



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Nova Research Company

**File:** B-236504

**Date:** December 13, 1989

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### DIGEST

1. Protest that agency failed to engage in meaningful discussions in the area of "level of effort" for a cost-plus-a-fixed-fee type contract is denied where record shows that agency posed sufficient discussion questions to protester in issue area to allow protester to adequately respond to agency's requirements.
2. Protest that agency engaged in "technical leveling" by providing all firms with certain normalized costs elements is denied since the concept of technical leveling is inapplicable to cost discussions and, in any event, protester has shown no prejudice in connection with agency's actions.

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### DECISION

Nova Research Company protests the proposed award of a contract to Johnson, Bassin and Shaw (JBS) under request for proposals (RFP) No. 263-88-P(88)-0195 issued by the National Institutes of Health (NIH) for the acquisition of services leading to the establishment and maintenance of a National Alzheimer's Disease Education and Referral Center. Nova argues that NIH did not properly advise it of the level of effort required under this cost-plus-a-fixed-fee type contract and thereby failed to conduct meaningful discussions. Nova also argues that NIH engaged in technical leveling.

We deny the protest.

The RFP was issued as a 100 percent small business set aside and contemplated the award of a cost-plus-a-fixed-fee contract. The solicitation provided that technical considerations would be of paramount concern for award purposes and listed four technical evaluation criteria along with a point value for each criterion in order to indicate

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its relative importance vis-a-vis the other evaluation factors. The maximum possible score for a firm's technical proposal was 100 points. The solicitation further provided that award would be made to the firm offering the most advantageous proposal, cost and technical factors considered. The RFP also advised that if offers were determined technically equal, cost would be of paramount importance.

Six firms submitted offers. After initial evaluation of these offers, the agency established a competitive range of three firms. The initial points scores of the three competitive range offerors were as follows:

JBS	85.0
Nova Research	76.6
CSR, Inc.	71.8

The contract negotiator engaged in written discussions with each competitive range offeror, limiting those discussions to technical issues only. The proposals were then reevaluated and the following point scores were given to the proposals:

JBS	76.8
Nova Research	78.4
CSR, Inc.	68.8

Subsequent to the conduct of these discussions, the contract negotiator left the agency and a new contract negotiator was assigned. The new contract negotiator orally solicited further proposal revisions, primarily in the area of cost. Specifically, the offerors were given information concerning the desired level of effort. After reviewing the written submissions of the three firms including their revised cost proposals, the contract negotiator concluded that the offerors did not understand the cost elements to be addressed in their proposals. Accordingly, the contract negotiator issued a request for best and final offers (BAFOs) which included a number of "normalized" cost elements, based on the government estimate, that offerors were required to include in their proposals. The three firm's BAFO prices were as follows:

JBS	\$2,554,369
Nova Research	\$2,663,000
CSR, Inc.	\$2,747,539

The agency concluded that the proposals of Nova and JBS were technically equal. Thus, under the solicitation terms, cost became the paramount consideration for purposes of making an

award decision. Accordingly, the contracting officer decided to make award to JBS as the apparently low cost offeror and this protest followed.

Nova first argues that the agency failed to specify in the solicitation the level of effort required under the contract and in so doing raised a question concerning the cost type of contract contemplated by the solicitation. According to Nova, the agency was required either to specify by amendment to the RFP both the type of cost contract contemplated and the level of effort required or to provide more specific discussion questions with respect to the required level of effort. In short, Nova alleges that either the RFP was defective or that the agency failed to engage in meaningful discussions.

The agency responds that it always intended to enter into a level-of-effort cost-type contract and, in the conduct of discussions, properly advised all offerors of the required level of effort.

To the extent that Nova's argument amounts to an allegation that the RFP was defective, we think that it is untimely since it was not filed prior to the closing date for receipt of BAFOs. 4 C.F.R. § 21.2(a)(1) (1989); D.W. Indust., B-232963, Jan. 25, 1989, 89-1 CPD ¶ 80. In any event, our Office has no objection to the use of discussions as one method for informing firms of the agency's requirements since, so long as all firms receive the same information in terms of discussion questions, the agency's actions are tantamount to the issuance of an amendment. See, e.g., M. Rosenblatt & Sons, B-230026; B-230026.3, Apr. 26, 1988, 88-1 CPD ¶ 409 (agency provided various RFP revisions to firms in the form of a second request for BAFOs).

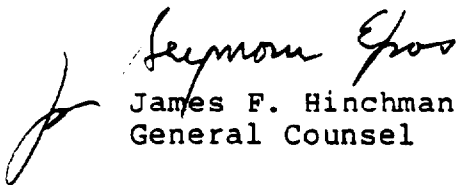
In addition, we think that the agency conducted adequate discussions with Nova with respect to the required level of effort. In this regard we note that NIH posed numerous questions to Nova which, when taken together, show that the agency adequately discussed with Nova the required level of effort. In particular, we point out that during oral discussions Nova was informed of the specific number of full-time employees which NIH felt would satisfy its required level of effort. In addition, NIH again indicated to Nova its expectations regarding level of effort when it requested the firm's BAFO. Specifically, the firm was told that its "year one" level of effort was acceptable and that it should maintain that level throughout the contract effort. Under these circumstances, we think that NIH fulfilled its obligation to meaningfully discuss this issue

with Nova and therefore deny this basis of protest. See S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159.

Nova also argues that the agency engaged in technical leveling. Specifically, the protester alleges that NIH acted improperly by providing offerors with various normalized cost elements in its request for BAFOs.

In our opinion, Nova's allegation in this regard is inapposite since the concept of technical leveling applies to technical rather than cost discussions. Federal Acquisition Regulation (FAR) § 15.610(2)(1); Unidyne Corp., B-232124, Oct. 20, 1988, 88-2 CPD ¶ 378. In any event, we fail to understand how the protester was prejudiced by the agency's notice to all offerors of stated amounts for various cost elements.

The protest is denied.

  
James F. Hinchman  
General Counsel