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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hydroscience, Inc.

File: B-227989, B-227989.2

Date: November 23, 1987

DIGEST

1. Agency determination to exclude offeror from competitive range is proper when the offeror's proposal ranked fifth out of eight proposals received and the agency reasonably determined that the offeror's technical proposal evidenced such significant deficiencies in understanding the scope of the work required under the solicitation and in its management approach that, despite its low estimated cost, the protester's proposal had no reasonable chance of receiving the award.

2. Offeror whose proposal was properly eliminated from the competitive range does not have the requisite direct economic interest to be considered an interested party to protest either the reasonableness of the cost-technical tradeoff between the two highest rated offerors in the competitive range, or the cost reasonableness of the awardee's proposal. The protester would not be in line for award if either protest issue were sustained, and cancellation and resolicitation would not be warranted.

DECISION

Hydroscience, Inc. protests the award of a contract to Hughes Aircraft Co. under request for proposals (RFP) No. N00039-87-R-0119(Q), issued by the Department of the Navy Space and Naval Warfare Systems Command, for the provision of technician crewmen to operate and maintain the Surveillance Towed Array Sensor Systems (SURTASS) aboard nine ships owned by the government, and for field support teams for these systems.^{1/} Hydroscience argues that its proposal was improperly evaluated and unreasonably excluded from the competitive range and that the award to Hughes was arbitrary and capricious and at an unreasonable cost.

^{1/} SURTASS is a passive undersea surveillance system in which data is acquired by an acoustic sensor array towed by a government ship.

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

The RFP was issued on February 12, 1987, with a March 16 closing date, as amended, for receipt of initial proposals. The RFP called for a cost-plus-award-fee contract from the date of award through September 30, 1987, with options for FY 1988, 1989 and 1990. Offerors were required to submit separate technical and cost proposals and evaluation was to be on the basis of technical approach, cost and project management, in descending order of importance. The weights assigned by the Navy to these factors and to the subfactor listed in the solicitation were as follows:

	<u>SubFactor Weight</u>	<u>Factor Weight</u>
A. Technical Approach		50%
1. Grasp of Scope	36%	
2. Innovative Methods in Manning Concept	32%	
3. FST Manning Concept	16%	
4. Crew Management	16%	
B. Cost		30%
1. Realistic Contract Cost	70%	
2. Cost Realism	30%	
C. Management		20%
1. Past Performance	55%	
2. Management Methodology	10%	
3. Organization	10%	
4. Project Plans	10%	
5. Schedule, Monitoring & Control	10%	
6. Delivery Schedule	5%	

Under "grasp of scope," the most important technical subfactor, the solicitation listed two criteria:

"(a) Understanding of operational and maintenance requirements as addressed in the Statement of Work for SURTASS operation and maintenance technician crews.

(b) Understanding of operational tempo and environment and the urgency of immediate requirements."

Eight proposals were received by the closing date. A technical evaluation board (TEB) evaluated the initial technical proposals and prepared a report for the contract award review panel (CARP) which, in turn, reviewed the TEB report and evaluated the cost proposals to arrive at a total evaluation score.

The TEB rated Hydrosience's technical proposal as fifth of the eight proposals submitted, and recommended that unless there was a major potential offsetting cost benefit, only the four highest rated proposals be given further consideration. In particular, the TEB stated that the four lowest rated proposal represented a significant risk of inadequate performance and concluded that "no amount of clarification would significantly alter any one of the evaluation results."

Hydrosience's estimated total cost plus award fee was \$7,988,105. The other seven proposals which were evaluated ranged in cost from \$9,209,156 to \$16,143,421. Based on its review the CARP concluded that the four highest scored firms resulting from combining weighted technical and cost scores, including Hughes, should be considered in the competitive range and that the other four offerors should be excluded from the competitive range.

With respect to Hydrosience, the CARP found that it should be excluded from the competitive range because:

"The [Hydrosience] proposal displays a lack of understanding of the SURTASS requirement, i.e., other than the towed array perspective. Their understanding of the communications requirement is shallow; they have little experience with large scale military communication systems. The [Hydrosience] management approach, which locates their management staff at Dallas, TX and uses ashore SMS crew leaders to coordinate and manage on-site operations is unsatisfactory. It provides no direct [Hydrosience] management/SURTASS on-site management interface and relies on technicians to execute a complex and essential management function. Further, the only person with relevant SURTASS experience identified as being available to this contract is the program manager."

