

Shauks



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: De La Rue Giori, SA
File: B-225447
Date: March 19, 1987

DIGEST

1. Agency did not exceed the discretion committed to it in concluding that protester's failure adequately to address in its written proposal how it planned to manage the project, including start-up activities, despite repeated requests that it do so could not be compensated for by its preliminary work on a prototype machine of the same general design as that being procured.
2. Record does not support protester's contention that it was not given the same opportunity as other offerors in the competitive range to submit a third best and final offer.

DECISION

De La Rue Giori, SA, protests the award of a contract for an intaglio printing press to Hamilton Tool Company under request for proposals (RFP) No. BEP-85-73(N), issued by the Bureau of Engraving and Printing, Department of the Treasury. The principal issue presented by Giori is whether its proposal was properly evaluated with respect to one technical criterion stated in the RFP. Giori maintains that its proposal was not properly evaluated and that if the points improperly deducted from its score were restored, it would be entitled to award as the highest-ranking offeror when both technical factors and price are considered.

The protest is denied.

BACKGROUND

According to Bureau documents, it must find a way to print increasingly larger volumes of banknotes within the physical confines of its present facility. The Bureau's solution to this problem is to procure a web press (i.e., one fed by a

038340

continuous roll of paper rather than with sheets of paper) which would be capable of printing both the front and back of a banknote, in one pass through the press, by the intaglio method (engraving in which the design is hollowed out from the surface of the background). Such a press would have a production output capacity equal to three or four of the Bureau's current sheet fed currency presses yet occupy less floor space than two of the sheet fed presses.

This press will be the first of its kind to be put into production. Its unique aspect is that it will print both the front and back of the banknote in a single pass through the press. The record indicates that other countries which currently print banknotes on web presses print one side of the note, rewind the web, reverse it, and then print the other side of the note in a second pass through the press. The design which the Bureau seeks would eliminate the need for rewinding the web and passing it through the press a second time.

This design, according to the Bureau, although never before put into production, is unique only in that it requires new application of existing technology using components the majority of which should have a manufacturing history.

Consistent with these requirements, the RFP sought firm -- fixed-price proposals for the design, fabrication, test and evaluation of a web currency press "designed to print the Intaglio Face and Back image of U.S. currency using electroformed (or equal reproductions of steel engravings) plate cylinders in one pass through the press [producing] print quality [which equals or exceeds] current production methods." Training of Bureau personnel, spare parts, documentation, ancillary support equipment (if needed) and delivery were to be included in each offeror's price. The period of performance was stated as 40 months, during which would occur preliminary and final design reviews, factory inspection tests, site preparation, delivery and installation of the press, delivery of spare parts, extended test and evaluation at the Bureau, the final acceptance test, training of Bureau personnel and the furnishing of the contractor's final report.

After an extensive procurement process, which included negotiations, the Bureau awarded a contract to Hamilton Tool, whose top technical ranking and 2nd-ranked price of approximately \$10.2 million resulted in its receipt of the highest number of total award points. Giori's third-place technical ranking and low price of approximately \$8 million resulted in a second-place ranking overall.

In its protest of the award to Hamilton, Giori has raised a number of issues characteristic of those encountered in a negotiated procurement. These issues center on whether proposals were evaluated fairly and in accordance with the criteria set forth in the solicitation and on whether all offerors were given an equal opportunity to submit best and final offers (BAFO's). In the course of Giori's protest, however, one issue predominates over all the others: whether Giori's proposal properly was evaluated under the project management evaluation criterion. Giori's comments on the agency report, although lengthy, clearly state that "[the Bureau's] failure to apply the evaluation criteria to that area in accordance with the . . . criteria [listed in the RFP] is [Giori's] complaint in its protest" and that "[t]his protest concerns [the Bureau's] application of the evaluation criteria identified in the RFP for the Project Management Plan." In broad outline, Giori's argument--which we discuss in detail below--in that the Bureau arrived at an "absurd result" under this criterion because it penalized Giori for not having explained, in its proposal, how it planned to manage certain activities which Giori, to the Bureau's knowledge, had already accomplished in actual practice. Giori argues that were the points improperly deducted under this criterion restored to its proposal, it would become the highest-ranked offeror and thus, entitled to the award.

