



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Unidyne Corporation

File: B-232124

Date: October 20, 1988

DIGEST

1. Contracting agency did not engage in technical leveling where, although offerors were given two opportunities to revise their initial proposals, there is no indication in the record that during successive rounds of discussions the agency informed the awardee of inherent deficiencies remaining in its proposal so that the awardee was helped to raise its proposal to the level of the protester's proposal.
2. Protester's contention that awardee failed to include certain costs in its price proposal as required by the solicitation is without merit where there is no evidence that awardee omitted any applicable costs.
3. Procuring agency is not required to award a contract to the offeror who receives the highest total score for cost and technical factors although the RFP contains a numerical technical/price evaluation formula, it provides that the award will be made to the offeror whose proposal is most advantageous to the government.
4. Contracting officer reasonably determined that technical proposals were equal in merit based on the conclusion that the protester's slightly higher technical score was due to the experience it gained as the incumbent contractor.
5. Contracting officer reasonably determined that awardee's price proposal was realistic even though some proposed labor rates were lower than required under applicable wage determinations since payments under the contract were limited to the proposed fixed labor rates and the government therefore will not bear any increased costs resulting from any higher wage rate payments.

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DECISION

Unidyne Corporation protests the award of a contract to Analysis & Technology, Inc. (A&T), under Department of the Navy request for proposals (RFP) No. N00189-87-R-0039. The RFP was issued to procure engineering support services for the Naval Sea Combat Systems Engineering Station. Unidyne alleges that the Navy engaged in technical leveling during discussions, that in evaluating proposals the Navy did not follow the RFP evaluation criteria and that the Navy failed to conduct an adequate cost realism analysis of A&T's cost proposal.

We deny the protest.

The RFP, issued on February 25, 1987, requested the submission of technical and price proposals and contemplated the award of an indefinite delivery, indefinite quantity time and materials contract. The solicitation included a detailed list of tasks that might be requested, precise minimum qualifications of required personnel and estimates of the hours of performance required for each labor category. Section M of the solicitation provided that technical proposals would be evaluated on the basis of proposed personnel and the offeror's corporate experience and management plan. The basis for the price evaluation was the offeror's proposed labor rate for each category multiplied by the estimated hours for that category, plus any other proposed direct costs, any general and administrative (G&A) rate the contractor proposed to apply to reimbursable travel and transportation costs, and any proposed material handling charge. The price proposal also was to be evaluated for realism and reasonableness.

The RFP noted that while price was less important than technical factors, it was still an important factor and should not be ignored, and that the importance of price would increase with the degree of equality of the technical proposals submitted. The contract was to be awarded to the responsible offeror whose offer, conforming to the solicitation, was determined most advantageous to the government, price and other factors considered.

The Navy received three proposals and, after an initial evaluation, included all three in the competitive range. (The third offer is not relevant to this protest.) As originally issued, the RFP provided that technical factors would be worth 75 percent and price 25 percent. Based on that formula, Unidyne received an initial technical score of 72 out of 75 points and a price score of 25 out of 25, for a

total score of 97; A&T received a technical score of 67 and a price score of 24 for a total score of 91. The agency then advised each offeror of the technical deficiencies in its proposal and requested each firm to submit a revised proposal. In addition, by amendment No. 7, the Navy decreased the weight of the technical factors from 75 to 70 percent and increased the weight of price to 30 percent. Unidyne then submitted revised technical and price proposals, increasing its price from \$10,084,846.32 to \$11,052,431.83. A&T submitted only a revised price proposal in which it reduced its proposed price from \$10,706,394 to \$9,657,703.

The Navy evaluated the revised proposals and based on the amended 70 percent technical/30 percent price evaluation scheme, Unidyne received scores of 67.8 and 25.67, for a total score of 93.47. Since A&T did not submit a revised technical proposal, it was not reevaluated, but its technical score was decreased from 67 to 62.1 to reflect the new 70 percent scale. A&T received 30 points for its now low price proposal, for a total score of 92.1 points.

