



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Eastern Technical Enterprises, Inc.
File: B-259844
Date: May 8, 1995

Petros M. Beys for the protester.
Cecilia R. Carson, Esq., Department of Commerce, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Evaluation of proposal as technically unacceptable and its subsequent elimination from the competitive range were reasonable where the proposal was rated unacceptable in five out of seven evaluation subfactors and contained significant deficiencies which would have required major revisions to correct, and protester does not show that evaluation was unreasonable. Contracting agency is not required to conduct discussions with offeror whose proposal is properly outside of the competitive range.

DECISION

Eastern Technical Enterprises, Inc. (ETE) protests the rejection of its proposal from the competitive range with respect to request for proposals (RFP) No. 52-SPNA-4-00005, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for the design, repair, and modernization of the NOAA fisheries research vessel, Delaware II.¹

¹The Delaware II is a unique and complex research platform that is used in conducting various scientific research projects essential to NOAA's mission. The RFP, which was issued on June 2, 1994, sought offers to develop a detailed design to accomplish the repair/modernization of the ship according to the given specifications and drawings, and to perform the industrial work to implement it. The project is referred to as the Delaware II Detail Design and Repairs-to-Extend (RTE), or Delaware II RTE. Generally, the project entails repair and replacement of existing machinery, addition of accommodation and operational spaces, and

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We deny the protest.

The RFP contemplated a fixed-price contract. Offerors were to submit proposals in three separately bound volumes, one for each of the three evaluation factors; technical, management, and price. The technical factor included three subfactors and the management factor included two subfactors. The nonprice factors (technical and management) together were more important than price, although as nonprice scores approached equality, price would become more important. Award was to be made based on the proposal deemed most advantageous, or "best value," to the government, cost or price, and other factors considered.

Several proposals were received. After evaluation, ETE's proposal was determined technically unacceptable overall due to material deficiencies which rendered it unacceptable in five out of the seven technical and management subfactors. Based on that finding, plus the fact that the competitive range included proposals with combined technical and management scores approximately twice that of ETE's, the agency eliminated ETE's proposal from the competitive range.

ETE claims that its proposal was wrongly eliminated from the competitive range because it could have been made acceptable through negotiations. ETE maintains that all of the perceived deficiencies in its proposal were either misunderstandings on the agency's part or easily correctable, superficial flaws that do not reflect the true strong technical ability of ETE. Given its proven performance record and what it believes to be its low price, ETE insists that its proposal would have evolved into the "best value" for the government had it been allowed to improve it through discussions.

In reviewing an evaluation, we will not reevaluate the technical proposals; we will examine the evaluation only to ensure that it was reasonable and in accordance with the solicitation's evaluation criteria. D. M. Potts Corp., B-247403.2, Aug. 3, 1992, 92-2 CPD ¶ 65. Proposals that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. TLC Sys., B-243220, July 9, 1991, 91-2 CPD ¶ 37.

The evaluation of ETE's proposal was reasonable. Section L of the RFP provided detailed requirements for each subfactor under the technical and management factors. ETE's proposal

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improvements to the scientific mission capability of the ship.

was found unacceptable under all three technical subfactors and under two of the management subfactors, based to a large extent on ETE's failure to include the specified information. We discuss several aspects of the evaluation below.

Under technical subfactor I(a), "Detailed Design and Production Approach," the most heavily weighted technical subfactor, the evaluators found numerous significant deficiencies. The RFP provided that an offeror was to describe its detailed design, with emphasis on how it would be developed from the specifications, and the interrelationships between the engineering, production, and purchasing departments during detail design and production. ETE's proposal provided no information concerning its design approach, including no discussion of how the detailed design would be developed from the specifications. Furthermore, it did not address the interrelationships of the shipyard departments or demonstrate an integrated approach to the detailed design and subsequent interaction and relationship between the engineering, production, and purchasing departments.

