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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-242871.3

Date: May 11, 1992

Kerry D. Dance for the protester.
William H. Spindle, Department of the Air Force, for the
agency.
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

As part of reassessment performed in response to General
Accounting Office decision sustaining a protest where the
awardee's proposed level-of-effort (LOE) appeared to be
inconsistent with the government's estimate, the agency
concluded that the awardee's proposal is within 3 percent of
the government's revised estimate of the required LOE.
Under these circumstances, the agency reasonably determined
that the contract should remain with that awardee.

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 related work. S-Cubed contends that discussions
conducted during negotiations were inadequate and misleading
and that the agency failed to properly implement our
Office's recommendation in an earlier protest in which
S-Cubed raised the same issues.

We deny the protest.

This is the second protest that S-Cubed has filed against
the same award decision by the agency. We sustained the
first protest in S-Cubed, A Div. of Maxwell Laboratories,
Inc., B-242871, June 17, 1991, 91-1 CPD ¶ 571. Because the
procurement context was set forth in detail in the earlier
decision, we will not repeat that background, but instead
simply summarize the facts relevant to this protest.

In their evaluation of initial proposals, the agency evaluators found that S-Cubed's proposed level-of-effort (LOE) was acceptable, but that Teledyne's proposed LOE, which was substantially below that proposed by S-Cubed, was so low, particularly in certain areas, as to constitute a high risk. Accordingly, during discussions, the Air Force indicated to S-Cubed that the company's proposed LOE was acceptable and informed Teledyne that the agency questioned that offeror's ability to accomplish the tasks contained in the RFP's statement of work with so few labor hours. In response to this concern, Teledyne, in its best and final offer (BAFO), redirected some of its labor hours to other tasks within the statement of work, but overall proposed a slight decrease in the total LOE.

After reviewing the BAFOs, the agency awarded a contract to Teledyne, in essence because Teledyne's proposed cost was significantly lower than S-Cubed's, notwithstanding the fact that the record indicates that the source selection official determined that S-Cubed's technical proposal was superior. We sustained S-Cubed's earlier post-award protest because the agency offered no reasoned explanation for its determination that Teledyne's proposed LOE, which agency evaluators had initially found was so low as to constitute a high risk, was considered acceptable after the submission of BAFOs, despite its actually being lowered further at the BAFO stage. We found that the record contained no evidence that a meaningful cost realism analysis had been performed to determine whether Teledyne's proposed low cost was, in fact, realistic. We recommended that the agency conduct a proper cost realism analysis of Teledyne's proposal, perform a thorough technical evaluation of the proposal in light of this analysis, and then reassess its cost/technical tradeoff and award determination.

The Air Force subsequently informed our Office that, as part of a reassessment, it had conducted a new cost realism analysis and technical evaluation. According to the agency, the reassessment revealed that Teledyne's BAFO is within 3 percent of a revised government estimate of the required LOE. The reassessment also revealed that, if for evaluation purposes the LOE is normalized for Teledyne and S-Cubed, Teledyne's proposal remains substantially less expensive than S-Cubed's. The difference between the cost of the two proposals is primarily attributable, not to the difference in LOE, but instead to Teledyne's willingness to perform at reduced profit, coupled with lower overhead and labor rates. Based on that analysis, the agency reaffirmed its award determination and allowed Teledyne's contract to remain in place.


In its current protest, S-Cubed asserts that the agency statement that Teledyne's BAFO is within 3 percent of the government's estimated LOE contradicts our earlier finding that the proposed LOE was approximately half of the government's estimate. S-Cubed also alleges that the agency's ultimate decision indicates that the discussions conducted with S-Cubed during negotiations were misleading.

The Air Force explains that the apparent inconsistency raised by S-Cubed simply reflects the agency's taking into account a lower, revised government estimate of the required LOE. Specifically, the agency states that, as a result of increased efficiencies arising from computerization of some of the tasks, the procuring activity reduced its estimated LOE by approximately 17 percent.

In reviewing a protest against an agency evaluation of proposals, 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. Here, we find that it was reasonable for the Air Force to take into account its lower, revised estimated LOE in performing the reassessment that our Office recommended in our earlier decision. Because the reassessment revealed that Teledyne's proposal was within 3 percent of the revised government estimated LOE, the agency reasonably concluded that Teledyne's proposed LOE and cost were realistic.

Concerning S-Cubed's allegation that the agency misled the offeror by failing to point out that its proposed LOE was excessive, we note that the agency never treated S-Cubed's proposed LOE as unacceptably high. Moreover, even if we assume, arguendo, that the company was misled into leaving the proposed LOE in its BAFO at a level considerably higher than Teledyne's, this had no impact on source selection. The agency's normalization of the LOE for the purpose of comparing the two offerors' proposals demonstrates that the difference in the offerors' proposed LOE was not determinative because Teledyne's cost advantage was largely due to lower labor rates, overhead, and profit. Accordingly, S-Cubed was not prejudiced by the agency's failure to address the high level of S-Cubed's LOE during discussions.

The protest is denied.


James E. Hinchman
General Counsel