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# Decision

**Matter of:** J.E. Federal Enterprises, LLC

**File:** B-422916

**Date:** December 4, 2024

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Shane J. McCall, Esq., Nicole D. Pottroff, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., and Annie E. Birney, Esq., Koprince, McCall & Pottroff, LLC, for the protester.

Nathaniel H. Sears, Esq., and Matthew Vasquez, Esq., Defense Health Agency, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging various terms of a solicitation as overly restrictive, unclear, and unreasonable is denied where the record shows that the terms are reasonably related to the agency's needs and provide offerors with sufficient detail to enable them to compete intelligently and on a relatively equal basis.

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## DECISION

J.E. Federal Enterprises, LLC, of Auburn, Alabama, protests the terms of request for proposals (RFP) No. HT001124R0073, issued by the Department of Defense, Defense Health Agency, for a clinical decision support (CDS) tool. The protester argues that various terms of the RFP are overly restrictive, unclear, and unreasonable.

We deny the protest.

## BACKGROUND

On August 6, 2024, the agency issued the RFP as a combined synopsis/solicitation pursuant to Federal Acquisition Regulation parts 12 (acquisition of commercial items) and 15 (negotiated procedures).<sup>1</sup> Agency Report (AR), Tab 30, RFP SAM.gov Contract

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<sup>1</sup> The agency amended the RFP four times. All citations are to the Adobe PDF page numbers of the documents referenced in this decision.

Opportunity Details; AR, Tab 31, RFP Combined Synopsis/Solicitation. The RFP seeks a contractor to provide a commercial-off-the-shelf, “comprehensive, current, evidence-based, and peer-reviewed CDS tool to be used at the point of care” and requires the CDS tool to “cover a broad range of medical disorders and diseases and provide recommendations, guidance, and advice to providers in identifying, treating, and managing the disease, disorder, or issue at hand.” AR, Tab 45, RFP Statement of Work (SOW) at 1-2; *see also* AR, Tab 31, RFP Combined Synopsis/Solicitation at 1. The RFP further explains that the CDS tool will be used by Defense Health Agency providers “with a wide range of education, training, and experience,” and is “a particularly critical resource for junior physicians, medics, and corpsmen who are often the sole health care provider in remote locations.” AR, Tab 45, RFP SOW at 1. In this regard, according to the RFP, the CDS tool is “critical to the delivery of safe, effective, and timely health care.” *Id.*

The RFP contemplates the award of a single fixed-price contract to be performed over one 8-month base period and four 12-month option periods. AR, Tab 31, RFP Combined Synopsis/Solicitation at 1. The RFP provides that award will be made on a best-value tradeoff basis considering a technical factor and a price factor. The RFP explains that the technical factor “is significantly more important than price” and includes two subfactors, accessibility, and quality of content, listed in increasing order of importance. AR, Tab 34, RFP Evaluation Criteria at 1-2.

The technical factor’s accessibility subfactor would be evaluated on an acceptable/unacceptable basis. This evaluation would consider the offeror’s response to the accessibility requirements in the SOW, including those “which are critical [ ] in the military operational environment.” AR, Tab 34, RFP Evaluation Criteria at 2. Of note, SOW requirement 2.3.5 requires the vendor to provide Digital Video Discs (DVDs), as follows:

The vendor shall provide a fully tested, functional, and of commercial-quality DVD containing all the same content as the online version in its entirety. Due to the lack of Internet connectivity on ships and deployed, remote locations, this requirement is of utmost importance. The DVD is also critical for use when, for operation security, providers are prohibited from carrying devices that can emit a “ping” or location signal (e.g., smart phone). The DVD shall be updated at a minimum three (3) times per year and be in alignment with the online updates.

AR, Tab 45, RFP SOW at 7.

The RFP requires offerors to deliver five DVDs for proposal evaluation and explains that the agency “will search, in the offeror’s DVD, a total of thirty-five (35) clinical queries on common diseases and clinical controversies on the content areas described” in the SOW to “evaluate the quality of the content of the offeror’s proposed solution.” AR, Tab 34, RFP Evaluation Criteria at 2; *see also* AR, Tab 33, RFP Instructions to Offerors at 2, 4. The technical factor’s quality of content subfactor would consist of three

elements: author expertise, expert recommendations, and atypical presentations. The quality of content subfactor would be evaluated and assigned a rating of outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 34, RFP Evaluation Criteria at 2-5.

