

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-214489

DATE: July 13, 1984

MATTER OF: Basic Technology Incorporated

DIGEST:

1. Protest that subcontract proposal was improperly evaluated by prime contractor managing a government-owned facility is denied since protester has not met its burden of establishing that the evaluation was unreasonable.
2. Protest contending procuring agency should have checked all references and asked for more if those listed proved less than satisfactory is denied since procuring officials have no duty to check references offered or to seek additional references for the offeror's benefit.

Basic Technology Incorporated (BTI) protests the rejection of its offer in response to request for proposals (RFP) No. 1184, issued by the Argonne National Laboratory (ANL) under ANL's prime contract No. W-31-109-ENG-38 with the Department of Energy. The solicitation invited proposals to provide consulting services on a labor-hour basis in the field of dynamics and structural analysis. BTI contends that its proposal was unfairly evaluated.

We deny the protest.

The RFP was issued to five firms. As of the proposal due date, the contracting officials at ANL had received two proposals, not including one from BTI; at that time, BTI's proposal had been received at ANL's facilities but had been misplaced. After evaluation of the two offers, a contract was forwarded to the incumbent contractor, Analysis & Design Application Co., Ltd. (Adapco).

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Two weeks later, the procuring officials discovered that BTI's proposal had been at ANL on the due date. ANL then issued a stop-work order to Adapco and informed BTI that its proposal would be evaluated in accordance with the solicitation evaluation criteria. This evaluation resulted in a determination that BTI's proposal was acceptable but not as good as Adapco's proposal; the stop-work order was then rescinded.

Initially, we point out that we do not review subcontract awards by government prime contractors, except in limited circumstances. Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166. One of those circumstances is when, as here, the prime contractor is managing a government-owned facility and is thus acting "for" the government. See CMI Corporation, B-205829, Sept. 8, 1982, 82-2 CPD ¶ 204. In that case, we review the subcontract procurement to determine if it was consistent with and achieved the same policy objectives of the federal statutes and regulations that apply to direct procurements by federal agencies. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD ¶ 10. Therefore, in reviewing BTI's allegations, we will question ANL's assessment of the technical merits of BTI's proposal only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Holmes and Narver, Inc., B-206138, Jan. 11, 1983, 83-1 CPD ¶ 27.

Further, BTI has the burden of affirmatively proving the allegations it makes in support of its protest. ACMAT Corporation, B-197589, March 18, 1981, 81-1 CPD ¶ 206. BTI must do this without the benefit of the "independent fact-finding audit" by our Office that it has requested, because we do not normally conduct investigations under our bid protest function for the purpose of establishing the validity of a protester's assertions. Tri-States Service Company, B-195642, Jan. 8, 1980, 80-1 CPD ¶ 22.

SOLICITATION REQUIREMENTS

The solicitation required that the personnel to be assigned to the contract have a minimum of 15 years of experience in the field of stress analysis. It also

required that the personnel have practical first-hand experience in the design and analysis of nuclear grade components, including 9 years of experience with the boiler and pressure vessel code of the American Society of Mechanical Engineers (ASME), as it relates to elevated temperatures in nuclear applications, and that services must have been performed within the past 18 months. In addition, the solicitation required resumes of those people to be assigned to the project; three traceable references; a company commitment "regarding performing on an as needed basis and necessary travel, as deemed necessary" by ANL; and a cost proposal providing "fully-loaded" hourly rates (inclusive of all direct and indirect costs and profit) for each class of employee to be assigned, along with the various cost elements making up those rates.

There were four evaluation criteria: statement of work tasks; past performance; labor hour rates; and whether the principal employees are full time employees. Proposals were scored on a scale from 1 (low) to 5 (high), by two evaluators; Adapco received 17 points from one and 18 from the other, while BTI received 15 and 16 points.

(1) President's Experience

In its proposal, BTI stated that it was submitting a complete resume for its president, but only abbreviated resumes for the three others proposed for assignment. ANL concluded that only BTI's president had a strong background in inelastic analysis which, we are informed by the agency, is a component of structural analysis, but that he did not meet the requirement for experience within the previous 18 months.

