

DECISION



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

Woorhouse

29817

FILE: B-215933

DATE: November 19, 1984

MATTER OF: ATI Industries

DIGEST:

1. In reviewing protests against allegedly improper evaluations, GAO will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations.
2. Meaningful discussions have been held where the agency, through written or oral communications, has identified certain areas of deficiency in an offeror's proposal, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal. A mere request for best and final offers is sufficient to satisfy the requirement for discussions.
3. A showing of bad faith requires irrefutable proof that contracting officials acted with the specific and malicious intent to injure the protester.
4. In a negotiated procurement, award need not be made to the low offeror unless the solicitation so indicates.

ATI Industries protests the award of a firm fixed price contract for the production of unloaded missile warheads to Chamberlain Manufacturing Company under request for proposals (RFP) No. N00024-84-R-5514(Q), issued by the Department of the Navy, Naval Sea Systems Command. ATI alleges that the Navy: (1) improperly

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evaluated its technical proposal; (2) failed to conduct meaningful discussions; (3) acted in bad faith by intentionally downgrading its proposal in Chamberlain's favor during the evaluation process; and (4) should have awarded it the contract as the technically acceptable firm offering the lowest cost. We deny the protest.

Background

The RFP was issued on November 7, 1983, for offers to produce 1,450 unloaded missile warheads in fiscal year (FY) 1984 with an option for the government to purchase an additional 1,594 warheads in FY 1985. The RFP provided that award would be made to that responsible offeror whose offer was "most advantageous to the Government, price and other factors considered." Offerors were cautioned that the government reserved the right "to accept other than the lowest offer."

The evaluation criteria for award were contained in section M of the RFP, which provided that technical factors (encompassing technical approach, facility, program management, and product assurance) would be more important than cost factors (encompassing cost realism and cost to the government). Section M further provided that award would be made to that responsible offeror whose proposal was technically acceptable and whose technical/cost relationship was most advantageous to the government. Offerors were advised that cost factors would be less significant than technical factors, but would become more important when competing technical proposals were determined to be of equal merit. Offerors were again cautioned that "award may not necessarily be made to that offeror submitting the lowest estimated cost."

Initial proposals were received on January 27, 1984, from ATI, Chamberlain, and three other offerors, and were then evaluated. The contracting activity's evaluation board gave ATI's technical proposal a raw or unweighted score of 877 out of a possible 1300 in accordance with the evaluation criteria. Chamberlain's technical proposal received a raw score of 1257, the highest score given. All proposals were deemed to be technically acceptable.

Discussions were then held with all five offerors. The Navy states that, in ATI's case, discussions with the firm consisted of an April 16 letter from the contracting activity which addressed certain areas of ATI's technical proposal in which the evaluators required additional information. ATI responded to these concerns in an April 24 letter. Although the Navy states that oral discussions were also held with the firm on April 16, these discussions were limited due to the sudden death of an evaluation board member.

The Navy then requested best and final offers by June 15. ATI's revised proposal received a final weighted technical score of 77.70 out of a possible 100, ranking well behind Chamberlain's final weighted technical score of 96.45, which was the highest.

ATI offered a price of \$2,091,228, the lowest of all offerors, and accordingly received a raw cost score of 100 out of a possible 100 during the evaluation of cost proposals. Chamberlain's offered price of \$2,559,722 was third lowest and received a raw cost score of 77.59. The Navy then applied predetermined weight factors of .6 and .4, respectively, to the technical and cost scores of the offerors to determine the final total weighted scores, in accordance with section M's provision that technical factors were of greater importance than cost. The final score for Chamberlain was 88.91, and 86.62 for ATI.

The Navy subsequently determined that an error had made in determining ATI's and Chamberlain's weighted technical scores because equal weight had not been given to each of the subfactors, i.e., technical approach, facility, program management, and product assurance. Accordingly, a recomputation was conducted which revised the weighted technical scores of the two firms, resulting in final total scores of 88.268 for ATI and 88.539 for Chamberlain. The Navy concluded that this modification in the scores had no effect upon Chamberlain's standing as the firm offering the most advantageous proposal to the government from a technical and cost standpoint, and the Navy awarded it the contract on July 17.

Protest and Analysis

ATI believes that its proposal was improperly evaluated in large part because the Navy erred in determining that ATI had not adequately addressed the compatibility of its facilities and equipment workload with the anticipated warhead production requirements. ATI complains in this regard that the Navy could have readily resolved any concerns by inspecting its facilities during a preaward survey. In addition, ATI asserts that the Navy erred in determining that the Master Phasing Chart included in its proposal did not adequately demonstrate the firm's understanding of the production and delivery requirements.

ATI also believes that the Navy failed to conduct meaningful discussions that would have led to the correction of any perceived deficiencies in its proposal. ATI states that its representative traveled to the contracting activity's Washington, D.C. office on April 16 as the result of an invitation to discuss the technical aspects of the proposal, but was informed upon arrival that no technical representative from the Navy would be present and that no technical discussions would therefore be conducted. ATI relates that its representative was merely handed the Navy's letter of the same date addressing areas of deficiency in the proposal and dismissed.

