D. Matter

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: AT&T Technologies, Inc.

File: B-237069

Date: January 26, 1990

DIGEST

1. The mere employment of a former consultant to the agency who is familiar with the work required and helped prepare the specification does not confer an unfair competitive advantage or establish a conflict of interest where the facts do not demonstrate that any action of the consultant resulted in prejudice for or on behalf of the awardee, that the consultant had access to inside agency information concerning the procurement, or that the consultant's prior employment improperly influenced the evaluation and award.

2. Contracting agency acted reasonably in selecting for award an offeror proposing to validate proposed towed buoy antenna system, by means of dynamic computer model to simulate operation of an actual buoy system, over offeror proposing a slightly less expensive, but unproven and unvalidated new system.

DECISION

AT&T Technologies, Inc., (AT&T), protests the Department of the Navy's selection of Martin Marietta Corporation (and consequent exercise of the option under Martin Marietta's Phase I contract, No. N00039-88-C-0211) to be the Phase II contractor for production of upgraded AN/BRR-6 towed antenna buoy systems for nuclear ballistic missile submarines. AT&T alleges that award to Martin Marietta is precluded by a conflict of interest because Martin Marietta hired a former employee of a technical consultant to the agency. AT&T also challenges the evaluation of its own proposal.

We deny the protest.

The AN/BRR-6 towed buoy antenna system is found on board Trident nuclear ballistic missile submarines and includes an antenna which can be deployed behind a submerged submarine for the purpose of receiving radio signals; the system

provides the submarine with a continuous and reliable communications link in support of its strategic deterrent mission, while also permitting it to remain submerged and thereby reduce the likelihood of detection. As a result of reliability and availability problems experienced by this system and a similar system (OE-305/BRR) on board Poseidon nuclear ballistic missile submarines, the Navy in 1986 convened a joint government/industry committee--including AT&T, Spears Associates, Inc. (the manufacturer of the existing system and a member of the AT&T team for the subsequent procurement), Gould, Inc. (to which Martin Marietta is the successor), Analysis and Technologies, Inc. (A&T, a Navy consultant), and American Systems Corporation (ASC, an A&T subcontractor)--to examine and propose solutions for the reliability problems of the towed antenna system on board Poseidon submarines. In 1987, A&T was tasked by the Navy with using the report of the government/industry committee, issued in May 1986, and the original specifications for both antenna systems to prepare draft contract specifications for upgraded versions of the systems; A&T in turn subcontracted the work to ASC, which assigned the task to an engineer who had participated on the government/industry committee.

On September 3, 1987, the Navy issued request for proposals No. N00039-87-R-0307(Q), for Phase I of a two-phase procurement to upgrade the antenna systems for both the Poseidon and Trident submarines. Under Phase I, each of two selected contractors was required to investigate the availability problems of the systems and recommend improvements; the solicitation provided for this effort to culminate in the preparation of Phase II production proposals, evaluation of the proposals pursuant to criteria set forth in the solicitation, and award of a single, Phase II contract by exercise of an option under the appropriate Phase I contract. Phase I proposals were received on November 12 from AT&T (teamed with Spears) and Gould (now Martin Marietta); both proposals were considered technically acceptable, and after subsequent discussions and receipt of best and final offers (BAFOs), the Navy, on March 21, 1988, awarded Phase I contracts to the two firms.

AT&T and Martin Marietta subsequently submitted Phase II proposals on October 3. The Navy included both firms in the competitive range, and after conducting discussions with both, requested the submission of BAFOs.1/ Based upon its

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1/ During Phase II negotiations, the OE-305/BRR upgrade program for the Poseidon submarine was eliminated from the procurement for lack of funding.

evaluation of BAFOs, the Navy determined that Martin Marietta had submitted the Phase II proposal most advantageous to the government.

The Phase I contracts provided for Phase II proposals to be evaluated on the basis of the following three evaluation factors, listed in descending order of importance as price (with an undisclosed weight of 55 points), technical (36 points) and management (9 points), and described the price and technical factors as having significantly greater weight than the management factor. AT&T offered the low evaluated price of $25,558,894, $481,544 (1.9 percent) less than Martin Marietta'a evaluated price of $26,040,438, and as a result received a slightly higher score (55 points) under the price factor than Martin Marietta's (53.97 points). Martin Marietta, however, received a substantially higher technical/management score (34.35 points) than AT&T's (21.5 points), and as a result received a higher overall score (88.32 points) than AT&T's (76.5 points).