Although BTI insists that its president is fully qualified, it does not specifically state that its president's experience with respect to the ASME code has been recent. Moreover, no matter how capable an offeror may be, it cannot expect to be considered for award if it does not submit an adequately written proposal. Informatics, Inc., B-194926, July 2, 1980, 80-2 CPD ¶ 8. The president's resume contained no information as to his activities and publications after 1974, other than the fact that he had

been president of the firm since 1970. Even the list of the president's publications that BTI submitted to support its protest contains nothing published after 1972 (although the record shows that BTI informed ANL by telephone during the evaluation that he had published a technical article in 1980). We believe ANL reasonably found that BTI's proposal did not establish that the president's experience met the requirements set out in the solicitation.

(2) Experience of BTI's staff

ANL found that only BTI's president had a strong background in inelastic analysis. BTI, however, argues that all three of the staff members to be assigned to the project have similarly good backgrounds in the required experience.

The three individuals' resumes were very brief and contained no specific dates for the experience listed. Also, the duration of each assignment cannot be determined from the resumes. The descriptions of each project did not exceed three lines, and consisted primarily of the name of the client and such terms as "stress analysis" and "mechanical design" to describe the work. In one resume, the assignment was described as "work on the following nuclear plants" using two specified sections of the ASME code, and there was a list of six plants without dates or further description. The resume of the reviewer who, the firm insists, has an excellent background in inelastic analysis listed five projects on which he had worked since 1974 but gave no specific dates or information concerning the duration of each project. Under these circumstances, we believe ANL again was reasonable in finding that, as to BTI's staff members, the proposal did not demonstrate compliance with the experience requirements of the solicitation.

(3) Availability of BTI's president and staff

In BTI's proposal, the name of its president was listed with three others as "our prime consultants on this work" with the president serving as "chief liaison." The proposal gave no indication as to the amount of time or

priority that any of the four, including the president, would give to this project. ANL had doubts whether the other duties of the president would prevent his devoting sufficient time to the contract. ANL was also concerned that the failure to dedicate personnel to the project might require each to go through a learning process for almost every job to which he might be assigned. This concern evidently was based on the theory that one person performing a succession of similar projects is generally more effective than a series of people handling the same projects. While ANL found BTI's proposal to be acceptable in this regard, it determined that the proposal was not as good as Adapco's.

BTI argues that ANL's doubts as to the availability of its president were not warranted and that its president would be available. With respect to the concerns of ANL about the possible rotation of different reviewers, rather than the continuous assignment of one reviewer, BTI points out that the solicitation referred to the offeror's proposed "principle reviewer(s)/analyzer(s)," which BTI contends indicated that more than one would be acceptable.

We find nothing unreasonable in ANL's rating BTI's proposal less acceptable than Adapco's because of doubts about the availability of BTI's president. In contrast to BTI, Adapco specifically stated in its proposal that the offer was based on using its president for "carrying out all review activities." The fact that BTI's president would serve as chief liaison does not necessarily mean that he would perform the review and analysis himself. In the absence of a specific statement in the proposal as to the president's constant availability, we find that ANL's doubts were not unreasonable. We also find nothing unreasonable in ANL's concern with BTI's failure to dedicate people to this particular project.

(4) Company Commitment

The solicitation required a company commitment "regarding performing on an as needed basis and necessary travel, as deemed necessary" by ANL. ANL found that BTI's

proposal was deficient because it did not contain this commitment. BTI, however, notes that its proposal stated that travel requirements were not a problem if reasonable notice was furnished and that "[b]asically, our organization wants to work with and be of service to ANL." BTI argues that this commitment is as strong as that in Adapco's proposal, which stated that it "as a corporation makes the commitment that it will assign first priority to providing [its president's] services to meet the needs of this activity" and that "[t]his includes the time for any necessary travel."

We cannot find unreasonable ANL's view that BTI's statement does not convey as strong a commitment as Adapco's promise to give first priority to this project. BTI's statement does not foreclose the firm's right to put other projects ahead of this one. The statement, by avoiding the word "commitment," or the use of equally strong wording, could reasonably lead ANL to wonder just where this project would be placed in priority with BTI's other projects.

