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DECISION



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

[Protest of Army Contract Award]

FILE: B-200124

DATE: February 26, 1981

MATTER OF: Halcyon Films

DIGEST:

1. All companies placed on Qualified Film or Videotape Producers List pursuant to Office of Federal Procurement Policy's Uniform Procurement System for Acquiring Audiovisual Productions are not essentially equal concerning technical capability. List does not rank companies and is to be used as source of minimally acceptable companies whose proposals must be evaluated based on specific criteria set forth in RFP.
2. Where record indicates that evaluation of proposals was in accordance with established criteria set forth in solicitation and was based on reasoned judgment, protest based on offeror's disagreement with evaluation is denied because determination of relative merits of proposals is responsibility of procuring agency and will not be disturbed unless shown to be arbitrary or contrary to statutes or regulations.

Halcyon Films (Halcyon) protests the award of a contract to the Walter J. Klein Company, Ltd. (Klein), under request for proposals (RFP) DAAH01-80-R-1276, issued by the Department of the Army (Army). The contract is for a color motion picture production entitled "The Article Fifteen (Nonjudicial Punishment)." We have been advised by the Army that the contract has been completed.

Halcyon states that its "principal basis" of protest is "that a scripted Army film, whose form was already set in concrete and whose production would be closely attended by the producing agency, gives sufficiently small artistic leeway and production decision to the contractor as to obviate all but the

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most positively asserted opinion as to the various competitor's abilities." Moreover, Halcyon believes that all producers found, pursuant to the Office of Federal Procurement Policy's (OFPP), Uniform Procurement System for Acquiring Audiovisual Productions (System), OFPP Pamphlet No. 3, September 1980, to meet the predetermined qualification standards of the System and placed on the Qualified Film or Videotape Producers List are essentially equal in technical capability and, therefore, the only factor remaining for the procuring agency's review is the proposal price. Halcyon contends that its proposal was "more attractive" than Klein's proposal since Halcyon's price was \$27,080 while Klein's was \$73,987.33. Halcyon does concede, however, that an unreasonably low bid from a company with no previous Government contracting experience may be cause for alarm; but argues the Government can protest itself by requiring a performance bond. Furthermore, Halcyon objects to the Army's technical evaluation of its proposal.

Under the System, the Directorate for Audiovisual Management Policy, Department of Defense, is designated as Executive Agent to establish and administer the System and as the central information source on motion picture and videotape production programs. Any firm interested in performing motion picture or videotape production work for the Government is invited to submit sample films and a statement explaining the purpose of each film, the sponsor, the contract price and/or production costs to the Interagency Audiovisual Review Board (Board). The Board, which represents approximately 20 agencies, evaluates the samples in accordance with standardized criteria. Those producers who receive 70 (the minimum acceptable level of quality) or more points out of 100 points are eligible to be placed on the Qualified Film or Videotape Producers List. However, the document issued to each qualified producer is not a contract for a specific product since it does not contain a description of the item to be procured, delivery dates or a price to be paid. Rather, it is an agreement of certain general terms and conditions which will be incorporated into a contract for a specific production. The OFPP Pamphlet, at paragraph "c" (4) on page 2, provides that "proposals will be evaluated on the basis of technical

quality, personnel qualifications, creativity, price, and other specific factors described in the RFP."

After an agency prepares its RFP for a specific motion picture or videotape production it notifies the Executive Agent of the System, requests the names of qualified producers, from the appropriate list, and sends the RFP to those producers. The names on the list only provide an agency with those producers who are interested in contracting with the Government and, based on the Board's evaluation of a prior production, are deemed to be minimally acceptable, e.g., received at least 70 points. The list does not rank the producers according to their scores (70 to 100) in qualifying for the list. Therefore, it is clear that all producers on the list are not, as Halycon contends, essentially equal.

The procuring agency must evaluate each proposal based on the specific criteria set forth in the RFP, using the list solely as its source of producers. The proposal evaluation criteria in the subject RFP were:

- "A. Demonstrated creativity as evidenced by film submission.
- "B. Proposed production team and producer qualifications: * * *
- "C. Organizational capabilities:
 - (1) Recent productions by producer on team proposed.
 - (2) Availability of required team and resources for project.
- "D. Proposed Price.
- "E. Criteria A, B, and D are equal in weight. Criteria C is greater weight than either A, B, or D, individually but less than the aggregate of A, B and D."

The Army has documented the considerations upon which the challenged evaluation was based. The RFP Production Requirements provision provided that 16 professional actors were required. The Army contends that Halcyon did not satisfy this requirement. More specifically, the Army points to the Technical Proposal Format for Motion Picture Productions portion of Halcyon's proposal in which Halcyon stated:

"Also, please note that Fayetteville, N.C., home of the Fort Bragg Players has some of the most vital regional community theatre in the country and is the home base of very qualified acting talent."

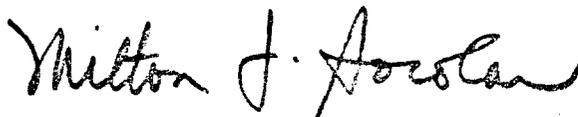
It is the Army's position that the "Fort Bragg Players" are amateurs, not professionals. Furthermore, the Army reports that in a telephone conversation, the president of Halcyon advised "that by not using professional talent, he could use much fresher amateurs and many the gems among them." The Army downgraded Halcyon in regard to organizational capabilities not only because of the professional actor issue but because of Halcyon's desire to extend shooting for a 2-week period, when "shooting usually takes from 5 to 7 days." In addition, the Army believes that Halcyon's "editing techniques, [as demonstrated in the sample film,] are non-current and not in standing with Industry Standards." While the Army concedes that Halcyon's sample film demonstrated creativity, the Army points out that the film was a documentary, with only a voice over (e.g., use of a narrator) and no scripted dialogue as required by the instant film. Another factor in the technical evaluation was the proposed production team and producer's qualifications. The Army gave Halcyon's director and cameraman a good rating while its editor received only a fair rating, which resulted in Halcyon receiving only 60 percent of the points allocated for this segment of the evaluation. Halcyon's overall technical evaluation score was 47 points out of a possible 100 points, whereas Klein's score was 90.

Halcyon objects to the Army's statement that Halcyon was using nonprofessional actor talent. Halcyon argues that this "is a pure fabrication unsupported by anything which Halcyon Films supplied in its bid." However, Halcyon fails to specifically support its position. Also, Halcyon contends that the Army's technical expert's remarks, that Halcyon's "editing techniques used in its sample film were non-current and therefore not in standing with industry standards," are incorrect since the film was an American Film Festival finalist in 1977. Moreover, Halcyon takes issue with the Army's statements "which would seem to derogate [Halcyon's] sample film by imputing obsolescence to its use of the voice-over and to the fade-out * * *."

In resolving cases where a protester challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency, since it must bear the burden of any difficulties incurred by reason of a defective evaluation. Accordingly, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and that such determinations are entitled to great weight and must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. Airport Management Systems, Inc., B-190296, May 25, 1978, 78-1 CPD 395.

We have reviewed the Army's technical evaluation in light of Halcyon's allegations and see nothing in the record which indicates that the evaluation of Klein's proposal or that of Halcyon was improper or arbitrary. To the contrary, it appears that the Army rated both proposals on the basis of reasoned judgment and in accordance with the established evaluation criteria. The fact that Halcyon disagrees with that judgment does not invalidate it. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

The protest is denied.



For the Comptroller General
of the United States