The pertinent RFP provisions concerning the manner in which proposals were to be evaluated and an offeror selected for award stated:

"SECTION M - EVALUATION FACTORS FOR AWARD

.

M-2 PROPOSAL EVALUATION

a. The prime objective of proposal evaluation is to insure impartial, equitable, and comprehensive evaluation of competitive proposals and to insure selection of that source which affirmatively demonstrates in its written proposal that it offers optimum satisfaction with regard to performance, schedule, and cost. [Emphasis in original.]

b. In addition to proposal evaluation as stated herein, the government reserves the right to visit offeror locations for the purpose of more comprehensive evaluation of vendor capability with respect to the requirements of this solicitation.

M-3 TECHNICAL PROPOSAL EVALUATION CRITERIA

<u>Factors</u>	<u>Maximum Weights</u>
a. <u>Technological Approach.</u> The specific present day technology employed in response to BEP requirements; comprehensiveness of the technical proposal; ability of basic design to facilitate later addition of secondary examining and finishing equipment with a minimum of space and cost; soundness of the design concepts to be employed; and the degree that the design approach maximizes productivity, maintainability, and reliability objectives of the press.	30
b. <u>Project Management Plan.</u> (Organization and Structure). The specific management philosophy, methods, techniques, and human resource utilization of the Offeror's plan shall be sufficiently logical and thorough to ensure that the contractor will obtain all the detailed facts required to develop fully supportable conclusions and recommendations and will at least meet the objectives and cover the requirements of this project. The plan shall include start up activities and liaison with BEP and subcontractors as appropriate.	15
c. <u>Offeror's Experience and Capacity.</u>	10
.	
d. <u>Qualifications of Professional Staff.</u>	10
.	
e. <u>Implementation Cost.</u>	5
.	
Total	75

M-4 SELECTION FOR AWARD

a. In evaluating proposals the Government will assign AWARD POINTS (TECHNICAL PROPOSALS & PRICE OFFER POINTS) where 100 is the maximum number of possible award points.

.

In computing PRICE OFFER POINTS, the lowest priced technically acceptable proposal automatically receives the maximum number of possible PRICE OFFER POINTS. (Note: Since technical considerations are considered to be approximately three (3) times as important as price, it would be 75 and 25 points respectively). [Other than the lowest offeror would receive proportionately fewer points.]

.

c. Notwithstanding the computation of Award Points as described in paragraph (a) above, award will be made to the offeror (1) who submits a technically acceptable proposal, and (2) whose proposal provides the quality/cost relationship along with other relevant factors that is most advantageous to the Government from among the proposals received from responsible offerors in the competitive range. Although numerical ratings shall be used as guide in contractor selection, the right is reserved to select a contractor who may not have the highest numerical rating (technical and price combined)." [Emphasis in original.]

With respect to the preparation of technical proposals, the RFP instructed offerors:

"II. TECHNICAL PROPOSAL PREPARATION INSTRUCTION

A. General

The technical proposal will be an important consideration in the award of a contract . . . , therefore it should be sufficiently comprehensive and detailed, in a format readily interpretable by the government, to enable complete evaluation of the offeror's capability to satisfactorily fulfill the government's requirements. The offeror will respond to each requirement within this RFP, element by element. The technical proposal shall consist of a technical approach, a project management plan, record of the quality and nature of your firm's experience. . . .

B. Technical Approach

Each offeror must provide a detailed technical approach

C. Project Management Plan

Each offeror must provide a detailed project management plan that identifies and discusses the following:

1. The specified management philosophy methods, techniques, and human resource utilization that the offeror will employ to accomplish this project.
2. The extent of required contractor and BEP Liaison.
3. Start-up activities.

D. Offeror's Experience and Capacity

Offeror's record of experience should set forth in detail verifiable objective evidence of successful development and preparation of similar equipment for other organizations.

."

