

DECISION



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

FILE: B-221068

DATE: March 17, 1986

MATTER OF: Advanced Technology Systems

DIGEST:

1. Where RFP required that successful offeror update agency's security procedures and manuals and stated that offeror's experience in implementing policy would be evaluated, it was reasonable for agency to consider offeror's current working-level experience in evaluating proposals.
2. Agency did not violate requirement for conducting meaningful discussions by not informing offeror that its key personnel lacked recent working-level experience since agency is not required to point out weaknesses inherent in offeror's proposed approach and proposal was based on these particular individuals who could not be replaced without redoing the proposal.
3. Fact that protester's cost proposal was lower than awardee's is irrelevant when protester's proposal was technically unacceptable and thus ineligible for award.
4. Contention regarding contract requirements concerning employee and facility security clearances raised after award is untimely since a protest based upon alleged improprieties in a solicitation must be filed prior to the closing date for receipt of initial proposals.

Advanced Technology Systems (ATS) protests the award to Brogan Associates, Inc., of a cost-type contract for information security management services, classification management services, security education services and related technical assistance under request for proposals

(RFP) No. EMW-85-R-1973 issued by the Federal Emergency Management Agency (FEMA). ATS argues that it was improperly eliminated from the competitive range due to FEMA's evaluation of its proposal on the basis of factors not stated in the solicitation or pointed out during discussions.

We deny the protest in part and dismiss it in part.

The solicitation, which was issued on June 5, 1985, contained the following six technical evaluation criteria (and relative weights), each of which included several subcriteria:

I	Understanding of the Scope of Work	(10)
II	Previous Experience and Demonstrated Competence	(56)
III	Managerial Capacities	(5)
IV	Availability of Resources	(12)
V	Organization and Staffing to meet Delivery Schedule	(7)
VI	Facilities and Equipment	(10)

The solicitation informed offerors that these technical factors would be more important than cost in determining the award, but warned that cost may be the deciding factor should proposals be ranked technically equal.

Only ATS and Brogan submitted proposals in response to the solicitation. After the technical evaluation panel had scored the initial proposals, both firms were advised that their proposals were in the competitive range. Each was asked to clarify and supplement various aspects of its proposal, and each responded with a revised proposal. Upon evaluation of the revised proposals, the technical evaluation panel raised Brogan's technical score^{1/} from 77 to 86 and lowered ATS' from 73 to 66. The contracting officer

^{1/} A perfect score would be 100.

concluded that ATS had become technically unacceptable and thus ineligible for award. The agency subsequently entered into negotiations with and awarded a contract to Brogan.

ATS contends that it was improperly eliminated from the competitive range because the technical evaluation panel deducted 24 points from its score under the criterion of Previous Experience and Demonstrated Competence due primarily to its lack of "recent working-level experience." It is ATS' position that since it was not informed either by the solicitation or during discussions that experience would be discounted if it were not recent or at the working-level, the agency improperly relied upon an unspecified evaluation factor. ATS also argues that its personnel had extensive working-level experience, and that it would have highlighted this experience in its proposal if its significance had been made clear. ATS further contends that it lost a disproportionate number of points merely because FEMA concluded that two of the people it proposed to fill junior-level positions lacked sufficient experience. Finally, the protester questions whether FEMA could have reasonably found it deficient in the areas cited.

The record shows that in the initial evaluation, FEMA's evaluators awarded ATS 37.67 of a possible 56 points under the Previous Experience and Demonstrated Competence criterion.^{2/} The evaluators found that while ATS had much experience in the computer area, its most relevant experience was in its work with the Department of Housing and Urban Development, which did not involve either "Sensitive Compartmented Information (SCI)" or "Special Access Programs (SAP)," both areas which FEMA considered critical to its effort. Further, the evaluators stated their concern that ATS' key personnel lacked recent working-level experience and noted that ATS had not identified by name or technical experience its three document analysts.

^{2/} ATS lost most of its points under this criterion.

In its discussions with ATS, FEMA negotiators requested, among other things, that the protester submit resumes of its three proposed document analysts and asked for more information regarding ATS' corporate experience as demonstrated by completion of studies in the security area with emphasis on tasks performed in support of SAP.

In evaluating ATS' revised proposal, the evaluators reduced ATS' score of 37.67 under the experience criterion to 32. The record shows that this reduction occurred solely because of the evaluators' reaction to the resumes of the three document analysts submitted in response to FEMA's request made during the discussions. The agency was concerned about the analysts' lack of current technical experience. Specifically, the evaluators noted that one analyst had only limited experience in private industry, the second had military experience but that was only in controlling documents while the third person's experience resulted from work done before 1979. In a related matter, the evaluators reduced ATS' score from 7.68 to 7.01 under the Availability of Resources criterion because two of the three analysts identified in the resumes did not have current security clearances. Based on the agency's estimate that the required background investigation would take several months, FEMA concluded that they would not be able to obtain the required clearance prior to award.

In short, ATS did not improve its score under the experience criterion with its revised proposal, but in fact the revised proposal caused ATS to lose points both under that criterion and the Availability of Resources criterion because of the resumes of the three analysts it submitted for the first time with its amended proposal.^{3/}

In considering protests of an agency's technical evaluation, we will review the record to determine whether the agency's evaluation was conducted reasonably and whether the agency followed the evaluation scheme set forth

^{3/} ATS also lost 0.34 points under the Facilities and Equipment criterion because FEMA concluded that ATS' revised proposal cast doubt on whether it could provide the required sensitive compartmented information facility.

in the RFP. Rolen-Rolen-Roberts International et al., B-218424, Aug. 1, 1985, 85-2 CPD ¶ 113. We do not, however, reevaluate the proposals or make our own determination as to their merits. That is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540 (1985), 85-1 CPD ¶ 589. Here, we find that FEMA acted reasonably and in accordance with the established evaluation scheme in its evaluation of ATS' proposal.

Despite ATS' arguments to the contrary, under the terms of the RFP it was proper for FEMA to downgrade ATS because of its conclusion that ATS lacked recent working-level experience. The RFP's scope of work required the successful offeror to "review and update" FEMA's information and management program (section I). To accomplish this task the RFP specified that the contractor would "review and update" both FEMA's security procedures manual (section II, ¶ 2A) and its operating procedures manual (section II, ¶ 2B), and provide FEMA employees with videotape briefings (section II, ¶ 2E). In addition, a subcriterion under the experience criterion stated that an offeror's "technical experience--for implementation in support of policy decisions at a government headquarters level" would be evaluated. In our view, the RFP reasonably put offerors on notice that they would be required to demonstrate that their experience included knowledge of current security techniques and the ability to put into practice the programs that they developed. It would not be reasonable under the circumstances to prohibit the agency from considering in its evaluation under the experience criterion whether an offeror's experience was current and whether that experience included actual working-level implementation of a security program.

ATS also argues that FEMA's evaluation inordinately emphasized the resumes of the three document analysts submitted with its amended proposal. The protester says that these three individuals were low-level employees and were not key personnel whose qualifications should have had a significant impact on the evaluation.

The record shows that while the FEMA evaluators did not favorably view the three document analysts offered by ATS in its revised proposal, this resulted in the loss of only 5.67 points. FEMA determined the ATS revised proposal unacceptable and dropped the firm from the competitive range based on a combination of factors. First, ATS was not able to improve its proposal in the areas where it lost significant points in the initial evaluation. For example, as indicated before, ATS' initial proposal only scored 37.67 out of a possible 56 points under the experience criterion and 7.68 out of 12 under Availability of Resources. ATS' revised proposal lost an additional total of 6.34 points under those same criteria because of the three proposed analysts as well as an additional 0.34 points under the Facilities and Equipment criterion. Thus, while the loss of points because of the document analysts was indeed significant, it was that loss combined with ATS' failure to improve in other areas that resulted in the rejection of the ATS proposal. In these circumstances we do not think FEMA's conclusion was unreasonable or accorded too much importance to the document analysts.

ATS states that each of its key personnel had both recent extensive policy-level and working-level experience and argues that had FEMA indicated during discussions that it wished information regarding these matters, it would have been able to supply such information in its revised proposal.

The governing statute, 10 U.S.C.A. § 2305(b)(4)(B) (West Supp. 1985), requires that oral or written discussions be held with all offerors within the competitive range. Such discussions must be meaningful and, in order for discussions to be meaningful, agencies must point out weaknesses, excesses or deficiencies in proposals unless doing so would result in disclosure of one offeror's approach to another or result in leveling when the weakness or deficiency was inherent in the proposed approach or caused by a lack of due diligence or competence. Joule Engineering Corp.--Reconsideration, 64 Comp. Gen. 540, supra; Ford Aerospace & Communications Corp., B-200672, Dec. 19, 1980, 80-2 CPD ¶ 439.

Here, while FEMA asked ATS to clarify its corporate experience in SAP, FEMA did not specifically point out its concern that ATS' key personnel lacked recent working-level experience.

We think that FEMA acted reasonably in not specifically discussing these matters with ATS. See Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715. It is clear that the ATS proposal was centered around the five proposed key individuals and their many years of experience in the security area. The initial proposal contained extensive materials regarding their security experience and showed their most recent work. The weakness FEMA saw in the recent working-level experience of ATS' key staff appears to be inherent in the prior positions held by those individuals. Since they all held rather high-level positions, it would be difficult for them also to have had recent working-level experience. Further, because the ATS proposal was structured around these individuals, it is not likely that they could be replaced without redoing the proposal. Therefore, we find that this weakness was inherent in ATS' proposed approach to the RFP and would have required extensive revisions to resolve.^{4/} Agencies are not obligated to point out such inherent weaknesses during discussions. See Ford Aerospace & Communications Corp., B-200672, supra.

ATS also challenges the agency's judgment in downgrading its proposal in the area of previous experience. ATS argues that its proposed personnel did not lack working-level experience and that their experience should not have been discounted because it was not current since there have been relatively few changes in security classification principles and considerations over the past 5 years.

^{4/} While the protester says it could have remedied the weaknesses, it does not indicate that it would have made a personnel change. It simply does not appear that more information would have altered FEMA's conclusion.

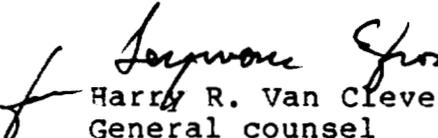
We do not think that ATS has demonstrated that the agency's conclusion regarding the working-level experience of its key personnel was unreasonable. Although ATS argues that its employees had a great deal of such experience, as shown above, it was clear from the resumes submitted with its proposal that the recent experience of ATS' key personnel was at a relatively high level. It was certainly reasonable for the agency to conclude from this information that those individuals did not also possess recent working-level experience. Furthermore, even assuming that ATS is correct in its contention that there have been relatively few changes in security classification principles over the course of the past few years, we do not think that it would have been improper for the agency to value recent experience more highly in scoring proposals.

ATS suggests that our Office should make a comparative analysis of ATS' and Brogan's corporate and key personnel experience. While we do not conduct our own separate evaluation of technical proposals, Simulators Limited, Inc., B-219804, Dec. 4, 1985, 85-2 CPD ¶ 625, our review of the record shows that FEMA's evaluators gave Brogan's final proposal 44 out of a possible 56 points under the experience criterion. In this regard, the evaluators concluded that Brogan's key personnel had the necessary technical experience and training. Further, while the evaluators had doubts about the relevance of some of Brogan's corporate experience, they were impressed with Brogan's experience in the SCI/SAP areas. Thus, although the evaluators had some reservations about both Brogan's corporate experience as well as that of its key personnel, the evaluators felt that Brogan merited a higher score than did ATS under the experience criterion. Our review of the record does not show that this judgment was unreasonable.

The protester also contends that FEMA should have considered the fact that ATS' cost proposal was lower than that proposed by the awardee. We have held that where, as here, a proposal is properly rejected as technically unacceptable, the cost proposed by the offeror is irrelevant as the proposal is ineligible for award. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 CPD ¶ 400.

Although ATS' initial protest did not challenge FEMA's conclusion with regard to the protester's inability to provide either personnel with the requisite security clearances or sufficiently secure facilities, ATS argues in its rebuttal to FEMA's report that it is not possible for a contractor to have personnel investigated and cleared for the purpose of future or potential contract work, nor is it possible for a contractor to obtain the appropriate security clearance for its facility unless it has a contractual requirement for such a facility. Both of these requirements were clearly stated in the RFP. Our Bid Protest Regulations provide that protests which are based upon alleged improprieties in a solicitation that are apparent prior to the closing date for receipt of initial proposals must be filed prior to that closing date. 4 C.F.R. § 21.2 (a)(1) (1985). These allegations are thus untimely and will not be considered.

The protest is denied in part and dismissed in part.


Harry R. Van Cleave
General counsel