

**DOCUMENT RESUME**

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[Negotiation and Evaluation of Revised Proposal]. B-187247.  
April 20, 1977. 6 pp.

Decision re: Urbdata Associates, Inc.; by Robert F. Keller,  
Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel; Procurement Law I.  
Budget Function: General Government; Other General Government  
(806).

Organization Concerned: Southwest Research Inst.; Bureau of  
Mines.

Authority: 52 Comp. Gen. 198. 52 Comp. Gen. 208. B-181913  
(1975).

Protester complained that its proposal was improperly rejected because the agency failed to negotiate in good faith and failed to properly evaluate the proposals. An agency is under no obligation to conduct further negotiations with an offeror whose initial proposal is considered technically acceptable, once the offeror's revised proposal is evaluated and considered outside of competitive range. The fact that the offeror received a lower score for the revised proposal than for the initial proposal was justified. No improprieties were found in the present procurement, and protester failed to cite specific examples indicating agency effort to exclude company from procurement. The protest was denied. (Author/SC)

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John Brosnan  
Proc. I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-187247 DATE: April 21, 1977**  
**MATTER OF: Urbdata Associates, Inc.**

**DIGEST:**

1. Agency is under no obligation to conduct further negotiations with offeror whose initial proposal is considered technically acceptable once offeror's revised proposal is evaluated and considered outside of competitive range because of high cost estimate caused by offeror's technical approach and management structure.
2. Fact that offeror received lower score for its revised proposal than for its initial proposal was justified. Record shows that weaknesses in offeror's proposal were revealed to evaluators as a result of discussions with offeror and by evaluation of its revised proposal.
3. Protester's claim that competitor's proposal is "nonresponsive" to technical requirements is not sustained by record.
4. Possible competitive advantage gained by offeror as a result of its performance of other Government contract is not improper.
5. Protester's claim that agency is engaged in systematic effort to exclude it from all its procurements lacks merit where record shows no improprieties in instant procurement and protester cites no specific examples of irregularities in past.

Urbdata Associates protests its exclusion from the competitive range under RFP No. H0262047 issued on April 9, 1976 by the United States Department of the Interior, Bureau of Mines (Bureau). Urbdata essentially complains that its proposal was improperly rejected because the Bureau failed to negotiate with it in good faith and failed to properly evaluate the proposals.

The RFP solicited offers for a cost-type contract in five phases for the development and testing of a variable-wall miner prototype unit. The object of this procurement is to test the cutting and conveying capability of a side-cutting auger concept and to determine the practicality of its operation and the mechanical strength of its component parts.

On the May 10 closing date proposals were received from Urbdata and Southwest Research Institute (Southwest). The technical proposals were evaluated and, although Urbdata's proposal was rated highest, both were considered acceptable and within the competitive range. Cost

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was not considered in this initial competitive range determination. On May 24 and 25 separate technical discussions were held with each of the offerors and each was invited to submit proposal revisions.

Revised technical and cost proposals were received from both firms. Both revised proposals were determined to be technically acceptable but Southwest's proposal was rated highest. The revised cost proposals, \$1,232,321 for Urbdata and \$685,130 for Southwest, were also evaluated and both considered realistic in terms of their respective levels of effort. However, because of Urbdata's greater overall cost, which the agency determined could not be realistically reduced through negotiation, that firm's proposal was removed from the competitive range and no longer considered for award. The Bureau proposes to award the contract to Southwest. However, award has been withheld pending the outcome of this protest.

Urbdata argues that its proposal was improperly eliminated from the competitive range because the Bureau failed to conduct good faith negotiations with it when its proposal was found to be technically acceptable and its cost estimate determined reasonable. In support of this position Urbdata notes that the contracting officer determined that both Urbdata's and Southwest's cost estimates were "reasonable with respect to the level of effort established in the respective technical proposals." From this Urbdata concludes that its greater overall cost, which caused its proposal to be rejected, must have been due to its inclusion of more work effort in its proposal than was necessary. If this be the case, Urbdata contends that the Bureau was under an affirmative duty to so inform Urbdata during negotiations. "In this connection the protester points out that a letter accompanying its revised proposal clearly indicated that Urbdata believed that there existed areas where more effort could be expended by the parties to further reduce costs. Finally, Urbdata notes that its unique status as the successful contractor on a feasibility study of the equipment which is the subject of the procurement should have been considered.