Subsequently, the Navy issued two additional amendments to the RFP and both A&T and Unidyne submitted revised price proposals. Following the evaluation of these revised proposals, Unidyne received a score of 95.1 (67.8 technical plus 27.3 price) and A&T received a score of 92.1 (62.1 technical and 30 price). The costs proposed by A&T and Unidyne in these second best and final offers were \$9,780,100.67 and \$10,878,276.52, respectively.

The contracting officer then performed an analysis of the price proposals and concluded that all the offerors' proposed prices were reasonable and realistic. She then reviewed the evaluation results to determine which proposal represented the greatest value to the government. Based on her own analysis and advice from the technical evaluation panel, she determined that the offers of Unidyne and A&T were technically equal and, as a result, made award to A&T on the basis of its low price proposal.

Unidyne first asserts that the Navy improperly engaged in technical leveling during discussions. Unidyne bases its contention on the fact that the Navy held two rounds of discussions and not only informed offerors of the deficiencies in their proposals, but also advised them how to receive the maximum score for proposed employees, even though the employees already exceeded the minimum performance requirements. We find this argument to be without merit.

Technical leveling arises when, as the result of successive rounds of discussions, the agency helps to bring one proposal up to the level of other proposals such as by pointing out inherent weaknesses that remain in an offeror's proposal because of the offeror's own lack of diligence, competence or inventiveness after having been given the opportunity to correct those deficiencies. Federal Acquisition Regulation (FAR) § 15.610(d)(1); Raytheon Ocean Systems Co., B-218620.2, Feb. 6, 1986, 86-1 CPD ¶ 134. Here, while the offerors were given two opportunities to revise their proposals, the Navy raised the technical deficiencies in the offerors' proposals only during the first round of discussions; the Navy called for the second round of revised proposals only because two amendments had been issued to the RFP after the first set of revised proposals was submitted. Further, A&T at no point revised its technical proposal and, as a result, its technical score never increased. Under these circumstances, we see no basis to conclude that the Navy engaged in technical leveling.

Unidyne next contends that the award to A&T is improper because the Navy awarded the contract on a basis different than that provided for in the RFP. In this regard, Unidyne argues that the RFP required offerors to include all elements of cost in their proposed direct labor rates unless their Cost Accounting Standards Disclosure Statement required other direct costs to be charged separately to the contract and those costs were specifically identified in the proposal and priced out on a per hour basis. Unidyne complains that A&T neither included in its direct labor rates, nor priced out on a per hour basis, costs for copying charges, compugraphic machine charges, graphic presentation materials and telephone calls. Unidyne charges that these costs can be "conservatively" estimated at \$100,000. Unidyne concludes that A&T's proposal should have been rejected for failure to include these costs. Alternatively, Unidyne argues that it should have been given the opportunity to submit its proposal without including the costs for these items in its direct labor rates.

We find this argument to be without merit. First, the solicitation did not require the Navy to reject a proposal that failed to comply with this requirement. Rather, section L12a(b)(5) provides that during contract performance the contractor would not be reimbursed for any direct costs not specifically identified as required. More important, the record does not support Unidyne's contention that A&T omitted any applicable charges from its proposal. With regard to one of the items identified by Unidyne-- compugraphic machine charges--both the Navy and A&T assert

that A&T did not propose to use compugraphic machines and thus was not required to include any charges for them.

Further, the Navy states that the remaining three items-- copying charges, graphic presentation materials and telephone calls--were part of the estimate of materials costs included as a separate line item in the RFP. The Navy also disputes Unidyne's unsupported \$100,000 estimate of these charges, arguing that based on historical data the charges for copying, graphic materials and telephone calls will not exceed \$30,000 over the 3 years of the contract. Finally, even if A&T had omitted costs totaling \$100,000 as Unidyne contends, Unidyne was not prejudiced as a result since its proposed price was over \$1 million higher than A&T's price. See Applied Mathematics, Inc., B-227930, Oct. 26, 1987, 67 Comp. Gen. ____, 87-2 CPD ¶ 395.

Unidyne next argues that in making the award to A&T on the basis of price, the Navy failed to follow the RFP's evaluation criteria which weighted technical factors at 70 percent and price at 30 percent. Unidyne further argues that the Navy did not justify its finding that the two offerors submitted technically equal proposals and that in fact, the technical superiority of Unidyne's proposal is evidenced by the 5.7 percent higher technical score it received.