On or before the September 10 due date for proposals, J.E. Federal submitted a proposal to the agency and also filed this protest with our Office.

## DISCUSSION

J.E. Federal challenges various terms of the RFP as overly restrictive, unclear, and unreasonable. The protester's many areas of concern include, but are not limited to: the requirement to provide DVDs; each of the three elements under the technical factor, quality content subfactor; and its allegation that the solicitation improperly limits the competition to one of the firm's competitors. We have considered all of the protester's arguments, including those that are in addition to or variations of those discussed below, and find no basis to sustain the protest.

### DVD Requirement

We first address the protester's complaints about the DVD submission requirement. Primarily, J.E. Federal argues that "[e]valuating the entire program via a DVD is unreasonable, unclear, and overly restrictive" as it "limits review to what is essentially an 'old' version for programs that update frequently" and, in the protester's view, is not the version that will be most widely used by the agency. Protest at 12-13. Specific to its proposed product, J.E. Federal also claims that "certain capabilities will not be demonstrated to their full potential if only evaluated on a DVD's content" because its product "has incorporated [REDACTED] into its program so it is constantly [REDACTED]." *Id.* at 12.

In response, the contracting officer explains that the agency "clearly identified the need for the 'fully tested, functional, and commercial quality DVDs' which should contain the same content as the online version in its entirety." Contracting Officer's Statement (COS) at 6; AR, Tab 45, RFP SOW at 7. As noted above, the RFP explains that the DVD requirement is "of utmost importance" and "critical for use when, for operation security, providers are prohibited from carrying devices that can emit a 'ping' or location signal[.]" AR, Tab 45, RFP SOW at 7. The contracting officer further explains that, while the selected contractor will be required to update the DVDs at least three times during the year, "for purposes of proposal evaluation, each offeror will be evaluated based on the content of the DVD version submitted with their proposal." COS at 6. Therefore, in the agency's view, this requirement "is a clear and reasonable way to satisfy the government's objectives in a manner that is not overly restrictive or prejudicial to any offeror." *Id.*

Indeed, with respect to the protester's concerns about its specific product, the agency reiterates that the RFP's requirement that "the DVD content is required to be the same as the online content" and responds:

J.E. Federal's concern that its online content will be updated after submission of the DVD demonstrates why evaluating the DVD instead of the online content is reasonable. Evaluation of the DVD establishes a common cut-off and ensures that offerors will be evaluated on an equal basis instead of being evaluated on content that could be edited weeks or months after the proposal submission deadline.

Memorandum of Law (MOL) at 13-14.

Where a protester challenges a specification or requirement, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. *Air USA, Inc.*, B-409236, Feb. 14, 2014, 2014 CPD ¶ 68 at 3. We examine the adequacy of the agency's justification for a challenged solicitation provision to ensure that it is rational and can withstand logical scrutiny. *AAR Airlift Grp., Inc.*, B-409770, July 29, 2014, 2014 CPD ¶ 231 at 3. Agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular criterion as long as the method chosen reasonably relates to the agency's needs in choosing a contractor and is not otherwise contrary to law or regulation. *Logistics Mgmt. Int'l, Inc.*, B-412837, June 6, 2016, 2016 CPD ¶ 159 at 3. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. See *Gallup, Inc.*, B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5.

In our view, the agency's justification for the DVD requirement is rational and reasonably related to its needs, and the protester's disagreement with the agency has not established that the requirement is unreasonable or contrary to procurement law or regulation. The agency has explained that it requires the CDS tool to be used at the point of care--which includes areas with operation security concerns--and to have the same content in both the DVD and the online version. The agency has also explained that evaluating a DVD establishes a common cutoff and basis for evaluating proposals, notwithstanding the protester's concerns about its own evolving product.

As an additional point of contention concerning the DVD requirement, while the protester also claims that the terms of the RFP concerning the number (five) and format of DVDs are unclear, the contracting officer informed our Office that the agency has already received J.E. Federal's DVD package and "determined that the submission complied with the solicitation's DVD submission requirements." COS at 5. In other words, as the agency asserts, "[d]espite its arguments that the solicitation's DVD submission requirements are unclear, J.E. Federal was able to submit DVDs consistent with the terms of the solicitation." MOL at 14-15.

