



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unidynamics/St. Louis, Inc.
File: B-232295
Date: December 21, 1988

DIGEST

1. Proposal is not materially unbalanced where record indicates that the awardee's proposed prices for the basic and option requirements were reasonably related to the scope of the tasks to be performed in each performance period, and were consistent with the other prices submitted and the independent government estimate.
2. Objections concerning the evaluation of proposals are without legal merit where they either are not supported by the record or do not concern matters which were significant to the final selection decision, and the selection of the awardee on the basis of its overall technical superiority and low risk notwithstanding its higher price is not objectionable where it is adequately explained in the evaluation documents and has not been shown to be unreasonable.
3. Agency did not abuse its discretion in not reopening negotiations after the receipt of best and final offer (BAFO) in which a major subcontractor was substituted where the BAFO contained sufficient information upon which the selection decision could be made.
4. Source selection official, in reaching his selection decision, may consider factors which are logically encompassed by or related to evaluation criteria listed in the solicitation.
5. Attempts at political influence on behalf of the awardee do not warrant legal objection to the contract award where record fails to show that those attempts resulted in any action which unfairly affected the protester's competitive position.

044187/137582

DECISION

Unidynamics/St. Louis, Inc. protests the award of a contract to Bechtel National, Inc. under request for proposals (RFP) No. F19628-86-R-0155, issued by the Air Force for the production, installation and support of its Weapons Security and Storage System (WS3).^{1/} The protester alleges various improprieties with respect to the evaluation of proposals and the source selection decision.

We deny the protest.

FACTS

The RFP, which was issued on July 14, 1987, provided that the contractor would have total system responsibility for providing the WS3, including: the fabrication and modification of 437 weapons storage vaults ^{2/}; the provision of vault electronics, code management, command control, communications and assessment subsystems; and the integration and installation of the system at 20 military bases in Europe and the Pacific area. The basic contract called for 75 vaults to be installed at two bases in Europe and included a number of other responsibilities, for example: first article testing; site surveys; and the provision of considerable data, and prime mission equipment (PME) for installation at training bases. Contract options provided for the subsequent installation of the remaining 362 vaults at 18 other locations.

Award was to be made on a fixed-price basis to the offeror whose proposal was found to be most advantageous to the government based primarily on two areas of evaluation set forth in the RFP in descending order of importance:

^{1/} Another protest, B-232295.2, filed with respect to this award by Federal Electric International, Inc., is the subject of a separate decision.

^{2/} Amendment 0005, issued March 29, 1988, in response to Changed North Atlantic Treaty Organization (NATO) requirements for different size weapons in the wake of the recent Intermediate Nuclear Forces (INF) treaty, required the successful offeror to redesign the vaults to enlarge them.

technical and cost/price. The technical area contained four subcategories: installation and integration approach, manufacturing ability, supportability, and management.^{3/}

In addition to providing that price would be evaluated inclusive of options, the RFP provided that price would be examined in terms of realism, reasonableness and risk.

The procurement was conducted in accordance with agency formal source selection procedures for major acquisitions, FAR 70-15, which require, among other things, in-depth technical evaluations and detailed analyses of risk. Accordingly, offerors were advised that, in addition to an evaluation of the proposals and preaward surveys, the Air Force would conduct Manufacturing Management/Production Capability Reviews (MM/PCRs) as well as independent, executive in-plant reviews, known as "Grey Beard" reviews. Also, offerors were specifically instructed to identify in detail perceived risks associated with contract performance under their approaches, and to propose methods aimed at eliminating or reducing those risks under each of the subcategories in the technical evaluation area.

Seven proposals were received by the amended October 20 closing date. Following an initial technical evaluation, one offeror was eliminated from the competitive range. On the same day, clarification requests and deficiency reports were issued to the remaining six offerors; basic responses were received by December 2. Face-to-face negotiations were completed by December 23. The Grey Beard executive reviews were completed in mid-January; MM/PCRs were conducted with potential contractors and subcontractors from December through February, and a final report ^{4/} was issued on March 7. Best and final offers (BAFOs) were requested by letters dated June 9; offerors were expressly cautioned that BAFOs containing changes from previously negotiated proposals which were not adequately explained or which failed to provide complete traceability from an offeror's previous position might not be considered credible

^{3/} Installation and integration approach, manufacturing ability, and supportability were all considered to be of equal importance and were ranked ahead of management.

^{4/} Because Unidynamics later proposed a new electronics PME subcontractor in its best and final offer, an additional MM/PCR was conducted on July 12, approximately 3-1/2 weeks prior to award.

in the final evaluation and might be downgraded in the technical and/or price areas. They were further advised that such changes might render their proposals unacceptable.