This disparity in evaluation under the non-price factors primarily resulted from the Navy's differing conclusions with respect to the risk associated with each proposal. The agency found the technical analysis in AT&T's proposal "inconclusive" and incomplete, and viewed the proposal as presenting a high schedule and technical risk; according to the agency, there was a low probability that AT&T's buoy system would perform as required when first installed on a submarine. The agency based its conclusion largely on the fact that AT&T was offering a new, unproven control system for deploying the antenna which had not been validated by a computer model or simulation and for which no testing of critical items had been undertaken during Phase I.

In this regard, AT&T in its proposal described the overall delivery schedule as posing an extreme challenge and the schedule for completing the first article test as representing a risk of major concern. Although it did not believe its proposed new control system posed a technical risk, AT&T acknowledged that the system had not been previously demonstrated or tested and, because of the overall magnitude of the proposed changes, it "strongly recommended" verifying the proposed design by testing a prototype at sea; according to AT&T, "deployment prior to verification is not recommended." In this regard, during Phase I negotiations the Navy had suggested to both offerors the use of a computer simulation model as a means of validating their proposed designs without sea trials. However, when questioned during discussions as to how the agency could meet its delivery commitments in view of AT&T's proposal of at-sea testing and whether the firm could suggest "a more timely system

verification alternative to an at-sea test on an operational submarine," AT&T reiterated its view that at-sea testing was necessary. While acknowledging that "a computer model could be developed to verify the system," the firm nevertheless maintained that the model would still require data from at-sea testing to assure accuracy and claimed that with "minor delivery schedule modifications, a sea trial validation can be accommodated." In its evaluation, however, the Navy rejected AT&T's approach, which it determined would result in AT&T missing the scheduled date for delivery of the systems to one, and probably two, submarines.

In contrast, the Navy gave Gould's proposal a significantly higher rating under the evaluation for schedule; it concluded that there was a reasonable probability that Gould's buoy system would perform as required when first installed on a submarine. The Navy determined that Gould would be able to minimize technical risk through its proposed use of a dynamic computer model to simulate the operation of an actual towed buoy system so as to verify that its new control system will work as anticipated. In this regard, the agency noted that Gould's computer model had been compared for accuracy against both a Navy computer model and against data from an actual at-sea towed buoy exercise using a ballistic missile submarine. Furthermore, the agency noted that not only had Gould already subjected its control system to verification by simulation, but in addition the firm had also already undertaken testing of other critical elements of the overall buoy system and proposed to complete further testing within 5 months of the Phase II award. The Navy's confidence in Gould's ability to successfully deliver a conforming system on schedule was further enhanced by Gould's decision to upgrade the existing analog-based trainer, rather than, as proposed by AT&T, to undertake to develop a new, digital-based trainer.

Accordingly, the source selection authority determined that Martin Marietta's proposal offered "the more sound technical approach which has a strong promise of delivering hardware on schedule," and that this technical superiority outweighed AT&T's slightly lower price. Upon learning of the resulting exercise of the Phase II option in Martin Marietta's contract, AT&T filed this protest with our Office.

CONFLICT OF INTEREST

AT&T protests that award to Martin Marietta is precluded because of a conflict of interest. In September 1987, after the Phase I solicitation was issued but before proposals were received, the ASC engineer who had prepared the draft

specification for the Navy left ASC, and soon thereafter began providing consulting services to Martin Marietta. AT&T alleges that the engineer's involvement with the buoy program provided Martin Marietta with "tremendous insight into the issues which the Navy deemed most important" and into the agency's "subjective intent," thereby conferring an unfair competitive advantage upon Martin Marietta when it was preparing its proposal.

When a conflict of interest is alleged, our role within the context of a bid protest is to determine whether any action of the individual who previously participated in the procurement on behalf of the government resulted in prejudice for or on behalf of the awardee. See generally Dayton T. Brown, Inc., 68 Comp. Gen. 6 (1988), 88-2 CPD ¶ 314. There must be hard facts and not mere suspicion or innuendo that a conflict of interest exists before a firm may be excluded from a competition on this basis; the mere employment of an individual who is familiar with the type of work required and helped prepare the specification or statement of work, but who is not privy to the contents of proposals or other inside information, does not establish a conflict of interest or confer an unfair competitive advantage. Id.; see generally Damon Corp., B-232721, Feb. 3, 1989, 89-1 CPD ¶ 113.