Giori's protest focuses on the evaluation of its proposal under the "Project Management Plan" criterion, especially with regard to "start-up activities," as described in section M-3 b. of the RFP and paragraph II. C. of the technical proposal preparation instructions.

Four proposals were received by the October 10, 1985, due date and were referred to a technical evaluation panel. In early November 1985, the panel recommended that one proposal be dropped from further consideration, which subsequently did occur. With regard to the three remaining proposals submitted by Giori, Hamilton and Miller Printing Equipment Company, as to each of which the panel felt there was a high probability of improvement to a fully satisfactory level, the panel submitted detailed comments and requests for clarifications. With regard to the adequacy of Giori's proposal concerning "project management," the panel stated:

"The proposal does not address sufficiently the management philosophy proposed including liaison and interface methods and procedures with subcontractors and the Bureau, nor does it provide sufficient details as to the start-up plans proposed. Fully 20% of the proposal evaluation score is contained in the above responses."

The panel also suggested with regard to Giori, as well as for Hamilton and Miller, that the firm be requested to provide a date when the panel could review and discuss the firms' accomplishments in web intaglio printing through a site visit.

As its "Project Management Plan," Giori presented three block diagrams in which it identified: (1) its principal subcontractors; (2) those individuals at Giori's Lausanne, Switzerland, headquarters responsible for various aspects of the program; and (3) responsible individuals at its subcontractor in Wuerzberg, West Germany, which was to build the press. It also outlined a schedule of how frequently the managers at various levels were to report to their superiors and Giori would consult with its subcontractors and the Bureau. The proposal clearly left to some time after contract award, however, the establishment of any specific task schedules necessary for completion of the project; no detailed plans in this respect were presented.

Essential to an understanding of Giori's protest, however, and as explained in its proposal, was the fact that between the issuance of a prior Bureau solicitation for such a system and the issuance of this solicitation, Giori had built at its subcontractor's plant an experimental or prototype web intaglio press for the printing of banknotes, front and back, in one pass through the press.^{1/} Giori's approach to designing and building a press for the Bureau was based on certain tests it had performed on its prototype.

The "Project Management" section of Hamilton's initial proposal, by contrast, was much more expansive and detailed than Giori's. It described how the company was to organize itself for the completion of the project, how during contract performance the company would control and implement changes affecting the physical characteristics of the press, in what areas and how it would effect liaison with the Bureau. The last included including the facilitation of the Bureau's monitoring of Hamilton's progress on a day-to-day basis through a Hamilton-supplied computer modem link

^{1/} This is the Bureau's second attempt to procure this equipment. We previously sustained a protest by Hamilton against an award to Giori on the basis that the Bureau significantly relaxed its requirements in discussions with Giori and did not permit other offerors to compete on the altered requirement. The Hamilton Tool Co., B-218216, May 17, 1985, 85-1 C.P.D. ¶ 566.

placing the Bureau online with the data collection network in Hamilton's plants. Hamilton also addressed the implementation of start up activities as illustrated by a detailed Milestone Pert chart showing the scheduling and integration of contract tasks from the date of award through delivery of the final report, and covered the management arrangements for the factory inspection test, equipment installation, equipment start up and training. The technical evaluation panel had no comment on this aspect of Hamilton's proposal.

On November 21, 1985, the Bureau sent letters to the three offerors asking each to provide additional information in the areas of concern to the technical evaluation panel. With respect to Giori, the panel's comment about the inadequacy of the firm's discussion of "Project Management" was transmitted verbatim, except for the observation that it represented 20 percent of the technical score.

In its response of December 20, 1985, Giori devoted about one typewritten page to project management, in which it stated that in view of the continuous contact which exists between it and its manufacturers and suppliers, it proposed a program whereby within 15 days of contract award it would meet with those firms "in order to define the details of designing, manufacturing, delivery and testing of all the equipment to be supplied" to the Bureau, and within 30 days of contract award would present this program to the Bureau. It also proposed the periodic submission of reports to and the holding of meetings with the Bureau and the attendance of the firm's representatives during erection of the press and the evaluation, acceptance and training phases of the contract.

