

DECISION



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

FILE: B-220142 **DATE:** November 19, 1985
MATTER OF: Joseph L. DeClerk and Associates,
Inc.

DIGEST:

1. Protest that contracting agency refused to provide protester with access to certain documents for development of its protest is denied. The contracting agency has the primary responsibility for determining which documents are subject to release under the Competition in Contracting Act of 1984.
2. Protest against exclusion of proposal from competitive range is denied where record shows agency's finding that offeror's technical proposal was unacceptable was reasonable.
3. A technical evaluation must be based on information contained in the proposal and, consequently, information contained in a preaward survey is not a substitute for information that should have been included in an offeror's technical proposal.
4. Protester's claim for costs incurred in participating in preaward survey because protester subsequently was excluded from competitive range is denied where decision to conduct preaward survey has not been shown to be unreasonable. Consistent with customary agency procedure, contracting officer initiated preaward surveys on all offerors before establishing competitive range apparently to avoid possibility of delay in making award because the preaward survey was not completed.

Joseph L. DeClerk and Associates, Inc. (JDC), protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. DAAB07-85-R-K038 issued by the Department of the Army. The RFP solicited a cost-plus-fixed-fee contract for support for the Army

Readiness Directorate's "material fielding" mission to provide Army units in the field with necessary combat communications electronic systems.

We deny the protest.

The RFP listed, under the basis for evaluation, factors, subfactors, and elements to be evaluated, in descending order of importance. The most important factor was technical and consisted of a technical approach subfactor. The RFP advised that "the importance of this subfactor is in excess of that of all other technical subfactors combined." The technical approach was subdivided into three elements. The RFP provided that the first element listed, feasibility of approach, was more important than the other two technical approach elements--understanding of problems and completeness, combined. The other three subfactors under technical were personnel, materials and facilities, and engineering and technical man-hours. The second factor was cost consisting of two subfactors--cost proposal and cost realism. The third factor was management consisting of a subfactor of past performance.

The source selection evaluation board (SSEB) evaluated technical proposals and determined that JDC's and two other offers were technically unacceptable. The contracting officer concurred in this judgment and excluded JDC's offer from the competitive range. The contracting officer notified JDC that its proposal was unacceptable in critical areas and that JDC's offer would not be included in the competitive range which consisted of two offerors. The SSEB primarily found JDC unacceptable in the areas of understanding of the problem, and engineering and technical man-hours. Specifically, the SSEB determined that JDC had shown only a very general understanding of the material fielding process, and especially the fielding team chief function, had indicated no clear understanding of existing material fielding publications, and, finally, that it failed to adequately show a level of effort for each individual system listed in the statement of work. The contracting officer reports that "after full consideration of the offeror's proposal and the evaluation of SSEB," he found JDC's proposal technically unacceptable. The contracting officer further determined that it was not possible for JDC to make its proposal technically acceptable without major revisions tantamount to submission of a new proposal.

JDC contends that its technical proposal was improperly evaluated. It argues that its offer did not contain major deficiencies and was acceptable. It states that it could

have clarified any problems during discussions and was arbitrarily determined outside the competitive range. Furthermore, JDC points to the fact that the contracting officer ignored the findings of a preaward survey on JDC conducted by the Defense Contract Administration Services (DCAS) at the contracting officer's request. JDC asserts that the survey information was relevant to its acceptability and should have been considered.

Initially, the protester objects to the Army's "sanitized" administrative report and the Army's decision to withhold from JDC documents relevant to the protest. The Army released to JDC only the contracting officer's response to the protest, the Army's legal memorandum and a technical evaluation of JDC's initial protest letter. JDC argues that "GAO should strike from the record all portions of the agency report not furnished to [JDC]." JDC further asserts that disclosure of documents concerning the Army's technical evaluation of JDC would not prejudice the Army or any other interested party.

