



Comptroller General  
of the United States

Washington, D.C. 20548

Arsencff  
143700

## Decision

**Matter of:** ITT Electron Technology Division

**File:** B-242289

**Date:** April 18, 1991

Richard L. Moorhouse, Esq., and Kathleen E. Troy, Esq., for the protester.  
Ruth E. Ganister, Esq., Rosenthal & Ganister, for Burle Industries, Inc., an interested party.  
Jonathan Kosarin, Esq., and Kim Lantz Yoder, Esq., Department of the Navy, for the agency.  
Robert C. Arsencff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Meaningful discussions were not provided regarding perceived informational deficiencies in a proposal relating to parts cleaning and traceability where the agency did not inform the offeror of these problems in a sufficiently clear manner to alert the offeror to the agency's concerns.
2. Where a solicitation provision limited the number of pages to be contained in offers, the agency's review of a proposal appendix which exceeded the limitation was improper because it provided one offeror an evaluation opportunity not provided to others.

### DECISION

ITT Electron Technology Division protests the award of a fixed-price contract to Burle Industries, Inc. under request for proposals (RFP) No. N00104-90-R-G086, issued by the Department of the Navy for tetrode-type power amplifier tubes (PATs) which are used in the AN/SPS-40 shipboard radar system. The protester principally argues that the agency failed to disclose significant evaluation subcriteria in the RFP, that failure to conduct meaningful discussions combined with a misreading of its proposal led to an improper technical evaluation, and that competing offers were not evaluated on a common basis.

We sustain the protest.

## BACKGROUND

Section M of the RFP provided that award would be made to the offeror whose proposal was determined to be most advantageous to the government based on an analysis of technical factors and price. The weighted value of price was described as being less than one-half of the value of all the technical factors. The three listed technical factors were:

(1) technical approach, (2) quality assurance (QA) (described as being of equal value), and (3) organization and management (described as being of slightly less value than either of the other two). Section L of the RFP, which provided guidance in structuring proposals, further broke the technical factors down into a total of ten subfactors as follows:

"I. ELEMENT-TECHNICAL APPROACH: Ability to integrate tetrode tube knowledge and experience with optimal manufacturing techniques.

"A. The Specification-Demonstrate a thorough understanding of the electrical requirements, physical principles and functional operating interrelationships of the Power Amplifier Tube (PAT), (5 page maximum (PM)).

"B. The SOW-From a manufacturing point of view, describe the most salient criteria for manufacture, test and acceptance of PATs; and the significance and interrelationship of MIL specifications to the PAT specification and the SOW (5 PM).

"C. Manufacture-Demonstrate a thorough understanding of the materials, methods, techniques, equipments, and/or tools needed to assure PATs conformance with Operating Life Requirements and Conditions (5 PM).

"II. ELEMENT-QUALITY ASSURANCE (QA): Knowledge of QA requirements and the ability to utilize them to monitor materials, workmanship, and equipment.

"A. QA Knowledge-Communicate how MIL-Q-9858 relates to the PAT specification and SOW (5 PM).

"B. QA Application-List the ten most important QA, in-process production inspection/check/test points for manufacturing PATs. Explain the significance of each point, the techniques/procedures used to collect data, and the acceptance criteria/standards required to continue processing (3 PM).

"C. QA Authority-Define the organizational philosophy, job titles, authority, and reporting relationships associated with those individuals who approve/disapprove further processing at each of the ten in-process QA inspection points listed in II B. . . . (3 PM).

"III. ELEMENT-ORGANIZATION AND MANAGEMENT: Possession of relevant knowledge organized for maximum effectiveness.

"A. Manufacturing Qualifications-Furnish a detailed resume of the person in charge of quality assurance operations at the facility where the PAT will be assembled. . . .

"B. Quality Assurance Qualification-Furnish a detailed resume of the person in charge of quality assurance operations at the facility where the PAT will be assembled. . . .

"C. Organization of Tasks-Describe in detail, the organization of tasks associated with the process of cathode fabrications, conditioning and assembly of the PAT structure. . . . (3 PM).

"D. Electron Tube Manufacturing Knowledge-At the facility of proposed PAT manufacture, detail the specifics of tube contracts secured during the past five years. . . ."

Under the evaluation plan used in the procurement, and consonant with the relative factor weights set forth in the RFP, the technical approach and QA factors were each worth a total of 25 weighted points and the organization and management factor was worth 20 weighted points. (Price was worth 30 points.) Also, under the evaluation plan, each subfactor was graded on a five-part descriptive scale<sup>1/</sup> to which specific raw scores were assigned by the Proposal Evaluation Committee (PEC). The subfactor grades were totaled within each factor and the result was mathematically converted to represent the weight of the factor. The weighted technical points were added to the weighted price points to obtain a final rating which was used to determine which proposal was most advantageous.

