

Protest of)
NOVADYNE COMPUTER SYSTEMS, INC.) Date: November 9, 1990
Solicitation No. 104230-90-A-0051) P.S. Protest No. 90-49

DECISION

Novadyne Computer Systems, Inc., ("Novadyne") timely protests the award of a contract under Solicitation No. 104230-90-A-0051 to Digital Equipment Corporation ("Digital") for maintenance of Microvax II computer systems. The solicitation was issued by the Office of Procurement, Headquarters, on April 13, 1990, with an offer due date of May 14. Three offers were received, including those from Digital and Novadyne.^{1/}

The technical evaluation resulted in the elimination one offeror. The evaluation panel found that although Novadyne's offer had significant deficiencies, it was capable of being made acceptable through discussions and included it in the competitive range. Novadyne was asked to respond to deficiencies in six technical areas, and it did so in its BAFO. The evaluation panel found Digital's proposal to be "well prepared with no significant technical deficiencies" and did not ask it to respond to any questions about its technical proposal. BAFOs were submitted on July 17. Following an evaluation of the BAFOs, discussed further infra, award was made to Digital on July 23. On August 9, at its request, Novadyne was debriefed.

Section M of the solicitation described the method for evaluation of proposals. Pertinent provisions of Section M were:

M.3 CONTRACT AWARD AND PROPOSAL EVALUATION (Provision OA-16)(July 1989)

^{1/}Novadyne's offer was initially submitted under the name of McDonnell Douglas. Apparently, during the procurement process the division of McDonnell Douglas which would provide the maintenance, was sold to Novadyne. This transfer was first brought to the attention of the contracting officer when Best and Final Offers ("BAFOs") were submitted. For convenience, we refer to the protester as Novadyne throughout the decision.

a. Award will be made to the responsible offeror who submits the best combination of Technical Proposal, Business Proposal (cost/price), business/Management Proposal (if applicable), and other factors considered. The primary areas to be used in determining which proposal is most advantageous to the Postal Service are listed below in Section M.8 in descending order of importance.

b. Cost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.^[1]

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M.5 EVALUATION PROCESS

The evaluation process leading to selection and award under this RFP shall be phased as follows:

* * * *

c. Phase C -- Technical Evaluation -- Qualitative Analysis shall be conducted in accordance with the evaluation factors set forth in the Technical Evaluation Factors. Section M.8.

The technical proposals will be evaluated on the basis of a total score of 100. This evaluation will be used to determine technical acceptability and to establish a competitive range. There are no predetermined cut offs for those technically acceptable offers within the competitive range. Unrealistically low or unreasonably high cost proposals will not be considered to be within the competitive range from both the technical and cost standpoints. Technical superiority will be the governing factor in award.

* * * *

2. Price Evaluation. Price proposals will be evaluated in accordance with the Price Evaluation . . . herein . . .
 - d. Phase D -- Competitive range is determined by the contracting officer (CO) during this phase by evaluating the findings of the price/cost panel and the technical evaluation panel and determining which offer(s) have a reasonable opportunity of award.

²This admonition is repeated at section M.7.b in discussions of the fixed price options.

Section M.8 listed the "primary evaluation factors," in descending order of importance, as follows:

I. MANAGEMENT APPROACH	
a. Overall Management Approach	30 Points
b. Specific Management Element	10 Points
c. Project Management Elements	10 Points
TOTAL POSSIBLE POINTS UNDER ITEM I	50 POINTS
II. CORPORATE HISTORY	
a. Contractor Experience	30 Points
b. Corporate Philosophy	10 Points
TOTAL POSSIBLE POINTS UNDER ITEM II	40 POINTS
III. GENERAL QUALITY OF PROPOSAL	
a. Completeness	5 Points
b. Format and Content	5 Points
TOTAL POSSIBLE POINTS UNDER ITEM III	10 POINTS.

Each subfactor was followed by a narrative explaining in detail what the offeror was expected to provide.

Novadyne contends that the contracting officer did not evaluate its proposal in accordance with the specified evaluation criteria. It asserts that the solicitation did not state that the technical evaluation factors would be assigned greater importance than price, and thus that price and technical factors should have been accorded substantially equal weight. Novadyne postulates that since its offered price was substantially less than Digital's, Digital's technical evaluation score would have had to exceed one hundred points to justify receipt of award.^{1/} Novadyne contends that award to Digital represents a dramatic departure from affording technical factors and price approximately equal weight and asserts that its analysis would not change, even if Digital's technical score was measurably higher than Novadyne's.^{1/}