All six remaining offerors submitted BAFOs by June 20 as requested. While Bechtel proposed no major changes in its BAFO, Unidynamics proposed the use of a new electronics PME fabricator--Missouri Research Laboratories (MRL); the protester had originally proposed Sparton Technology in this capacity, the same subcontractor initially and finally proposed by Bechtel. The following is a summary of the final prices (in millions of dollars) submitted by the relevant offerors:

<u>Offeror</u>	<u>Basic Price</u>	<u>Options Price</u>	<u>Total Price</u>
Unidynamics	\$ 28.1	\$ 156.8	\$ 184.9
FEI	45.1	147.2	192.3
Bechtel	45.7	161.0	206.5

The Source Selection Evaluation Board (SSEB) completed its report on July 5, and briefed the Source Selection Advisory Council (SSAC) on July 6. In turn, the SSAC issued its report and briefed the Source Selection Authority (SSA) on July 8. The SSAC report marked the culmination of a lengthy technical and cost/price evaluation. Within the technical area, the subcategories listed in the RFP were analyzed. The SSAC considered each offeror's technical, schedule and cost risks. The results of a past/present performance analysis, the Grey Beard reviews, and the MM/PCRs were not factored into the SSAC analysis; they were separately presented to the SSA as "general considerations," as provided in the RFP.

The final SSAC report contained summary findings which ranked the proposals in terms of their overall advantage to the government and scored them in terms of acceptability and risk assessment as follows:

<u>Overall Rank</u>	<u>Offeror</u>	<u>Color Rating 5/</u>	<u>Risk Assessment</u>
1st	Bechtel	Green	Low
2nd	Unidynamics	Green	High
3rd	FEI	Green	Moderate

In the accompanying narrative, Bechtel's proposal was found to have no weaknesses or risks. Specific strengths were

5/ Green indicates acceptable.

found under each of the technical evaluation subcategories. More specifically, in the final analysis Bechtel was credited by the SSAC with strengths for proposing: a production line approach to shipping PME in an already prepared kit with each vault thus speeding construction time significantly (installation and integration approach subcategory); an excellent approach to the vault redesign and manufacture with redesign documents near completion (manufacturing subcategory); a 2-year warranty for all PME versus the 1-year required warranty (supportability subcategory); and a unique approach to problem solving where a "tiger team" with the authority to direct changes in order to solve immediate problems would be permanently assigned to the WS3 program manager (management subcategory).

Unidynamics was credited with specific strengths for proposing: an innovative construction process involving the simultaneous installation of the vaults and steel reinforcing for concrete, thereby making it easier to install sensor cables and speeding up overall construction and installation by 10 to 15 percent--regarded by the SSAC as being second to Bechtel's proposal under installation and integration; and a feasible vault manufacture and redesign approach with redesign documents having already been presented for review--regarded by the SSAC as being second only to Bechtel's approach under the manufacturing subcategory; and a 3-year warranty for all PME--for which Unidynamics was given the highest subcategory rating, higher than the second-ranked Bechtel, under supportability. Unidynamics was ranked second to Bechtel under the management subcategory with no particular strengths or weaknesses. In the risk analysis, the SSAC found a specific weakness in the manufacturing subcategory because Unidynamics changed electronics PME fabricators in its BAFO without sufficiently detailing the subcontractor's capabilities. Risk under the manufacturing subcategory was assessed as high because of the change.

The SSAC concluded based on its review of both the technical and price proposals that on an overall basis Bechtel should be ranked first and Unidynamics second.

The Grey Beard final evaluation of Bechtel indicated that the reviewers believed the offeror to be "a good choice, if affordable." Specific strengths were found in the areas of program management, construction management and vault manufacturing. The one weakness found in Bechtel's initial proposal by the Grey Beards related to the need for an informed electronics integration program manager. As a result, Bechtel received an award rating of "very good."

The Grey Beard evaluation of Unidynamics concluded that the protester was "capable if [it] acquires or is given help in system electronics." Specific strengths were found in the areas of vault manufacturing and construction management. Two specific weaknesses were noted: program management and electronics integration (which Unidynamics planned to perform in-house). As a result, Unidynamics received an overall rating between "average" and "very good."

The final MM/PCR analysis of Bechtel's vault manufacturing capabilities found that the risk presented "in producing a quality product on schedule is low"; in its conclusion, the MM/PCR team noted that Bechtel's proposed subcontractor had complete in-house machining capabilities and that its quality system was comparable with or exceeded the requirements of specification MIL-Q-9858A. With respect to the vault manufacturing facility eventually proposed by Unidynamics, the MM/PCR had little to say other than it was "just an empty building" and that plans for gearing up, obtaining MIL-Q-9858A approval, and an overall risk assessment would have to be revisited; the overall risk assessment was viewed as moderate.