On January 16, 1986, the Bureau again wrote Giori about "various weaknesses" the technical evaluation panel had noted in the firm's November 21, 1985, submission. In this letter, the reference to the project management plan was more pointed:

"Technical Proposal Preparation Instruction
Section C-Project Management Plan

a. items 1 and 2

The information provided was weak. Please provide any additional information you deem appropriate.

b. item 3

Provide additional information on how you intend to manage 'start up activities,' and ink testing and related concerns." [Emphasis in original.]

Giori was requested to submit any revision to its proposal as a result of these and other comments by January 27, 1986.

In its reply of that date, Giori simply referred the Bureau to its prior submissions with regard to items 1 and 2. As for item 3, Giori replied:

"We consider that also for this part the basic concept is explained in our original proposal. We do not clearly understand what you mean by ink testing and start-up activities. Our proposal was based on the fact that, as we were working on the project of a web press printing front and back in one pass dollar like currency, we are at the very advanced stage of a practical testing activity for paper, inks, engravings, etc. We are ready to communicate to the [Bureau] at the very beginning of the project the results of those tests if necessary. The visit of your delegation in Wuerzburg will be helpful to ascertain the degree of development in this field. If you consider that the above is a misinterpretation of your request please specify in detail your wishes." -

Also during the week of January 26, 1986, a visiting committee from the Bureau toured the offerors' designated sites to confirm the level of intaglio web capability of each firm. The visiting committee attempted to assess the level of user training required to learn to operate the existing press; maintenance complexity of the equipment; user satisfaction with equipment and vendor; the level of availability of the equipment--its mean time between failure (MTBF) and mean time to repair (MTTR); the stability of the equipment; and ergonomics.

The Miller and Hamilton intaglio web presses which the committee examined did not print front-and-back in one pass through the press but were being operated in production environments. The Giori press was its prototype demonstrated at Wuerzburg. Since the Giori press had not been delivered to a customer, user satisfaction could not be measured and MTBF and MTTR data did not exist because the press had not been run in a production environment. Because of incidents which occurred during operation the committee concluded that press stability had not been well demonstrated and there was a problem in maintaining print quality with increasing operating speed.

On the whole, the committee concluded that there was no basis for disqualifying any of the offerors as each possessed demonstrated experience in designing and building functional intaglio web printing machines. The committee also offered the following assessments: (1) in terms of the amount of work to be done to produce a press for the Bureau Giori was "ready to start final design," Miller was "almost at the same point" and Hamilton appeared to be "slightly further back," (2) about the same ranking would apply as to the offerors' ability to deliver a satisfactory press in 42 months; and (3) in terms of the perceived benefits which each could potentially deliver, Hamilton appeared able to produce the best overall design and the other two firms ranked somewhat lower based on their more restricted view of creative systems engineering and program management.

In mid-February, 1986, the technical evaluation panel completed its evaluation of the revisions to proposals received on January 27. Hamilton scored higher than Giori as to "Technical Approach," "Project Management," and "Staff Qualifications," equaled Giori in "Implementation," and was lower than Giori as to "Experience and Capacity." The most marked difference was in ratings for "Project Management." On the whole, Hamilton's score was higher.

The panel acknowledged that the scores under "Project Management" and "Staff Qualifications" may have been more related to writing style than capability since all three offerors were capable firms. Nevertheless, the panel stated, it elected to score proposals by applying the RFP criteria to what was presented in the written proposals. With regard to Giori's low score in "Project Management," the panel was of the opinion that the written information provided would not warrant an increase in score. The panel recognized that Giori's approach of designing products at its own expense in-house for sale as off-the-shelf designs, which required little external project management effort, did not lend itself well to evaluation under this criterion. The panel mentioned but did not adopt a less rigorous standard for Giori under "project management" in view of the "relatively advanced state of development" of its prototype.

