



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

## DECISION FOR PUBLIC RELEASE

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**Matter of:** Ogden Support Services, Inc.

**File:** B-270354

**Date:** February 28, 1996

Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for the protester.

Joel Feidelman, Esq., James J. McCullough, Esq., Catherine E. Pollack, Esq., and Lawrence E. Ruggiero, Esq., Fried, Frank, Harris, Shriver & Jacobson, for SSI Services, Inc., an intervenor.

Lisa Miller, Esq., Central Intelligence Agency, for the agency.

Henry J. Gorczycki, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision., for the protester.

## DIGEST

Agency failed to conduct meaningful discussions with the protester where it did not identify during discussions the significant evaluated weaknesses and deficiencies in the protester's proposal that needed to be addressed in order for the protester's proposal reasonably to be considered for award.

## DECISION

Ogden Support Services, Inc. protests the award of a contract to SSI Services, Inc. under request for proposals (RFP) No. 95-Z06, issued by the Central Intelligence Agency (CIA) for operations and maintenance services at the CIA Headquarters, Langley, Virginia, and at 13 other facilities in the Washington, D.C. metropolitan area. Ogden protests the CIA's evaluation of proposals, conduct of discussions, and source selection decision.

We sustain the protest because the agency failed to conduct meaningful discussions.

The RFP contemplated the award of a cost-plus-award-fee, level-of-effort contract for a 5-year contract period.<sup>1</sup> A best value basis for award was stated with technical/management, experience/past performance, security, and cost identified as

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<sup>1</sup>This RFP combined the requirements from several contracts, for which Ogden was the incumbent contractor.

the evaluation factors. The security factor was to be evaluated on a pass/fail basis. The technical/management factor was said to be three times more important than experience/past performance factor. The technical/management factor listed a number of subfactors, of which the staffing plan subfactor was identified as being substantially more important than any of the other subfactors. The RFP did not identify the relative weight of the cost factor, but only stated that cost would become more important as the difference in technical evaluation scores decreases and that cost “may become” determinative when proposals are technically equal.<sup>2</sup>

The agency received seven proposals, of which four, including Ogden's and SSI's, were included in the competitive range. The initial technical scores and proposed costs of the competitive range proposals were:

Offeror	Technical Score (1,000 points maximum)	Cost
SSI	[DELETED]	[DELETED]
Offeror A	[DELETED]	[DELETED]
Offeror B	[DELETED]	[DELETED]
Ogden	[DELETED]	[DELETED]

Ogden's relatively low technical ranking reflected the technical evaluators' determination that Ogden's staffing plan contained a number of significant weaknesses and deficiencies, including proposed organizational structure and overall inadequate staffing.

Written discussions were conducted with each competitive range offeror based on questions prepared by the technical evaluators. Most of these questions requested general clarification or additional information. For example, of the nine questions directed to Ogden concerning its technical proposal, four were general questions asked of all four offerors and one identified a typographical error in an acronym. The remaining questions identified a few staffing deficiencies, which were similar in all four proposals, such as that proposed personnel for specifically identified categories fell one or a few persons below the minimum required level (e.g.,

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<sup>2</sup>This scheme fails to state the relative importance of the cost factor as required by Federal Acquisition Regulation (FAR) § 15.605(e). Where a solicitation fails to explicitly state the relative weight of cost in the evaluation scheme, it must be presumed that cost and technical considerations will be accorded equal weight and importance in the evaluation. Meridian Corp., B-246330.3, July 19, 1993, 93-2 CPD ¶ 29.

electricians, Central Plant staff), and also requested additional information. No question to Ogden identified the agency's concerns with Ogden's overall staffing or organizational structure.

The agency requested and received best and final offers (BAFO), which were evaluated as follows:

Offeror	Technical Score	Cost
SSI	[DELETED]	\$87,655,923
Offeror A	[DELETED]	[DELETED]
Offeror B	[DELETED]	[DELETED]
Ogden	[DELETED]	[DELETED]

In selecting SSI for award, the source selection authority (SSA) found:

“[Ogden’s] staffing plan is marginal. Its proposed organizational structure fragments the trade shops and external facilities. [DELETED]. The total staff of [DELETED] is less than the [g]overnment estimate of [DELETED]. Much of this deficit results from an excessively small management staff [DELETED]. This creates significant span of control concerns for many management positions within the organizations. [Ogden’s] major fragmentation of trade shops and its proposed minimum management staffing contributed to a fourth place ranking.

. . . . .

“[Ogden’s] technical proposal had some significant weaknesses and is ranked a distant fourth. [Ogden’s] proposed cost is less than SSI’s for the full contract term [DELETED] The significant risks in [Ogden’s] technical proposal are not offset by the prospective cost savings.”

The CIA awarded the contract to SSI, and Ogden protested to our Office within 5 calendar days of receiving its requested debriefing. Performance of SSI's contract has not been suspended because the agency determined that performance was in the best interest of the government.

Ogden protests, among other things, that discussions were not meaningful because the CIA did not inform it of the evaluated weaknesses and deficiencies in its proposal.