The record reveals that Urbdata's technical approach was significantly more costly than that of Southwest in the areas of direct material, direct labor and general and administrative costs. More specifically, the evaluation record shows that Urbdata's material costs for such items as instrumentation and its simulated coal block were much higher than Southwest's costs for these items. The record also shows that these and other higher material costs in Urbdata's proposal were viewed by the evaluators as resulting from its "more costly experimental approach." Further, the record indicates that the evaluators viewed Urbdata's "inefficient management

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of labor (high supervision costs) and other resources (need for inclusive G&A)" as a major contributor to Urbdata's high overall cost estimate. It is clear that this high cost was due to a great extent, to Urbdata's basic technical approach to the project and its management structure.

These technical matters were raised during the negotiations. The Bureau made several inquiries regarding Urbdata's management structure and the Bureau also indicated that a less elaborate data gathering approach would be appropriate. Urbdata's revised proposal submitted as a result of these discussions reflected a significant decrease in its cost estimate (from \$1,677,370 to \$1,232,321).

Despite this decrease Urbdata was unable to convince the Bureau that its proposal represented a cost effective method of accomplishing the goals of the proposed study. It is clear from the record that after evaluation of the revised proposals, the evaluators concluded that Urbdata's proposal could only become cost competitive through extensive revisions of the offeror's technical approach and management structure. Under these circumstances, the Bureau was under no obligation to conduct further discussions with Urbdata. 52 Comp. Gen. 198, 208 (1972).

Regarding Urbdata's contention that it should have received special consideration for its having performed an earlier feasibility study of the subject equipment the record indicates that under the evaluation criterion entitled "Contractor's responsibility and past performance in similar programs" the Bureau did consider Urbdata's past performance under the feasibility study. However, the evaluators were not impressed by Urbdata's performance under that contract. In fact, at least two evaluators listed Urbdata's past performance as a negative factor.

Urbdata claims however, that the evaluation of the proposals was faulty and prejudicial. Urbdata questions the higher score Southwest received on its revised proposal because of its hiring of a "temporary consultant" and its more detailed test plan. In this regard Urbdata maintains the hiring of a single consultant could never eliminate Southwest's main weak point, lack of coal mining experience. Likewise the protester argues that its revised proposal should not have been rated lower than its initial proposal since the weak points in Urbdata's proposed approach should have been discovered during the evaluation of its initial proposal. Accordingly, the protester concludes that, at a minimum, the scoring on its revised proposal should have remained the same.

Moreover, Urbdata questions why certain evaluators changed their scoring while others rated the original and revised proposals the same.

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Urbdata also notes that the Bureau's final report submitted in connection with the protest appears to consider only four of the five evaluation criteria listed in the RFP. The protester emphasizes that it has not been provided the original evaluation sheets by the Bureau, and it asks this Office to carefully review the evaluation sheets which have been submitted to us.

The scores of the original and revised proposals are as follows:

Evaluator	A		B		C		D		E	
	orig	new	orig	new	orig	new	orig	new	orig	new
Urbdata	515	495	545	545	675	675	580	510	705	640
Southwest	470	620	500	500	690	715	880	660	555	680
							Urbdata	orig	new	
								604	573	
							Average			
							Southwest	575	635	

With regard to the increased score Southwest received on its revised proposal, the Bureau states that the major weakness in Southwest's initial proposal was its limited familiarity with the variable wall miner system and its vague test plan, rather than its lack of mining experience. The record indicates that in the evaluators' view Southwest's revised proposal showed significant improvement in the two major areas of weakness in addition to indicating that a coal mining consultant would be hired. Based on the record, we find no reason to question the Bureau's determination that Southwest's revised proposal evidenced significant improvement in each area of weakness and that its revised proposal deserved an increased rating.

