's presentation was better than NKF's, but NKF contends that its proposal was adequate in this area. Regarding NKF's milestone chart, NKF contends that its chart was as detailed and adequate as Wyle's. The Navy explains that Wyle's chart was supplemented by detailed task descriptions written directly to the requirements of the RFP; whereas, NKF's task description and chart included items of additional work not contemplated by the RFP.

NKF also argues that, since the Navy's technical evaluators scored NKF's proposal as qualified in all areas evaluated, the rating of technically unacceptable is not proper. NKF notes that the Navy did not establish a cutoff score prior to evaluating proposals. NKF also notes that one of the two evaluators gave NKF the highest rating for understanding the complexity of the physical security ship design problem, which seems inconsistent with the contracting officer's view that NKF's proposal was technically unacceptable.

NKF notes that one of the two evaluators gave it a score of 250, which is the same score that the other evaluator gave Wyle. Thus, in NKF's view, based on NKF's lower proposed cost and NKF's acceptable technical proposal, NKF should have been selected for award.

In our consideration of protests, like NKF's, against a procuring agency's evaluation of proposals, we recognize that the relative desirability or technical acceptability of proposals is largely subjective, primarily the responsibility of the procuring agency, and not subject to objection by our Office unless shown to be unreasonable, arbitrary or violative of law. See, e.g., Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23; Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD 439.

Here, the contracting officer's determination that NKF's proposal is technically unacceptable is supported by (1) the six cited specific reasons, (2) the spread in overall technical ratings, and (3) the technical evaluators' summary explaining that vendors deemed technically unacceptable did not satisfactorily meet all the RFP's requirements.

Regarding the six cited reasons, first, we note that NKF does not object to one of those reasons. Second, we find that NKF's proposed scope of the study was broader than Wyle's because NKF went beyond the scope of the RFP and Wyle confined the scope of its proposal to the RFP's requirements. There is no basis to conclude that Wyle's proposal was based on inside knowledge because Wyle's proposal merely responds to the stated requirements of the RFP. Third, NKF admits that in certain other areas, like NKF's discussion of on-schedule, on-budget performance on similar contracts, its proposal was not as good as Wyle's. Another example is Wyle's milestone chart that was accompanied by a detailed task description, which was not present in NKF's proposal. Fourth, in the areas of adequacy of discussion of ship classes and demonstrated knowledge of physical security ship design, the record does not provide a basis for our Office to object to the Navy's determinations.

Regarding the scoring spread, we have held that technical point ratings are useful guides for intelligent decisionmaking in the procurement process, but whether a given point spread between two competing proposals indicates the significant superiority of one proposal over the other depends on the facts and circumstances and is primarily a matter within the discretion of the procuring agency. See, e.g., 52 Comp. Gen. 686 (1973); Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Here, the spread supports the contracting officer's determination; moreover, we find that NKF has not shown the specific reasons justifying the determination to be unreasonable, arbitrary or violative of law.

NKF's contention--that the contracting officer's determination is not supported by the scoring of NKF's proposal based on the evaluation plan's scoring guide--is not persuasive. The scoring was based on 0 points for an area not addressed or where the proposal was rated

unqualified and 1 to 3 points for an area deemed to be qualified, depending on the degree of documentation-- poorly documented - 1 point, documented - 2 points, well documented - 3 points. Although NKF's proposal received scores of 1 to 3 in every area, in our view, that means that NKF's proposal merely addressed each area. We are not persuaded that NKF deserves to be considered technically acceptable merely because it did not receive a 0 score in any area.

Further, NKF's contention--that its high rating from one evaluator should be compared to the low rating that the other evaluator gave Wyle--is without merit. The evaluation plan was reasonable and called for two evaluators to independently score all proposals. The individual results were added to produce the overall rating of each proposal. In such situations, evaluators may not score proposals identically because the evaluation of technical proposals is largely subjective. See, e.g., Development Associates, Inc., B-203938, October 9, 1981, 81-2 CPD 296. Thus, NKF is clearly not entitled to have its high rating from one evaluator compared to another offeror's low rating from the other evaluator.

Similarly, the fact that one evaluator rated NKF high (3; the other rated NKF at 1.5) in the area of understanding the complexity of the problem does not persuade us that the contracting officer's contrary conclusion is unreasonable. The record shows that the contracting officer based his view on NKF's failure to consider all of a ship's vital functions in its proposed method of inserting physical security into the design process.

Regarding NKF's observation that prior to evaluating proposals the Navy did not establish a cutoff score for technical acceptability, we have held that the use of predetermined cutoff scores, as suggested by NKF, is improper. See 52 Comp. Gen. 382 (1972); 50 Comp. Gen. 59 (1970).

Accordingly, after carefully considering NKF's arguments, we must conclude that NKF has not shown that the Navy's evaluation of its technical proposal was unreasonable.

NKF's suggestion that the Navy's selection of Wyle was unduly influenced by the Navy's past contractual association with Wyle is sheer speculation. As noted, NKF's contention that Wyle had inside information on what the Navy wanted is without merit because Wyle's proposal is based on the RFP and NKF's proposal is based on a scope of work broader than that contemplated in the RFP. From the record, we find no evidence of bias in favor of Wyle or unequal treatment of NKF; Wyle's proposal and NKF's proposal were both fairly evaluated against the RFP's requirements. Further, it is not our role to investigate, on the basis of NKF's speculation, all Navy contacts with Wyle personnel to remove any doubt about bias in favor of Wyle. See Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. Thus, we find no merit in this aspect of NKF's protest.

Accordingly, we find no basis to disturb the Navy's determination that NKF's proposal was technically unacceptable. Thus, the Navy properly did not consider NKF's lower proposed cost. SDC Integrated Services, Inc., B-195624, January 15, 1980, 80-1 CPD 44.

Protest denied.

*Milton J. Sowlar*

for Comptroller General  
of the United States