The final MM/PCR analysis of Bechtel's electronics PME fabricator was that the risk "to produce quality hardware is low." In its conclusion, the MM/PCR team noted that Bechtel's proposed subcontractor had experience in building the prototype hardware, that it already had the data and assembly/test procedures and test equipment on hand, and that its quality system was "in compliance with MIL-Q-9858A"; the MM/PCR team noted that some long lead times had been identified and that efforts were underway to reduce schedule risk attendant to them. With respect to the electronics PME fabricator finally proposed by Unidynamics, the final MM/PCR analysis was that it presented a "moderate risk" for production capability; while manufacture did not appear to be a problem to the MM/PCR team, they did find a problem with testing due to the lack of trained electrical engineers ^{6/}; they also found problems with the proposed subcontractor not being fully aware of material requirements--a problem which they believed could lead to considerable schedule delay.

The SSA announced his selection of Bechtel in a decision document dated July 22. That document specifically

6/ The evaluators did note that engineers from another location were expected to have an increased role if the contract were awarded to Unidynamics.

referenced the foregoing analysis of proposals and stated that the decision was "predicated upon the evaluation criteria listed in the . . . RFP," noting that those criteria subordinated cost/price considerations to technical considerations. The document continued by stating that:

"The Bechtel proposal was selected because in the most important area, technical, Bechtel provided an excellent overall approach with low technical risk. Strong features of the proposal include: a credible vault redesign package already well started, an extended two-year warranty on all PME, and a good approach to shipping PME to installation sites. Moreover, in the cost/price area, Bechtel provided a realistic and reasonable price."

The SSA later expanded upon the rationale behind his selection in a July 29 memorandum.

Award was made on August 5. In a letter dated August 8 to Unidynamics, the Air Force informed it that Bechtel had been selected and indicated that the Unidynamics proposal was weak in two areas: electronics subsystems effort and its proposed new vault-building facility.

PROTEST

Unidynamics' protest is based on the premise that Bechtel's proposal was unreasonably upgraded and its proposal improperly down-graded during the evaluation. It is the protester's view that this was either the result of a poorly conducted selection process or pressures exerted on behalf of Bechtel's proposed vault manufacturing subcontractor, Mannesmann A.G., primarily by the West German government.

Unidynamics presents six basic arguments in support of its position that the award to Bechtel should be overturned: 1) the Air Force allegedly ignored the fact that Bechtel's proposal was unbalanced; 2) the agency's evaluation of competing proposals was arbitrary and lacked a reasonable basis; 3) the agency abused its discretion by not conducting meaningful discussions and by failing to reopen discussions with the protester concerning its substitution of MRL as a subcontractor; 4) the RFP, in essence, misstated the agency's actual needs; 5) price was not properly evaluated; and 6) the award was tainted by improper political influence.

ANALYSIS

1. Unbalanced Offer

Unidynamics argues that the Air Force should have rejected Bechtel's offer as unbalanced because a comparison of the ratio of Bechtel's basic price of \$45,650,000 to its option price of \$160,849,300 to Unidynamics' prices of \$28,075,002 and \$156,761,511 shows that Bechtel's offer is mathematically unbalanced. In this regard, the protester points out that Bechtel's basic price is 62.6 percent higher than Unidynamics' basic price but its option price is only 2.6 percent higher. Further, the protester maintains that Bechtel's 5.06 percent profit for the basic requirements versus its 1.13 percent profit for the options establishes that each performance period does not bear a fair share of cost and profit. The protester concludes that, hence, there is a reasonable doubt that award to Bechtel will result in the lowest ultimate cost to the government because the Air Force may not, in fact, exercise all of the RFP options if a future treaty removes the weapons to be stored in the WS3 from Europe or if political resistance to housing those weapons in foreign countries increases. Both possibilities, the protester submits, were known to the Air Force.

The Air Force disagrees. With respect to the comparison suggested by Unidynamics, the agency notes that Bechtel's prices for the basic versus the option requirements are more typical of the allocations proposed by other offerors than are Unidynamics'. The Air Force also points to the RFP definition of an unbalanced offer which provides that imbalance exists where prices are significantly less than cost for some items and significantly overstated for others--a condition that the agency maintains, based on its evaluation of the certified cost or pricing data submitted in support of the awardee's price proposal, does not apply to Bechtel's offer. Finally, the agency states that the options as stated in the RFP accurately reflect its currently foreseeable future requirements.