In negotiated procurements, contracting agencies generally must conduct discussions with all offerors whose proposals are within the competitive range. FAR § 15.610; E.L. Hamm & Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156. Although discussions need not be all-encompassing, they must be meaningful; that is, an agency is required to point out weaknesses, excesses, or deficiencies in a proposal as specifically as practical considerations permit so that the agency leads the offeror into areas of its proposal which require amplification or correction. E.L. Hamm & Assocs., Inc., *supra*; Northrop Worldwide Aircraft Servs., Inc., B-262181, Oct. 27, 1995, 95-2 CPD ¶ 196. Discussions cannot be meaningful if an offeror is not advised, in some way, of the weaknesses, excesses, or deficiencies in its proposal that must be addressed in order for the offeror to be in line for award. *Id.*

We find that the agency failed to advise Ogden of the weaknesses and deficiencies in its proposal that prevented Ogden from reasonably being considered for award, and, accordingly, that the CIA did not conduct meaningful discussions with Ogden. As stated above, the CIA, in its initial evaluation, assessed a number of significant weaknesses or deficiencies, including Ogden's assertedly inadequate overall staffing, inadequate management staffing resulting in "span of control concerns," [DELETED], and an organizational structure that allegedly fragmented the trade shops and external facilities. The written discussion questions provided to Ogden did not address any of these significant evaluation concerns. While the CIA informed Ogden that its proposed electrician staffing and Central Plant staffing were below the levels required by the RFP, there was no mention of Ogden's management staffing or overall staffing levels. Nor did the CIA identify its concern for trade shop fragmentation in Ogden's proposed organizational structure. As indicated in the above-quoted source selection statement, these evaluated staffing and organizational problems were the overriding concerns upon which the SSA relied in determining that Ogden's lower-cost proposal would not be selected for award.

SSI argues that the CIA was not required to identify the weaknesses and deficiencies evaluated in Ogden's proposal because they were so inherent in Ogden's technical approach that they could not be changed without a substantial revision of Ogden's proposal. We disagree. These evaluated weaknesses and deficiencies could be addressed without substantial revision of Ogden's proposed approach. For example, Ogden could address the agency's concerns about a minimal number of management staff by increasing the proposed staff level. See Northrop Worldwide Aircraft Servs., Inc., *supra*; Presentations South, Inc., B-229842, Apr. 18, 1988, 88-1 CPD ¶ 374.

Also, with regard to the fragmented trade shops, the agency was apparently concerned that Ogden's proposed staff organization shows that [DELETED]. These functions are but one part of a large organization and all of the functions are already unified under the same manager, such that any change to Ogden's

organization to deal with the agency's concern would be minor in the context of its overall proposal.

The agency argues that Ogden was not prejudiced, even assuming meaningful discussions were not conducted. We disagree.

Competitive prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where an agency violates procurement requirements, a reasonable possibility of prejudice is a sufficient basis for sustaining a protest, and we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester. Foundation Health Fed. Servs., Inc.; QualMed, Inc., B-254397.4 *et al.*, Dec. 20, 1993, 94-1 CPD ¶ 3; The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174, *aff'd*, Moon Eng'g Co., Inc.—Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233. Where, as here, an impropriety in the conduct of discussions is found, it must be clear from the record the protester was not prejudiced before we will deny the protest. Alliant Techsystems, Inc.; Olin Corp., B-260215.4; B-260215.5, Aug. 4, 1995, 95-2 CPD ¶ 79; National Medical Staffing, Inc., B-259402; B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163.

The CIA alleges that even assigning the maximum possible evaluation points in the areas in which Ogden's proposal was downgraded and for which Ogden had not received meaningful discussions, the impact on its overall technical score would be negligible and that an intervening offeror with a higher-rated, lower-cost BAFO would be in line for award ahead of Ogden. However, the agency's calculation of the effect of its failure to conduct meaningful discussions ignores virtually all of the weaknesses/deficiencies that are the basis for our finding that the CIA did not conduct meaningful discussions; the CIA's calculation is limited to four other undisclosed "deficiencies" which are minor in the overall evaluation. This does not show that the protester was not prejudiced by the agency's failure to conduct meaningful discussions, such that the protest should be denied. Alliant Techsystems, Inc.; Olin Corp., *supra*. Furthermore, our review shows that, had the agency disclosed during discussions the significant evaluated weaknesses/deficiencies found in Ogden's proposal, Ogden would have had an opportunity to improve its score by more than [DELETED] points—to a level approaching SSI's score—and its proposal may well have remained low in cost. Thus, the record evidences a reasonable possibility that, but for the deficient discussions, Ogden could have been in line for award and was therefore prejudiced. Id. We sustain Ogden's protest on this basis.

Given our finding above and our recommendation to reopen the competition, Ogden's protest of the CIA's evaluation of proposals and source selection decision are academic. Nevertheless, the protester has raised some valid concerns about the agency's evaluation of proposals that warrant the agency's attention upon reevaluation. In particular, the CIA's evaluation is not sufficiently documented to

support the technical evaluation consensus scores. While the individual evaluators' worksheets document the individual evaluators' scores, the consensus scores are not reasonably related to the individual evaluators' scores. In fact, the consensus scoring of SSI's proposal is inexplicably higher than any of the individual evaluators' scores, while the consensus scoring of Ogden's proposal is inexplicably lower than any of the individual evaluators' scores. The agency should adequately document all aspects of its future evaluation and source selection process. See Southwest Marine, Inc.; Am. Sys. Eng'g Corp, B-265865.3; B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ \_\_\_\_.

We recommend that the CIA amend the RFP to state the relative weight of cost, reopen discussions with the competitive range offerors, request revised BAFOs, and make a new source selection decision based upon the evaluation of revised BAFOs. If the CIA determines that award to an offeror other than SSI is appropriate, the agency should terminate the contract with SSI and make another award. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 60 Fed. Reg. 40,737, 40,743 (Aug. 10, 1995) (to be codified at 4 C.F.R. § 21.8). The protester should submit its certified claim for costs to the contracting agency within 90 days of receiving this decision. Bid Protest Regulations, § 21.8(f)(1).

The protest is sustained.

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of the United States