

DECISION

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

FILE: GT & T Industries

DATE: April 27, 1984

MATTER OF: B-208622.3

DIGEST:

1. Unsuccessful offeror's speculation that the selected firm's evaluated proposed costs may not be realistic even after adjustments by the contracting agency based on proposal evaluation and audit support does not meet the firm's burden to prove the agency's cost realism analysis was unreasonable.
2. Protester's speculation that the successful offeror may not be able to provide key personnel on whom proposal evaluation was based, founded on inference from the selected firm's unsuccessful attempts to hire substitutes for some personnel after winning the competition, does not meet the protester's burden to prove unreasonable the agency's evaluation that the firm's staffing will be acceptable.

GT & T Industries protests the proposed award of a cost reimbursement contract to ATE Associates, Inc. under request for proposals (RFP) No. N00421-82-R-0003 issued by the Department of the Navy for technical and engineering services to support automated test equipment programs. The protester contends that ATE's proposed cost may not be realistic, and that ATE does not have the qualified personnel needed to perform the contract work.

We deny the protest.

Background

The automated test equipment involved is used to support Navy aircraft weapon systems. The RFP solicited services for four Naval Air Rework Facilities, inviting offers on any of five lots. Lots IV and V, in issue here, each involved different systems at the Navy's Alameda, California facility.

The RFP provided that, for evaluation purposes, technical considerations were worth at least three times the value of proposed costs, which would be evaluated on the basis of cost realism and adjusted if deemed necessary to reflect a realistic cost. The four technical evaluation factors, in descending order of importance, were (1) Personnel Qualifications, (2) Management, (3) Technical Approach, and (4) Past Performance. The first factor was valued at least 1-1/2 times as important as the combined value of the other three. The contract was to be awarded to the firm whose proposal offered the greatest value to the government in terms of technical and cost considerations.

For lot IV, ATE received the maximum evaluated technical score of 75 points, as opposed to the protester's score of 62.65 points. (There was one other offeror, whose technical score was slightly less than GT & T's.) ATE's proposed cost, adjusted for cost realism purposes, was slightly lower (1.1 percent) than the protester's. (The third firm submitted the lowest cost proposal.) ATE's combined score, after the evaluated costs were translated into point scores, was the highest one assigned and the firm therefore was selected for award.

ATE and the protester were the only offerors on lot V. The evaluated technical scores (74.19 for ATE; 75 for GT & T) were judged essentially equal, and since ATE's evaluated proposed cost was the lower of the two, the firm was selected to receive the contract for this lot as well.

Cost Realism

GT & T suggests that ATE's proposed costs, even as evaluated, may not be realistic. This suggestion, however, is unsupported.

The record shows that the government undertook a detailed analysis of ATE's offer that included an audit report from the Defense Contract Audit Agency (DCAA) on ATE's direct labor and indirect expense rates. As a result, the contracting officer adjusted ATE's proposed cost upward for evaluation purposes, as recommended in the audit report, and his selection decision included consideration of that adjustment.

Because the contracting agency is in the best position to determine how realistic the costs are under proposed technical approaches, the agency's evaluation of cost realism is entitled to great weight. Consequently, our Office will not disturb the agency's evaluation unless the evaluation has no reasonable basis. Ecology and Environment, Inc., B-209516, Aug. 23, 1983, 83-2 CPD ¶ 229. We therefore have upheld an agency's decision where it was based on a careful evaluation of proposals and DCAA field pricing support. See JVAN, Inc., B-202357, Aug. 28, 1981, 81-2 CPD ¶ 184. A protester has the burden of proving its case, and since GT & T has provided no evidence to show that the Navy's cost realism determination was unreasonable, we have no legal basis to fault the agency's analysis in this case. See Reliability Sciences, Incorporated, B-205754.2, June 7, 1983, 83-1 CPD ¶ 612.

Proposed Personnel

The protester, noting that Personnel Qualifications was the most important evaluation factor, contends that ATE will not be able to furnish the personnel needed to perform the contract. The basis for this contention is that ATE, after being selected as the prospective awardee, unsuccessfully tried to hire for the project another contractor's personnel already working at the Alameda facility (GT & T named that firm as a subcontractor in its offer), ostensibly to improve its staff. The protester infers from these attempts that ATE "does not have adequate personnel available and will in fact be trying to substitute other personnel for those who have already been proposed and/or evaluated." In this regard, the RFP, in describing the Personnel Qualifications criterion, required that the contractor demonstrate the ability to provide the personnel identified in submitted resumes, basically by furnishing conditional employment acceptance statements.¹

The Navy reports that after a meeting with ATE's president, subsequent to the firm's selection to discuss

¹As a general rule, personnel proposed in an offer for evaluation need not be presently employed by the offeror. See AAA Engineering and Drafting, Inc., B-204664, April 27, 1982, 82-1 CPD ¶ 387 at 7.

the transition of contractors, the contracting officer wrote ATE a letter requesting reconfirmation of the availability of the individuals proposed in ATE's offer, and the names of those who may not be available, with resumes or letters of commitment for proposed substitutes. In this respect, the RFP permitted substitution for key personnel with people "of at least substantially equal ability and qualifications" if approved by the contracting officer.

ATE initially expressed puzzlement at the Navy's request, in a letter to that agency. The firm stated that as the incumbent for the lot IV services it was nearly fully staffed, and since the incumbent for the lot V services is a large business ineligible for this set-aside competition, personnel working for that firm would be available for employment with ATE if needed. ATE nevertheless responded formally in a second letter, stating that it already had employed 21 of the 43 individuals it had proposed (31 for lot IV and 12 for lot V), and that only 2 of the personnel proposed for lot V might not be available. ATE furnished resumes for two proposed substitutes, who already were employed by the firm. The Navy states that the contracting officer and an official at the Alameda facility reviewed the resumes and found that the proposed substitutes had abilities and qualifications substantially equal to those of the personnel originally proposed.

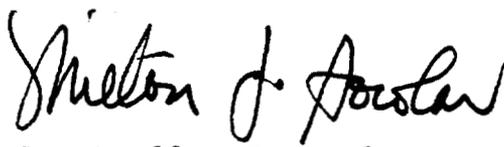
The protester's speculation that key personnel proposed by ATE in fact may not be available is based only on an inference from ATE's unsuccessful attempt to hire, after its selection, people to substitute for some of those proposed. In our view, however, that speculation does not meet the protester's burden of proving unreasonable the Navy's evaluation of ATE's ability to staff the projects as proposed. See The Trade Group, B-212544, Oct. 24, 1983, 83-2 CPD ¶ 484. The protester simply has furnished no substantive reason for our Office to question the Navy's judgment in that respect, or the contracting officer's determination that the two lot V personnel substitutes proposed by ATE were acceptable.

Moreover, to the extent the protester believes ATE is not a responsible concern for purposes of this contract, that is, does not in general have the present capability to perform, we point out that the Navy has found ATE responsible, and our Office does not review affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of procuring officials, or the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Jack Roach Cadillac, Inc., B-210043, June 27, 1983, 83-2 CPD ¶ 25. Neither exception is involved here.

Conclusion

The Navy, in accordance with the RFP's evaluation scheme, proposes to award the lot IV contract to the highest scored technical, and highest scored combined technical/cost, proposal. We have no legal basis to question that intention. As to lot V, where the two best technical offers are judged essentially equal, the Navy has selected the offer lower in cost and consequently higher-scoring overall. We have recognized that where competing proposals are judged equal technically, cost properly may be the determinative factor even though, in the overall evaluation scheme, cost is of less importance than other factors. See Ares, Inc., B-209323, March 31, 1983, 83-1 CPD ¶ 336.

The protest is denied.

for 
Comptroller General
of the United States