In order to reject an offer for unbalancing, the offer must first be shown to be mathematically unbalanced, which involves an assessment as to whether each item offered carries its share of the total cost of the work plus profit or whether it is based on nominal prices for some work and enhanced prices for other work. Next, the offer must be materially unbalanced, that is, there must exist a reasonable doubt that an award will result in the lowest ultimate cost to the government. Kidde, Inc., Weber Aircraft Division, B-223935 et al., Nov. 19, 1986, 86-2 CPD ¶ 587.

Given the numerous tasks attendant to the basic requirements of the RFP which are not present in the option period, we can not conclude that Bechtel's offer was in any way unbalanced where, for example, 17 percent of the total number of vaults required is represented by the basic contract effort and Bechtel's proposed basic price for that effort is 22 percent of its total price and includes the additional start-up work not included in the option requirements.^{7/}

Further, although Bechtel proposed a higher profit rate for the basic period, we do not think its profit rate of 5.06 percent is unreasonably high. In fact, the record shows that the balance between the basic and option prices offered by Bechtel is consistent with those proposed by four of the other offerors and is in line with that represented by the government's independent cost estimate. We do not believe that the record supports the protester's position, which seems to be primarily based on its assumption that any offer which differs from its price balance must, therefore, be impermissibly unbalanced.

2. Arbitrary Evaluation of Proposals

Unidynamics' argument in this regard consists of two parts-- first, it is alleged that Bechtel's proposal was improperly upgraded in comparison to other proposals; next, the protester argues that the Air Force erred in finding weaknesses and risks in the Unidynamics' proposal.

a. Bechtel's Proposal

The protester lists a number of examples of "supposed strengths" found in Bechtel's proposal for which the awardee allegedly received evaluation credit beyond that deserved in comparison to other offerors.

At the outset, we note that the determination of the relative merits of competing proposals, particularly with regard to technical considerations, is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. Systems and Processes Engineering Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ ____.

^{7/} The agency has conducted an analysis of the cost data submitted in support of Bechtel's pricing and has not found that either its basic or option price is not reasonably related to its costs.

A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Instruments & Controls Service Co., B-230799, June 6, 1988, 88-1 CPD ¶ 531.

Regarding two of the examples from Bechtel's evaluation listed by the protester--the awardee's demonstration that progress was underway with vault redesign, and the firm's proposed extended warranty--the evaluation record does not indicate that the Air Force acted arbitrarily in that both the awardee and the protester received appropriate credit in these areas. The credit received for having vault redesign underway was equal as between the firms; and the credit received by Bechtel for proposing a 2-year warranty was second only to Unidynamics, which received the maximum credit possible for proposing a 3-year warranty.

With respect to three other examples listed by Unidynamics--Bechtel's relative proximity to the German vault installation sites, its having production tooling already in place, and its profit being the lowest of all the offerors--the record indicates that these matters were not separate significant factors in the evaluation process or in the source selection decision. With the sole exception of a subsidiary comment in the SSAC report regarding production tooling--for which Bechtel received no evaluation credit--the issues were not mentioned at all until the July 29 post-selection memorandum of the SSA. In any event, we do not believe, for example, that the protester's unsupported opinion that its location was just as advantageous as Bechtel's demonstrates that the evaluation was, in fact, arbitrary as alleged. Likewise, with respect to Unidynamics' assertion that its low price and not Bechtel's low profit should have figured prominently in the final award decision, it is clear from the record that the evaluators and the SSA were aware that the protester's price was lower than the awardee's and their decisions were, nonetheless, based on Bechtel's technical superiority; the SSA's lone post-selection comment that Bechtel's price did not reflect a high profit margin simply does not demonstrate that the price difference was not considered in the selection decision.

Finally, with respect to the remaining examples 8/ listed by Unidynamics--credit received by Bechtel for proposing to ship PME in complete kits and for proposing a "tiger team" management innovation to expedite the resolution of performance problems encountered by its WS3 program manger as they occurred--the record discloses nothing more than a continuing disagreement with the agency's judgment in these matters. With respect to the shipment of PME in kits, we have been provided with nothing more than the protester's unsupported opinion to the effect that it should have received credit equal to the awardee for proposing an equivalent approach. With respect to the management issue, the protester maintains that the "tiger team approach" is unnecessary to its proposal because its management is more streamlined than Bechtel's to begin with; the record, however, indicates the same number of relevant management levels for each firm and we note that the RFP specifically encouraged offerors to propose effective management techniques of the sort offered by Bechtel. Thus, there is no basis upon which to conclude that the comparative evaluation of proposals was arbitrary as alleged.

b. Unidynamics' Proposals

The Air Force criticized Unidynamics' proposal in two respects: the risks and weaknesses associated with its change to MRL as its electronics PME fabricator; and the risk associated with its proposal to fabricate vaults at an unequipped facility in Granite City, Illinois.

