



G A O

Accountability \* Integrity \* Reliability

Comptroller General  
of the United States

United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** Global Technology Systems, Inc.

**File:** B-408461

**Date:** August 30, 2013

---

Michael Grosberg, Global Technology Systems, Inc., for the protester.  
Kyle E. Chadwick, Esq., Department of the Army, for the agency.  
Christopher L. Krafchek, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Protest challenging agency's rejection of proposal as technically unacceptable is denied where agency's evaluation was reasonable and consistent with solicitation terms.

---

### DECISION

Global Technology Systems, Inc. (GTS), of Framingham, MA, protests its exclusion from the competitive range under request for proposals number HQ0682-13-R-0008 (RFP) for high capacity batteries, issued by the Joint Improvised Explosive Device Defeat Organization (JIEDDO), a component of the Department of Defense. GTS challenges the agency's rejection of its proposal as technically unacceptable, arguing that the underlying evaluation was unreasonable and inconsistent with the terms of the RFP.

We deny the protest.

### BACKGROUND

On January 24, 2013, JIEDDO issued request for information No. W15QKN-13-R-0081 (RFI) for Counter Remote Control Improvised Explosive Device Electronic Warfare (CREW) high capacity lithium-ion batteries. Protest at 2. GTS responded to the RFI with a statement of interest and also indicated that it possessed the capability to meet the RFI's technical requirements. Id.

On April 1, JIEDDO issued solicitation number HQ0682-13-R-0007 seeking proposals for rechargeable lithium-ion batteries. GTS submitted a proposal in

response to this solicitation. Protest at 2. JIEDDO subsequently canceled the solicitation prior to evaluating proposals because the solicitation did not address first article testing. Contracting Officer's Statement (COS) at 1.

JIEDDO issued the current RFP (HR0682-13-R-0008) on May 16, seeking proposals to provide "Dismounted CREW Systems High Capacity Batter[ies]." RFP at 3. As specified in the solicitation, JIEDDO sought to procure up to 10,750 batteries at a fixed unit price, with first article testing at no extra cost to the government, and an option to purchase up to an additional 10,750 batteries. Id. at 3-5. The RFP stated that the proposed batteries must satisfy the salient characteristics of applicable military performance specifications and the additional specifications outlined in Section C of the RFP. Id. These specifications identified the battery's dimensions, weight, nominal and maximum voltage, watt-hour rating, capacity, discharge, pulse discharge, operating and storage temperature, and other technical details. Id. at 6.

The RFP included the clause at Federal Acquisition Regulation (FAR) § 52.212-1, entitled "Instructions to Offerors-Commercial Items," and advised prospective offerors that their offers must show, as relevant here:

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

\* \* \* \* \*

(11) If the offer is not submitted on the SF [Standard Form] 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

Id. at 10.

The RFP also included a modified version of the clause set forth at FAR § 52.212-2, and stated in relevant part, that JIEDDO would award the contract to the offer that conformed to the solicitation, and was most advantageous to the Government with price and other factors considered. Id. at 14. The factors to be evaluated were technical capability, ability to meet the delivery schedule, and price. Id. The RFP stated that the technical capability factor would be evaluated on a pass/fail basis and that the proposals would be evaluated based upon the described approach to meeting the specifications provided in Section C and the schedule provided in

Section F. Id. The RFP required initial delivery of 2,000 batteries within 60 days of award, and subsequent delivery of 2,000 batteries every 30 days until completion. Id. at 7.

JIEDDO received seven proposals in response to the RFP, including one from GTS. COS at 4. The GTS proposal consisted of a completed SF 1449, and a six-page narrative section that, in pertinent part, stated “[o]ur offer shall meet or exceed all requirements specified in the solicitation, as amended. It shall [be] branded, Global Technology Systems, Inc. and have the following part #: BB2590/99.” Agency Report (AR), Tab 5, GTS’s Proposal at 2. Within the narrative description, the proposal also included a table of “Key Competitive Advantages,” that identified GTS’s “[n]ew technology features” and “[p]ractical advantages to military.” Id.

On May 28, the technical evaluation team assigned a “fail” to GTS for the technical capability factor and the schedule factor. AR, Tab 6, Evaluation Report, at 1. Specifically, the technical evaluators found that GTS’s proposal was unacceptable for three reasons: (1) it failed to provide sufficient detail about how it would satisfy the applicable specifications; (2) it did not address how it would meet the required delivery schedule; and (3) it did not discuss whether the proposed battery had completed required testing procedures. Id.

On June 5, the contracting officer, acting as the source selection authority, established a competitive range before entering into discussions. AR, Tab 7, Competitive Range Determination, at 1. The contracting officer selected the three highest-rated offerors for inclusion in the competitive range. Id. at 6.

The contracting officer excluded the remaining offerors, including GTS, from the competitive range because their proposals were “technically unacceptable and not capable of being made acceptable without complete proposal resubmission.” Id. at 5. As relevant to GTS, the contracting officer found that the protester’s proposal was technically unacceptable because it “did not submit the required information for evaluation of their proposal against the specifications in Section C,” and also because it was “not clear [that] GTS’s proposal meets the desired schedule.” Id. at 4.