As a second basis for its protest, Novadyne alleges that the contracting officer exceeded his discretion in making the cost-technical trade-off. It contends that Digital's price was 47.1% higher than Novadyne's while its technical score was only 27.5% higher. Novadyne contends that this "modest" degree of technical superiority does not justify the substantial discrepancy in price, especially as it qualified as a technically

^{3/}Novadyne relies on ACCO Industries, Inc., P.S. Protest No. 79-49, January, 30, 1980; LLC Dover, Inc., 67 Comp. Gen. 58 (1987) (protest sustained where there was a slight technical advantage, but a 48% difference in price); Medical Services Consultants, Inc., et. al., Comp. Gen. Decs. B-203998; 204115, 82-1 CPD & 493, May 25, 1982 (contracting officer's decision that an 18% cost difference did not warrant award to protester in order to achieve a 13% technical advantage was upheld).

^{4/}In any event, Novadyne asserts that none of the deficiencies raised in the post-award discussions impugned its technical and management qualifications. Novadyne characterizes most of them as informational deficiencies and thinks many of them were "downrightmakeweight."

competent offeror.

In his report on the protest, the contracting officer states that the award to Digital was premised upon the following information:

<u>Offeror</u>	<u>Technical</u>		<u>Price</u>	
	<u>Original</u>	<u>BAFO</u>	<u>Original</u>	<u>BAFO</u>
Digital	92.25	92.25	\$3,807,864	\$3,807,864
Novadyne	67.50	72.50	\$3,070,008	\$2,589,084.

Denying Novadyne's contention that technical and price factors should be given equal weight, the contracting officer contends that Novadyne failed to read Section M.8 in harmony with Section M.5, which provides that "[t]echnical superiority will be the governing factor in award." He also notes that Section M.3.b clearly states that award might not be made to the offeror with the lowest price. He asserts that the facts do not support a decision to award to Novadyne.¹⁷ He states that Novadyne's proposal was initially evaluated as being capable of being made acceptable through discussions. He contends that even after discussions and BAFOs, Novadyne's proposal was only "marginally acceptable," as it did not sufficiently address the issues identified during discussions. As evidence of this contention, the contracting officer attaches the evaluation committee's conclusions regarding Novadyne's BAFO responses to the deficiencies in its technical proposal.

The evaluators' conclusions reflected a continued concern that Novadyne did not fully understand the scope of work involved. Under the most important technical factor, the evaluators gave Novadyne only one additional point for the overall management approach. The evaluators remarked that the BAFO response barely met the requirements of the solicitation and noted that Novadyne had presented very little additional information. They indicated weaknesses in the adequacy and accuracy of Novadyne's management procedures at all levels, deficiencies in the qualifications of the project manager and the firm management plan, and a lack of cohesiveness throughout its proposal. Novadyne's technical score was increased as follows:

^{5/}The contracting officer uses a mathematical process to compute the variation between the technical score and the price, different from the method Novadyne uses. Dividing the difference between the scores/prices by the larger number, the contracting officer contends that there is only a 32% difference in price, and a 21.6% difference in technical scores. Novadyne disagrees with this method. According to Novadyne, the appropriate method is to determine the percentage higher Digital's price is than Novadyne's by dividing the larger number by the smaller. The cases cited by Novadyne use this methodology. For the sake of consistency, we adopt this method.

	Initial BAFO	
I. MANAGEMENT APPROACH		
a. Overall Management Approach	21.75	22.75
b. Specific Management Element	7.00	7.00
c. Project Management Elements	6.25	6.25
II. CORPORATE HISTORY		
a. Contractor Experience	20.00	23.00
b. Corporate Philosophy	6.00	7.00
III. GENERAL QUALITY OF PROPOSAL		
a. Completeness	3.25	3.25
b. Format and Content	<u>3.25</u>	<u>3.25</u>
	67.50	72.50

In the final remarks, the evaluators stated that:

[T]he combined responses still leave many areas where the proposer is seemingly assuming that the evaluator will impose some preconceived or previous knowledge of the corporate methodology or the corporate ability to perform to the required standards. It is the responsibility of the proposer to provide clear and irrefutable evidence of their ability to meet the requirements of the work statements. That evidence is very shallow in the Novadyne . . . proposal

The file accompanying the contracting officer's report also contained the award recommendation memorandum. The memorandum notes that after a thorough review, the changes in Novadyne's technical score and price in its BAFO were considered insufficient "to leave them in a position of presenting the best value to the Postal Service." The memorandum contains a detailed explanation of the technical/price trade-off determination, comparing, in depth, the offerors' technical proposals.

Finally, the contracting officer states that Digital satisfied the requirement of price reasonableness, pursuant to the Procurement Manual ("PM") 5.3.3.2. He notes that Digital's price is well below those established in its commercial catalogues, significantly lower than prices being paid for comparable services under other contracts, and is approximately one-third lower than the Postal Service estimate.