Early in the evaluation process, one of the four members of the PEC developed a checklist of elements he believed important for a proposal to address in response to four of the

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<sup>1/</sup> The scale was as follows: far exceeds normal, exceeds normal, meets normal, meets minimum, fails to meet minimum.

ten subfactors. The checklist (which in three instances stated that the elements were listed in order of importance) was used by the PEC in both the evaluation of initial and revised proposals.

Of the four initial proposals received, this decision focuses on those of ITT and Burle since they were the only two firms in contention for the award. ITT initially offered a price of \$2,467,500, which translated into a maximum of 30 price points; Burle's initial price of \$5,273,100 converted into 14 price points; however, when combined with the firms' respective technical point totals the initial evaluation led to the following results:

| <u>Firm</u> | <u>Tech. Pts.</u> |   | <u>Price Pts.</u> |   | <u>Final</u> |
|-------------|-------------------|---|-------------------|---|--------------|
| Burle       | 66                | + | 14                | = | 80           |
| ITT         | 45                | + | 30                | = | 75           |

The Navy reports that unless the technical proposal was ranked in one of the two top descriptive rating categories (i.e., far exceeds normal, exceeds normal) for a given subfactor, it was regarded as deficient for that subfactor and a written discussion question was posed to the offeror. Burle's proposal was not regarded as deficient in any area and the firm was asked no questions during written discussions. On the other hand, ITT's proposal was regarded as deficient under eight subfactors and, as a result, the firm was asked to respond to eight questions, although, as will be seen below, not all eight of these areas are the subject of this protest.

The final evaluation was as follows:

| <u>Firm</u> | <u>Tech. Pts.</u> |   | <u>Price Pts.</u> |   | <u>Final</u> |
|-------------|-------------------|---|-------------------|---|--------------|
| Burle       | 69                | + | 19                | = | 88           |
| ITT         | 55                | + | 30                | = | 85           |

As a result, Burle was awarded a contract on November 27, 1990. ITT was debriefed on December 5 at which time the protester was provided with the subfactor checklists used by the PEC as well as a list of "weaknesses" found in its proposal. Of the seven areas discussed at the debriefing, the six listed below are in dispute here.

Under subfactor IA (approach/specification), the PEC faulted ITT's treatment of Environmental Stress Screening (ESS) as being overly concerned from a "design" perspective rather than a production perspective.

Under subfactor IB (approach/statement of work (SOW)), the PEC faulted ITT's discussion of various RFP testing

requirements as a misconception since it emphasized that testing would increase average tube life whereas the purpose of testing, in the PEC's view, was to insure that each tube met minimum performance requirements.

Under subfactor I.C. (approach/manufacture), the PEC faulted ITT's discussion of the cleaning of parts during manufacture as inadequate.

Under subfactor II.A. (QA/knowledge), the PEC faulted ITT's proposal as presenting an inadequate discussion of the traceability of parts through production to a particular end-product.

Under subfactor III.A. (organization and management/qualifications), the PEC faulted ITT's proposal for failing to propose a production manager with sufficient experience.

Under subfactor III.D. (organization and management/electron tube manufacturing experience), the PEC faulted ITT for having limited experience with the type of tube sought by the RFP and a deficient record with regard to meeting delivery schedules.

ITT first argues that it was prejudiced as a result of the Navy's failure to disclose the contents of the PEC evaluation checklists in the RFP and in essence contends that they represent "significant subfactors" which must be disclosed in the RFP pursuant to Federal Acquisition Regulation (FAR) § 15.605(e). Next, ITT maintains that, with respect to the six areas listed above, it was denied an opportunity to address the PEC's concerns because discussions were not meaningful and that, in certain cases, the RFP did not clearly require the information. Finally, ITT objects to the PEC's consideration of the appendix to Burle's proposal since other offerors were confined to the RFP page limitations.

We have reviewed each of ITT's allegations and find that, with respect to the issue of not disclosing the PEC checklists and to four of the six specific areas of dispute, there is no legal basis for objecting to the manner in which the procurement was conducted. However, with respect to the PEC's concerns about parts cleaning (subfactor I.C.) and traceability (subfactor II.A.), we find that the Navy failed to conduct meaningful discussions. We also find that the agency's consideration of the 83-page appendix to Burle's proposal effectively accorded that firm an opportunity which was denied to other offerors due to page limitations established by the RFP. In view of the closely scored competition, these defects in the procurement process may well have impacted upon the selection decision and we, therefore, sustain the protest on these grounds.