While the protester continues to complain that “the fact that J.E. Federal guessed correctly does not erase the fact that the solicitation was ambiguous,” Comments at 4, we note that generally, a contracting agency must provide offerors with sufficient detail in a solicitation to enable them to compete intelligently and on a relatively equal basis. *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 12. Here, the protester has not shown that the terms of the solicitation were inconsistent with that standard. Given the agency’s representation that J.E. Federal’s submission complied with the DVD requirement, we find no basis to further address the protester’s allegation that the requirement was unclear.

#### Technical Factor, Quality Content Subfactor

Next, J.E. Federal challenges virtually every aspect of the terms of the RFP concerning the technical factor’s quality content subfactor. As noted above, the quality content subfactor would consist of three elements: author expertise, expert recommendations, and atypical presentations. J.E. Federal contends that all three elements are flawed in multiple respects. We address two representative examples below.

#### Author Expertise Element

As a first representative example, we address the protester’s concerns about the author expertise element. The RFP provides that the agency will evaluate the degree and extent to which the search results of the offeror’s CDS tool meet SOW requirement 2.1.19, which begins with: “The lead or primary author/writer of each topic shall be an expert in the clinical subspecialty.” AR, Tab 45, RFP SOW at 5. The RFP further provides that an adjectival rating will be assigned based on the percentage of authors that are professors or associate professors. AR, Tab 34, RFP Evaluation Criteria at 3.

J.E. Federal argues that the terms of the RFP concerning the author expertise element are overly restrictive because “[t]here is no rational reason for valuing professors over other medical professionals.” Protest at 17. In the protester’s view, “this requirement would penalize those offerors that use editorial teams comprised of recognized experts in their medical specialty fields and that are [REDACTED].” *Id.*

In the agency’s view, this requirement is reasonable and not overly restrictive. The contracting officer explains that the agency considered various methods of defining author expertise and determined that “identifying an author’s position as a professor or associate professor was the only practical, objective, and effective method for purposes of evaluating proposals.” COS at 10-11. The agency further explains that its determination “was based on the understanding that academic rank is readily available and is directly linked to specialized experience.” *Id.* at 11. While J.E. Federal argues that the terms of the RFP should be amended to include considering [REDACTED] as an alternative measure of author expertise, the agency explains that it “considered [REDACTED], but this would only indicate that an author met the minimum requirement for knowledge and skills acquired during their medical education” and that it was already

“assume[d] that all authors of clinical decision support tools are [REDACTED].” *Id.*; AR, Tab 46, Decl. of Agency Program Director at 4.

On this record, we find no basis to object to the terms of the author expertise element. As noted above, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular criterion as long as the method chosen reasonably relates to the agency’s needs in choosing a contractor and is not otherwise contrary to law or regulation. *Logistics Mgmt. Int’l, Inc.*, B-412837, June 6, 2016, 2016 CPD ¶ 159 at 3. In our view, the agency’s explanation for how it considered various methods of defining author expertise, and its selection of professors under these circumstances, withstands logical scrutiny, and the protester’s disagreement does not establish that the agency’s judgment is unreasonable.<sup>2</sup>

### Expert Recommendations Element

As a second representative example, we address the protester’s concerns about the expert recommendations element. The RFP provides that the agency will evaluate the degree and extent to which the search results of the offeror’s CDS tool meet SOW requirement 2.1.5:

The topic reviews shall include expert recommendation, guidance, and advice from the author/writer to assist providers with the practice of medicine. The expert topic author/writer shall apply clinical gestalt and clinical experience to guide and advise providers on diagnosis, treatment, and management of diseases, disorders, and conditions and on interpretation and application of guidelines, published studies, and other evidence.

AR, Tab 45, RFP SOW at 3. The SOW requirement further specifies the required percentage of recommendations in certain medical situations where, for example, guidelines and studies are conflicting, inconclusive, or lacking. *Id.* The RFP further provides that an adjectival rating will be assigned based on the percentage of clinical topics that have specific recommendations. AR, Tab 34, RFP Evaluation Criteria at 4.

