



Comptroller General
of the United States

Washington, D.C. 20548

L. Lebowitz 1974/18

Decision

Matter of: ARTEL, Inc.

File: B-248478

Date: August 21, 1992

Brian N. Garcia, Esq., and Pamela J. Mazza, Esq., Piliero, Mazza & Pargament, for the protester.
J. Robert Humphries, Esq., Arnold & Porter, for Overseas Bechtel, Inc., an interested party.
Nina G. Nathani, Esq., Agency for International Development, for the agency.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency should have selected the protester, the third-ranked firm, as the most highly qualified firm with which to negotiate an architect-engineer contract is denied where the record shows that the agency reasonably evaluated the protester's qualifications in accordance with the stated evaluation criteria.

DECISION

ARTEL, Inc. protests the selection by the Agency for International Development (AID) of Overseas Bechtel, Inc./Teleconsult, Inc. as the team with which to negotiate an architect-engineer (A-E) contract to assist the Arab Republic of Egypt to expand and upgrade the telecommunications system in Cairo. The protester basically alleges that the agency improperly evaluated its qualifications and as a result, it was not selected as the firm with which to conduct negotiations.

We deny the protest.

Generally, under the selection procedures set forth in the Brooks Act, as amended, 40 U.S.C. § 541 et seq. (1988), and its implementing regulations, Federal Acquisition Regulation (FAR) part 36.6, the contracting agency must publicly announce requirements for A-E services. An A-E evaluation board established 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, and selects at least three firms for discussions. The board recommends to the selection official, in order of preference, no less than three firms deemed most highly qualified. The selection official then lists, in 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 the firm as to a fair and reasonable fee, negotiations are terminated and the second-ranked firm is invited to submit its proposed fee. See generally FAR part 36.6; James W. Hudson & Assocs., B-243277, July 5, 1991, 91-2 CPD ¶ 29; Asbestos Management, Inc., B-237841, Mar. 23, 1990, 90-1 CPD ¶ 325.

The procurement, referenced as solicitation No. Egypt 92-09, was synopsized in the Commerce Business Daily (CBD) on January 14, 1992. The synopsis stated that the agency intended to award a cost-plus-fixed-fee type contract. The synopsis invited consulting engineering firms to submit a completed Standard Form (SF) 254 A-E and Related Service Questionnaire and an SF 255 A-E and Related Service Questionnaire for Specific Project if the firms could demonstrate (1) previous experience in installation supervision of digital switching systems (DSS) and conceptual design and installation supervision of outside plant (OSP) networks; (2) management capability, workload capacity, and financial resources, and (3) experience in providing similar services within the past 5 years in the Middle East and/or Egypt and/or a similar developing country environment.¹ The synopsis further stated that firms would be evaluated in accordance with the ten standard A-E evaluation criteria, listed in descending order of importance, at AID Acquisition Regulation § 736.602-3(b). See also FAR § 36.602-1(a). The three criteria relevant to this protest, as listed numerically in the agency's regulation, include: (1) specialized experience of the firm with the type of service required; (3) past record of performance on contracts with respect to such factors as control of costs, quality of work, and ability to meet schedules; and (4) ability to assign an adequate number of qualified key personnel from the organization.

Nine firms (which included two teams) submitted qualifications statements. The agency's six-member evaluation board evaluated the qualifications statements

¹Contrary to the protester's assertion, these items are properly considered evaluation factors pursuant to FAR § 5.207(c)(2)(xi) which requires synopses for A-E projects to contain details with respect to "any significant evaluation factors."

and selected the protester, Overseas Bechtel/Teleconsult, and another team to make technical presentations. Prior to the presentations, the agency mailed to each firm/team a list of 13 specific "discussion points" to be addressed during the presentations. For example, firms/teams were requested to describe how their experiences, qualifications, and capabilities reflected an ability to provide the required services; to demonstrate specific DSS and OSP installation supervision experience; and to describe the firm's/team's experience in providing similar services to foreign government-owned telecommunications organizations.