Subfactor I(a) also required that the offeror provide its approach to configuration management, including configuration control of documentation during integration of government and regulatory body comments, and of drawing changes and engineering change proposals. ETE's proposal did not address configuration management, i.e., the drawing configuration control process, which NOAA maintains would be critical to the complex requirements of the Delaware RTE. The proposal simply stated that detailed design drawings and calculations would be developed by ETE's engineers and naval architects using software programs, that the drawings would then be submitted to the regulatory bodies for review and approval, and that any comments would be incorporated in the development of final drawings. The evaluators concluded that this blanket statement did not demonstrate an understanding of the overall design and engineering effort required for drawing configuration control.

Subfactor I(a) required a discussion of the offeror's production approach, including ripouts, fabrication, outfitting and erection of new structure, installation of new equipment, overhaul and upgrades of existing equipment and systems, hauling or drydocking of the vessel, and test and trials. ETE's proposal provided no such discussion; it contained only a statement that ETE's production approach will be developed by ETE's computers using specified software and 10 pages of graphs depicting a "preliminary production schedule."

Subfactor I(a) required that offerors discuss their approach for meeting the alignment and leveling requirements for the granite reference block, verification of the transducer reference plane, and subsequent installation and verification of hull mounted transducers. Proposals were to contain a description of the offeror's plan for development of the pre-RTE and post-RTE docking plans, including verification of existing hull penetrations and transducers, and methods for accommodating the installation of the new ballast keel, new transducers, and bow thruster. Regarding these requirements, ETE's proposal stated only that:

"Special engineering calculations will be carried out prior to drydocking this vessel. These calculations will take into consideration keel block location, cribbing, weight distribution, interference with bow thruster installation and will be conducted by ETE's Naval Architects in conjunction with a certified Dock Master."

The proposal also did not mention an approach for the installation of the bow thruster, transducers, or the ballast keel during drydocking; did not present methods for accommodating the installation of the new ballast keel or new transducers, aspects of this topic considered critical by NOAA; and failed to provide a method of meeting alignment and leveling requirements for the granite reference block, which is important to the effectiveness of the ship's underwater sensors.

Subfactor I(a) required a description of the offeror's approach to the ship's test and trials program, including the roles and responsibility of the testing organization and its relationship to engineering, production, purchasing and quality assurance and the offeror's approach to development and validation of test and trials procedures and reports. With respect to this requirement, ETE's proposal stated only that:

"Testing and trials will be conducted in accordance with the Technical Publications as prescribed in the solicitation and in compliance with Regulatory Body Regulations. Schedules for tests and trials will be prepared in advance and submitted for approval."

Technical subfactor I(b), "Weight and Stability Control," required that proposals include a description of the offeror's approach to weight and stability management, particularly with respect to minimizing the growth of displacement and changes in centers of gravity resulting from the contract work. Weight and stability management is essential in order for the ship to effectively operate

without endangering the ship's crew and scientists. ETE's proposal provided the following:

"As specified in the solicitation upon arrival of the vessel in its facility, the Contractor will perform an initial Inclining Experiment and Dead Weight Survey to determine the vessel's light ship weight and vertical center of gravity on the pre-RTE condition. Thereafter, Contractor will perform additional experiments when necessary to verify the change in center of gravity and light ship weight as controlled via weight and moment reports."

The evaluators found ETE's proposed method of performing additional inclining experiments to be an unrealistic and costly method of managing and monitoring changes in the displacement and vertical center of gravity.

Under management subfactor II(a), "Resources and Schedules," the RFP required offerors to describe various aspects of their proposed facilities, schedules, integrated logistics support and quality assurance program, in sufficient detail to demonstrate their understanding of and capability of managing the required work effort. Subfactor II(a) specifically required that the offeror identify the engineering labor required to satisfy the contract requirements, and quantify it along with the total anticipated shipyard engineering effort. This information is absent from ETE's proposal. The evaluators considered this a major weakness in view of the significant level of engineering effort required (especially for the control of the ship's weight and stability and the reconfiguration of the ship's working deck), and particularly in view of the statement elsewhere in the proposal that the design approach would be developed in-house, and that engineering labor would be derived from technical and administrative staff. The evaluators found that neither the organizational chart nor the few key personnel identified to perform an engineering function provided adequate assurance that sufficient in-house engineering personnel would be available.