## UNDISCLOSED SUBFACTORS

The protester argues that the Navy was required to disclose the checklists employed by the PEC during the evaluation since, in its view, they constituted significant evaluation subfactors. The Navy argues that it was not required to disclose the list because its elements were, in fact, logically related to the stated evaluation criteria.<sup>2/</sup>

Under the law applicable to this procurement, agencies are required to set forth all significant evaluation factors in the RFP, 10 U.S.C. § 2305(a)(2)(A) (1988), but need not specifically identify subfactors if they are sufficiently related to the stated criteria so that offerors would reasonably expect them to be included in the evaluation. Coopers & Lybrand, 66 Comp. Gen. 216 (1987), 87-1 CPD ¶ 100.

There is nothing in the evaluation record which suggests that the elements on the list are not directly related to the subject matter of the subfactor for which it was prepared. Even ITT concedes that "some" of the elements are so related and points to no particular one which is not. Thus, we have no basis to object to the use of the checklist without disclosure in the RFP. Coopers & Lybrand, 66 Comp. Gen. 216 (1987) supra.

## DISCUSSIONS/EVALUATION

ITT objects to the agency's conduct of discussions and evaluation with respect to six specific areas of its proposal. In this regard, the protester variously alleges that discussions were not meaningful and that, in its view, the PEC's conclusions about its proposal reflect a misreading of it which led to an unreasonable downgrading.

Contracting officers are required to conduct discussions with all offerors in the competitive range, FAR § 15.610, and although agencies are not required to afford all-encompassing discussions, the discussions must be meaningful and, in general, that means that agencies must lead offerors into

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<sup>2/</sup> For example, under subfactor IB (Technical Approach/Statement of Work) the list contained the following elements:

- (1) CM Requirement
- (2) QA Requirement MIL-I-45208 and MIL-Q-9858
- (3) Product Baseline Definition
- (4) IRB Authority
- (5) Repairability Demonstration

areas of their proposals which are of concern to the evaluators and which require amplification or correction. Jaycor, B-240029.2 et al., Oct. 31, 1990, 90-2 CPD ¶ 354. In this regard, discussions should be as specific as practical considerations will permit and, where they are unnecessarily general, we will sustain a protest and in most instances recommend reopening negotiations. Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300. This is especially true where proposal defects are largely informational in nature, in which case it is incumbent upon the agency to be as clear and precise as possible in informing an offeror of informational gaps in its proposal. Techniarts Eng'g, B-234434, June 7, 1989, 89-1 CPD ¶ 531. In addition, an agency may not inadvertently mislead an offeror through the framing of a discussion question into responding in a manner which does not address the agency's concerns. Vitro Servs. Corp., B-233040, Feb. 9, 1989, 89-1 CPD ¶ 136. In this connection, we find that of the six disputed areas, the agency failed to conduct meaningful discussions in two: parts cleaning and parts traceability.

#### Parts Cleaning

Under subfactor I.C., offerors were required to demonstrate a thorough understanding of the materials, methods, techniques, equipment and tools needed to insure PAT conformance with RFP operating life requirements. The PEC faulted ITT's proposal for not addressing the cleaning of parts in sufficient detail under this subfactor. During discussions, ITT was asked:

"What is your technical approach to the processing of parts, subassemblies and assemblies that will assure conformance with the operating life requirements and conditions?"

Both the agency and ITT recognize that the cleaning of parts is a routine, albeit important, matter in PAT production. It is the protester's position that, if the agency wanted a detailed discussion of parts cleaning, it should have asked clearly and directly for the information. The agency responds that the "processing of parts" as used in the discussion question included parts cleaning and that, therefore, discussions were adequate in that they led ITT into the area of its proposal in need of amplification. We disagree.

In the Navy's report in this matter, the agency recognizes that "parts processing" includes, in addition to cleaning, inspection, deburring, vacuum firing, hydrogen firing, storage and protection, "etc." The RFP nowhere asked for a specific discussion of parts cleaning and the discussion question posed to ITT also did not specifically mention it. Further, the agency does not argue that ITT was downgraded

because it thought that the firm did not understand that parts cleaning was a necessary process; it argues only that ITT's discussion of the subject lacked sufficient detail. Thus, in the context of this procurement, we fail to see how an offeror such as ITT was reasonably on notice that, of the variety of elements comprising parts processing, the Navy believed its proposal was deficient as a result of a failure to provide information about how it proposed to clean parts unless a specific question mentioning the term "cleaning" was presented. The problem perceived with ITT's proposal was largely informational in nature, and especially since the RFP did not specifically mention parts cleaning, we fail to see why the agency should not have informed ITT about the informational gap in its proposal in a clear and precise manner. Techniarts Eng'g, B-234434, supra. Under these circumstances, we find that meaningful discussions were not conducted because the question presented to the protester lacked sufficient specificity. Data Preparation, Inc., B-233569, supra.

