



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: J-E-T-S, Inc.
File: B-255770
Date: March 31, 1994

Elizabeth D. Johnson for the protester.
Robin B. Teichman, Esq., and Donald F. Hassell, Esq.,
Nuclear Regulatory Commission, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Agency reasonably downgraded the protester's proposal for instructional services where the protester's proposal evidenced a lack of certain instructor qualifications that were designated in solicitation as being preferred and proposed a less than optimum technical approach.

DECISION

J-E-T-S, Inc. protests the award of a contract to Andrew L. Hogg, Jr., under request for proposals (RFP) No. RS-AED-93-294, issued by the United States Nuclear Regulatory Commission (NRC) for an "Inspecting for Performance" (IFP) training course.

We deny the protest.

NRC licenses and inspects nuclear power reactors and nuclear materials facilities to ensure compliance with applicable codes and standards. As part of this responsibility, the NRC in 1987 developed the IFP training program to train NRC inspectors and other technical personnel, who inspect commercial nuclear power plants/facilities. NRC issued this RFP on May 14, 1993, to obtain a contractor to furnish personnel, materials, and services to (1) present and maintain the IFP course including minor and major updates; (2) develop and present a nuclear materials version of the course; and (3) develop and present specialized versions of the course covering specific IFP course topics. The course was to be provided under a firm, fixed-price, task order contract for a 5-year period.

The statement of work (SOW) in the RFP listed various requirements. For example, the SOW required that the proposed instructors have experience in the development and presentation of training materials in the nuclear industry, experience in the operation and maintenance of commercial nuclear power plants, and knowledge and experience in developing, implementing, and assessing nuclear power plant quality assurance. The SOW also expressed a preference for instructors who have experience as nuclear-licensed training supervisors or similar positions, design/test engineers, licensed operators and/or supervisors or similar positions, and operating facility quality assurance managers or similar positions.

Under the RFP, technical merit was accorded more weight than price. The technical evaluation criteria were qualifications of contractor personnel (40 points), corporate experience (25 points), technical approach (20 points), and project management experience (15 points).

On June 14, NRC received five proposals in response to the RFP, including the proposals from J-E-T-S and Mr. Hogg, the incumbent contractor. A source evaluation panel (SEP) determined that only J-E-T-S's and Mr. Hogg's proposals were in the competitive range because their respective technical scores were significantly higher than the other offerors' technical scores. Following discussions with both offerors, the NRC received best and final offers (BAFO) on August 17. J-E-T-S's BAFO, priced at \$191,500, received a technical score of 83, while Mr. Hogg's BAFO, priced at \$263,554, received a technical score of 98. On October 21, the NRC awarded the contract to Mr. Hogg after determining that the technical superiority of Mr. Hogg's proposal warranted the additional price premium. J-E-T-S protests that its proposal was not properly evaluated and that it should have received the award since it offered the lowest price.

In reviewing a protest against an allegedly improper proposal evaluation, we review the agency's evaluation to ensure that it was reasonable and consistent with the RFP's evaluation criteria. Aerial Image Technology, B-251913, May 4, 1993, 93-1 CPD ¶ 367. A protester's disagreement with the evaluation of its proposal does not render it unreasonable. Id. In a negotiated procurement, there is no requirement to award on the basis of lowest price unless so specified in the RFP. Rather, price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the established evaluation factors. An award to an offeror with a higher technical ranking and higher price is proper so long as the result is consistent with the evaluation criteria and the procuring agency has reasonably determined that the technical difference is

sufficiently significant to outweigh the price difference. Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. Based on our review of the record here, we find that NRC reasonably evaluated J-E-T-S's proposal in accordance with the RFP criteria.

While J-E-T-S's proposal, as indicated by its point score, contained strengths,¹ the NRC reasonably noted a number of weaknesses. Specifically, J-E-T-S's proposal was downgraded under the most important criterion, "qualifications of contractor personnel," because its instructors lacked the optimum experience and there were weaknesses in its technical approach.² With regard to the qualifications of contractor personnel criterion, J-E-T-S claims that NRC unreasonably employed as "rejection criteria" the RFP's stated preferences for optimum instructor experience.³ The record does not support J-E-T-S's contentions as shown by the fact that J-E-T-S received more than two-thirds of the

¹For example, J-E-T-S's proposal received close to the maximum point score under the corporate experience criterion (24) and the maximum score under the project management criterion (15). Contrary to J-E-T-S's argument that NRC discounted the value of J-E-T-S's proposing the original author of the course, the evaluation documents indicate that NRC recognized this fact and found that J-E-T-S's proposal contained a number of other strengths such as: (1) 19 years of experience in engineering, construction, nuclear, materials processing and operations quality assurance; (2) experience in presenting performance-based training at over 20 facilities; (3) experience in nuclear materials processing assessments; and (4) nuclear power reactor and performance based inspection experience.