(1) MRL

In its BAFO dated June 20, Unidynamics for the first time proposed the use of MRL as its electronics PME fabricator in lieu of Sparton as originally proposed. This resulted in the evaluators' finding a specific weakness and identifying an associated risk in the evaluation subcategory of manufacturing. This assessment reflected the agency's determination that, despite a warning that major changes in BAFOs had to be adequately explained and supported, Unidynamics did not furnish adequate information with respect to MRL. Moreover, a subsequent MM/PCR performed at

8/ The protester also suggests that another offeror, FEI, was improperly downgraded in relation to Bechtel for not proposing a testing approach similar to the awardee's. We do not consider arguments raised on behalf of other parties who may properly raise the issues themselves before this Office. Westinghouse Electric Corp., B-224449, Oct. 27, 1986, 86-2 CPD ¶ 479.

MRL indicated that the firm did not conform to the quality assurance requirements of specification MIL-Q-9858A, as required by the RFP, and that MRL presented a significant schedule risk due to weaknesses in various management, engineering, purchasing, test and production planning areas.

The protester objects to this assessment by arguing that its late substitution of MRL was the result of the original RFP's direction that offerors use Sparton as their electronics PME fabricator and that alternate suppliers would only be permitted by RFP amendment following the submission of initial proposals. Moreover, Unidynamics argues that the Air Force's own expressed concerns about Sparton's ability to meet schedule requirements, and the agency's awareness that Sparton was reluctant to operate in accordance with MIL-Q-9858A, "forced" the protester to seek an alternate subcontractor. The protester also maintains that it adequately explained and justified its selection of MRL with approximately 20 pages of detailed narrative and analysis in its BAFO. Further, Unidynamics submits that while MRL is now approved under MIL-Q-9858A according to the Air Force's own position taken in this protest, Sparton only complies with the "intent" of that specification. Also, the protester disputes the results of the negative MM/PCR performed at MRL, providing affidavits indicating that the reviewers were informed that their concerns about an inadequate engineering staff and purchasing staff and the lack of a list of materials at the facility could be explained by the fact that these resources were all located at other facilities not visited by the MM/PCR team. Finally, the protester argues that the evaluation of its proposal was arbitrary because the Grey Beard review conducted with respect to its initial proposal in January 1988 found Unidynamics to be "poor" with respect to electronics production and design/integration when the protester was proposing Sparton while, in the final award analysis, Bechtel received credit for proposing the same firm.

As the Air Force points out, a number of the specification drawings contained in the original RFP bore a restrictive note which was typically used on source control drawings. Specifically, the note restricted the purchase of electronics PME to the one vendor listed on the drawing-- Sparton--unless approval for an alternate source was obtained in advance. Noting this problem, at least one potential offeror contacted the agency and pointed out that, under this procurement, the need for such a restriction was not obvious, and requested permission to manufacture in-house or pursue other sources. In a document distributed by the contracting officer to all potential offerors, including

Unidynamics, on August 18, 1987, the agency reprinted the question it had received and responded by stating: "These are specification-controlled drawings; disregard the drawing note"; the cover letter to the document indicated that an RFP amendment would follow. The protester does not dispute that it received this direction--it asserts only that an RFP amendment did not formally incorporate the deletion into the RFP until after the October 20 date set for receipt of initial proposals, so that alternate suppliers could only be proposed, presumably at some risk, in the BAFOs. However, since the August 18 direction of the contracting officer clearly indicated that the RFP did not restrict offerors to one supplier, and since such communications can operate, in any event, to change the government's requirements even though they are not labeled as formal amendments to the RFP, we do not believe that the protester has been prejudiced by the timing of the formal amendment. See Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1 CPD ¶ 523. Moreover, we note that at least two offerors did initially propose PME fabricators other than Sparton. Thus, we do not agree, as Unidynamics suggests, that it was belatedly forced to seek an alternative subcontractor.

As to the argument that the Air Force had expressed concerns about Sparton's ability to meet schedule requirements, while the record of the MM/PCR conducted with respect to the proposed subcontractor contains one reference to Sparton's ongoing efforts to reduce long lead times on some items, the conclusion of the MM/PCR team was that Sparton presented a low overall risk. Moreover, while the affidavits submitted by Unidynamics do indicate that the protester had concerns about Sparton's ability to comply with MIL-Q-9858A, they do not indicate that the agency was aware of, or shared, these concerns. The MM/PCR and plant facility survey of Sparton reported compliance with the quality specification without qualification.

