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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: L-3 Communications, KDI Precision Products, Inc.

File: B-290091; B-290091.2; B-290091.3

Date: June 14, 2002

Louis D. Victorino, Esq., James J. McCullough, Esq., Jonathan S. Aronie, Esq., and Abram J. Pafford, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. John S. Pachter, Esq., Jonathan D. Shaffer, Esq., S. Jun Jin, Esq., and W. Stephen Dale, Esq., Smith, Pachter, McWhorter & Allen, for Alliant Precision Fuze Company, an intervenor.

Warren D. Leishman, Esq., and Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably determined that awardee's performance of certain prior contracts was not relevant for purposes of evaluating past performance, where contracts involved more complex and challenging technology than that under the solicitation; agency reasonably relied instead principally on awardee's performance on predecessor contract for the solicited work.

DECISION

L-3 Communications, KDI Precision Products, Inc. (KDI) protests the Department of the Air Force's award of a contract to Alliant Precision Fuze Company, under request for proposals No. F08635-01-R-0073, for production of DSU-33 proximity sensors. KDI challenges the evaluation of past performance and the agency's assessment of program risk based on KDI's proposal of significant no-cost-to-the-government work.

We deny the protest.

The DSU-33 is a nose-mounted, radio frequency proximity sensor for general purpose bombs and the Joint Direct Attack Munition. The sensor determines where the ground is relative to the weapon system through receipt of the return of a signal transmitted to the ground; at a predetermined height (referred to as "height-of-burst"), normally 20 feet above the ground, the sensor provides a fire pulse to a separate fuze, which in turn initiates detonation. The RFP provided for award of

a primarily fixed-price contract for the production of up to 72,000 DSU-33 proximity sensors, including a 12,000-unit maximum basic quantity, with five 12,000-unit maximum option quantities. The contemplated contract is a follow-on contract to a production contract awarded to Alliant in 1998. Offerors were allowed to propose to build either to the current DSU-33 technical data package (referred to as “baseline”) or to an alternate design (referred to as “alternate baseline”).

Award was to be made to the offeror whose conforming proposal represented the best value, and demonstrated that the offeror can accomplish the RFP requirements in a manner most advantageous to the government. The RFP provided for proposals to be evaluated under the following four equally weighted factors: (1) past performance on current and relevant contracts; (2) mission capability, including (in descending order of importance) subfactors for form, fit and function, manufacturing capability, systems engineering, testing, schedule, and small disadvantaged business subcontracting; (3) proposal risk (to be assigned at the mission capability subfactor level only); and (4) cost/price.

Four proposals from three offerors were received in response to the RFP--Alliant and a third firm submitted baseline proposals, while KDI submitted both a baseline and an alternate baseline proposal. All offerors were included in the competitive range and, after discussions, were requested to submit final proposal revisions.

Alliant’s and KDI’s final baseline proposals received the highest technical and overall ratings. While the evaluated price (\$[DELETED]) of KDI’s final baseline proposal was lower than Alliant’s (\$[DELETED]), the source selection authority (SSA) noted that Alliant’s proposal was superior under the collectively more important non-price factors. In this regard, Alliant was the incumbent contractor, and its proposal was rated exceptional/high confidence in past performance, while KDI’s was rated only very good/significant confidence. In addition, while Alliant’s proposal received a satisfactory/low risk rating under all seven mission capability subfactors, KDI’s received a satisfactory/low risk rating under only six of the subfactors. Under the second most important mission capability subfactor, for manufacturing capability, KDI’s baseline proposal received a satisfactory/moderate risk rating based on the fact that (1) KDI will be required to undertake a new production start and production qualification effort, which usually requires special contractor emphasis and close government monitoring, (2) it appeared from KDI’s proposal that there were only limited manufacturing process controls, and (3) KDI’s proposed approach to ensuring height-of-burst across all temperature ranges was only minimally acceptable, and entailed additional risk. Proposal Analysis Report (PAR) at 10; Subfactor Summary; Analysis Worksheet (Evaluators).

In explaining his finding of Alliant’s overall superiority, the SSA noted that Alliant offered

a strong record of highly relevant Past Performance along with demonstrated and proposed technical expertise, experience, and a strong management approach for producing DSU-33B/Bs. I have high confidence that, as a proven producer of DSU-33B/Bs, [Alliant] can produce and deliver fully operational units to the warfighter on time and at cost. Under the current wartime situation, maintaining a production capability in order to deliver units to the field is critical. [Alliant] proposed a proven low risk manufacturing capability with the systems engineering and test assets available, to ensure proven products are delivered on schedule.