The contracting officer adopted the CARP's findings and determined to include only the four highest rated firms in the competitive range. By letter dated May 19, 1987,

Hydroscience was advised that its proposal had been eliminated from the competition and would no longer be considered for award. Discussions were held with the remaining four offerors, and after submission and evaluation of their best and final offers, award was made to Hughes on July 10, 1987. Hydroscience was notified by letter dated July 13, whereupon, by letter dated July 17, Hydroscience requested a debriefing from the Navy and on July 24, filed a protest with our Office alleging that the award was arbitrary because of the cost-technical tradeoff between Hughes and offeror A, and that the award cost of \$11,351,712 was unreasonable. A debriefing was held on July 30 and on August 13 Hydroscience filed a supplemental protest with our Office alleging that its proposal had been improperly evaluated and eliminated from the competitive range.

In reviewing protests concerning the evaluation of proposals and competitive range determinations, our function is not to reevaluate the proposal and make our own determination about its merits. This is the responsibility of the contracting agency, which is most familiar with its needs and must bear the burden of any difficulties resulting from a defective evaluation. Robert Wehrli, B-216789, Jan. 16, 1985, 85-1 C.P.D. ¶ 43. Procuring officials have a reasonable degree of discretion in evaluating proposals, and we will examine the agency's evaluation only to ensure that it had a reasonable basis. RCA Service, Co. et al., B-218191 et al, May 22, 1985, 85-1 C.P.D. ¶ 585. Furthermore, it is well established that the determination of whether a proposal should be included in the competitive range is a matter primarily within the contracting agency's discretion which will not be disturbed unless it is shown to be unreasonable or in violation of procurement laws or regulations. Metric Systems, Corp., B-218275, June 13, 1985, 85-1 C.P.D. ¶ 682. Additionally, the fact that a protester does not agree with an agency's evaluation does not render the evaluation unreasonable or contrary to law. Logistic Services International, Inc., B-218570, Aug. 15, 1985, 85-2 C.P.D. ¶ 173.

Hydroscience takes exception to virtually all of the areas in which its proposal was determined to be weak or deficient. The protester also contends that certain mathematical errors in scoring which occurred during the evaluation were prejudicial to its proposal. Further, Hydroscience points out that the TEB had not found its proposal technically unacceptable, rather it had recommended that: "Unless one of the [four lowest ranked offeror's] proposals offers a major potential cost benefit which could offset an 'adequate' rating (vis-a-vis an 'excellent' rating), it is recommended that they be given no further consideration." Hydroscience contends that its proposals' \$2 million cost savings provided such an offset.

With respect to the alleged cost savings, we note that Hydrosience had failed to include costs for one of the ships in FY 1990, and that its estimated costs were unescalated through the life of the contract. Thus, an upward adjustment would have been required had Hydrosience's proposal been included in the competitive range. Therefore, it is unclear how much cost savings are actually associated with the proposal. However, more significantly, the contracting officer who was the source selection official did not adopt the findings of the TEB. Rather he adopted the CARP findings, which indicated that Hydrosience's technical proposal was technically unacceptable because of fundamental deficiencies which could not be improved through discussions, and that the proposal had no reasonable chance of being selected for award. A source selection official is not bound by the recommendations and conclusions of evaluators such as the TEB. Advance/Technology Systems, Inc., 64 Comp. Gen. 344 (1985), 85-1 C.P.D. ¶ 315; Master Security, Inc., B-221831, May 9, 1986, 86-1 C.P.D. ¶ 447. Consequently, Hydrosience's reliance on the TEB's recommendation is misplaced, and we have held that a marginally acceptable or generally adequate proposal may be excluded from the competitive range where, as here, it does not have a reasonable chance of award. Leo Kanner Associates, B-213520, Mar. 13, 1984, 84-1 C.P.D. ¶ 299.

In our view, the Hydrosience proposal was properly determined to be technically unacceptable on the basis of the three major deficiency areas outlined in the CARP's findings, which relate to Hydrosience's lack of understanding of the SURTASS requirements other than the towed array perspective, namely Hydrosience's shallow understanding of the communications requirement, its lack of experience with large scale military communications systems, and Hydrosience's unsatisfactory management approach. Since these provided a sufficient basis for elimination of Hydrosience from the competitive range, we will restrict our discussion to these areas.

Hydrosience asserts that its understanding of the SURTASS requirement is insured by its extensive experience with the towed array segment of the SURTASS system, and with the quick reaction surveillance system (QRSS), which it alleges the Navy ignored. Hydrosience contends that, instead, the Navy evaluated the proposal on the basis of an unstated evaluation criterion, namely a requirement for specific experience with all SURTASS communications equipment.