We find that ETE's proposal in fact lacked the information discussed above. Essentially, ETE did not provide sufficient detail to demonstrate its ability to perform the contract; rather, its responses constituted no more than blanket offers to comply with the RFP requirements. Such offers of compliance are not adequate substitutes for the detailed and complete technical information necessary to establish what the offeror proposes will meet the agency's

needs, InterAmerica Research Assocs., Inc., B-253698.2, Nov. 19, 1993, 93-2 CPD ¶ 288.² A proposal properly may be excluded from the competitive range for deficiencies which are so material that major additions and revisions would be required to make the offer acceptable; there is no requirement that an agency permit an offeror to revise an initial proposal when such a revision would be tantamount to the submission of a new proposal. Frequency Eng'g Labs., B-212516, Feb. 7, 1984, 84-1 CPD ¶ 151. Given the substantial omissions of information from ETE's proposal, the agency reasonably concluded that a rewrite of the proposal would be required to make it acceptable, and that the proposal therefore was outside the competitive range (and that discussions with ETE thus were not required).³

ETE maintains that, whatever the merits of its written proposal, its actual technical and administrative capabilities are extremely strong, as demonstrated by its prior contracts for similar ship repair/conversions. However, no matter how competent a contractor may be, a technical evaluation must be based on information in, or submitted with, the proposal. Yankee Mach., Inc., B-249183, Oct. 29, 1992, 92-2 CPD ¶ 294. An offeror must submit an adequately written initial proposal and demonstrate affirmatively the merits of its proposal or run the risk of having its proposal rejected as technically unacceptable. Id.; Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. As ETE did not do so, the evaluation of its proposal was proper.⁴

²In defense of its proposal's lack of detail, ETE also argues that the thoroughness of the specifications frequently did not allow for further elucidation on technical issues, and that the ordinary nature of the work to be performed did not require elaboration. Given the requirements for specific information, we think that ETE was obligated to respond more fully to the RFP.

³ETE maintains that it should have been included in discussions due to its alleged low price. However, it is proper to exclude a technically unacceptable offer from the competitive range regardless of its lower proposed costs. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228.

⁴ETE argues that the evaluation placed unreasonable weight on the proposals, and should have placed more weight on ETE's proven past history and related work experience. It also maintains that price should have been more determinative in the evaluation, and that the procurement should have been conducted using sealed bidding procedures
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Finally, ETE complains that contracting officials made the decision to eliminate ETE's proposal from the competitive range no later than September 28, and yet failed to so notify ETE until their letter of December 27. ETE claims that it was harmed by NOAA's delay because it was maintaining a financial exposure of \$1.2 million for a letter of credit, in lieu of a bid bond, that was costing roughly \$2,000 for each month of use. First, the record does not indicate the exact date on which the competitive range was determined. In any case, however, such a procedural defect provides no basis for questioning the award decision. See Paragon Dynamics, Inc., 72 Comp. Gen. 142 (1993), 93-1 CPD ¶ 248; Ross Aviation, Inc., B-236952, Jan. 22, 1990, 90-1 CPD ¶ 83.⁵

The protest is denied.

Michael L. Golden
 For Robert P. Murphy
 General Counsel

⁴ (...continued)
 or cost-based negotiated procedures. All of these arguments are based on characteristics of the procurement which were apparent on the face of the solicitation. Our Bid Protest Regulations require that such grounds for protest be raised no later than the closing time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (1995); Gordon R. A. Fishman, B-257634, Oct. 11, 1994, 94-2 CPD ¶ 133. Hence, those grounds for protest are untimely and will not be considered.

⁵In its comments on the agency report, ETE complains for the first time that NOAA either consulted or directly employed a private engineering firm for assistance in the evaluation of proposals, and that said firm may have had a vested interest in awarding to a specific contractor other than ETE. As we have found that the evaluation was consistent with ETE's proposal deficiencies, the possibility suggested by ETE is academic.