Novadyne submitted comments on the contracting officer's statement reiterating that the solicitation does not explicitly provide that the technical proposal would be weighted more heavily than price. It contends that Section M "reveals itself to be a disorganized, confusing and frankly muddled statement of the USPS' intentions."¹⁴ Novadyne maintains that in light of this allegedly unclear articulation of the relative importance of evaluation criteria, they must be afforded equal weight.

¹⁴For example, it asserts that the statement that "[t]echnical superiority will be the governing factor in award" appears in the middle of a paragraph describing the process for establishing a competitive range and does not suffice to put offerors on notice of the priority of technical over price.

Concerning the cost/technical trade off, Novadyne asserts that the contracting officer's report fails to demonstrate that the evaluations were in accord with the evaluation criteria, since it did not establish a reasonable basis for awarding to the higher priced, higher technically rated offeror, in light of Novadyne's acceptable proposal.

Digital also submitted comments on the contracting officer's statement, stating that Novadyne's assertion that the solicitation fails to identify technical factors as more important than price is unfounded. It references the provisions of Section M providing that technical evaluation factors are "[t]he primary factors to be used in determining which proposal is most advantageous to the Postal Service" (Digital's emphasis) and "[t]echnical superiority will be the governing factor in award." Moreover, it notes that, although the solicitation provides that "[c]ost/price will be considered in the award decision," it does not indicate that cost is as important a factor as technical factors.

Digital also contends that the contracting officer's statement evidences a reasonable decision regarding technical/cost tradeoff, noting that even after the submission of BAFOs, Novadyne's technical proposal was considered only marginally acceptable. According to Digital, the contracting officer was "well within the acceptable limits of his discretion" in selecting the higher technically rated, higher priced offer, citing Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986.^{1/}

Novadyne further asserted that the contracting officer failed to explain how he harmonized the technical and price differentials. In support of its contention that even if the technical score was more important than price, Novadyne asserts that a comparison of the differentials show that Novadyne still should have received award.^{1/}

^{2/}Digital asserts that its technical superiority is even greater than that set forth in the BAFOs, noting that subsequent to the submission of initial proposals, but prior to the submission of BAFOs, the original offeror, McDonnell Douglas Field Services Company, was sold and a newly created company, Novadyne, was formed. Since 30 of the possible 100 technical points were allocated to corporate experience, Digital suggests that the change in corporate status would have resulted in a decrease in Novadyne's technical score in the area of corporate history, rather than an increase. With respect to this transfer, Novadyne states at its protest conference that all of the McDonnell Douglas personnel made the transition to Novadyne and that, therefore, the transfer had no effect on the information in its proposal. Although the evaluators' comments do not discuss the transfer, the record contains evidence that the transfer came as a surprise. However, it does not appear to have affected Novadyne's overall evaluation.

^{3/}Novadyne presents a formula used in a Department of Labor solicitation, a "typical formula for computing greatest value to the government." The formula is as follows:

$$\frac{\text{Tech. Score} \times \text{Tech. Factor}}{\text{Highest Tech Score}} + \frac{\text{Lowest Price} \times \text{Price Factor}}{\text{Price}}$$

Using this formula, Novadyne illustrates that only when the technical score is weighted as 50% more important than price does Digital's total score come out higher, and then, just barely.

Use of this formula would appear to be proscribed for Postal Service procurements. "Cost or price

Discussion

Novadyne first complains that award to Digital is contrary to the evaluation factors set forth in the solicitation, alleging that the technical and price factors should have been afforded equal weight. Novadyne's interpretation of the contemplated value relationship between the technical and price factors is incorrect.^{4/} The solicitations in the cases on which it relies are inapposite; unlike the solicitation here, they contained no language whatsoever indicating the relative importance of price to technical factors.^{1/}

Although it does not quantify precisely the relative value of technical factors over price, the solicitation manifests that the technical factors will be more important than the price in at least three places: 1) M.3.a - "[t]he primary areas to be used in determining which proposal is most advantageous . . . are listed . . . in Section M.8 in descending order of importance;" 2) M.5.c - "[t]echnical superiority will be the governing factor in award;" and 3) M.8, which states that the technical factors listed are the "primary evaluation factors." In addition, the M.3.b and M.7.b made it clear that "award may not necessarily be made to that offeror submitting the lowest price."

Next, Novadyne complains that the contracting officer's technical/price trade-off determination, resulting in award to a contractor whose price was 47.1% higher but whose technical score was only 27.5% higher, was not justified under the circumstances of this procurement. Our procurement regulations provide that the contracting officer must make the contractor selection decision based on the proposal most advantageous to the Postal Service and is responsible for trade-off judgments involving cost and other evaluation factors. PM 4.1.5 b.