The Army states that it provided the report except for privileged information, and that the documents at issue were deleted from the administrative report supplied to the protester in accordance with applicable agency regulations and the Freedom of Information Act procedures.

The Competition in Contracting Act of 1984, 31 U.S.C.A. § 3553(f) (West Supp. 1985), provides in pertinent part that:

"Within such deadlines as the Comptroller General prescribes, upon request each Federal Agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this Section) that would not give the party a competitive advantage and that the party is otherwise authorized by law to receive."

Clearly, the contracting agency has the primary responsibility for determining which documents are subject to release under the above provision. Although the Army has denied JDC access to the documents related to the evaluation process, the Army has provided all of these documents to our Office solely for our review. We have honored the Army's restriction and reviewed the materials in light of the

protest issues raised, but our discussion is necessarily limited because of the Army's restriction.

Regarding the merits of JDC's protest, the evaluation of technical proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best method of accommodating them. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. See Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2; B-211053.3, Jan. 17, 1984, '84-1 C.P.D. ¶ 74; Syscon Corp., B-208882, Mar. 31, 1983, 83-1 C.P.D. ¶ 335.

Further, we have repeatedly held that, in reviewing an agency's technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the agency's evaluation to ensure that it had a reasonable basis. Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2; B-211053.3, supra, 84-1 C.P.D. ¶ 74 at 4; Syscon Corp., B-208882, supra, 83-1 C.P.D. ¶ 355 at 2; Decilog, B-198614, Sept. 3, 1980, 80-2 C.P.D. ¶ 169. In addition, the protester bears the burden of showing the agency's evaluation was unreasonable. Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2, B-211053.3, supra, 84-1 C.P.D. ¶ 74 at 4.

We find that the Army's technical evaluation of JDC's proposal and exclusion of the proposal from the competitive range were reasonable. With regard to understanding of the problem, the agency found that in many instances, JDC "parroted back" in its proposal solicitation language or language from other Army information. The Army further reports that JDC's proposal lacked detail and that JDC failed to propose an approach which was feasible and showed an understanding of the government's requirements. In this connection, we previously have found insufficient proposals which contain restatements of specifications or which lack detail to satisfy an RFP requirement for specific and detailed responses. See Essex Electro Engineers; ACL-Filco Corp., B-211053.2; B-211053.3, supra.

For example, with regard to "pre-fielding" requirements under the RFP, that is, "preparatory actions taken in preparation for the eventual . . . fielding events," the Army found that the JDC proposal called for team chiefs to be located at five different locations throughout the United States. The Army reports its experience is that a

substantial amount of prefielding work (preparation) must be handled at the central command location, and that the statement of work indicated at least three prefielding tasks which must be handled at the one location. The Army determined that JDC had not demonstrated who would handle these tasks.

JDC responds that, through discussions, it would have indicated that "prefielding actions" were the responsibility of the JDC project manager and, second, that, notwithstanding the RFP requirements for prefielding tasks, prefielding effort has never been part of the contract requirements previously, that the prefielding effort generally has been accomplished by government personnel and most of the prefielding has been completed.

This explanation concerning prefielding matters under the RFP is stated in JDC's protest letter and was not in its proposal. Thus, by its protest explanation, JDC indicates that its discussion of prefielding work in its proposal was not complete and required further explanation. Under these circumstances, we find that the Army reasonably found JDC's proposal to be deficient for failing to explain its approach to prefielding tasks.

The Army also determined that JDC failed to satisfactorily describe the prefielding and fielding tasks of the project manager and fielding team chief and the interrelationship of these two positions. The Army concluded that, because JDC did not specify how it's organization would execute what JDC proposed, JDC's proposed approach might not be feasible and contained "high risk."