As to the lowering of Urbdata's score the record shows that its score was reduced largely because none of the evaluators was satisfied with Urbdata's internal organization. The evaluators were also unimpressed with matters relating to the hiring of key personnel, with the fact that the project manager would reside 400 miles from the project site and with the proposed drafting hours. The Bureau indicates that only after discussions and the submission of Urbdata's revised proposal were the evaluators apprised of the magnitude of these problems. For example, it was not until the revised proposal was evaluated that the details and the inherent weakness of Urbdata management structure became apparent. In view of the increased insight into Urbdata's structure and approach afforded the Bureau by its discussions with that offeror and by the subsequent submittal of a revised proposal, we do not find it unreasonable that the evaluators could have lowered their rating.

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Furthermore, there is nothing wrong in the fact that each of the various evaluators rated Urbdata differently. Since the evaluation panel was composed of a number of individuals it is only natural that differing numerical ratings would result. Also it appears that the Bureau only mentioned four of the five criteria in its final report because only under those four factors was Urbdata's revised proposal downgraded.

Urbdata next contends that the Southwest proposal is "non-responsive" to numerous portions of the RFP statement of work, since Southwest's proposal merely restated the requirements without explaining the methods it intended to follow in performing the contract. In this connection the Bureau has listed each section of the statement of work cited by Urbdata along with the corresponding portion of the Southwest proposal. The Bureau maintains that the Southwest proposal adequately dealt with each of the cited portions of the statement of work.

We note that in some instances Southwest's proposal does seem to restate the requirements from the statement of work. For example, in response to the requirement "333.9 Evaluate various bit types, bit spacing and bit angles." The Southwest proposal states, "In addition various bit types, bit spacings and bit angles will be employed during the matrix of tests." We find no reason to question the adequacy of this response. Further, in most of the instances cited by Urbdata we note that Southwest set forth a comprehensive explanation of its proposed method of performance. For example, Southwest's revised proposal included a detailed nine-page section entitled "Test Plan Development."

We have reviewed the cited portions of the Southwest proposal and find that there exists no basis for our Office to question the Bureau's judgment.

Next Urbdata complains that Southwest had an unfair competitive advantage because the Bureau in June 1976, awarded Southwest a contract for a related project. In this regard Urbdata lists the areas where it alleges "significant technical overlaps" exist between the two projects.

The Bureau maintains that only a slight technical overlap exists between the two projects (the other contract deals with prototype equipment to be used in surface mining while the subject RFP encompasses prototype equipment for use in underground mining) and that, in any event, there is no prohibition against the Bureau taking advantage of any efficiencies developed by an offeror during its performance of other Bureau contracts. We agree with the Bureau in this respect. We have recognized

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that the Government is not required to equalize competition on a particular procurement by taking into consideration competitive advantages accruing to firms by reason of their own particular circumstances, including the award of other Government contracts. Plasecki Aircraft Corporation, B-181913, June 27, 1975, 75-1 CPD 391. Accordingly the awarding of both of these contracts to Southwest would not be subject to legal objection on the basis of any alleged unfair competition advantage.

Finally, Urbdata contends that the Bureau has engaged in a systematic effort to keep it from receiving Bureau contracts. The protester notes that it has received only one contract out of about seven proposals submitted during 1974 by Urbdata. The protester insists that the subject procurement is just a further example of Bureau's policy to exclude Urbdata. We have reviewed the evaluation record in this case and are unable to find that the Bureau acted improperly in its conduct of this procurement. Since we can find no improprieties in the instant procurement and since the protester cites no specific examples of irregularities in the past we find no merit in Urbdata's claim that the Bureau has been and is engaged in an effort to exclude it from Bureau procurements.

The protest is denied.

  
Deputy Comptroller General  
of the United States