ATI alleges that the Navy acted in bad faith during the evaluation process by intentionally downgrading its technical proposal in Chamberlain's favor. The firm contends that any deficiencies were minimal in nature and did not justify its low technical score. ATI urges that its proposal was indeed technically acceptable and that it should therefore have received the award because it was the firm offering the lowest cost. We find no legal merit to the protest.

(1) Proposal Evaluation

In reviewing protests against allegedly improper evaluations, this Office will not substitute its judgment for that of the contracting activity's evaluators, who have wide discretion, but rather will examine the record to

determine whether the evaluators' judgments were reasonable and in accord with listed criteria, and whether there were any violations of procurement statutes and regulations. D-K Associates, Inc., B-213417, Apr. 9, 1984, 84-1 CPD ¶ 396. The protester's mere disagreement with the results of the evaluation does not meet its burden of proving that the evaluation was itself unreasonable. A.B. Dick Company, B-207194.2, Nov. 29, 1982, 82-2 CPD ¶ 478.

Here, ATI's best and final technical proposal received a low rating for proposed facilities and equipment. The evaluators concluded that ATI's discussion of its in-house and subcontractor facilities and equipment available for warhead production was inadequate. ATI, to the contrary, urges that its proposal did in fact list all equipment that would be used for the production of particular parts and assemblies. The firm contends that it should be obvious that specific equipment is not earmarked for exclusive use under any particular contract, but rather that the work is scheduled for the equipment as required.

Our examination of the firm's proposal indicates that ATI did specify which equipment would be utilized for the fabrication of various components and subassemblies. However, the firm did not establish that the listed equipment would be reserved for warhead production, and we think that this was the key aspect of the evaluators' concern. At a preproposal conference which ATI attended, offerors were given a "Technical Format" which indicated that their technical proposals had to show what available facilities and equipment would be "dedicated" to the program. In our view, it was proper for the Navy to require offerors to demonstrate that their facilities and equipment and those of any subcontractors would be fully compatible with the production requirements of the warhead contract, and that other production demands would not interfere with program completion. We do not believe that ATI addressed this concern in an adequate fashion, the firm merely averring that its workload was compatible with the warhead production program. Therefore, the evaluators' conclusion that the proposal was deficient in this area cannot be regarded as unreasonable.

To the extent that ATI asserts that the Navy should have conducted a preaward survey of its facilities, we point out that such a survey is used for the specific purpose, if needed, of establishing the responsibility of a prospective contractor, that is, the bidder or offeror that has apparently won the competition. See generally Defense Acquisition Regulation (DAR), § 1-905.4, reprinted in 32 C.F.R. pts. 1-39 (1983). A preaward survey is not used, as ATI desires here, to supplement a technical proposal that is informationally deficient. In a negotiated procurement, since the agency's technical evaluation is based upon information submitted with the proposal, the burden is clearly on the offeror to submit an adequately written proposal. Marvin Engineering Co., Inc., B-214889, July 3, 1984, 84-2 CPD ¶ 15.

Although the evaluators determined that ATI's technical approach demonstrated a good degree of control over in-house tasks, they were of the opinion that the firm's discussion of its overall organization of the production processes "indicates a very shallow understanding or reading of the RFP." Specifically, the evaluators noted that ATI's Master Phasing Chart incorporated in the proposal did not contain the correct number of warheads, and felt that the chart was inconsistent with the RFP's requirements by failing to give any evidence of the flow and lead times necessary for production, and, consequently, that it was not adequate for evaluating ATI's overall program planning.

ATI did revise the phasing chart to show the correct number of warheads, but merely referred the evaluators to certain symbols in the chart which, according to ATI, indicated the production times that were of concern. The Navy considered this to be inadequate because it was unclear from the chart and ATI's responses when the firm would place its separate production unit purchase orders and receive the ordered materials. According to the Navy, the chart only contained the flow and lead times for the pre-production units, and not for the production units.

ATI argues that its phasing chart was clear at all times and should have been interpreted correctly by the evaluators. ATI alleges that the evaluators concluded that the production schedule would be jeopardized because

they mistakenly believed that the firm had chosen to procure the full quantity of material before the delivery of the pre-production units, and that this in fact was not the case. The offeror, however, bears the burden of submitting an adequately written proposal so that the agency can make an intelligent evaluation, Marvin Engineering Co., Inc., supra, a burden which necessarily extends to furnishing satisfactory responses to concerns raised by the agency when given the opportunity to revise a deficient proposal. See Control Data Corp., B-209166.2, Dec. 27, 1983, 84-1 CPD ¶ 21. Therefore, ATI cannot successfully argue that the evaluators continued to misinterpret its phasing chart when the firm bore the responsibility for assuring its clarity in the first instance, as well as the responsibility for then satisfying the evaluators' expressed concerns in this area. From our own examination, we do not agree with the firm that the phasing chart necessarily demonstrated a full understanding of the production and delivery requirements of the warhead program, and we thus cannot conclude that the evaluators' lower score given to ATI's proposal in this area was unreasonable.