On the contrary, the Navy specifically recognized Hydrosience's experience with the QRSS and the towed array system and listed this experience as a strength. However,

the Navy determined that the QRSS experience was fundamentally dissimilar and of limited value in the SURTASS program, and that the towed array segment was the least complex element of the SURTASS system. Hydrosience was downgraded because it had no relevant experience with Navy Fleet Communications systems and standard Navy processing and display hardware, which are the most complex and difficult aspects of the SURTASS equipment. Hydrosience's experience was considered to be of limited utility, particularly since Hydrosience's proposal was found to be deficient in grasp of scope of both SURTASS operation and maintenance requirements, and understanding of operational tempo and environment and urgency of immediate requirements--the most important technical subcriteria. In particular, the Navy determined that Hydrosience's proposal failed to adequately address crucial SURTASS operational elements such as ship to shore communications and message handling, mission aborts and emergency port visits.

While Hydrosience asserts that it addressed the communications requirements in its at-sea scenario, the Navy reasonably determined that this scenario, as well as Hydrosience's proposal, did not address numerous critical elements of the communications process, such as ongoing interaction between ship and shore during routine target prosecution which allows effective hand-off of operations to the ship when communications fail. Further, Hydrosience's communications outage scenario displayed inappropriate responses, such as proposing a 6 hour delay before manning the backup display--which the Navy determined demonstrated serious deficiencies in Hydrosience's grasp of shipboard operations, and lack of understanding of the communications aspects of SURTASS operations. Thus, the Navy reasonably determined that Hydrosience's proposal lacked critical information, which evidenced serious deficiencies in the grasp of the scope of work, and which itself constitutes a sufficient basis for elimination of a proposal from the competitive range without discussion. Electronic Warfare Associates, B-224504, et al., Nov. 3, 1986, 86-2 C.P.D.
¶ 514.

Hydrosience contends that this assessment constitutes the application of an unstated criteria. However, we find that these areas are reasonably related to the general evaluation criteria and therefore were properly considered by the Navy. While an evaluation must conform to the scheme set forth in the solicitation, the procuring agency is not required to identify all of the various aspects of the subcriteria, as long as they are reasonably related to or encompassed by the criteria. Id. Hydrosience's disagreement in this regard is central to all of its objections to the Navy evaluation. In essence, Hydrosience contends that the only relevant

function of the awardee was one of recruitment and management of personnel who are to be trained by the Navy, and that the Navy's evaluation imputed responsibilities to the contractor which were, in fact, the Navy's. However, under the statement of work (SOW), sections 3.2 and 3.3, it is clear that the contractor is responsible for the operation of the SURTASS shipboard equipment system. In our view, this makes it clear that the contractor's requirements are substantially broader than the limited hiring and recruitment function which Hydrosience argues is encompassed. Accordingly, the Navy had a reasonable basis to downgrade Hydrosience's understanding of the scope of work.

Hydrosience concedes that there are differences in the equipment and duties relating to the communications aspects of the current requirement and the programs which it has previously conducted, but contends that these differences do not impact the basic requirement which is the recruitment, management and support of the technical crews. However, we find that the Navy reasonably construed the responsibilities more broadly than Hydrosience and Hydrosience essentially concedes that its proposal had critical informational deficiencies.

With respect to the Navy's determination that Hydrosience lacked understanding of the communications equipment, again the crux of Hydrosience's disagreement concerns its contention that the contract is primarily a hiring function, while the Navy contends that this focus is too narrow. We have already considered the communications deficiencies noted by the Navy in the context of the foregoing treatment of the evaluation of Hydrosience's understanding of the broader general SURTASS requirements. As indicated above, we find that the Navy had a reasonable basis for its position that Hydrosience's proposal showed a lack of understanding of the communications requirements, and Hydrosience's disagreement with the scope of the requirement and with the value of its related experience is insufficient to establish that the Navy's evaluation was improper. Metric Systems Corp., B-218275, supra.

With respect to the deficiencies in Hydrosience's management approach, Hydrosience contends that unstated evaluation criteria were applied. In particular, the Navy downgraded Hydrosience's proposal for the use of shared-resources rather than providing dedicated personnel. Hydrosience contends that it successfully used the shared-resource approach under its QRSS contract and that the RFP did not prohibit this approach. In our view, the Navy's concerns were reasonably related to the solicitation requirement under management methodology that the offerors evidence willingness to allocate resources to their proposed

management approach, and that the proposal show specific management organization and procedures for implementing the management approach.