With respect to the justification and explanation contained in its BAFO regarding Unidynamics' proposal to use MRL, we have examined what the protester says is a detailed explication and find no basis upon which to disagree with the Air Force's conclusion that the submission consists of about two pages of general narrative and about 18 pages of scheduling data, much of which appear to be unrelated to MRL's role in PME fabrication. As to the MM/PCR findings that MRL lacked such adequate resources as an engineering staff and a purchasing staff as well as a list of materials, there is continuing disagreement between the protester and the agency. While Unidynamics has provided evidence that the MM/PCR team was told that the resources were to be found at other locations, it is obvious that the reviewers were

not satisfied with this explanation; such a disagreement does not, however, serve to demonstrate that the evaluator's findings lacked a reasonable basis. See Instruments and Controls Service Co., B-230799, supra. Moreover, we note that the discussion of MRL's capabilities contained in the protester's BAFO does not indicate that the firm would be drawing on resources outside of the facility visited by the MM/PCR team even though Unidynamics was on notice that major BAFO changes required full explanation and justification.

Finally, with respect to Unidynamics' contention that it was evaluated as "poor" by the Grey Beards for proposing Sparton while the final analysis actually credited Bechtel for the same thing, the record indicates that the initial "poor" rating was apparently not due to Sparton's proposed participation but because of Unidynamics' proposing to perform some of the electronics installation/integration tasks itself.

(2) Granite City Facility

Unidynamics argues that the Air Force had no reason to perceive any schedule risks with its proposed vault manufacturing facility located at Granite City. While not denying that concerns about the timely ability of Unidynamics to ready this new facility were expressed by the Air Force during discussions, the protester submits that it provided sufficient assurances. Rather than assigning risk to its proposal for containing a virtually unequipped facility, Unidynamics now maintains that the agency should have credited it for providing a facility unencumbered with existing plant layouts and equipment arrangements, and suggests that Bechtel somehow should have been downgraded for proposing a vault manufacturing facility with equipment already in place.

The Air Force did not attribute a specific weakness to this aspect of the proposal during the evaluation; instead the agency merely attributed to it a degree of scheduling risk. We fail to see how this attribution was unreasonable since, at best, the protester has only shown that it disagrees with the agency, and we find no merit to the suggestion that Bechtel should have been downgraded for proposing a subcontractor whose facility had production equipment in place.

3. Failure to Reopen Negotiations On MRL

Unidynamics argues that the deficiencies found during the MM/PCR performed at MRL should have been the subject of another round of discussions because the Air Force was

under a duty to insure that an otherwise advantageous proposal would not be discarded over a dispute relating to electronics PME fabricators since the agency had only permitted a choice of such subcontractors during the final BAFO round.

An agency may, but is not required to, reopen negotiations and request new BAFOs when to do so is clearly in the government's best interests. Orlite Engineering Co., Ltd., B-227157, Aug. 17, 1987, 87-2 CPD ¶ 168. Federal Acquisition Regulation (FAR) § 15.611(c) provides that negotiations may appropriately be reopened when it is clear that available information is insufficient to justify a selection decision. The decision regarding the reopening of negotiations is within the discretion of the agency and we will not overturn that decision unless it is unreasonable. See Orlite Engineering Co., Ltd., B-227157, supra.

The protester has not shown that the agency abused its discretion in not reopening negotiations over MRL. As stated earlier, Unidynamics was incorrect in concluding that it was not free to propose MRL in the first place and, also as discussed before, the description of MRL's capabilities contained in the protester's BAFO was properly found wanting despite a clear warning in the letter requesting BAFOs that offerors could be downgraded as a result. Moreover, it has not been shown that the agency was without sufficient information to support its selection decision.

4. Misstatement of Agency Needs

Reiterating the same specific areas for which Bechtel allegedly received undeserved credit as discussed earlier, Unidynamics also asserts that because the award decision was predicated on these factors it was improper since they were not specifically listed as evaluation factors in the RFP; thus, the protester concludes that the RFP misstated the agency's actual needs.

As a preliminary matter, and as mentioned earlier, Unidynamics was not prejudiced in the evaluation by the vault redesign progress and the extended warranties. With respect to the comparative approaches to shipping PME, the protester itself claims to have proposed such an approach; moreover, such an approach appears to be intended to reduce scheduling risk and the RFP specifically advised offerors that efforts to reduce risk would be considered in the evaluation process. Also, as discussed before, Bechtel's "tiger team" approach was clearly within the express ambit of the language of the RFP's technical evaluation area as it specifically related to the management subfactor. Further,

as noted previously, FEI, and not Unidynamics, is the proper party to raise allegations concerning the comparative worth of intermediate PME testing.

Remaining, then, are the SSA's observations made 1 week after the selection decision was made, namely: that Bechtel's European management office and its vault supplier, Mannesmann, were proximate to the installation sites; that Mannesmann had production tooling already in place; and that Bechtel's profit was the lowest proposed--all of which the protester maintains were not specifically identified as factors for evaluation in the RFP.