(2) Meaningful Discussions

ATI alleges that the principal reason for any remaining deficiencies in its proposal was the Navy's failure to conduct meaningful discussions with the firm. As previously indicated, ATI alleges that its representative was never able to participate in any technical discussions with Navy contracting officials on April 16. Even though this may be the correct version of events, we cannot conclude that ATI was at all prejudiced.

We have repeatedly stated that meaningful discussions have been held where the agency has identified those areas in a proposal which are deficient, and has afforded the offeror an opportunity to correct those deficiencies in a revised proposal. Logistical Support, Inc., et al., B-208722, et al., Aug. 12, 1983, 83-2 CPD ¶ 202. As the Navy correctly points out, such discussions may be in either written or oral form, DAR, § 3-805.1, and we also note as well that a mere request for best and final offers is sufficient to satisfy the requirement for discussions. See Information Management, Inc., B-212358, Jan. 17, 1984, 84-1 CPD ¶ 76.

Here, although it may be unfortunate that ATI's representative made a fruitless trip to participate in technical discussions that were never held, the Navy furnished the representative with a written letter that enumerated the areas of the firm's proposal that the evaluators considered to be deficient. This letter pointed out 11 areas where ATI was required to provide additional information, and the firm then provided its written responses to the Navy. The Navy subsequently requested best and final offers from all five offerors. Thus, ATI clearly was informed of the areas of deficiency and was afforded the opportunity to correct those deficiencies through the submission of a revised proposal. Logistical Support, Inc., et al., supra.

(3) Bad Faith

ATI has raised the serious allegation that the Navy acted in bad faith throughout the evaluation process by intentionally downgrading its proposal in Chamberlain's favor. We have found no evidence from our examination of the record to support such a charge, and a showing of bad faith requires irrefutable proof that government contracting officials acted with the specific and malicious intent to injure the protester. See Jack Roach Cadillac, Inc., B-210043, June 27, 1983, 83-2 CPD ¶ 25.

From our perspective, the evaluators' judgments as to technical issues were both reasonable and in accord with the RFP's evaluation criteria. The RFP expressly provided that technical factors would be of greater importance than cost factors and, therefore, we find nothing arbitrary or unreasonable in weighting the offerors' scores in those respective areas at a 60/40 ratio. We fail to understand how ATI can allege that its proposal was intentionally downgraded when the Navy, after discovering an error, recomputed the final total scores so that ATI's was revised upwards to become only .271 less than Chamberlain's.

In essence, we believe that ATI fails to appreciate that the Navy determined that its technical proposal was markedly inferior to Chamberlain's, and although ATI may disagree with that determination, mere disagreement neither establishes that the evaluation was unreasonable, A.B. Dick Company, supra, nor that the Navy intentionally

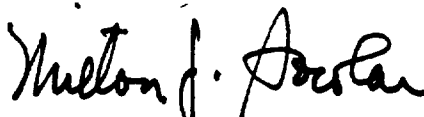
downgraded ATI's proposal so as to ensure Chamberlain's selection. The allegation of bad faith is without foundation.

(4) Lowest Cost

Finally, ATI asserts that its proposal was technically acceptable and that it therefore should have received the award as the firm offering the lowest cost. ATI does not believe that its slightly lower final total score of 88.268 versus 88.539 for Chamberlain justifies award to Chamberlain at a much higher price. We do not agree.

We point out to ATI that the Navy never determined that its proposal was technically unacceptable--indeed, all five proposals submitted were found to be acceptable, and ATI's weighted technical score after the evaluation of best and final offers did not in fact rank at the bottom. However, even though ATI may have proposed the lowest cost, we stress that this was a negotiated procurement, in which award need not be made to the low offeror unless the RFP so indicates. Price Waterhouse & Co., B-203642, Feb. 8, 1982, 82-1 CPD ¶ 103. Here, the RFP clearly advised offerors that award would not necessarily be made to the low offeror, and that the technical merit of submitted proposals was more important than proposed cost, except where proposals were judged to be technically equal. Since ATI's technical proposal was deemed to be significantly inferior to that of Chamberlain, award to ATI was not required even though ATI was the low offeror. See Quest Research Corporation, B-203167, Dec. 10, 1981, 81-2 CPD ¶ 456. Although ATI's final total score at the conclusion of the evaluation may have been very close to Chamberlain's, that does not obviate the fact that ATI's proposal was not most advantageous to the government in terms of its technical/cost relationship. We therefore cannot object to the Navy's award of the contract to Chamberlain as the higher-priced, but technically superior, offeror. Price Waterhouse & Co., supra.

The protest is denied.


for Comptroller General
of the United States