Here, the Navy has furnished our Office with sworn affidavits from the engineer and from agency employees involved in the procurement and familiar with the engineer's work; these indicate that neither A&T (the subcontractor to the Navy), ASC (the engineer's employer and a subcontractor to A&T), nor the engineer were permitted access to the agency's evaluation plan or other source selection information. According to the affidavits, and as confirmed by the engineer at the conference on this protest held at our Office, no information regarding a preferred method of performance beyond that provided in the solicitation was communicated to the engineer. In addition, the engineer left ASC before Phase I, much less Phase II, proposals were received by the agency, and thus had no access to information concerning AT&T's proposed approach. In any case, the primary distinguishing characteristic between the two proposals was AT&T's failure to verify its proposed new design through use of a computer model, as did Martin Marietta; AT&T's resulting disadvantage in this regard, however, resulted not from any "inside" information concerning the agency's undisclosed perferences which Martin Marietta allegedly acquired through hiring the engineer, but instead resulted from AT&T's failure to heed the agency's repeated urgings to adopt a similar approach.

These facts do not demonstrate that any action of the engineer resulted in prejudice for or on behalf of Martin Marietta; that the engineer was accorded access to inside agency information concerning the procurement; or that the individual's prior employment improperly influenced the evaluation and award. Consequently, this ground of AT&T's protest does not provide a basis on which to question the award to AT&T. See Damon Corp., B-232721, supra.

TECHNICAL EVALUATION

AT&T contends that the technical evaluation was unreasonable and inconsistent with the evaluation criteria.

In reviewing AT&T's arguments, we will not make an independent determination of the merits of the technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. This standard reflects our view that the evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. The protester bears the burden of showing that the evaluation was unreasonable, and the fact that it disagrees with the agency does not render the evaluation unreasonable. Pitney Bowes, 68 Comp. Gen. 249 (1989), 89-1 CPD ¶ 249.

AT&T challenges the reduction in its score for relying on at-sea testing to validate its proposed design on the basis that, as it previously expressed during negotiations, computer modeling can never be "completely accurate," and therefore at-sea testing is a "prudent" means to verify system performance. AT&T argues that the Navy itself has recognized this to be true; it notes that the agency intends to subject an initial up-graded buoy system to an operational test of between 6 to 12 months in duration.2/

2/ AT&T concedes that it did not rely on computer modeling to validate its proposed design. Although it now maintains that it used computer modeling in the basic design effort, it has cited nothing in its proposal that should have alerted the agency to even a limited use of dynamic computer modeling to simulate the operation of an actual buoy system (as opposed to more coventional computer-aided design of a static system).

As we understand the dispute here, however, the question is not whether the at-sea testing proposed by AT&T would be useful in verifying system performance; the Navy acknowledges the value of at-sea testing, as demonstrated by its plans to conduct extended operational testing at sea. Rather, the significant fact here is that Gould, but not AT&T, proposed design validation prior to installation by means of a sophisticated, dynamic computer model whose accuracy had been verified by comparison with a Navy computer model and data from an actual at-sea exercise. In other words, the question for our review is whether the agency was reasonable in finding an approach which offered the maximum assurance of successful performance possible prior to acceptance by the agency and installation on a submarine to be superior to an approach calling for acceptance and installation aboard a ballistic missile submarine of an unproven, unvalidated new design. We find the agency evaluation in this regard to be reasonable, since we believe an agency may evaluate more highly an approach that offers a greater likelihood of the initial, successful operation of a vital, defense-related communications system.

AT&T questions other aspects of the evaluation. In view of our conclusion above, however, that there existed a reasonable basis for the Navy to prefer a less risky approach to satisfying the agency's vital, minimum needs, we need not consider the protester's additional allegations in this regard. We find that the additional risk of the AT&T approach by itself justified Martin Marietta's significantly higher technical score, and that the agency's acted reasonably in determining that the technical superiority of Martin Marietta's proposal offset AT&T's slightly lower price.

The protest is denied.

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