The Navy reasonably concluded that shared-resource personnel would lack the priority program orientation to the SURTASS which the Navy believed was essential to accomplish the SURTASS mission. The Navy determined that the use of corporate personnel, not funded by the program, would be insufficient to administer the program because of their requirements to respond to other, unrelated corporate priorities.

Similarly, the Navy downgraded Hydrosience's proposal for the use of a program manager in Dallas, rather than at the Norfolk SURTASS support center. Hydrosience points out that the RFP does not require location at Norfolk, and that there are Pacific operations as well, and argues that the existence of modern communications technology obviates the need for such a location. Hydrosience contends that it successfully used a Dallas-based program under its SURTASS array maintenance facilities contract. However, Hydrosience's array maintenance facilities contract was considered dissimilar by the Navy in that it is only for the repair of towed arrays which required minimal interaction among the program manager, technicians and the Navy, while the SURTASS operations and maintenance crew contract requires continuous and immediate contact among these entities. We find the Navy reasonably determined that it needed a program manager with immediate access to secure Navy communications systems and deployed crews, and with the ability to provide on the spot reaction to program and mission emergencies. Further, the Navy considered that proximity to program personnel would provide better awareness of program status and problems.

We find that these considerations are reasonably related to the RFP's project management requirements, particularly in view of the fact that the solicitation clearly indicated that time of performance is of the essence and is a competitive evaluation factor. Such a requirement provides a reasonable basis to downgrade a proposal which fails to provide for location in close proximity to the critical agency facility. See Wolf, Block, Schorr & Solis-Cohen, B-221363.2, May 28, 1986, 86-1 C.P.D. ¶ 491. We also note that Hydrosience concedes that it failed to provide qualifications for positions other than that of program manager, as required under the RFP, and contends only that it would have provided these descriptions had discussions been conducted.

Certain mathematical errors were, in fact, made by the Navy during the determination of the competitive range. Hydrosience's corrected score of 74.08 was only 2.6 points lower than the corrected score of Company B,^{2/} the final offeror determined to be in the competitive range, while the evaluation indicated that Hydrosience's proposal was 5.21 points below the lowest scored proposal which was included in the competitive range. However, the chairman of the CARP stated that Hydrosience's deficiencies are integral to its basic approach and limitation of corporate resources and thus relied on those deficiencies, not on the numerical array, in recommending that Hydrosience not be included in the competitive range. The contracting officer specifically determined that the scoring error was clerical and had no effect on the analysis of the substantive weaknesses and deficiencies which led to Hydrosience's exclusion. In view of the discussion above concerning these deficiencies, we find that this statement is supported by the record, and accordingly that the mathematical errors were not prejudicial to Hydrosience. See W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 C.P.D. ¶ 13.

Because we find that the Navy had a reasonable basis for excluding Hydrosience from the competitive range, Hydrosience is not an interested party to protest either the reasonableness of the Navy's cost-technical tradeoff decision between Hughes and the other highest-rated offeror, or the reasonableness of the awardee's price. Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3551 (Supp. III 1985), an interested party for purposes of eligibility to protest must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by the failure to award the contract. This statutory definition is reflected in our Bid Protest Regulations implementing CICA. 4 C.F.R. § 21.0(a). Where there are intermediate parties between the protester and the low offeror, we have generally considered the protester to be too remote to establish himself as an interested party since it would not be in line for an award even if its protest were sustained. CC Distributors, Inc., B-225603, Mar. 19, 1987, 66 Comp. Gen. _____, 87-1 C.P.D. ¶ 312.

^{2/} The identities of the offerors other than Hydrosience and Hughes are designated by letter in accordance with the Navy's request that their identities not be disclosed.

While Hydrosience contends that it should be considered an interested party because resolicitation is warranted if its protest is sustained, this is incorrect. If the cost/technical tradeoff decision between Hughes and Company A were found to be unreasonable, then Company A would be in line for award, under the rationale which Hydrosience presents. If the awardee's cost was determined to be unreasonable, there remains a lower priced intervening offeror, Company C, in the competitive range which would be in line for award. In neither instance would cancellation and resolicitation be warranted, nor would Hydrosience be in line for award. A protester does not become "interested" merely by alleging that cancellation and resolicitation are appropriate. See Flight Resources, Inc., 65 Comp. Gen. 619 (1986), 86-1 C.P.D. ¶ 518.

The protest is denied in part and dismissed in part.

In view of our resolution of the protest, Hydrosience's claim for proposal preparation costs and the costs of pursuing its protest are also denied. Satellite Services, Inc., B-225624, Mar. 19, 1987, 87-1 C.P.D. ¶ 314.


James F. Hinchman
General Counsel