Source Selection Decision (SSD) at 3. The SSA further found an “inherent program risk” in KDI’s proposal based on KDI’s proposal to absorb certain [DELETED] costs (exceeding \$[DELETED]), including those relating to [DELETED]. Id. The SSA concluded that Alliant’s superiority in the non-price factors outweighed KDI’s lower price, and that Alliant’s baseline proposal therefore represented the best value to the government. Upon learning of the resulting award to Alliant, and after being debriefed by the agency, KDI filed this protest.

PAST PERFORMANCE

KDI challenges Alliant’s rating of exceptional/high confidence under the past performance factor. In this regard, the RFP provided for the agency to assign an overall confidence assessment rating for past performance “considering the offeror’s relevant performance record,” and specifically indicated that “[t]he currency and relevancy of the information, source of the information, context of the data, and the general trends in your performance will be evaluated.” RFP § M1(c)(1). “Currency and relevancy” was defined as “work performed within the last 5 years and relevant to the production, manufacturing and design of proximity sensors.” RFP § M1(c)(1)(b). The agency’s Performance Risk Assessment Group rated prior contracts as either: highly relevant, where the work was similar in magnitude and complexity; relevant, where there were some dissimilarities in magnitude and/or complexity, but the contract included most of what the solicitation required; somewhat relevant, where the dissimilarities were greater but the contract included some of what the solicitation required; or not relevant. PAR at 14.

Alliant and KDI both proposed nine contracts for consideration. Six of KDI’s contracts, all of which were related to fuzes, were found to be sufficiently relevant to be included in the past performance evaluation. Three of Alliant’s contracts were found to be sufficiently relevant to be included in the past performance evaluation, including the predecessor DSU-33 proximity sensor contract, a contract for production of the FZU-39 proximity sensor, and a contract for development and production of the MK419 multifunction fuze (which includes a height-of-burst capability and proximity sensing). Alliant’s overall exceptional/high confidence past performance rating was based on an exceptional past performance rating for the

highly relevant DSU-33 proximity sensor contract, a very good rating for the relevant MK419 multifunction fuze, and a satisfactory rating for the relevant FZU-39 proximity sensor contract.

KDI maintains that the Air Force improperly failed to take into account in its rating of Alliant's past performance two contracts listed by Alliant in its proposal: (1) a contract for the development of the hard-target smart fuze, which has not yet reached production, and for which Alliant received an overall marginal performance rating; and (2) a contract for development of the next-generation multiple-event hard-target fuze, for which Alliant received an overall satisfactory performance rating. According to the protester, Alliant's past performance rating would have been lower had the agency taken Alliant's performance under these two contracts into account.

The evaluation of past performance is a matter within the discretion of the contracting agency, which our Office will review only to ensure that it was reasonable and consistent with the stated evaluation criteria and with procurement statutes and regulations. Sterling Servs., Inc., B-286326, Dec. 11, 2000, 2000 CPD ¶ 208 at 2-3. Where the solicitation provides that the past performance evaluation will take into consideration the similarity of offerors' contracts to the contract to be awarded, the agency's consideration should be meaningful. Beneco Enters., Inc., B-283512.3, July 10, 2000, 2000 CPD ¶ 176 at 7-8 n.4; Chem-Services of Indiana, Inc., B-253905, Oct. 28, 1993, 93-2 CPD ¶ 262 at 3-4. We think the Air Force reasonably determined that Alliant's contracts for development of the hard-target smart fuze and the multiple-event hard-target fuze were not sufficiently relevant to be included in the past performance evaluation.

The agency reports that the hard-target fuze technology associated with the two contracts is vastly different from the technology associated with proximity sensors. The proximity sensor, incorporating Doppler radar technology, determines where the ground is relative to the weapon system through receipt of the return of a radio frequency signal transmitted to the ground; at a predetermined height-of-burst, the sensor provides a fire pulse to a separate fuze, which in turn initiates detonation. Basic proximity sensor technology has been in existence for many years. In contrast, a hard-target fuze uses completely different technology designed to permit deep penetration of hard targets before detonation; the hard-target fuze relies on an mechanical accelerometer receiving shock signals generated by the weapon system decelerating as it hits the surface of the ground and penetrates various layers of medium and voids, rather than on the Doppler radio frequency sensors used in the proximity sensor. The hard-target fuze programs require the development of software algorithms to read the impulses generated by the accelerometer, so as to distinguish between the various layers of medium and voids, and these algorithms must be performed sufficiently fast as to detonate the weapon effectively. The hard-target fuze must be shock-hardened in order to survive and continue to function notwithstanding penetrating multiple layers of hardened concrete, compacted soil,

etc. In addition, the hard-target fuze, because it (unlike the DSU-33 proximity sensor) is in the direct firing sequence and includes the explosives which ignite the weapon, must satisfy a “Fuze, Safe and Arm” requirement. Finally, unlike proximity sensor technology, hard-target fuze technology has not yet been successfully developed.