On June 7, JIEDDO notified GTS that it was not included in the competitive range. AR, Tab 8, Notice of Non-selection, at 1. In response, GTS requested a debriefing, which JIEDDO provided on June 11. AR, Tab 10, Debrief, at 1. On June 13, JIEDDO notified GTS that it intended to make awards to two other offerors. AR, Tab 11, Notice of Award, at 1. This protest followed.

## DISCUSSION

In its protest, GTS argues that JIEDDO unreasonably found its proposal technically unacceptable for two primary reasons. First, according to GTS, all of the

information necessary to determine the compliance of its proposed battery with the RFP's requirements was provided to the agency in its response to the RFI, in its proposal in response to the cancelled solicitation, and in its proposal in response to the RFP. Protest at 1-2. GTS further argues that this information, along with its repeated general assertions in its proposal that it could meet the requirements of the RFP, and its past performance of producing similar batteries, demonstrates that its proposal should not have been deemed technically unacceptable. Id. Second, GTS also argues that JIEDDO should have exercised its discretion to waive any alleged failure to sufficiently describe how its proposed battery met the requirements in the RFP. GTS's Comments on the AR, at 2.<sup>1</sup>

JIEDDO argues that the contracting officer properly excluded GTS from the competitive range because its proposal failed to provide sufficient detail describing how its battery met the salient characteristics outlined in the RFP and because GTS did not propose a delivery schedule.<sup>2</sup> JIEDDO also argues that the evaluators, and the contracting officer, properly limited the technical evaluation to the information contained in GTS's proposal. For the reasons discussed below, we find no basis to sustain the protest.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not independently evaluate proposals; rather, we review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and applicable statutes and regulations. SOS Int'l, Ltd., B-402558.3, B-402558.9, June 3, 2010, 2010 CPD ¶ 131 at 2. We have long held that the evaluation of proposals is a matter within the discretion of the procuring agency; we will question the agency's evaluation only where the record shows that the evaluation does not have a reasonable basis or is inconsistent with the RFP. Hardiman Remediation

---

<sup>1</sup> GTS also argues for the first time in its comments on the agency report that the agency placed undue emphasis upon price and improperly assumed that a lower price reflected a lower technical capability. We view GTS's price argument as constituting a new protest ground. This protest ground is untimely, as the protester did not file a protest with our Office challenging this matter within 10 days of when the protester knew or should have known that the agency excluded it from the competitive range. Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, a protest based on issues other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2013). GTS possessed all of the relevant facts to make this argument on the date it learned it was removed from the competitive range, June 7, 2013. Accordingly, this protest ground is dismissed.

<sup>2</sup> GTS did not specifically challenge the agency's other bases for finding that its proposal was unacceptable.

Servs., Inc., B-402838, Aug. 16, 2010, 2010 CPD ¶ 195 at 3. An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

Here, the RFP expressly required offerors to provide a “technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation.” RFP at 10. Moreover, the RFP also expressly advised offerors that a proposal that failed to furnish required information might be excluded from consideration. RFP at 10.

Based upon our review of the record, we find that the agency reasonably excluded GTS from the competitive range. The record reflects that GTS’s proposal failed to provide a narrative description of how its proposed battery satisfied the specifications identified in the RFP. AR, Tab 6, Technical Evaluation Report, at 1. Instead, GTS’s proposal described its new technology features and outlined what it believed to be the advantages those features would provide to the military, without explaining or describing how those features correlate to the Section C specifications. GTS Proposal at 2-4.

GTS does not specifically refute the agency’s findings regarding the missing information in its proposal. Rather, the protester argues that the agency should have considered all of the information GTS provided over the course of the entire procurement. In support of this argument, the protester asserts that the technical evaluators should have considered, as part of the technical evaluation, the pre-solicitation correspondence GTS had with agency personnel, GTS’s responses to the RFI and to the cancelled solicitation, and GTS’s past experience providing batteries to the Department of Defense.

Contrary to GTS’s arguments, a vendor is responsible for demonstrating affirmatively the merits of its quotation and risks rejection if it fails to do so. See HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5. Further, no matter how competent a vendor may be, the technical evaluation must be based on information included in the firm’s quotation. See Watson Indus., Inc., B-238309, Apr. 5, 1990, 90-1 CPD ¶ 371 at 3-4. In this case, because the RFP required the offerors to include specific technical information for evaluation, we consider reasonable the agency’s determination that the protester’s failure to submit the information rendered its proposal technically unacceptable and, as a result, the contracting officer properly excluded GTS from the competitive range. Accordingly, we see no basis upon which to disturb the agency’s technical evaluation or subsequent establishment of the competitive range.

Next, GTS argues that the agency should have exercised its discretion to waive the protester’s failure to provide the information required under the solicitation. We disagree. The protester cites no support for its argument that an agency should

waive an offeror's failure to provide information required under a solicitation. Moreover, an agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. Metcalf Constr. Co., Inc., B-289100, Jan. 14, 2002, 2002 CPD ¶ 31 at 6; Safety-Kleen (TS), Inc., B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Here, there is no evidence that the agency concluded that GTS's proposal met the government's needs--in fact, as discussed above, the agency found that the protester's failure to provide the required information precluded such a finding, and rendered its proposal unacceptable. On this record, we find no merit to the protester's argument.

The protest is denied.

Susan A. Poling  
General Counsel