



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Engineering Sciences, Inc.

File: B-226871

Date: July 29, 1987

DIGEST

1. General Accounting Office (GAO) review of agency selection of an architect-engineer (A-E) contractor is limited to examining whether selection is reasonable. It is not GAO's function to determine the relative merit of the submissions of A-E firms. GAO will question the agency's judgment only if it is shown to be arbitrary.
2. Protester's contention that it has received extremely favorable evaluations of its professional qualifications by other agencies under previous competitions for A-E projects does not establish that the procuring activity was arbitrary in rating the protester lower than competing firms.
3. Protester is not entitled to credit for all of the experience and other professional qualifications of another A-E firm simply because the principals who recently established the protester's firm previously worked together as a group in the other firm.

DECISION

Engineering Sciences, Inc. (ESI) protests the Department of the Army's selection of Burns & McDonnell as the firm with which to negotiate an architect-engineer (A-E) contract for performance of an energy audit of all buildings and energy related equipment at the Memphis, Tennessee Defense Depot. ESI contends that because the Army did not properly apply the evaluation criteria published in the Commerce Business Daily (CBD) notice, ESI was unfairly eliminated from the "short list" of firms with which discussions were conducted. ESI contends that it is better qualified to perform the services than the selectee, Burns & McDonnell.

We deny the protest.

Generally, under the selection procedures set forth in the Brooks Act, 40 U.S.C. §§ 541-544 (1982), which governs the procurement of A-E services, and in the implementing

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regulations in the Federal Acquisition Regulation (FAR), 48 C.F.R. §§ 36.00-36.09 (1986), the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board set up by the agency evaluates the A-E performance data and statements of qualifications already on file, as well as those submitted in response to the announcement of the particular project. The board must then conduct "discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required service." 40 U.S.C. § 543 (the "short list"). The firms selected for discussions should include "at least three of the most highly qualified firms." FAR, 48 C.F.R. § 36.602-3(c). Thereafter, the board recommends to the selection official, in order of preference, no less than three firms deemed most highly qualified.

The selection official, with the advice of appropriate technical and staff representatives, then lists, in the order of preference, the firms most qualified to perform the required work. Negotiations are held with the firm ranked first. If the agency is unable to agree with that firm as to a fair and reasonable price, negotiations are terminated and the second ranked firm is invited to submit its proposed fee. See generally FAR, 48 C.F.R. Subpart 36.6.

On December 11, 1986, the Army announced the requirement in a CBD synopsis which listed the selection criteria, by reference to CBD note 62, as consisting of:

"(1) Professional qualifications necessary for satisfactory performance of required services; (2) specialized experience and technical competence in the type of work required; (3) capacity to accomplish the work in the required time; (4) past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules; (5) location in the general geographical area of the project and knowledge of the locality of the project . . . ; and (6) the volume of work previously awarded to the firm by the Department of Defense . . . with the object of effecting an equitable distribution of Department of Defense contracts"

The CBD notice invited all interested qualified firms to submit Standard Forms 254 and 255 outlining their qualifications for the project. The Army's preselection board reviewed the forms for the 40 firms which responded to the announcement. Ten firms, including ESI, were recommended by the board for further consideration. A selection board

then scored these 10 firms under the evaluation criteria, with a maximum possible score of 100 points, consisting of 30 points under criterion 1, 25 points under criterion 2, 15 points under criterion 3, and 10 points each under criteria 4, 5 and 6. The board contacted the four highest ranked firms, which had obtained scores ranging from 79 to 84.5, for telephone discussions. ESI, with a score of 73, was not contacted. As a result of the telephone discussions, the evaluations were rescored and three of the firms had their total scores reduced in amounts ranging from two to seven points. In each instance, the reduction was under criterion 6, reflecting the fact that the firms had actually received a higher volume of DOD contracts during the past year than had previously been calculated. The fourth firm's score remained unchanged. Based on these scores, the board recommended the three highest scored firms as most qualified to perform the required services. Burns & McDonnell, with the highest final score of 79, was recommended as the most qualified. On April 17 the Commander adopted the board's findings and chose Burns & McDonnell as the most qualified firm. The Army notified ESI that it had not been selected on April 20, and ESI received a debriefing on the same day. Thereupon, ESI protested to our Office.

Our review of the agency selection of an A-E contractor is limited to examining whether that selection is reasonable. We will question the agency's judgment only if it is shown to be arbitrary. Leyendecker & Cavazos, B-194762, Sept. 24, 1979, 79-2 C.P.D. ¶ 217. In this regard, the protester bears the burden of affirmatively proving its case. Albert C. Martin and Associates/Daniel, Mann, Johnson and Mendenhall, B-221746, Apr. 7, 1986, 86-1 C.P.D. ¶ 343.

Further, it is not the function of our Office to make our own determination of the relative merits of the submissions of A-E firms. The procuring officials enjoy a reasonable degree of discretion in evaluating such submissions and we will not substitute our judgment for that of the procuring agency by conducting an independent examination. Y.T. Huang & Associates, Inc. B-217122; B-217126, Feb. 21, 1985, 85-1 C.P.D. ¶ 220.

The Army determined that ESI was weaker than the three firms selected with respect the first three criteria: professional qualifications, specialized experience and capacity to perform in the required time. The crux of ESI's contention is that it has such extensive and highly specialized expertise, qualifications and experience that it is inconceivable that Burns & McDonnell, or any of the other firms, reasonably could have been scored significantly

higher. ESI contends that its position is supported by the fact that it has been consistently highly rated in its prior submissions for other DOD A-E contracts. However, in essence, this allegation constitutes no more than a disagreement of opinion with the Army evaluators, who concluded that the firms selected had better qualifications. Mere disagreement by the protester with the agency's evaluation does not render the evaluation unreasonable. Gamma Corp., B-222548.3, Feb. 17, 1987, 87-1 C.P.D. ¶ 167.

ESI's specific objections to the evaluation procedure arise in large measure because ESI was not credited with points for the expertise and experience of another firm, Energy Solutions, Inc. In the cover letter which it submitted to the Army, ESI stated that it was a relatively new firm, but that the experience of most of its personnel was gained mainly by working together as a group at Energy Solutions, which these people left to form ESI because of a change in Energy Solution's ownership. In evaluating past performance under criterion 4, ESI contends that it was entitled to additional points for work performed by Energy Solutions, but the Army considered only work actually performed by ESI. We believe the Army acted reasonably in this respect. ESI did not make clear its relationship with the predecessor firm, beyond what was noted above in its cover letter. In any event, we have held that a newly formed firm is not necessarily entitled to credit for experience of a predecessor firm at which its principal employee was employed. Airtronix, Inc., B-217087, Mar. 25, 1985, 85-2 C.P.D. ¶ 345. The same considerations apply to criteria 1 through 3 to the extent that ESI contends it is entitled to full credit for the accomplishments, qualifications and expertise of Energy Solutions.

ESI also questions the Army's reliance on and exclusive use of the A-E contract administration support system (ACASS) data as a basis for rating the competing firms' experience. ESI contends that this does not give sufficient weight to non-government performance, and that the data in the ACASS files are inaccurate. However, under FAR, 48 C.F.R. § 36.603, agency A-E evaluation boards are required to maintain such data files, and to utilize these files in the evaluation of A-E firms. With respect to non-government performance, the Army credited all of the A-E firms with 4 points out of the total of 10 points which were possible for both government and non-government work. ESI has not established that Burns & McDonnell, or any of the other short-listed firms, had less non-government experience than ESI, and we can not say that the Army was unreasonable in

utilizing an evaluation criterion which placed a premium on successful performance of prior DOD contracts, using rating files which the FAR expressly requires be maintained and utilized for A-E procurements.

With respect to location, ESI, a Memphis firm, received the maximum 10 points allocated. However, ESI questions why Burns & McDonnell received five points rather than no points, since Burns is located in Kansas City, Missouri, and, ESI contends, only local firms have any advantage which warrants receiving any points under this criterion. The Army determined that local firms within a 100 mile radius would receive the full ten points and had three gradations with the number of points decreasing as the distance from the site location increased. Burns and McDonnell received five points because the formula allotted five points to firms which were located within a 251 to 1000 mile range of Memphis. This was not, in our view, unreasonable.

With respect to volume of work previously awarded, criterion 6, ESI concedes that, having received 10 points, it was overscored since this reflects the maximum score for a firm with \$100,000 or less in DOD contract volume in the past year. ESI states that it performed \$329,000 of DOD work, which, under the Army formula, would have entitled it to only seven points under this criterion. The Army ACASS records reflect no DOD work performance by ESI. If ESI performed one Army contract for \$329,000, and, as ESI believes, it received an outstanding rating for this work, ESI would be entitled to only three additional points for past performance under criterion 4, while ESI should have lost three points under the work volume criterion. Thus, there is no net change in ESI's rating. Clearly, ESI was not prejudiced as a result.

Accordingly, we cannot conclude that the agency's action has been shown to be arbitrary or unreasonable.

We note that ESI complains that the Army has refused to provide ESI with the evaluation documents which ESI contends would have enabled it to support its allegations. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (Supp. III 1985), government agencies are not required to provide protesters and interested parties documents related to a protested procurement action that would give one or more parties a competitive advantage or which the parties are not otherwise authorized by law to receive. Louisiana Foundation for Medical Care, B-225576, Apr. 29, 1987, 87-1 CPD ¶ 451. Consistent with our practice, however, we have reviewed and based our decision on the entire record, not

merely those portions that have been provided to the
protester. Id.

The protest is denied.

for *Raymond E. Van*
Harry R. Van Cleve
General Counsel