As far as consistency with the evaluation criteria is concerned, we have held that selection officials may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated criteria. Science Management Corp., B-207670, Sept. 23, 1983, 83-2 CPD ¶ 362. In our view, each of the SSA's observations was encompassed by or related to the RFP criteria.

For example, with respect to the issue of proximity, it is clear that the SSA viewed this matter as but one feature of the Bechtel proposal that contributed to his overall conclusion that the awardee's proposal presented no schedule risk; while the record of the evaluation preceding the source selection does not indicate that proximity was ever an issue, we have no basis for concluding that the SSA was precluded from, in some manner, considering the somewhat obvious benefits that proximity might present in the area of scheduling risk, especially since, as discussed above, the RFP advised offerors that risk analysis would be a part of the final selection decision.

Likewise, with respect to the issue of Bechtel's having production tooling in place, we believe this observation to be logically encompassed by the RFP subcategory of manufacturing ability. In addition, the RFP specifically stated that the evaluation would include an examination of "the extent to which the offeror's proposal provides evidence that program requirements will be met."

Finally, with respect to the issue of Bechtel's proposal containing the lowest profit while Unidynamics' offered the lowest price, while the matter appears to have been subsidiary to the SSA's consideration of the reasonableness of the awardee's price in comparison to the independent government estimate, considerations of profit margin are clearly and directly related to cost realism, risk and reasonableness--all areas listed by the RFP for evaluation

as they impacted an offeror's understanding of the work required and the overall adequacy of its technical approach. Thus, we conclude that the SSA's July 29 observations, though perhaps unnecessary to support the final selection decision, were, nonetheless, not impermissible matters for his consideration.

5. Improper Evaluation of Cost

Unidynamics first contends that the technical/price trade-off was not explained, much less justified, in the source selection documents. As support for this position, Unidynamics relies on the agency's quantification in the debriefing of \$14.6 million for the technical risks associated with its proposal. Using this figure, Unidynamics argues that its proposal would still be \$7.1 million dollars cheaper than Bechtel's. Thus, the protester argues that, not only has the agency failed to provide a sufficient justification for the technical/price tradeoff represented by the award to Bechtel, it has in fact provided evidence which indicates that an award to that firm was irrational and should not have been made.

We disagree that the evaluation documents do not contain an analysis of the technical/price tradeoff. While the SSA did not specifically set off a section of his selection decision for this purpose, it is clear from both the SSAC evaluation report and the SSA's selection decision that there was a recognition that Bechtel's technical superiority was worth the additional cost. For example, the source selection decision document specifically notes Bechtel's price, states that the firm provided an excellent overall technical approach with low risk, and concludes that award to Bechtel was in the best interest of the government. Moreover, the SSA's July 29 memorandum specifically mentions that, although not low by approximately 10 percent, Bechtel's price compared favorably to the independent government estimate for the project.

As far as the merits of the determination are concerned, we have held that the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. We have upheld awards to technically superior, higher-priced offerors where the record shows that such an offeror's price premium was justified in light of its technical superiority. Id. Our review is limited to considering whether the source selection decision is

rationally based and consistent with the stated evaluation criteria. The Earth Technology Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113.

Unidynamics' criticism of the selection decision focuses only on the \$14.6 million of estimated risks in its proposal and does not consider the technical superiority that the SSAC found with respect to Bechtel's proposal--a factor which should properly be taken into account in making a technical/price tradeoff decision. The SSAC in its final assessment, while noting that Bechtel's proposal was more expensive than some others, ranked Bechtel ahead of those offerors, not only because its proposal presented no risks, but also because of its technical superiority. With respect to the technical evaluation subcategory of installation and integration, Bechtel was found to have "the most credible approach." With respect to the subcategory of manufacturing, Bechtel's approach was found to be "excellent," while the protester's was described as "feasible" and "second best" to Bechtel's. Finally, with respect to the subcategory of management, Bechtel's approach was described as "unique"; all others were regarded as acceptable and ranked second to Bechtel's. The fact that the agency risk quantification analysis--which was not used in the final selection decision--indicates that Unidynamics might be a better value if just risks were considered does not show that the decision to award to Bechtel, based on a combination of risk assessment and demonstrated technical superiority, as provided in the RFP, was not rationally based.