In this connection, the Army concluded that JDC did not recognize the importance of fielding team chiefs, which both JDC and the Army apparently agree is a key to performance of the contract. For example, the Army notes that, while JDC stated in its proposal that team chiefs are the key members of the support organization, it failed to specifically reference them on the organization chart included in JDC's proposal. JDC responds in its protest that it would have clarified this omission during discussions. JDC advises that, although the team chiefs were not identified as such on the chart, the block identified as "JDC P1" represents the fielding team chiefs. However, on the face of its initial proposal, JDC's offer created confusion concerning the team chief's role and raised questions as to its understanding of the work.

Also, while JDC argues it did not deemphasize the team chief's role in its proposal, it placed responsibility for material fielding for each of 61 pieces of equipment on the project manager, not the fielding team chief. Since, under JDC's approach, the one project manager would be located at the directorate headquarters, the Army did not find the proposal adequately explained how the fielding equipment tasks would be accomplished at the five diverse locations in the United States and where, precisely, the fielding team chief would fit in and how the project manager would relate effectively to the fielding team chiefs in the five locations. While JDC proposed the project manager for 1 man-year, which was the government estimate, the Army's 1 man-year estimate assumed a greater amount of work would be handled by the fielding team chiefs rather than the project manager, thus further reinforcing the Army's concerns about JDC's understanding of the work.

The Army determined JDC's proposal generally unacceptable concerning the requirement for providing engineering and technical man-hours under the technical factor. The criteria under this subfactor required offerors to demonstrate "sufficiency of quoter's estimate of engineering and technical man-hours required to accomplish the specified program using his specific technical approach." JDC's consolidated man-hour list repeated the government's estimate of man-hours without showing how this estimate related to JDC's specific technical approach. JDC does not respond specifically to this deficiency, but rather asserts that the RFP did not require a detailed breakout of level of effort for each individual system listed in the statement of work. Nevertheless, we think that, in light of the clear RFP requirement for an estimate of engineering and technical man-hours needed to accomplish the offeror's technical approach, the Army properly could conclude that a restatement of the government's estimate did not satisfy this requirement. Furthermore, such a response reasonably could raise concerns by the SSEB as to the adequacy of JDC's proposed technical approach since the man-hours estimated conflicted, in the agency's view, with JDC's technical approach.

The protester asserts that the deficiencies the Army found in JDC's proposal could have been resolved through discussions. JDC failed to properly explain how its organizational approach would perform the prefielding work adequately, to demonstrate the project manager's and team chiefs' ability to carry out JDC's approach and to show the

feasibility of its approach through its man-hour estimate. Under these circumstances, we think the Army reasonably concluded that JDC's proposal would require major revisions to become technically acceptable and reasonably excluded the proposal from the competitive range.

The protester also alleges that the Army improperly refused to consider information obtained from the preaward survey in its technical evaluation of JDC's proposal, for example, information allegedly provided to the Army preaward survey team further explaining the fielding team chief's role. We have stated that a technical evaluation must be based upon the information contained in the proposal, so that, no matter how capable an offeror may be, it runs the risk of losing the competition if it does not submit an adequately written proposal. Numax Electronics Incorporated, B-210266, May 3, 1983, 83-1 C.P.D. ¶ 470. Thus, the Army reasonably limited its technical evaluation to the information provided in JDC's proposal.

JDC claims entitlement to recovery of its proposal preparation costs for this RFP and the costs of pursuing this protest. Given our conclusion that the Army properly excluded JDC from the competitive range, the claim is denied.

JDC also argues that, if we agree with the Army that the preaward survey was irrelevant to the selection process, and that the contracting officer unnecessarily subjected JDC to these procedures, we should award JDC the costs it incurred in participating in the preaward survey. However, the Army advises that it is its customary procedure to conduct the preaward surveys before establishing a competitive range of potential awardees. Apparently, the preaward surveys are conducted at an early stage to avoid delay in making award because the preaward survey has not been completed. In our view, the protester has not shown the agency's action was unreasonable. We deny JDC's claim for the costs of its participation in the preaward survey.

for *Signature*
Harry R. Van Cleave
General Counsel