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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S-Cubed, A Division of Maxwell Laboratories, Inc.

File: B-242871

Date: June 17, 1991

Larry R. Lafler and Dr. Kerry Dance for the protester.
Harvey G. Sherzer, Esq., and Scott Arnold, Esq., Howrey & Simon, for Teledyne Geotech, an interested party.
Martin F. McAlwee, Esq., Department of the Air Force, for the agency.
Anne B. Perry, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is sustained where contracting officer has not reasonably justified agency determination that the awardee's proposed level of man-hours, which is approximately half of the government estimate, and was initially considered by the agency to constitute a high risk of failure, will satisfy the agency's minimum needs without additional expense to the government under a cost-reimbursement contract, which was awarded primarily on the basis of the awardee's proposed low cost.

DECISION

S-Cubed, a division of Maxwell Laboratories, Inc. protests the award of a cost-plus-fixed-fee contract to Teledyne Industries, Inc., Geotech Division, under request for proposals (RFP) No. F08606-90-R-0024, issued by the Department of the Air Force for low yield regression models and their transportability. S-Cubed objects that the award amount does not reflect the cost of the actual level-of-effort (LOE) required to fulfill the tasks in the statement of work, and asserts that the agency must either have made award based on undisclosed criteria, or misled S-Cubed during discussions by not advising it that its LOE was unreasonably high.

We sustain the protest on the basis that the contracting officer has not justified her determination that Teledyne's proposed LOE was reasonable.

The solicitation was issued for the conduct of seismological studies to investigate seismic yield scaling and transportation of magnitude-yield models for underground nuclear explosions at different test sites. The objective of the project is to investigate seismic magnitude/log yield regression models for distinct geophysical/geological regions and their associated errors in order to estimate nuclear test yields.^{1/}

The RFP provided that award would be made to the offeror whose proposal the government determined to be the most advantageous based on evaluation, in descending order of importance, of the offeror's Scientific/Technical Approach, Qualifications, Management and Cost/Price. The solicitation noted that this was a technical competition with cost considered subordinate, and that cost/price was not to be rated or scored, but reviewed for realism, completeness and reasonableness.

Three proposals were received and the initial evaluation rated all three as technically acceptable. Teledyne submitted the lowest-cost proposal, S-Cubed submitted the second low proposal, and Woodward-Clyde Consultants was the high offeror. In its initial evaluation, the technical evaluation team stated that while Woodward-Clyde Consultants' man-hours were considered high, S-Cubed's proposed man-hours were considered reasonable and were consistent with the government estimate. Teledyne's proposed man-hours, on the other hand, which were only slightly more than half of the hours offered by S-Cubed, were "considered excessively low and will thus constitute a risk to the government of delivering a satisfactory product."

S-Cubed was informed during discussions that while its proposal contained no major flaws and its proposed LOE was considered reasonable, its travel costs were considered high. The protester responded to this agency concern by decreasing its travel budget in its best and final offer (BAFO).

Teledyne was notified during discussions of the agency's reservations about its ability to accomplish the tasks contained in the statement of work with so few man-hours. In response to this concern, Teledyne's BAFO redirected some of its man-hours to other tasks within the statement of work, but overall proposed a slight decrease in the total level-of-effort. Teledyne justified its low LOE on the grounds that its experience and approach enable it to accomplish the tasks most efficiently.

^{1/} A regression model shows the functional relationship between two or more related variables and is often used to predict values of one variable when given values of another.

The agency's evaluation of Teledyne's BAFO states that the initial concerns about Teledyne's ability to perform using so few man-hours were alleviated by the redirection of the man-hours and the further information concerning Teledyne's personnel's specific experience in the field of yield estimation. The contracting officer determined that the technical differences between Teledyne's proposal and those of the other offerors were not sufficient to warrant award to the higher-cost offeror and, therefore, awarded the contract to Teledyne.

S-Cubed requested and received a telephonic debriefing, at which time it was informed that although its travel costs were initially considered "excessive," its BAFO alleviated these concerns. Essentially, S-Cubed was told that it did not receive award because it was not the low-cost offeror.

