



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ampex Corporation

File: B-243855.3

Date: December 9, 1991

Andrew Mohr, Esq., Jeanne Anderson, Esq., and Andrew D. Tenenbaum, Esq., Cohen & White, for the protester. William W. Goodrich, Jr., Esq., and Thomas W. A. Barham, Esq., Arent Fox Kintner Plotkin & Kahn, for Sony Corporation of America, an interested party. William R. Medsger, Esq., and Elizabeth F. Buchanan, Esq., Department of the Army, for the agency. Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. To set aside award because of an alleged violation of solicitation provision that requires an offeror's unit prices be in proportion to item's actual cost, protester must establish it was prejudiced by awardee's alleged deviation from requirement. Where offers of both protester and awardee deviated from requirement, protester has not shown it was prejudiced by acceptance of awardee's lower-priced offer.
2. Allegation that awardee's offer is unbalanced is denied where record fails to show that the awardee's offer contained enhanced prices and that reasonable doubt exists that award will result in the lowest overall cost to the government.

DECISION

Ampex Corporation protests the award of a contract to Sony Corporation of America under request for proposals (RFP) No. DAAC09-91-R-0012, issued by the Department of the Army, Sacramento Army Depot, for the purchase of video recording and playback equipment. Ampex contends that award to Sony was improper because Sony's offer was materially unbalanced and because it violated the integrity of unit prices clause of the RFP, requiring unit prices to be in proportion to actual costs.

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We deny the protest.

The RFP, issued on December 21, 1990, contemplated the award of a firm, fixed-price requirements contract for a period of 1 base year and 2 option years. The RFP is for the acquisition of various quantities of Betacam and Betacam SP format video recording and playback equipment in support of Armed Forces radio and television services. The RFP required offerors to separately price line items for the basic equipment, various equipment components and spares. The schedule also solicited separate prices for on-site training per person at the factory and warranty service for 1 year and for 2 years for the various equipment line items. The RFP provided that the government would evaluate and select the warranty period desired based upon the cost. The RFP also provided for the evaluation of option prices and incorporated by reference the integrity of unit prices clause found at Federal Acquisition Regulation (FAR) § 52.215-26 (FAC 90-4). Award was to be made to the responsible offeror submitting the lowest priced technically acceptable proposal meeting all terms and conditions set forth in the solicitation.

Three offers were received by the March 11, 1991, closing date. One proposal was rejected because it offered an incompatible format of video recording and playback equipment. The offers from Ampex and Sony were evaluated and determined to be susceptible to being made acceptable. The agency held discussions with both offerors and each was requested to submit a best and final offer (BAFO) by June 24, 1991. Sony, in its BAFO, for the first time, priced both its warranty service and training at no charge for both the base year and 2 option years. Ampex, in its BAFO, included a price for training and provided no charge for a 1-year warranty but submitted a price for a 2-year warranty. On July 25, award was made to Sony, the low technically acceptable offeror. Ampex filed its protest with our Office on August 2.

With respect to Sony's alleged violation of the integrity of unit prices clause, Ampex argues that the price of "\$0.00" does not represent the proportionate share of the base costs of the line items for warranties and training. Ampex states that Sony's own initial proposal establishes that there was a cost associated with the extended 2-year warranty proposed by Sony, since Sony initially included prices for its extended 2-year warranty.

The integrity of unit prices provision requires that offerors distribute costs within contracts on a basis that ensures that unit prices are in proportion to actual costs and prohibits methods of distributing costs to line items that distort unit prices. To succeed in a protest of an

alleged violation of this provision, the protester must establish both that the violation exists and that the protester was prejudiced by the awardee's improper pricing method. See, e.g., Integrated Protection Sys., Inc., B-229985, Jan. 29, 1988, 88-1 CPD ¶ 92.

Even assuming a violation of the provision, we do not see how Ampex was prejudiced by Sony's pricing scheme. Ampex argues that it was prejudiced by Sony's pricing method because if Sony had priced warranty service and training in proportion to its costs, it could not have offered those items for free. According to Ampex, prices for those items would have raised Sony's total evaluated cost above Ampex's total evaluated cost. Ampex does not explain, and it is not at all evident, how Ampex would have been the low offeror had Sony pro-rated its price reduction offered in its BAFO across all items, instead of reducing its training and extended warranty prices to zero. Moreover, Ampex was not misled by the RFP since it also prepared its proposal without regard to the language of the provision.