#### Parts Traceability

Under subfactor II.A., ITT's proposal was faulted for a failure to provide information concerning a system of parts traceability. While, under another subfactor, ITT was credited with understanding the importance of the concept of traceability, the PEC downgraded the firm under II.A. for not describing its system of traceability--i.e., the method of identifying parts during production so that if an end item is defective, the contractor will know what parts may have caused the defect.

- During discussions concerning this problem, ITT was asked:  
"What system do you propose to identify end item problems resulting from piece part deficiencies used earlier during manufacture?"

In its response, ITT described a corrective action system for reporting nonconforming material which identifies end item problems. The protester maintains that the discussion question is, in essence, inverted, and therefore misleading; in ITT's view, if the Navy wanted a description of its system to identify which parts were defective, which it apparently did, the question should have clearly asked for such a description and not for a description of a system to identify end item problems.

We agree that the question is misleading--it does not convey the PEC's concerns that parts be identifiable through manufacture (an RFP requirement), but rather asks for a system of identification relating to end items. We perceive no reasonable way that ITT should have understood the question to

relate to parts identification. Thus, we find that meaningful discussions were not conducted in this respect also.

We have carefully reviewed the record concerning the remaining four disputed areas: ESS, testing and tube life, personnel qualifications, and corporate electron tube experience and in each of these areas, we find that the agency's evaluation conclusions were reasonable and the discussions conducted adequate.

#### BURLE APPENDIX

As indicated above, the agency says it did not review the 83-page appendix to Burle's proposal during the initial evaluation because the RFP placed page limitations on the sections of proposals relating to all of the subfactors but those pertaining to the submission of resumes of key personnel or to the firm's past experience; however, the agency reports that, since Burle was not asked to revise its technical proposal during discussions and the other offerors were given additional pages (subject to the same subfactor limitations as initial proposals) to respond to discussion questions, the appendix was reviewed as a matter of "fairness" to Burle in the final evaluation. As a result, Burle's final score was increased by three points--the final margin of difference between the awardee and ITT. ITT essentially objects on the basis that Burle was accorded an opportunity to expound on various technical subjects in its appendix while other offerors were held to page limitations. The agency responds by stating that only one member of the PEC actually read the entire appendix, and that Burle's score was increased in one area which was not subject to a page limitation, and in another where the limitation was five pages--but by reference to only one page of its appendix in the latter case.

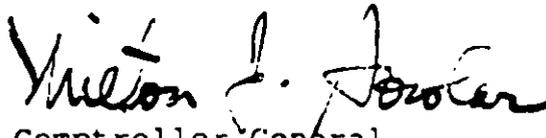
We have reviewed the appendix and find that Burle made extensive reference to it in its initial proposal, sometimes in order to take advantage of an opportunity to elaborate on matters subject to page limitations contained in the RFP--matters for which it received high ratings. Whether or not Burle was purposely using the appendix to avoid the page limitations, we believe the agency's defense of its review of the appendix during final evaluations misses the point. It does not matter that only one evaluator read the entire appendix or that only one or two pages actually contained information used to raise the awardee's score. The point is that the agency reviewed the entire appendix for information which proved valuable to Burle and no other offeror was accorded such an opportunity. Further, it does not matter that ITT was able to submit additional material in response to the discussions since this additional material permitted did not approach the 83-page volume of Burle's appendix.

Offerors are obligated to establish the relative suitability of their proposals within RFP format limitations such as those applicable to the number of pages in a proposal, and if they do not, they are not entitled to further consideration. See Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58. This constitutes unequal treatment; accordingly, we conclude that the agency acted improperly in considering this additional material and increasing Burle's score based upon this material.

#### RECOMMENDATION

In view of the close overall scores received by ITT (85) and Burle (88), it is clear that the three defects which we have found in the Navy's procurement process could have easily had an impact on the final selection. In fact, the point difference in the scores can be attributed alone to the agency's consideration of the appendix. Under these circumstances, the appropriate remedy is a reopening of discussions to give all offerors in the competitive range an opportunity to amend their proposals which would then be subject to evaluation on a common basis. That remedy is not practical here since performance of the contract is well underway and the Navy has informally advised us that the delivery schedule has been accelerated since the tubes are needed as soon as possible. Under the circumstances, we find the protester is entitled to recover its proposal preparation costs since the effect of the Navy's improper actions was to deny it a meaningful opportunity to compete, and we find that ITT is also entitled to recover the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1991); Data Preparation, Inc., B-233569, supra.

The protest is sustained.

*for*   
Comptroller General  
of the United States