Face-to-face negotiations were conducted in late February and early March, 1986. On March 21, the Bureau issued amendment No. 5 to the RFP, which added an "unpriced option" for the purchase of an additional press, provided that the contractor was to furnish a "turnkey" installation, and made other changes. Concurrently with this amendment, the Bureau sent letters to the offerors asking each to address a number of general and specific points. Best and final offers in

response thereto were due by April 14. Among the specific points of which Giori was asked to take note was the following:

"After review of your response to our January 16, 1986 letter concerning the weakness of the information provided in regards to your Project Management Plan you responded by directing us to existing information in your offer as if we omitted reading that portion of the proposal. Apparently, you did not understand that we had read it, but found it to be weak."

In responding to this point in its BAFO, Giori outlined its history and its general approach to product development, which it stated was to investigate new technologies in conjunction with its specialized subcontractors, seek engineering solutions, conduct a testing program and, if the results warrant, construct a prototype. These principles had been applied in the construction of the press at Wuerzburg, Giori stated, and similarly would be applied in the performance of the Bureau's contract. Giori also outlined the principles by which it would coordinate with its subcontractors and the Bureau and respond to changes or modifications.

In mid-April, the technical evaluation panel scored the revised proposals. Although in comparison with the February scoring, Giori gained a fraction of a point under "Technical Approach" and slightly improved as to "Project Management," the scores otherwise remained unchanged and the relative standing of the offerors remained the same (Hamilton first, Giori last) with "Project Management" the most significant disparity. When price was taken into account, however, Giori's total score was slightly higher than Hamilton's. The Department of the Treasury did not accept the Bureau's recommendation to make award to Giori at that point, however, apparently because of deficiencies it perceived in the procurement, which were corrected in amendment No. 6 to the RFP, issued on July 14.

Amendment No. 6 deleted the unpriced option for an additional press and the requirement for a "turnkey" installation. Instead, Bureau personnel were to install the press with technical assistance from the contractor. In a letter which accompanied amendment No. 6, the Bureau asked for the submission of a second BAFO by July 28 in which offerors could take these changes into account and with which cost and pricing data was requested.

In early August, further negotiations were conducted at the Bureau which concentrated on pricing matters. By letter of

August 15 to each offeror, the Bureau confirmed those discussions, asked for additional cost information and provided additional information about the Bureau's requirements concerning section 8.0 of the RFP's specifications for plate cylinder manufacturing equipment. Responses were received by August 22.

On September 8, according to the Bureau, it orally requested the submission of a third BAFO by September 16. On that date Giori sent a message confirming that its "second best and final offer dated July 22, 1986, is fully valid until September 30, 1986, and that the technical specifications for this machine remains unchanged."

At the conclusion of this process, Giori's and Miller's technical scores remained unchanged while Hamilton's was reduced by 1 point because of a change made to its proposal. When prices were taken into account, the final standing of the offerors was as follows:

	<u>Hamilton</u>	<u>Giori</u>	<u>Miller</u>
Technical	61.70	54.30	56.64
Price	<u>19.75</u>	<u>25.00</u>	<u>19.22</u>
	81.45	79.30	75.86

The technical score difference of 7.4 points between Hamilton and Giori reflects the award to Giori of zero points out of a maximum of five under the "start-up activities" subcriterion of the "Project Management" criterion. The total evaluation score difference is 2.15 points.

There then occurred an exchange of memoranda between the Bureau and the Department of the Treasury as to the appropriate award to be made under these circumstances, which culminated with the Bureau's recommendation to award to Hamilton as the firm which had earned the greatest number of award points. Such an award, the contracting officer stated, would be consistent with the evaluation criteria stated in the RFP and was warranted because the technical advantages of the Hamilton proposal outweighed the cost savings proposed by Giori. The contracting officer further noted that Hamilton had addressed the requirements of the "Project Management Plan," specifically liaison with the Bureau and start up. Acknowledging the view expressed in an earlier memorandum that Giori's score in "Project Management" should be "reinterpreted," the contracting officer observed that Hamilton did comply with the solicitation requirements and earned the scores that it was assigned.