In this regard, based on the Army's acceptance of the Sony offer and interpretation of the clause at issue in this case, it is clear that offers in which some items are without charge are acceptable to the Army. Even though the Army did not make this clear in the RFP, Ampex, at least when its offer was prepared, interpreted the RFP to allow such offers, i.e., Ampex in its proposal provided for a 1-year warranty at no charge. While Ampex maintains that its standard procedure is to offer the first year of warranty free of charge to the government under its General Services Administration (GSA) schedule contract, the point is that Ampex obviously felt free to structure its proposal in a manner similar to that used by Sony. Thus, both offerors priced some aspects of their proposals without regard to what Ampex now asserts is required by the integrity of unit prices clause; under these circumstances, we do not see how Ampex reasonably can claim it was prejudiced by Sony's deviation. See Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321.

Ampex next contends that Sony's offer is materially unbalanced because Sony, by its failure to include a charge for warranty and training, allegedly inflated its charge for equipment so that it could recoup the warranty and training costs. Ampex maintains that these items that Sony failed to price were items that the government would either not purchase or not purchase in large quantities. Ampex argues that it was prejudiced by Sony's pricing because Ampex's evaluated equipment cost is lower than Sony's if no training is purchased and the extended warranty is not purchased. Ampex argues that "if the government were to purchase as

much as 18.5 percent of the training classes and extended warranty," Ampex's total price is still lower than Sony's.

An offer is unbalanced where it is based on nominal prices for some of the work and enhanced prices for other work. An unbalanced offer is materially unbalanced where there is a reasonable doubt that its acceptance will result in the lowest overall cost to the government. All Star Maintenance, Inc., B-231618, Aug. 25, 1988, 88-2 CPD ¶ 181.

The record in this case does not demonstrate that Sony's offer was mathematically unbalanced. Although Sony offered warranty and training at no charge, there is no showing that Sony's proposed per-unit equipment prices are enhanced. An offer is not unbalanced absent evidence that certain prices are overstated. See Virginia Mfg. Co., Inc., B-241404, Feb. 24, 1991, 91-1 CPD ¶ 113; IMPESA Int'l, Inc., B-221903, June 2, 1986, 86-1 CPD ¶ 506. Ampex points out that its equipment prices are lower than Sony's. However, the record shows that Sony's unit prices for 24 of the 40 base-year line items were actually lower than the unit prices offered by Ampex. On the 14 line items where Ampex was lower than Sony, the difference in unit price is not significant. Also, in its BAFO, Sony did not raise its initial per-unit equipment prices, but merely reduced its initial prices for the 2-year warranty and training from the amounts first offered to zero. The record shows that Sony's proposed equipment prices were comparable with its prices for the same equipment, with standard warranty, under its GSA nonmandatory schedule contract and were substantially less than its GSA schedule prices for the same equipment with an extended warranty. Moreover, the protester's reliance on comparison to its own prices to support its conclusion of unbalancing is insufficient to show that another offeror's prices are unbalanced. Unidynamics/St. Louis, Inc., B-232295, Dec. 21, 1988, 88-2 CPD ¶ 609. There is absolutely no evidence in the record of enhanced pricing and thus no showing of mathematical unbalancing or of meaningful price distortion.

Moreover, even if the record established the existence of an unbalanced offer, we see no basis for the conclusion that the offer is materially unbalanced. Material unbalancing in a requirements contract situation may exist if there are faulty line item quantity estimates in the solicitation. Ampex argues that the solicitation estimates are faulty here in that the record concerning past training purchased by the Army for Betacam equipment demonstrates that the Army had no reasonable expectation of purchasing anything other than nominal amounts of training for this equipment and that the Army never before ordered a 2-year warranty for this type of equipment. In response, the Army asserts that it will purchase the warranty for each piece of equipment purchased and

that training will likely be acquired in the estimated numbers. The record shows that award to Sony will result in the lowest actual cost to the government even if less than 20 percent (or more than 18.5 percent) of the training classes and the 2-year warranty is purchased. Ampex's assertion of material unbalancing thus is based on the belief that the agency's estimated requirements are incorrect by 80 percent. The protester's reliance on the Army's past purchasing history does not establish that the agency's estimates under this contract are erroneous. The Army states that its estimates are realistic and that there is no reasonable doubt that the award will result in the lowest ultimate cost to the government. We have no basis on this record to find otherwise.

The protest is denied.


for James F. Hinchman
General Counsel