

S. R. Buck



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Southwest Aerospace Corporation
File: B-235881
Date: October 13, 1989

DIGEST

Protest that agency improperly awarded time and materials/labor hour contract to firm offering allegedly "below cost" labor hour rate is denied where record shows that agency considered reasonableness and realism of proposed rate and offers an adequate explanation for the admittedly low rate.

DECISION

Southwest Aerospace Corporation protests the award of a contract to Teledyne Brown Engineering under request for proposals (RFP) No. F42600-89-R-21824, issued by the Department of the Air Force for repair and maintenance services for the AGTS-36 towed target system. Southwest principally argues that the award was not in accordance with applicable regulations and did not represent the best value to the government because Teledyne's offer was a "buy-in."^{1/}

We deny the protest.

The RFP, which contemplated the award of a requirements type contract, contained different types of line items. The RFP contained several line items, primarily for repair support services, on a time and materials basis. Two line items, for contractor employee travel related expenses, were to be awarded on a cost reimbursement with no fee basis. Data were required to be priced on a fixed-priced basis. The RFP

^{1/} In its initial protest, Southwest also alleged that the Air Force had significantly underestimated the dollar value of contractor acquired property. However, the protester did not address the issue in its comments or rebut the Air Force's response. Under these circumstances, we conclude that Southwest has abandoned the issue. See Prison Match, Inc., B-233186, Jan. 4, 1989, 89-1 CPD ¶ 8.

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also provided for 1 option year. The RFP instructed firms to submit a single shop rate or composite per-hour labor rate, to be multiplied by the government's estimate of the number of contract hours for the base year and the option year. The RFP further specified that award would be made to the firm offering the most advantageous proposal, considering cost or price and other factors specified elsewhere in the solicitation.^{2/}

The agency received offers from Teledyne and Southwest. After evaluation of initial offers, the Air Force made award to Teledyne as the firm submitting the most advantageous proposal based on its lower price. Specifically, Teledyne offered a composite labor rate of \$22.52 per hour for the base year and \$23.65 for the option year (total evaluated price of \$358,715), while the protester offered a rate of \$48.13 for the base year and \$50.54 for the option year (total of \$675,745). This protest followed.

Southwest argues that the Air Force failed to make award to the firm offering the most advantageous proposal. Specifically, Southwest argues that since the Air Force awarded a "cost-type" contract, the Air Force was obligated to conduct a cost realism analysis which would have showed that Teledyne's labor-hour rate was unrealistically low and represented a "buy-in," and was based on use of unskilled labor. Southwest also alleges that Teledyne was not limited by the terms of the award with respect to the amount of subcontracting it could do and the associated burden rates which it could charge on the subcontracts. In this regard, Southwest alleges that Teledyne's burden rate is higher than the rate it offered.^{3/}

The Air Force responds that it carefully considered the labor-hour rate offered by Teledyne and concluded that it was both reasonable and realistic. In this connection, the Air Force notes that it was aware that Teledyne's labor-hour rate was significantly lower than the government's estimate, but that it was informed by Defense Contract Audit Agency field representatives that the substantially lower rate offered by Teledyne resulted from the fact that Teledyne intends to perform the contract in a labor surplus area where hourly wages are significantly lower. The Air Force

^{2/} The RFP did not specify any other evaluation criteria notwithstanding this statement.

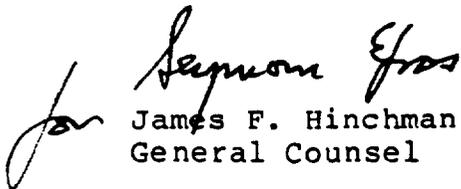
^{3/} This allegation is factually erroneous. The record shows that the burden rate offered by Teledyne was in fact lower than the rate offered by Southwest.

also argues that the contract contains adequate controls with respect to the amount of subcontracting which Teledyne can engage in since Teledyne cannot subcontract without the written approval of the contracting officer.

As to the reasonableness and realism of Teledyne's proposed hourly rate, we are satisfied that the contracting officer properly concluded that the rate offered was both reasonable and realistic. As noted above, Teledyne intends to perform in a labor surplus area and, thus, the fact that the firm's hourly rate is lower than the government's estimate is, in our opinion, adequately explained. In any event, the fact that the firm may have offered what amounts to a "below cost" hourly rate is of little consequence since firms were required under the RFP to offer firm, fixed labor-hour rates and, consequently, even if Teledyne is required to actually pay its employees more, Teledyne, and not the government, will be liable for any overage. See Unidyne Corp., B-232124, Oct. 20, 1988, 88-2 CPD ¶ 378. Moreover, the agency points out that the contract requires the contractor to notify the government when repair work estimates under the contract reach 75 percent of the estimated labor hours in the contract. Also, the Air Force has requested special review of hours billed to identify any significant departure from the contract estimates. These obviously afford the government protection against billings for excessive labor hours.

Finally, as to the possibility of Teledyne entering into subcontracts in an unlimited fashion and assessing its burden rate thereon, we are satisfied that the contract contains adequate controls for purposes of protecting the government's interests. As noted by the Air Force, the contract prohibits subcontracting without the contracting officer's approval where the dollar value of the subcontract is in excess of \$25,000. See Federal Acquisition Regulation (FAR) §§ 52.244-1 (FAC 84-23), 52.244-2 (FAC 84-12) and 52.244-3 (FAC 84-8). Under these circumstances, we cannot say that the Air Force's award decision is either improper or unreasonable.

The protest is denied.


James F. Hinchman
General Counsel