While there may be some general similarities between the hard-target fuze contracts and the contemplated DSU-33 contract effort—e.g., conforming to schedule and managing the contract effort—we think the agency has reasonably established that hard-target fuze technology is significantly more complex and challenging than proximity sensor technology. The protester has not refuted the agency’s explanation as to the differences in the technologies and their stages of development. Based on these material differences, it was reasonable for the agency to conclude that Alliant’s performance on the hard-target fuze development contracts was a poor predictor of performance under the solicited effort, and that these contracts therefore were not relevant to the past performance evaluation. Conversely, we think the agency reasonably gave significant weight to Alliant’s exceptional past performance on its predecessor DSU-33 proximity sensor contract, under which it produced over 15,000 units without a single lot failure; this contract clearly was a much stronger predictor of performance under the solicited DSU-33 production effort than performance on other contracts, be they for hard-target fuze development or even for other proximity sensors. We conclude that there is no basis for questioning the agency’s rating of Alliant’s overall past performance as exceptional/high confidence; the record certainly supports the agency’s finding that Alliant’s past performance was significantly superior to KDI’s, since KDI had not performed a proximity sensor contract and had received no overall performance rating higher than very good for any of its six evaluated contracts.

PROPOSAL RISK

KDI asserts that the Air Force improperly downgraded its proposal for not charging the government for work under contract line items for [DELETED], and instead absorbing [DELETED] costs exceeding \$[DELETED]. The SSA stated in his SSD that “there is an inherent program risk due to [KDI] assuming significant expenditures that would normally be borne by the Government”; according to the SSA, “history shows [that] inadequate funding usually results in inadequate contract performance.” SSD at 3-4. KDI argues that the SSA’s consideration of its no-charge-to-the-government pricing approach amounted to the improper introduction of an unstated evaluation factor into the evaluation.

Price realism is not ordinarily considered in the evaluation of proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor. However, an agency may provide for a price realism analysis in such cases for the purpose of assessing an offeror’s understanding of the requirements

and the risk inherent in an offeror's proposal. See Wackenhut Servs., Inc., B-286037, B-286037.2, Nov. 14, 2000, 2001 CPD ¶ 114 at 3. In this regard, the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals. Molina Eng'g, Ltd./Tri-J Indus., Inc. Joint Venture, May 22, 2000 B-284895, 2000 CPD ¶ 86 at 4; see generally Acepex Mgmt. Corp., B-279173.5, July 22, 1998, 98-2 CPD ¶ 128 at 6 (although a fixed-price offer that is below cost is legally unobjectionable and cannot be rated lower or downgraded in the price evaluation for source selection by virtue of its low price, the risk of poor performance when a contractor is forced to provide services at little or no profit is of legitimate concern).

Here, the RFP put offerors on notice that the agency would view with concern unrealistically low prices, stating as follows:

Proposals unrealistic in terms of technical, cost/price, or schedule commitments will be deemed indicative of an inherent lack of comprehension of the complexity and risks of the requirements and may be rejected. . . .

No advantage will accrue to an offeror who submits an unrealistically low cost/price proposal. Such a proposal may be viewed as indicative of a lack of understanding of the Government's needs.

RFP § M1(a). Given this language, the SSA's concern that KDI was proposing not to charge the government for certain required work was consistent with the RFP.¹ Although KDI maintains that there was no basis in fact for this concern—since there is no evidence to indicate that in fact its pricing will result in future performance problems—we think the SSA nevertheless could reasonably be concerned that KDI's proposal to absorb significant performance costs created some risk of future performance problems; again, the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals. See Molina Eng'g, Ltd./Tri-J Indus., Inc. Joint Venture, *supra*, at 4; Volmar Constr., Inc., B-272188.2, Sept. 18, 1996, 96-2 CPD ¶ 119 at 5.

KDI challenges the reasonableness of the price/technical tradeoff. However, given our conclusions above that the past performance and program risk aspects of the evaluation were reasonable, and given KDI's failure to challenge the agency's

¹ The agency actually asserts that the SSA's concern that there was an inherent program risk did not amount to a price realism analysis. Contracting Officer's Statement, 10-11. However, no matter how the determination is characterized, the fact remains that KDI's no-charge-to-the-government pricing for these contract line items was below-cost and unrealistically low, and that the SSA's concern as to the risk of inadequate contract performance was consistent with the RFP.

determination of KDI's higher proposal risk with respect to manufacturing capability, we find no basis to question the tradeoff and the resulting determination that Alliant's proposal represented the best value to the government.

The protest is denied.

Anthony H. Gamboa
General Counsel