DISCUSSION

In its protest, Giori points out that if it had received the five points assigned to start-up activities for evaluation purposes, its combined technical and cost score would have been higher than Hamilton's. The Bureau's award to it of zero points under that subcriterion, Giori argues, was "without a rational basis" as illustrated by the following example:

"What if [the Bureau] issued an RFP for a car with eight wheels instead of four. And, as part of the evaluation, the agency stated it would evaluate and assign points for each offeror's plans to start up its design and building of the eight-wheeled car. Joe's Bicycle Shop and Ford submit bids. Joe's Bicycle Shop, which has built cars, but has never built a car with eight wheels, submits a very complete and elaborate plan for its start-up to design, develop and produce a car with eight wheels. Ford submits a Proposal that indicates that Ford has designed, developed, and fabricated a car with eight wheels that can meet the specifications. Clearly, it would be unreasonable to penalize Ford, the more advanced offeror, because it did not need to start-up. -- Yet, that is exactly what [the Bureau] did in its evaluation of [Giori]."

We do not believe Giori's analogy holds true for the following reasons. Here, the Bureau obtained competition from three well-qualified firms pursuant to an RFP which emphasized that the evaluation process was to "insure selection of that source which affirmatively demonstrates in its written proposal that it offers optimum satisfaction with regard to performance, schedule and cost." (Emphasis in original.) Giori's initial proposal was weak as to its "Project Management Plan," a matter which was brought to its attention three times during discussions. On the second of those occasions, the Bureau specifically asked Giori to "provide additional information on how you intend to manage 'start up activities,' and ink testing and related concerns." (Emphasis in original.) Giori did not offer a detailed explanation of how it intended to manage such aspects of contract performance. The essence of its position was that it was working on the problems posed by the Bureau's design concept by conducting tests on the prototype press in Wuerzburg.

The visiting committee which witnessed a demonstration of the prototype acknowledged that its possession put Giori slightly ahead of its competitors in terms of the amount of

work to be done to produce a satisfactory press within the anticipated contract period (although the committee also judged Hamilton able to produce the best overall design). The prototype press, however, was not being operated in a production environment, its reliability was difficult to assess and some problems were encountered during its demonstration. It does not appear to have been a perfected product which could "meet the specifications" as did the Ford car in the protester's example.

Giori could not be given full credit for a project management plan on the basis of its written proposal because it never presented a complete plan in writing. It could only receive credit under the subcriterion, in the words of Bureau memoranda, through the application of a "less rigorous standard" than that applied to the other offerors' proposals or through a "reinterpretation" of its score by which an imputed plan would be substituted for lack of written proposal content.

The Bureau did consider taking a less rigorous approach to scoring Giori's proposal under the "Project Management Plan" criterion, an approach which would have required some speculation since Giori's management plan was not laid out in the firm's written proposal. The Bureau appeared to envision a relationship, however, reflected in the RFP, in which the contractor would work closely with the agency, as a part of which it would reveal its management plans. Hamilton fulfilled that requirement, Giori did not, and in the final analysis the Bureau declined to speculate and instead evaluated the written proposals as initially contemplated.

Although the protester characterizes the Bureau's action as a triumph of form over substance, we do not find that the Bureau exceeded the bounds of the discretion committed to it in concluding that award should be made to Hamilton on the basis of its technically superior proposal.

The protester also alleges that the Bureau requested a third BAFO from Hamilton and Miller but denied the same opportunity to Giori. The agency states that it requested the third BAFO by telephone "due to a shortage of time" and did not confirm the oral request in writing. Giori argues that this action on the part of the Bureau was unfair and in violation of the Federal Acquisition Regulation. The record does not support this allegation.

On September 16, which the agency states was the due date for the third round of BAFO's, Giori sent a telex to the Bureau stating that it confirmed its "second" BAFO and that "the technical specifications for this machine remains

unchanged." Although the protester's telex on one hand might appear to be only a confirmation of a previous BAFO, that the protester was given an opportunity to revise its offer is indicated by its statement that there were no changes to its technical specifications. Had this simply been a response to a request for confirmation of the second BAFO there would have been no occasion for the protester to expressly decline to change any technical specifications. Thus we conclude that this allegation is without merit since it is not supported by the record. While the agency's failure to follow the oral request with a written confirmation was a procedural deficiency, it was not prejudicial to any offeror since all had notice of the request and responded to it.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel