



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: NDI Engineering Company

File: B-228207

Date: January 26, 1988

## DIGEST

1. The protester's failure to state the relief requested is a minor procedural defect which does not require dismissal of the protest.
2. Protester's receipt of the agency report 1 day late, though timely filed at the General Accounting Office (GAO), did not prejudice the protester who had an opportunity to submit its comments on the report to GAO.
3. Protest that agency improperly evaluated proposals is denied where protester indicates its disagreement with the agency's evaluation but does not demonstrate that the evaluation was unreasonable.
4. A protester has a heavy burden to show bad faith by contracting officials, and must submit virtually irrefutable proof that officials had a specific and malicious intent to harm the protester.

## DECISION

NDI Engineering Company protests the award of a contract to Scientific Management Associates (SMA) under request for proposals (RFP) No. N00140-86-R-1247 issued by the Naval Regional Contracting Center, Philadelphia, for 123,750 manhours of nonpersonal contractor services over a 3-year period in support of ship alteration planning.

The protest is dismissed in part and denied in part.

NDI contends that the Navy's evaluation plan was arbitrary, unreasonable and inadequate for evaluating NDI's technical proposal and that the evaluation relied on the judgment of a single, biased reviewer. Specifically, NDI questions the

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evaluation of its corporate and personnel experience as unacceptable and the Navy's decision not to credit NDI's experience in machinery alterations (Machalt) as being equivalent to ship alterations (Shipalt) experience. Furthermore, NDI contends that it has more incumbent experience than SMA and that NDI's lower cost proposal was the best choice for the Navy. Finally, NDI contends that the evaluation criteria in the RFP are vague as to the relative importance of corporate past experience and personnel resources.

Clause M-31 of the RFP described the evaluation factors as follows:

"The evaluation factors are listed below. Evaluation factors 3, 4 and 5 are listed in descending order of importance.

1. Corporate Past Experience
2. Personnel Resources (Quantity and Quality of Available Personnel)
3. Management Plan/Technical Approach
4. Contractor Facilities
5. Cost and Cost Realism."

Clause M-31 also provided that award would be made to the responsible offeror whose offer was determined to be the most advantageous to the government, cost and other factors considered.

The Navy states that after six proposals were reviewed, a decision was made to retain only SMA and NDI in the competitive range. SMA was rated highly acceptable under all four evaluation factors, whereas NDI was rated highly acceptable in one category, acceptable in two categories and unacceptable in one category. The Navy states that although NDI was given an acceptable rating in the areas of corporate past experience and personnel resources, this rating was contingent upon the satisfactory resolution of deficiencies noted in the technical evaluation. These deficiencies involved NDI's lack of any corporate experience in two of the statement of work items: item 6, review of material and equipment for packaged Shipalts and item 13, development of ship alteration and repair package (SARP) statements, and the failure of NDI's proposed program manager, senior engineer, engineer, systems analyst, computer programmer, engineering technician, senior logistician, logistician, logistician technician and planner and estimator, as shown by the resumes submitted, to meet minimum experience and educational requirements in some cases.

The Navy states, and the record shows, that NDI was informed of each of these deficiencies and that the best and final offer (BAFO) request letter summarized these weaknesses and notified NDI of the areas of concern. The BAFO request also reminded NDI that, in accordance with the solicitation, the technical proposal would be the primary factor in award evaluation.

The Navy contends that NDI's BAFO provided no improvement in some categories and made changes that weakened its proposal in other categories. For example, with reference to the review of material and equipment for packaged Shipalts, the Navy found that NDI mostly added Machalt experience. In this respect the agency states that Machalt and Shipalt are quite distinguishable and that a Machalt, a relatively uncomplicated alteration, is not as complex as a Shipalt. The Navy states that a Machalt typically involves changes in the design of specific machinery and does not impact on other nonrelated equipment or systems whereas a Shipalt impacts a variety of systems and subsystems and its implementation requires a thorough analysis of all affected systems. With regard to the personnel area the Navy found that the additional resumes which NDI submitted had nothing to do with the relevant tasks. Moreover, the Navy contends that the substitution of a new program manager actually weakened NDI's experience in relation to certain areas of the statement of work. Therefore, although the technical evaluators had initially believed NDI could improve its proposal so that it would be competitive with SMA's proposal, they found that NDI failed to do so.

In its comments on the Navy report, NDI contends that it added and clarified corporate experience in its BAFO, did not delete any portion of its proposal regarding corporate experience, and therefore did nothing to warrant a rating change from acceptable to unacceptable. Further, NDI contends that Navy's statement that its proposal was acceptable contingent upon satisfactory resolution of deficiencies is a mere post hoc rationalization to find NDI unacceptable.