This allegation also is without merit. First, the solicitation provided that the award would be made to the offeror that submitted the proposal most advantageous to the government, not to the offeror that received the highest total point score. Thus, even though the RFP contained a numerical evaluation formula with price as the least important evaluation factor, the Navy could properly award the contract to A&T on the basis of its low price if the Navy determined that the technical proposals were equal. See Lektron, Inc., B-228600, Jan. 25, 1988, 88-1 CPD ¶ 69. Also, while Unidyne argues that its proposal was technically superior as evidenced by the 5.7-percent greater technical score it received, the determining element is not the absolute difference in technical scores but the contracting agency's judgment concerning the significance of the difference. Applied Mathematics, Inc., B-227930, supra.

Here, the record shows that in reaching the conclusion that the technical proposals of A&T and Unidyne were equal, the contracting officer first questioned the technical evaluation panel, which responded that it did not consider the difference in scores significant and believed that the two offers were technically comparable. The contracting officer also reviewed the evaluation documents. In doing so

she noted that the evaluators described both offerors as highly qualified to perform the required services. She further determined that the difference in technical scores was due to experience that Unidyne gained as an incumbent for the Navy for these services. In this regard, a contracting officer properly may consider the fact that an incumbent's higher technical score reflects advantages inherent in its incumbency rather than technical merit. PRC Kentron, Inc., B-230212, June 7, 1988, 88-1 CPD ¶ 537. Under these circumstances, we find that the contracting officer reasonably determined that the proposals were technically equal.

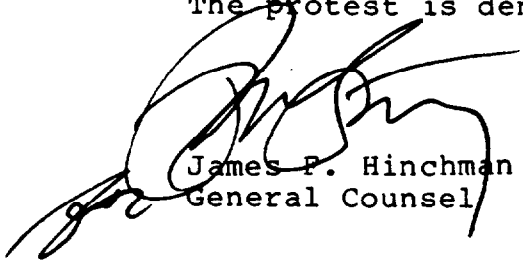
Finally, Unidyne asserts that the award to A&T is improper because the Navy failed to conduct a proper analysis of A&T's price proposal. As support for this allegation, Unidyne relies on two alleged defects in A&T's proposal. First, Unidyne argues while the greatest portion of costs under the contract are for personnel and the procurement is subject to the Service Contract Act, the hourly rates proposed by A&T are not sufficient to cover the wage rates required by the Service Contract Act. Second, as discussed above, Unidyne argues that A&T failed to include in its proposal costs for copying charges, compugraphic machine charges, graphic presentation materials and telephone calls, the cost of which Unidyne estimates to be \$100,000. Unidyne concludes that if the Navy had conducted a proper analysis, it would have concluded that the prices proposed by A&T were not realistic and did not reflect the full cost of the contract to the government.

The Navy responds that the contracting officer analyzed the offerors' price proposals by comparing the proposed labor rates with each other, as well as with the rates under the previous contract and the rates in the wage determination. She also obtained a rate check from the Defense Contract Audit Agency concerning A&T's proposed G&A rates. Based on this information, the contracting officer concluded that the costs proposed by A&T were reasonable and realistic. The contracting officer also noted that since A&T did not take exception to the requirements of the Service Contract Act, the firm was obligated to pay its employees in conformance with the act.

We see no basis to challenge the Navy's decision that A&T submitted a realistic cost proposal, that is, that the costs proposed by A&T are reasonably what the Navy can expect to pay for the contract. First, insofar as Unidyne questions A&T's proposed labor rates, the Navy agrees that for 3 of 14 categories the proposed rates appear to be less than required by the Service Contract Act. Under the RFP,

however, offerors were required to submit a firm fixed price for each labor category and will be paid at the proposed rate. Thus, even if A&T is required to pay certain employees more than the rates it proposed, A&T, and not the government, will bear those increased costs. See SEACO, Inc., B-211226, Aug. 1, 1983, 83-2 CPD ¶ 146. Further, to the extent that Unidyne contends that A&T failed to include certain costs in its proposal, as discussed above, there is no evidence in the record that any significant costs were omitted.

The protest is denied.



James P. Hinchman
General Counsel