There is no requirement in negotiated procurements that awards be made solely on the basis of the lowest price. Moreover, although cost may not totally be ignored, procurement officials have broad discretion in

factors are to be treated separately and apart from the other criteria and they are not to be weighted" P.M. 2.1.6 c.3. (Emphasis added.)

^{9/}To the extent that Novadyne complains that the terms of the solicitation are confusing or ambiguous, its protest is untimely. The PM states that "[p]rotests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals." PM 4.5.4 b. Since Novadyne did not raise any allegations of deficiencies in the solicitation until after award, this issue cannot be considered on its merits and is dismissed. Pitney Bowes, Inc., P.S. Protest No. 89-86, December 20, 1989.

^{10/}Acco Industries, Inc., supra ("award will be made to that offeror whose offer is most advantageous to the USPS when all factors including price are considered."); Development Associates, Inc., Comp. Gen. Dec. B-205380, 82-2 CPD & 37, July 12, 1982 ("award will be made to the offeror whose proposal is 'most advantageous to the Government, price and other factors considered.'"); Medical Services Consultants, Inc., et. al., supra; ILC Dover, Inc., supra.

determining the manner and extent to which they will make use of technical and cost evaluation results. A procurement activity may make cost versus technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. The determining element is the considered judgment of the procurement officials concerning the significance of the difference in technical merit among the proposals.

Chamberlain Manufacturing Corporation, *supra* (citations omitted). The fact that the protester disagrees with the determination "does not in itself render the evaluation unreasonable." Joint Venture of Diversified Turnkey Construction Company and Holmes & Narver Constructors, Inc., Comp. Gen. Decs. B-239831; B-239831.2, 1990 U.S. Comp. Gen. LEXIS 985, September 18, 1990.

Despite Novadyne's attempt to suggest that the technical differences between its proposal and Digital's were insignificant, the contracting officer's determination that Digital's proposal was substantially superior to Novadyne's is supported by the record. "[W]here the agency must bear the additional expense for the proposal it views as superior, the relevant consideration is not whether we believe that the more expensive, higher rated proposal is worth the extra cost, but whether we can discern from the record a reasonable factual basis for the agency's choice." Litton Systems, Inc., Comp. Gen. Dec. B-239123, 90-2 CPD & 114, August 7, 1990. First, on its face, a 27.5% higher technical score is significant.¹¹ Overall, Novadyne's final technical score was characterized as "marginally acceptable."¹¹ The record supports a finding that the contracting officer's technical/price trade-off had a rational basis. The determination of the desirability of proposals is largely subjective, and not merely a question of comparing numerical scores. See e.g., Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986; Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980.

Finally, there is no evidence to show that the Postal Service neglected to consider price. Digital's higher price was found to be reasonable and, in fact, lower than the Postal Service estimate. Accordingly, we find that the contracting officer's trade-off

¹¹In response to Novadyne's position that a 47.1% price differential can never justify a 27.5% technical differential, we note that an "agency is not required to give equal weight to the percentage differential between technical scores and the percentage differential between proposed costs." Associates in Rural Development, Inc., Comp. Gen. Dec. B-238402, 90-1 CPD & 495, May 23, 1990 Ecology and Environment, Inc., Comp. Gen. Dec. B-209516, 83-2 CPD & 229, August 23, 1983. The determination that one differential is more significant than another may be reasonable. *Id.*

¹²Novadyne's cases in which protests against awards to contractors with higher prices have been sustained are unavailing. "The propriety of each award for a negotiated procurement depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency." Medical Services Consultants, Inc., et. al., *supra*, citing Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD & 325.

determination was consistent with the stated evaluation criteria.¹¹ See Eagle Design and Management, Inc., Comp. Gen. Dec. B-239833, et. al., U.S. Comp. Gen. LEXIS 1007, September 28, 1990.

This protest is dismissed in part and denied in part.

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Office of Contracts and Property Law

[checked against original JLS 6/18/93]

^{13/}As to Novadyne's allegation that its proposal was evaluated unfairly, it is well settled that the evaluation of proposals is the procuring activity's responsibility and "procuring officials have a reasonable degree of discretion in that regard." APEC Technology Limited, P.S. Protest No. 88-23, June 30, 1988. Furthermore, "this office will not substitute its judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. Id., H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984. "Unsupported allegations or mere disagreement with the technical evaluators do not amount to evidence necessary to sustain a protest." APEC Technology, supra. Since Novadyne offers no evidence to support its allegation and the contracting officer's decision was neither arbitrary nor contrary to procurement regulations, this portion of the protest is denied.