S-Cubed asserts that the agency either misled S-Cubed during discussions into believing that its LOE was reasonable, or miscalculated Teledyne's proposal which contained so few man-hours. S-Cubed objects to the agency's failure to inform S-Cubed that its LOE was considered "excessive" until the debriefing. Alternatively, S-Cubed argues that if its own LOE was reasonable and in line with the government's estimate, then Teledyne's LOE must be unreasonably low, since this cost-reimbursement contract consists largely of man-hour-based expenses, and Teledyne's estimated award cost is one-third of S-Cubed's cost.^{2/}

The agency states that it did not consider S-Cubed's LOE excessive, and notes that the debriefer's agent's use of the term "excessive" described S-Cubed's pre-BAFO travel costs, which the protester adequately reduced in its BAFO. Overall, the agency states that S-Cubed's LOE was reasonable and consistent with the government's estimate.

The agency argues that S-Cubed's challenge to Teledyne's low cost is untimely since it did not protest within 10 working

^{2/} The protester also objects to the technical evaluation, alleging that the agency did not score proposals but rather only rated them as technically acceptable or unacceptable, and that this is inconsistent with the evaluation scheme disclosed in the RFP. The record reflects that although the agency may have misstated the evaluation scheme to the protester during the debriefing, the agency did evaluate the proposals, first narratively and then by rank. While the agency did do more than merely find the proposals acceptable or unacceptable, as alleged by the protester, we note that the agency evaluation analysis is minimal and largely conclusory.

days of learning of the award amount. 4 C.F.R. § 21.2(a)(2) (1991). We disagree. S-Cubed is not challenging the award amount itself, but rather the fact that if its LOE is reasonable and consistent with the government's estimate, which it learned at the debriefing, then Teledyne's LOE, which is reflected by its low cost, must be unreasonably low. Prior to its debriefing, S-Cubed did not have any reason to know that its proposal was not evaluated by the agency as technically inferior to Teledyne's, and that the award determination was essentially based on low estimated cost. Since S-Cubed protested within 10 working days after the debriefing, the protest is timely.

The evaluation of technical proposals and the determination of their relative desirability is primarily a function of the procuring agency, since it is the agency that is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Anderson-Elerding Travel Serv., Inc., B-238527.3, Dec. 19, 1990, 90-2 CPD ¶ 500. In reviewing protests against allegedly improper evaluations, we examine the record to determine whether the agency's judgment was reasonable and in accord with the evaluation criteria listed in the RFP. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Implicit in the requirement that the agency's judgment be reasonable is the requirement that these judgments be documented in sufficient detail to show they are not arbitrary. Waddell Eng'g, Corp., 60 Comp. Gen. 11 (1980), 80-2 CPD ¶ 269; KMS Fusion, Inc., B-242529, May 8, 1991, 91-1 CPD ¶ _____. FAR § 15.612(d)(2) requires that documentation supporting selection decisions show the relative differences among proposals; their strengths, weaknesses and risks; and the basis and reasons for the decisions.

Even where cost is the least important criterion, an agency may properly award to a lower-cost, lower-scored offeror if it determines that the cost premium is not justified. DynCorp, B-232999, Feb. 14, 1989, 89-1 CPD ¶ 152, aff'd, B-232999.2; B-232999.3, July 14, 1989, 89-2 CPD ¶ 45. A thorough and accurate cost realism analysis is crucial in such a case where technical considerations are paramount and the agency is awarding a cost-type contract under which the government's financial responsibility will vary depending on the offeror's ability to accomplish the tasks in the time and at the costs it has estimated. See, e.g., Marine Design Technologies, Inc., B-221897, May 29, 1986, 86-1 CPD ¶ 502.

This record contains no detailed analysis of why Teledyne's LOE, which was initially rated as a high risk, was considered technically acceptable after the submission of BAFOs, despite our requests to the agency to provide us with additional information concerning the basis for its award decision. The

evaluation documents provided contain conclusionary statements that the agency's concerns about Teledyne's ability to perform the tasks in so few man-hours were alleviated by Teledyne's redirecting some of its man-hours to certain vital tasks, and proposing staff with a significant amount of experience. The record also reflects, however, that both of the other offerors proposed highly experienced personnel, and nowhere in the record is there any analysis of how Teledyne can accomplish the tasks in the statement of work with approximately half of the man-hours estimated by the government or proposed by S-Cubed.