²Under the "qualifications of contractor personnel" criterion, J-E-T-S received 30 of a possible 40 points and under the technical approach criterion it received 14 of 20 points.

³J-E-T-S argues that the designated preferred instructor qualifications favored Mr. Hogg, even though they did not reasonably relate to the agency's requirements, and that the RFP provisions otherwise favored Mr. Hogg. The basis for these contentions was apparent from the face of the solicitation. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1993), require such allegations to be filed prior to the closing date to be considered timely. Since J-E-T-S did not protest these provisions until after award, this argument will not be considered.

available points for instructor qualifications.¹ Since the protester's proposal admittedly did not demonstrate that its instructors possessed the preferred qualifications, the agency reasonably deducted points from its score in this area.

NRC also found that J-E-T-S's technical approach relied heavily upon pilot courses, and NRC management and staff time, to fix or guide course development, which was perceived to be a weakness. Specifically, NRC found that J-E-T-S's BAFO indicated that its pilot course was proposed to be presented to 50 percent typical attendees, and 50 percent management and training review personnel. NRC also found J-E-T-S's low preparation-time-to-teaching ratio to be inadequate for a new course, which reflected either an underestimation of the labor hours or a misunderstanding of the necessary level of effort.

J-E-T-S argues that NRC misinterpreted its BAFO regarding the breakdown of the pilot course attendees. According to J-E-T-S, its BAFO noted only that the course should be comprised of at least 50 percent typical attendees, not that management and training personnel were to constitute the remaining 50 percent as was concluded by NRC.² While during the course of the protest J-E-T-S offered an explanation of the language in its BAFO, we cannot conclude, based upon our review of the language itself, that the NRC's interpretation was unreasonable. An offeror has the responsibility to submit an adequately written proposal and runs the risk of its proposal being downgraded if it fails to do so. SRI Int'l, Inc., B-250327.4, Apr. 27, 1993, 93-1 CPD ¶ 344.

¹To support its contention, J-E-T-S references a statement in the SEP's competitive range report that J-E-T-S did not have an operating license "as required." However, this was simply a misstatement in that report, inasmuch as the agency did not reject J-E-T-S's proposal for this reason.

²The actual language appearing in J-E-T-S's BAFO stated the following:

"After the training program is developed and reviewed, one or two pilot presentations are in order. Each pilot presentation should include an attendee audience that is at least 50 [percent] typical attendees. Other management and training review personnel will need to attend, but should not corrupt the data from the sample attendees."

J-E-T-S also offers evidence--based upon certain provisions in the RFP and its commercial experience--to rationalize its low preparation-time-to-teaching ratio. However, J-E-T-S's course development and presentation time was significantly below the government estimate, which we see no basis to question. Under the circumstances, we find that NRC could reasonably downgrade J-E-T-S's proposal for this reason.

In contrast, NRC found Mr. Hogg's proposal to be technically superior because Mr. Hogg's instructors satisfied all of the preferred instructor qualifications. NRC also found that Mr. Hogg's proposal exhibited an impressive degree of experience in performing contracts similar in size, complexity, and service. NRC found that Mr. Hogg's technical approach reflected a sound approach to meeting the RFP's requirements and that Mr. Hogg's corporate and project management structure demonstrated the necessary authority, responsibility, and controls to assure the RFP's objectives.

J-E-T-S has made a number of other allegations which we have reviewed and found to be without merit. The record shows that NRC found Mr. Hogg's higher-priced proposal was technically superior, as compared to J-E-T-S's proposal, and that this technical superiority was worth the price premium. Based on our review, we find the award decision was reasonably made in accordance with the evaluation criteria.

The protest is denied.

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 for Robert P. Murphy
 Acting General Counsel