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<sup>2</sup> While J.E. Federal initially raised another complaint about the author expertise element—that is, that the agency should also consider individuals identified as “editors” to count as “authors,” Protest at 22--the record shows that the agency has already taken this aspect into consideration. The record shows that the agency amended the RFP after engaging in clarifications about J.E. Federal’s proposal to remove a requirement that “[a]n editor is not considered a writer or author.” AR, Tab 44, RFP amend. 0001; see also AR, Tab 43, J.E. Federal’s Resp. to Agency Req. for Clarifications. Indeed, in its comments, J.E. Federal does not further address this aspect, and we consider it abandoned. *IntelliDyne, LLC*, B-409107 *et al.*, Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3.

J.E. Federal argues that the terms of the RFP concerning the expert recommendations element are “narrowly drafted” to exclude the consideration of terms other than “recommendation”—such as “treatment” and “management” that the protester contends may be used in other offerors’ products. Protest at 19. In the protester’s view, the requirement contains “no benefit to the government” other than favoring a product that uses the specific term “recommendation” over others. *Id.*

The agency responds that the protester makes an unfounded assumption by suggesting that “evaluators will only look to labels rather than the substance of the topics reviewed.” MOL at 24. The agency points to the extensive language and examples used in the RFP for the expert recommendations element and argues that, contrary to the protester’s position, the terms of the solicitation provide that the agency intends to review the entirety of a topic, rather than focusing on whether a specific word like “recommendation” is used. As the agency puts it, “J.E. Federal ignores, however, that the word ‘recommendation’ is a word in common usage, not a proprietary term nor even a term of art.” *Id.*

On this record, we agree with the agency that it is unreasonable for J.E. Federal to assume that the RFP provides for a narrow evaluation based merely on whether the word “recommendation” is used in the offeror’s product. As noted above, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition, and we will not object to the absence or presence of a particular criterion as long as the method chosen reasonably relates to the agency’s needs in choosing a contractor and is not otherwise contrary to law or regulation. *Logistics Mgmt. Int’l, Inc.*, B-412837, June 6, 2016, 2016 CPD ¶ 159 at 3. The terms of the RFP do not support the protester’s narrow view that the agency will only give credit for the literal use of the word “recommendations” and are instead consistent with the agency’s reasonable explanation for how it will review substance. In sum, the protester’s various complaints about the terms of the RFP under the quality content factor, including the representative examples about elements discussed above, are denied.

### Limiting Competition

As a final matter, as a common theme in its various filings, J.E. Federal claims that the RFP “limit[s] competition to one potential provider” and “result[s] in what is effectively a sole source award disguised as a competitive acquisition.” Protest at 1. In this regard, J.E. Federal claims that the RFP is designed to favor the software provided by a competitor, UpToDate, because the agency had previously awarded a sole-source contract to UpToDate, canceled that award after it was protested, and then issued the present RFP for full and open competition. Along with its challenges to the terms discussed in the representative examples above, J.E. Federal argues that the solicitation “makes it nearly impossible for any offeror, aside from UpToDate whose product uses exactly those terms, to submit an intelligent bid.” *Id.* at 2.

First, J.E. Federal's reliance on the agency's actions in a superseded procurement are inapposite. We note that, in general, each procurement stands alone, and actions taken in a different procurement are not relevant to our consideration of the agency's actions in this procurement. See, e.g., *Genesis Design and Dev., Inc.*, B-414254, Feb. 28, 2017, 2017 CPD ¶ 79 at 3 n.2.

Moreover, the agency asserts--and we agree, as discussed in the representative examples above--that the solicitation "does not favor one offeror over others" and is instead reasonably crafted to meet the agency's needs. MOL at 24. For example, we are unpersuaded that the presence of commonly used, non-proprietary phrases like "recommendations" in the RFP is designed to favor one competitor over another. Even so, we note that, in general, an agency is not required to construct its procurements in a manner that neutralizes the competitive advantage of some potential offerors, and the fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. *Construction Helicopters, Inc., d/b/a CHI Aviation*, B-420982.5, May 5, 2023, 2023 CPD ¶ 109 at 5. While J.E. Federal continues to speculate that the terms have "the potential to favor one offeror over the other," Comments at 2, the protester has not demonstrated that meeting the requirements is impossible or that the agency's judgments are otherwise unreasonable. Accordingly, this protest ground is denied.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel