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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20549**

FILE: B-189552

DATE: December 8, 1977

MATTER OF: H.C. Peters & Company, Inc.

**DIGEST:**

1. Technical evaluation of proposal which is not shown to be arbitrary or capricious is not subject to legal objection.
2. Where firm fixed-price contract is to be awarded, evaluation of cost realism, primarily to measure offeror understanding of Government requirements, is not objectionable since RFP put offerors on notice that realism would be evaluated and since offers were also properly evaluated on basis of proposed firm fixed-prices.

H.C. Peters & Company, Inc. (Peters) protests the evaluation by the Department of the Interior's Bureau of Mines (BOM) of its proposal under request for proposals No. S0177088, for the production of a 16 millimeter film of 20 to 25 minutes in length, tracing the progress of an ongoing BOM research project.

The RFP anticipated the award of a firm fixed-price contract and provided for the evaluation of proposals under criteria entitled "sample film", "company and personnel", and "cost". The first two criteria were weighted at 25 percent each while the latter counted for 50 percent.

With regard to the "sample film" factor, offerors were required to submit with their offers a sample 16mm, color motion picture, at least 16 minutes in length, which was produced within the last five years. The sample was required to adequately demonstrate the offeror's ability in effective photography, utilization of sync sound and animation, and would preferably constitute a "modern documentary in the area of natural resources development, mining, etc."

As for the "cost" factor, offerors were required to complete an estimated cost schedule form included with the RFP, on which they were to indicate the contemplated number of days and price per diem for cameramen, an electrician, and for specified equipment, the number of feet of #7247 film, plus other specified costs. The RFP also

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specified that proposed cost elements must be "realistic, reasonable, and consistent with the work to be performed."

The RFI stated that since factors other than cost were of substantial importance, the Government reserved the right to award a contract to other than the low offeror, i.e., to the responsible offeror, whose conforming offer was "most advantageous to the Government, cost and other factors considered." The RFP further stated in this regard that an offeror's proposal would not be considered if the proposed cost were "unreasonably high or unrealistically low."

Eighteen proposals were received in response to the solicitation and six firms were determined to be within the competitive range. After negotiations were conducted with these six firms, the final scoring revealed Concept Associates, Inc. (Concept), as the highest rated firm, at 355 points, with Peters fifth-ranked, at 290. Award was made to Concept on June 28, 1977.

Peters takes exception to the evaluation of its film sample, which received only 55 points compared to Concept's 100. The evaluators found that while the film "The Quiet Revolution" was well-photographed and presented its material with simple progression, when points were made they were "hit with the same dull blow." The film was considered an example of "acceptable but overall boring" filmmaking in which the overall pacing and tempo were unsatisfactory and with a narration "delivered with a just-out-of-broadcasting-school tone."

Peters alleges that the evaluation committee was "too subjective," and that its film received an unreasonably low rating to offset its "high point score" in other evaluation areas. Peters points to its prior award-winning motion pictures for the Government, and explains, with regard to the deficiencies found in its film sample, the narration was merely a reflection of what the client desired.

The record affords no basis for a finding that the conclusions of the evaluators were arbitrary or capricious. With regard to Peters' sample film, we note that Peters does not flatly dispute the comments made in the evaluation narrative, but rather suggests the discerned deficiencies should have been disregarded because the narration was geared to the desires of Peters' client.

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Whatever Peters' reasons may have been for submitting this particular film, as a sample of its capabilities, from the various alternatives it apparently possessed, we cannot say that the evaluators should have been expected to know why the film was the way it was or that it was not representative of Peters' usual work.

With regard to the "company and personnel" criterion, Peters received a score of 63 compared with Concept's score of 75. The evaluation narrative reveals that Peters was rated high in personnel and adequacy of facilities but fell short on performance of past contracts. A particular instance was cited with regard to a contract with the Navy which was delayed over a year because of non-payment to a subcontractor.

Peters disputes the accuracy of the latter, contending that "wrong connotations" were taken by BOM personnel from statements made by the subcontractor, and that the subcontractor had advised Peters that there was no intention of making a remark that would be harmful to Peters. It states, however, that "The Navy project has been a two way street on unreasonable delays. The project may end up before the Armed Services Contract Appeal Board." Thus from Peters' own submission, it is apparent that there have been delays in the Navy contract, the responsibility for which appear to be a matter of dispute between Peters and the Navy that may eventually be the subject of administrative litigation. In view thereof, we cannot conclude that the downgrading of Peters' proposal for perceived shortcomings in past performance was purely arbitrary or lacking a factual basis, notwithstanding Peters' disagreement as to the source of responsibility for the delays. Cf., Struthers Electronics Corporation, E-182967, May 23, 1975, 75-1 CPD 309; Halo Optical Products, Inc., B-178573, B-179099, May 17, 1974, 74-1 CPD 263.

"Cost" which was weighted at 50 percent, was scored in accordance with two subcriteria: "bid score" and "budget responsiveness." Under the former, Peters received the highest number of points of any offeror (90, as compared with Concept's 80) for offering the lowest total price. However, under "budget responsiveness", all offerors except Peters received a perfect score of 100 notwithstanding original cost proposals ranging from \$22,201 to \$58,882. Peters received only 80 points for its low offer of \$15,591.

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The record shows that BOM examined Peters' estimated cost schedule and considered the proposed 3,600 feet of #7247 film to be unrealistically low for the task involved, since the BOM internal estimate was 8,000 feet and the average of all other offerors was 6,444 feet. A breakdown of Peters' proposed budget revealed to BOM that no allowances had been made for any of the exigencies routinely encountered in filmmaking, and that every productional element was "thinly accounted for." After such deficiencies were pointed out to Peters during negotiations, Peters nevertheless declined to alter its best and final price proposal, contending that it could satisfactorily produce the film at its initial price. BOM expresses its opinion that Peters' cost proposal indicates that Peters "has not really come to grips with the difficulties of the task at hand" and fails to understand the intricacies of the project.

Peters takes exception to the BOM estimate that 8,000 feet of film are required, contending that live action will not exceed 10-12 minutes and its proposed 10:1 shooting ratio for live footage is more than adequate for the subject matter contemplated. In addition, Peters points to other elements of the RFP's estimated cost schedule which, in its view, are defective and inadequate for the undertaking involved. Peters also argues that since the RFP contemplated a firm fixed-price contract, under which the contractor would assume all cost responsibility for adequate performance, it was improper for BOM to evaluate a firm fixed-price proposal for "cost realism."

It is clear that under "budget responsiveness" BOM was interested in evaluating the "realism" of proposals submitted. Cost realism, which encompasses both offeror understanding of requirements and the relationship between proposed costs and the costs likely to be incurred by the Government, is generally evaluated when a cost reimbursement contract is to be awarded. See Federal Procurement Regulations § 1-3.805-2; Raytheon Company, 54 Comp. Gen. 169 (1974), 74-2 CPD 137; 50 Comp. Gen. 390 (1970). However, an evaluation of an offeror's understanding of the Government's requirements frequently precedes the award of a fixed-price contract also. See e.g., Design Concepts, Inc., B-186125, October 27, 1976, 76-2 CPD 365; MEI-Charleton, Inc., B-179165, February 11, 1974, 74-1 CPD 61. Such an evaluation may be based on offeror cost data as well as on technical proposal submissions. Electronic Communications, Inc., 55 Comp. Gen. 636 (1976), 76-1 CPD 15.

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Although it is unusual for a proposal evaluation scheme to establish offeror understanding as an area to be evaluated in terms of cost realism and as part of a cost evaluation when a fixed-price contract is to be awarded, we perceive no basis for legally objecting to the evaluation conducted in this case. First, BOM did not upwardly revise Peters' proposed price to reflect what BOM regarded as realistic, as is often done when cost proposals are evaluated. See, e.g., Dynalectron Corporation et al., 54 Comp. Gen. 562 (1975), 75-1 CPD 17. Thus, BOM did not ignore the fixed-price nature of Peters' proposal, and in fact gave Peters the high score for its low price. Secondly, offerors were advised by the RFP that their proposed costs would be evaluated to determine if they were "realistic, reasonable, and consistent with work to be performed," and that "unreasonably high or unrealistically low" cost proposals would not be considered for award. Moreover, the estimated cost schedule form provided to offerors (Exhibit A of the RFP) stated that the offeror's cost estimate would furnish the Government "insight into the offeror's understanding of the technical requirement and will assist in determining the realism of the price proposed." Thus, Peters was on notice that "cost realism" would be evaluated and that of primary concern would be offeror understanding of the Government's requirements.

With regard to Peters' complaint that BOM's 8,000 foot estimate is incorrect, we point out that it is the procuring agencies which can best judge their particular needs and there is nothing in the record which establishes that BOM acted arbitrarily in regarding Peters' proposed 3,600 feet of film as unrealistic for the required task.

The protest is denied.

  
Deputy Comptroller General  
of the United States