Before reaching the merits of NDI's protest, we must dispose of some procedural matters. First, the Navy requests that we dismiss NDI's protest on the grounds that NDI did not request any specific relief as is required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(6) (1987). We view the failure to state a request for relief, however, as a minor procedural defect that does not require dismissal of the protest. Carolina Auto Processing, B-226841, July 2, 1987, 87-2 CPD ¶ 8. It is clear from the protest letter filed here that NDI is requesting the award of the contract.

Second, in its comments on the agency report, NDI objected to receiving the agency report one day late and requests that we not consider the agency report in deciding this protest. However, the Navy filed its report with our Office on October 26, 1987, the date it was due, and NDI had an opportunity to submit its comments on the report. Obviously NDI was not prejudiced by receiving the report one day late, and we see no reason to not consider the report in reaching our decision.

Third, one aspect of NDI's protest, the allegation that the evaluation criteria in the RFP were vague, is untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals shall be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). In view of the fact that NDI did not protest the alleged vagueness of the evaluation criteria until after award was made, this basis of protest is dismissed.

The essence of NDI's protest concerns the propriety of the evaluation of its proposal. In this regard, the protester bears the burden of proving that the agency's evaluation was unreasonable, and this burden is not met by the protester's disagreement with the evaluation or its good faith belief that its own proposal should have achieved a higher rating. MICROCOM, B-227267, Aug. 7, 1987, 87-2 CPD ¶ 138. Furthermore, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost. We have consistently upheld awards to offerors with higher technical scores and higher costs so long as the result is consistent with the evaluation criteria and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference.

In this case, cost was the least important evaluation factor while corporate past experience and personnel resources were the most heavily weighted evaluation criteria. Accordingly, the evaluation of corporate past experience and personnel resources was of prime importance under this RFP.

We do not think the Navy's evaluation of NDI's initial proposal and its subsequent evaluation of NDI's BAFO is inconsistent. The Navy clearly documented the areas of its concern with NDI's proposal and informed NDI of these concerns in its BAFO request letter. When NDI failed to adequately respond to these concerns and failed to improve its proposal the Navy was not constrained from finding NDI's corporate and personnel sections unacceptable. In this respect, our review of the record, including NDI's BAFO, indicates that the Navy could reasonably find that with

NDI's substitution of a new program manager, it still lacked personnel experience in several statement of work elements such as the review of material and equipment for packaged Shipalts and Shipalt impact studies. Further, we agree with the Navy's reasons for not crediting NDI's Machalt experience as if it were Shipalt experience as Machalt and Shipalt encompass different aspects and degrees of complexity of alteration work. The additional corporate experience referred to in NDI's BAFO did not qualify as Shipalt or SARP experience and therefore did not provide the Navy with any basis to view NDI's proposal as acceptable in the two evaluation areas.

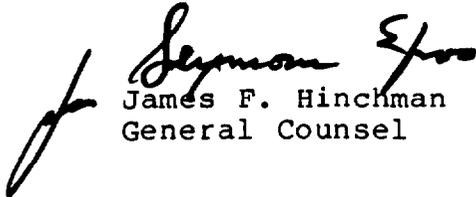
We also find no merit to NDI's other issues. NDI contends that it was improper of the Navy to find its management plan to be unacceptable. In this evaluation category there were two parts being evaluated, management plan and technical approach and NDI was found acceptable under the management plan, unacceptable in the technical approach and was given an over all unacceptable rating for the category. We find no inconsistency in combining the two ratings so that this factor was rated unacceptable since of the two aspects of this criterion NDI was unacceptable in one and the RFP clearly showed that both factors would be rated as one.

NDI's contention that it is the incumbent contractor and therefore has more experience is disputed by the Navy. NRCC states that this solicitation encompasses several elements of prior alteration contracts which both NDI and SMA have performed but it also adds new work which was not previously accomplished under any contract. For example, additional items included in the statement of work for this RFP are the identification of repairs in direct support of the ship alteration repair package for hull, mechanical, electrical, electronics and weapons equipments and systems. That NDI may have had a good record on its prior alteration contract does not show that its experience completely fulfills the requirements of this procurement.

Finally, NDI alleges that there was bias in the evaluation of its proposal because of a certain reviewer. NDI contends that the reviewer was very generous in rating the proposal of SMA, but very exacting and pointed in evaluating NDI. A protester bears a heavy burden to show bad faith by contracting officials, and must submit virtually irrefutable proof that officials had a specific and malicious intent to

harm the protester. Presearch, Inc., B-227097, July 7, 1987, 87-2 CPD ¶ 28. NDI's arguments do not constitute such a showing here and, as stated above, we find the evaluation reasonably based.

The protest is dismissed in part and denied in part.

James F. Hinchman  
General Counsel