Following the presentations, by letter dated April 15, the agency notified the protester that although the evaluation board found it to be technically strong, Overseas Bechtel/Teleconsult, and not the protester, was ranked first as the firm/team most highly qualified to perform the required services. On April 24, the protester filed this protest challenging the evaluation of its qualifications in the areas involving its DSS and OSP installation supervision experience, its identification of key personnel, and its corporate Middle East experience. The protester believes that had the information it furnished been properly evaluated, it would have been chosen as the most highly qualified firm with which to negotiate an A-E contract to perform the required services.

In reviewing a protest of an agency's selection of a contractor for A-E services, our function is not to reevaluate the offeror's capabilities or to make our own determination of the relative merits of competing firms. Rather, the procuring officials enjoy a reasonable degree of discretion in evaluating the submissions, and we limit our review to determining whether the agency's selection was reasonable and in accordance with the published criteria. James W. Hudson & Assocs., supra; Ward/Hall Assocs. AIA, B-226714, June 17, 1987, 87-1 CPD ¶ 605. Here, we find that the agency reasonably evaluated the protester's qualifications in accordance with the stated evaluation criteria.

Evaluation factor (1) required firms to demonstrate previous experience in supervising the installation of DSS, which would replace obsolete switching equipment, and in designing and supervising the installation of OSP equipment, which would allow for centralized operational management of various telecommunication exchanges. On its SFs 254 and 255, the protester listed three previous and two current, ongoing projects for which it provided, or is providing, technical and management services as a subcontractor. For its current, primary project which involves performing as a subcontractor on the team providing oversight of the

government's transition to an upgraded federal telecommunications system (the FTS2000 project which is not expected to be completed until the late fall of 1994), the protester furnished a detailed breakdown of the requirements it has been asked to perform to date.

The breakdown shows that the protester has evaluated and performed acceptance testing of switching systems; provided oversight of the installation of switching systems and of contractor performance; and reviewed and analyzed contractor compliance plans. The breakdown also shows that a significant portion of the protester's tasks have involved the performance of in-depth studies (e.g., of government programs and networks focusing on interoperability issues, acceptance testing and implementation of new services, network optimization modeling, and emergency preparedness plans) the development of evaluation criteria for transition planning and key performance indicators, guidelines for information data protection, procedures for providing emergency services, audit plans and procedures, and manuals involving various aspects of the telecommunications field.

The record shows that the agency considered the protester's performance as a subcontractor on all of the listed projects, including the FTS2000 project. Based on the tasks performed by the protester, the agency concluded that the protester was well-qualified for performing planning and management studies related to telecommunication systems and that while the protester had knowledge concerning DSS and OSP networks, it did not demonstrate a sufficient amount of actual DSS and OSP installation supervision experience, even considering its work to date on the FTS2000 project. The agency further concluded that the protester lacked experience as a prime contractor.

The protester contends that the agency improperly evaluated its record of experience, particularly its performance as one of the subcontractors on the FTS2000 project, for which it received a favorable letter of recommendation from the prime contractor. The protester emphasizes that its work on the FTS2000 project has involved DSS and OSP installation supervision experience.

Based on our review of the record, we find that the agency reasonably evaluated the protester's experience. The record shows that the protester received approximately 80 percent of the maximum credit for evaluation factor (1). The protester did not receive a higher rating because of the firm's level of experience in the supervision of DSS and OSP installation and as a prime contractor. The protester's detailed breakdown of tasks performed as a subcontractor on the FTS2000 project shows that its primary experience related to the performance of studies and the development of

evaluation criteria, guidelines, procedures, and manuals, rather than DSS and OSP installation supervision experience. Further, the agency concluded that the protester's work on the FTS2000 project was ongoing, and thus it could not properly give the protester credit for work which it had not yet performed. The record also confirms that the protester's experience is predominant in the role of subcontractor and the firm has no experience as a prime contractor with ultimate responsibility for the satisfactory completion of an entire contract of this type or magnitude.