For example, the agency had a specific concern that Teledyne's initial proposal failed to include any man-hours for creation of a database for the Novaya Zemalya test site, based on recent work published by the U.S. Geological Survey. Creation of this database was an explicit requirement under the RFP statement of work, and the agency estimated that approximately 1,000 hours would be needed to perform this requirement--which represents in excess of 15 percent of the total hours actually proposed by Teledyne. While Teledyne's BAFO states that it does intend to create this database, it proposes to do so in a small fraction of the time which the agency estimates will be required, and the agency provides no indication of how its concerns in this regard were remedied by Teledyne.

The agency's primary justification for accepting Teledyne's offer is its argument that "there is no prohibition against a firm submitting a below-cost [offer]." However, while an offeror may "choose" to absorb some of the costs of a contract, see Raytheon Support Servs. Co., 68 Comp. Gen. 566 (1989), 89-2 CPD ¶ 84, contracting officers must guard against buy-ins where the government will be liable for the contractor's actual and not estimated costs. Marine Design Technologies, Inc., B-221897, supra. Under a firm, fixed-price contract, the offeror generally bears the risk of loss if its costs are higher than anticipated; under a cost-reimbursement contract, the risk of loss is shifted to the government. As a result, when, as here, a cost-reimbursement contract is involved, an offeror's proposed estimated costs of contract performance and proposed fees are not considered controlling; instead, the contracting agency must protect itself against a buy-in by analyzing each offeror's proposed costs in terms of their cost realism and evaluating cost on the basis of what appears to be realistic. Id.; Federal Acquisition Regulation (FAR) § 15.605(d); General Research Corp., B-241569, Feb. 19, 1991, 70 Comp. Gen. ____ (1991), 91-1 CPD ¶ 183.

This cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Federal, 64 Comp. Gen. 71

(1984), 84-2 CPD ¶ 542. Because the contracting agency is in the best position to make this cost realism determination, our review is limited to determining whether the agency's cost realism analysis is reasonably based and not arbitrary. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Here, the record contains no evidence that a meaningful cost realism analysis was performed on Teledyne's offer. All that the agency did was compare Teledyne's cost with an average of the other two offerors' costs. Essentially, the record provides no assurance that Teledyne's proposed cost, which consists largely of the costs of man-hours and derived costs such as overhead, is reasonable, or even possible.

Finally, we note that the award may be inconsistent with the evaluation criteria insofar as the RFP assigned primary importance to technical considerations while the award was essentially based solely on price. The technical evaluators found that Teledyne's initial "proposed level-of-effort and man-hours [are] low, and could constitute a high risk of failure to deliver a satisfactory product to the government." The evaluation of Teledyne's BAFO notes the "minimal level-of-effort to complete some tasks," and follows this by unsupported statements that the risk was reduced and the concerns alleviated. However, although the evaluators determined that the risk of failure had been reduced under Teledyne's BAFO, they continued to rate Teledyne's BAFO as technically inferior to the proposals submitted by S-Cubed and Woodward-Clyde. The agency provides no reasoned explanation for its cost/technical tradeoff, offering instead merely a conclusionary statement that the cost-premium associated with S-Cubed's proposal was not justified. Since the agency has neither confirmed the possible cost savings by conducting a cost realism analysis, nor provided any reasoned cost/technical tradeoff analysis, the agency has failed to provide a sufficient basis or reasons to establish that its award decision was consistent with the evaluation criteria.

Accordingly, we recommend that the Air Force conduct a proper cost realism analysis of Teledyne's proposal, and perform a thorough technical evaluation of the proposal in light of this cost realism analysis. The Air Force should then reassess its cost/technical tradeoff assessment and the resulting award determination. See Amtec Corp., B-240647, Dec. 12, 1990, 90-2

CPD ¶ 482. In addition, S-Cubed is entitled to recover its costs of filing and pursuing the protest. 4 C.F.R. § 21.6(d)(1). S-Cubed should submit its claim for its protest costs directly to the agency. 4 C.F.R. § 21.6(c).

The protest is sustained.

A handwritten signature in black ink, reading "William J. Fowler". The signature is written in a cursive style with a large initial "W".

Acting Comptroller General
of the United States