(5) References

The solicitation required an offeror to provide three traceable references who had used the offeror's services involving the ASME's boiler and pressure vessel code. The solicitation also stated that it was very important to show whether the proposed reviewers were full-time employees of the offerors. BTI submitted four names of persons working on the Clinch River project, and ANL called one. This call led to two other calls to people who were not listed by BTI. The first two people contacted said that BTI had done no work for them but one understood that BTI's work for another section of the Clinch River project had been satisfactory. The third expressed doubts whether the BTI engineers assigned to his project had been full-time employees of BTI. ANL concluded that BTI had overstated its experience on the Clinch River project because these references, in its view, did not support BTI's proposal statements.

BTI asserts that at least one other listed reference had informed the firm that he was called and gave BTI an excellent reference, although the record submitted by ANL gives no indication of that reference call. BTI insists

that ANL's reference checks were inadequate because ANL did not call additional listed references and did not ask the right questions. BTI contends that ANL should have asked the firm for additional references if it was not satisfied with those it used. The firm also insists that all of its engineers who worked on the Clinch River project were full-time employees of the firm.

The record indicates that in a telephone call to BTI during the evaluations, the evaluators were clearly informed that the firm's proposed personnel were all full-time employees, and BTI's proposal was rated high in this respect. Therefore, BTI suffered no prejudice with respect to ANL's knowledge of the employment status of its proposed personnel. Further, procurement officials have no duty to check references listed by offerors. Roy F. Weston, Inc., B-197866; B-197949, May 14, 1980, 80-1 CPD ¶ 340 at 14. It follows that there is no duty to check all, as opposed to some, references, or to seek additional references if those contacted do not strongly support the offeror's competence and experience. We have no reason to question ANL's conclusion based on the reference checks.

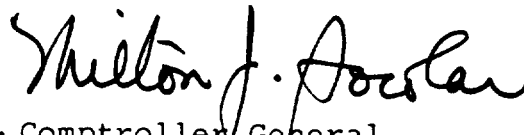
(6) Cost Proposal

Finally, the solicitation stated that a labor-hour contract was anticipated, and that the proposals should provide "fully-loaded" hourly rates for each class of employee to be assigned, along with the various cost elements included in these rates. BTI's proposal did not provide separate rates, but stated that the "average hourly rate for this work would be \$45/hr." The proposal explained that this rate was based on the gross wage paid to the employee, plus a "mark up of 2.5" that included all fringe benefits, administrative expense, and profit. ANL contends that when it called, BTI stated that if BTI's president did the work, the rate would be more than \$50; if the others did the work, the rate would be less than \$45; the average would be \$45; but the rate was negotiable. ANL concluded that as its needs were almost exclusively for the expertise of the firm's president, the cost would be more than \$45 and perhaps as high as \$55 or \$60. Adapco's hourly rate was \$60.

BTI denies that it ever suggested that its president's rate would be \$55 or \$60 and, instead, contends that ANL was told that while the president normally receives \$50 an hour, \$45 would be a fair rate. The firm explains that two of its reviewers receive \$42.50 an hour, and that because of its current competitive difficulties, rates generally have decreased.

We thus are presented with conflicting statements as to what ANL was actually told during the telephone call regarding the rate to be paid the firm's president, with ANL contending it was told that he would receive more than \$50, and BTI contending that it told ANL that \$45 would be a fair rate. Both of these contentions are reasonable, and it is not uncommon for each party to a telephone call to derive different impressions as to the information conveyed. In these circumstances, however, the protester has not met its burden of proof. Alchemy, Inc., B-207954, Jan. 10, 1983, 83-1 CPD ¶ 18. Moreover, ANL documented its interpretation of the call during the evaluation, while BTI's documentation consists of statements made in support of its protest. We are constrained to accept ANL's version of the call, and we find that ANL's conclusions based on this information were not unreasonable.

In summary, we find that ANL's evaluation of the protester's offer was reasonable. The protest is denied.



Acting Comptroller General
of the United States