6. Improper Influence

The protester argues that the selection of Bechtel was influenced by pressure from West Germany. In this regard, the protester relies on correspondence such as a letter to the Secretary of Defense from his West German counterpart expressing the importance of having a WS3 contractor with West German subcontractors, and an interagency Air Force document describing German pressures through NATO to accomplish the same end. The SSA admits that influence on behalf of Bechtel was apparently attempted; however, he has submitted an affidavit which states, in pertinent part, that:

"[a]ny decision was made in spite of--not because of the apparent attempts to influence the decision in favor of Bechtel. I considered those attempts improper, and wanted the record to clearly demonstrate that any decision was based

solely on the Government's evaluation of the proposals submitted and source selection criteria set forth in the solicitation."

Noting that it also received "anti-Bechtel" correspondence, the Air Force takes the position that the attempted influence was not atypical of major systems acquisitions and, in any event, that it did not affect evaluation or award. As the protester recognizes, attempted influence alone is insufficient to overturn a procurement decision unless it is shown that "bias translated into action that unfairly affected the protester's competitive position." Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43.

Unidynamics argues that the effect of the attempted influence is found in the irrationality of the evaluation and the award decision. Since we consider the evaluation to have been reasonable and the selection decision to have been rationally based and supported by the record in this matter, we find no merit to this aspect of the protester's argument. In this regard, we think it is significant that Bechtel's proposal was ranked highest in all of the various evaluations conducted by three independent boards over a period of several months. The final SSA selection decision was consistent with the earlier evaluations. The protester does not even argue that the attempted influence extended beyond the SSA and the SSAC.

The protester does, however, point to another example of alleged bias. In essence, Unidynamics alleges that its competitive position was unfairly affected by the Air Force's failure to promptly notify all offerors of an October 1987 NATO decision, which the record indicates may have been made in response to a "German demand," and which may have contributed to the RFP's being amended after initial proposals were received to extend the government's assumption of exchange rate risks to foreign vault fabricators such as Mannesmann. Further, Unidynamics alleges that this sequence of events resulted in offerors other than Bechtel being denied the opportunity to select (presumably more cost-advantageous) European vault manufacturers.

The Air Force explains that the purpose of the clause in question is to protect against unpredictable, long-term fluctuations in currency exchange rates, in accord with long-standing NATO procedures and as a precondition to receiving NATO reimbursement which was, in turn, a precondition to Congressional funding of the WS3 program. While the record indicates that NATO's debate over the proper application of its procedures may have been in response to a

German interest, it is not at all clear that this operated to the sole advantage of Mannesmann as alleged. Nor is it clear, as alleged but not supported by the protester or in the record, that either Mannesmann or Bechtel was privy to the outcome of the NATO debate any earlier than other offerors. We also note that any significant price impact as a result of the RFP amendment extending long-term exchange rate protection to foreign vault manufacturers is speculative.

What is clear is that this same alleged "German pressure" on behalf of Bechtel was resisted by the Air Force when it came to deciding whether, for evaluation purposes, the exchange rates in effect immediately prior to the submission of initial offers or those in effect immediately prior to BAFO submission were to apply. Pressure was exerted to use the earlier date, which, because of the relative strength of the dollar to the mark at the time, favored German suppliers; the Air Force decided otherwise and set the time preceding BAFO submission as consistent with the law governing its procurements.

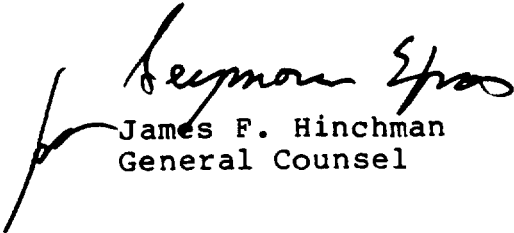
Accordingly, on the record before this Office, we find no basis for concluding that attempted influence translated itself into action which adversely affected the protester's competitive position.

CONCLUSION

As indicated in the preceding discussion, we find no basis to object to the award to Bechtel. First, we find no merit to the assertion that Bechtel's offer was materially unbalanced. Also, while both Unidynamics and FEI submitted acceptable proposals at lower prices than did Bechtel, agency evaluators at different levels and with different perspectives uniformly viewed Bechtel's proposal as technically superior to Unidynamics' and FEI's, and the SSA determined that Bechtel should be selected for award notwithstanding its higher price. Selection officials, of course, have considerable discretion in deciding which offeror's proposal is most advantageous to the government, and while it is possible that another selection official could have viewed the relative rankings of the competitors differently and/or selected another offeror for award, we can properly object to the award decision here only if we find no rational basis for the decision or an inconsistency with the evaluation criteria. On the record before us, the protester simply has not shown, nor are we able to find, that the selection decision runs afoul of either test.

Moreover, despite the attempted political influence on the award decision, our close scrutiny reveals no indication that the decision was, in fact, the result of such influence.

The protest is denied.



James F. Hinchman
General Counsel