Evaluation factor (4) required firms to demonstrate the ability to assign an adequate number of qualified key personnel. The instructions on the SF 255 required firms to provide a brief resumé for the key persons "anticipated for this project." The "discussion points" for the presentation required firms to describe how their experiences, qualifications, and capabilities reflected an ability to perform the contract. On its SF 255, the protester listed and provided a brief resumé for six engineers associated with its firm. The protester included a statement that the engineers listed were "representative of [its] capability" and that additional personnel with similar experience were available and would be provided for the project upon award of the contract. The SF 255 showed, however, that of the six engineers listed, only one was not otherwise committed to other ongoing projects for the protester over the next 2 to 4 years. The protester also stated that it had "initiated an effort" to identify local Egyptian engineers with telecommunications experience who would be hired to supplement the protester's American engineering staff for the project. The protester, however, did not provide any names or credentials for Egyptian engineers who would be assigned to the project.

At the presentation, the protester, as reflected on its presentation documents, stated it would make its core team, including both American and Egyptian engineers, available after award. At that time, the protester stated it would nominate two individuals for each key position and would leave the final selection and approval of its team to the agency. While the protester showed that it was capable, based on previously performed, high quality work, of assigning and mobilizing an adequate number of qualified key personnel, the agency determined that for this particular project, because the protester wanted to designate its key personnel and provide their qualifications after award instead of during the evaluation period, that the protester had failed to demonstrate its ability to assign an adequate number of qualified key personnel for this project to ensure timely completion of the project.


The protester contends that the agency improperly downgraded it for not identifying during the evaluation period its key personnel for this particular project. The protester argues that in accordance with evaluation factor (4), all it was required to do was demonstrate an "ability" to assign an adequate number of qualified key personnel, without designating its key personnel for this project. The protester maintains that it did demonstrate this ability by identifying in its qualifications statements six engineers who currently work for the firm and by having three of the firm's engineering representatives discuss at the presentation their qualifications and the firm's technical approach to performing the required services.

We think evaluation factor (4), as clarified by the instructions on the SF 255, and the "discussion points" for the presentation contemplated that a firm designate and provide for evaluation the credentials of its key personnel for this particular project so that the agency could determine, prior to ranking the firms, whether a firm had personnel available for the project and who had the necessary background and experience to satisfactorily perform the requirements of the contract. Evaluation factors required firms to demonstrate the ability to assign an adequate number of qualified key personnel. Further, the SF 255 required a brief resumé of key personnel anticipated for this project. Here, we think the protester's written submissions and oral presentation reasonably raised concerns about its capability to provide the necessary key personnel. For example, although the protester listed on its SF-255 six engineers, with the possible exception of one engineer, the protester offered no explanation of how it would make these engineers, who are shown to be committed to other ongoing projects for the protester over the next 2 to 4 years, available for this project as key personnel beginning as early as the late summer of 1992. In addition, the protester did not name as the key personnel on its presentation documents the engineering representatives who discussed their qualifications and the firm's technical approach for this project at the presentation. At the oral presentation, the protester did not name or commit to any key personnel, but stated that it would designate its team after award. We think the agency could reasonably downgrade the protester because of its lack of specificity as to the key personnel for the project which reasonably raised concerns as to its ability to properly staff the project to ensure timely project completion.²

²The protester also argues that the evaluation board failed to conduct "meaningful discussions" pursuant to FAR § 15.610 concerning the identification of its key personnel for this
(continued...)

The protester also contends that it was improperly downgraded because it did not demonstrate corporate Middle East experience as required by the CBD synopsis and as incorporated in evaluation factor (3). Even if the protester received the maximum credit for this evaluation factor the record shows that the relative standing of the firms would not have changed. Since Overseas Bechtel/Teleconsult still would be ranked first, we find the agency properly determined to conduct negotiations with Overseas Bechtel/Teleconsult. See, e.g., Naho Constr., Inc., B-244226, Sept. 12, 1991, 91-2 CPD ¶ 241.

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel

²(...continued)
project. FAR § 36.601-3(a) specifically exempts the acquisition of the A-E services from the requirements of FAR § 15.610.