



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Instruments & Controls Service Company

File: B-235197

Date: July 31, 1989

DIGEST

1. Awardee's proposal satisfied solicitation's requirement for in-house electricians where electricians proposed, although employees of a subcontractor, were assigned to work effort on a permanent, full-time basis.
2. Where request for proposals provided that, in evaluating proposals, technical quality and price would be considered to be of equal importance, agency properly awarded on the basis of higher-rated, higher-priced proposal since it reasonably determined that technical advantage associated with higher-rated proposal was worth the difference in price.

DECISION

Instruments & Control Service Company protests the General Services Administration's (GSA) award of a contract for mechanical maintenance services for three federal buildings in New York City to Ogden Allied Building & Airport Services, Inc., under request for proposals (RFP) No. 02-PPB-JA-088-N030. Instruments & Controls contends that Ogden's proposal should not have been considered for award since it failed to meet the RFP's minimum staffing requirements. The protester further complains that GSA deviated from the evaluation scheme set forth in the solicitation by ignoring the price advantage afforded by its lower-priced proposal. We deny the protest.

The RFP solicited offers to operate, maintain, and repair all mechanical, electrical, plumbing, and utility systems for the Jacob K. Javits Federal Office Building, the United States Court of International Trade, and the GSA Parking Garage located at 203-205 Centre Street in New York City for a base period of 3 years and an optional period of 2 years. The solicitation provided that, in evaluating proposals, technical quality and price would be considered to be of equal importance, and further stated that if technical

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proposals were evaluated as essentially equal, price could be the deciding factor, while if price proposals were evaluated as essentially equal, technical quality could be the deciding factor.

The technical evaluation was to be based on the following factors, listed in descending order of importance: experience on similar projects, qualifications of key personnel, staffing and organization, management control, and phase-in plan. With regard to staffing, each offeror was required to demonstrate "as a minimum that all operating engineer tours and watches are covered by in-house personnel and that there are at least two in-house personnel in each of the other critical trades (pipefitters, electricians, plumbers, and carpenters/locksmiths)."

Four offers were received in response to the RFP, two of which were rejected as technically unacceptable. The technical proposals submitted by Ogden and Instruments & Controls were both determined to be technically acceptable; therefore, discussions were held with both offerors and best and final offers requested. Ogden proposed a total price of \$13,149,754 for the 5-year period in its final offer; Instruments & Controls proposed a price of \$12,115,585. Ogden's proposal was judged superior, receiving a score of 9.5, as compared with Instruments & Controls' score of 6.4.

The evaluators determined that, since the price differential between the two proposals amounted to approximately 8.5 percent, the two prices should be regarded as essentially equal and that, therefore, technical quality should be the deciding factor. The evaluators recommended that award be made to Ogden since, in their view, the government would receive more service for a relatively small increase in price. On March 9, 1989, a contract was awarded to Ogden.

Instruments & Controls argues first that Ogden's proposal should not have been considered for award since it failed to meet the RFP's requirement for a minimum of two in-house employees in each of the four indicated critical trades. In particular, the protester objects to Ogden's stated intent to subcontract for the electrical work.

We have reviewed Ogden's proposal and find that Ogden did offer to provide from its own staff two pipefitters, two plumbers, and two carpenters/locksmiths. We therefore find the protester's assertions with regard to the insufficiency of Ogden's proposed personnel in those trades to be without factual basis. Further, in its proposal, Ogden indicated that it intended to subcontract with Knight Maintenance

Corporation for two journeymen electricians and two electrician helpers to be assigned to the work effort under this contract on a permanent, full-time basis. The protester objects to this, arguing that the requirement for "in-house" electricians prohibited Ogden from subcontracting this effort. We disagree.

In the absence of an explicit restriction against the use of subcontractors, the government may accept a proposal which is based on substantial subcontracting. Imperial Schrade Corp., 66 Comp. Gen. 308 (1987), 87-1 CPD ¶ 254.

Here, the RFP contains no limitation on subcontracting. Since it does not, in our view the only reasonable interpretation of the term "in-house personnel," as used in the RFP, means employees who will be on-site on a full-time basis--a condition that the electricians proposed by Ogden meet, despite the fact that they are employees of a subcontractor rather than of Ogden itself.

We do not agree with the protester that this conclusion is inconsistent with RFP language which requires that an offeror's staffing plan must complement its subcontracting plan. The fact that the two must complement each other does not mean, we believe, that some of the staff may not be subcontractor employees.

The protester further complains that it was prejudiced by the fact that it understood the requirement for in-house personnel to mean that the workers were required to be its employees. According to the protester, "electrical equipment is among the most expensive equipment necessary for the type of work being solicited" and "a subcontractor could bear these costs if in-house personnel were not required"; in addition, the protester asserts that subcontractor personnel demand less supervisory efforts, require little administrative support, and create no insurance and related business cost burdens.

We are not persuaded by the protester's arguments. In our view, it is only reasonable to assume that a subcontractor that is providing its employees to another firm on a permanent, full-time basis would pass along any additional expenses that it incurs by virtue of having the employees, who are performing no other services for it, on its payroll. Consequently, we are not convinced that the protester would have been able to reduce its price proposal substantially if it had realized that it could subcontract for the electricians' services. In any event, as we indicated above, we do not believe that the RFP contained any prohibition against using subcontractor employees for the

specified trades, so long as these personnel were permanently on the job site.

Instruments & Controls argues secondly that the agency deviated from the evaluation scheme announced in the RFP, which accorded equal weight to technical quality and price, by concluding that Ogden's higher price was essentially equal to its own and that technical quality would, therefore, be the determinative factor in selecting a proposal for award.

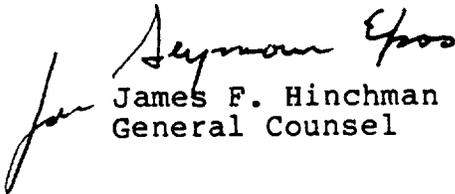
Despite the statement that the evaluators concluded that the prices were "essentially equal", we do not think that a fair reading of the record in this case indicates that the agency ignored the price differential between Instruments & Controls' and Ogden's proposals in selecting the latter for award; rather, in our view, it shows that the agency determined that the difference in technical quality between the two proposals outweighed the difference in price.^{1/} Where, as here, an RFP provides for award based equally on technical merit and price, the agency has the discretion to determine whether the technical advantage associated with a higher-rated, higher-priced proposal is worth the difference in price. McShade Gov't Contracting Serv., B-232977, Feb. 6, 1989, 89-1 CPD ¶ 118. Since the judgment as to whether the difference in technical merit is worth the difference in price is, like other technical judgments, the responsibility of the agency, we will question it only if it is unreasonable. Burnside-Ott Aviation Training Center, Inc., et al., B-233113 et al., Feb. 15, 1989, 89-1 CPD ¶ 158.

Here, we think that the record shows that it was reasonable for the agency to conclude that Ogden's more highly rated proposal was worth its higher price. Although the protester asserts that the agency has offered no justification for awarding its proposal a lower technical score than Ogden's, we think that the agency has, in fact, offered ample justification for its judgment that Ogden's technical proposal was substantially superior to the protester's. The evaluators noted, for example, that one of the major strengths of Ogden's proposal was its staffing plan, which provided for a substantially greater number of full-time workers than Instruments & Controls' proposal. The evaluators concluded that, since the additional staff offered by

^{1/} In recommending Ogden for award, for example, the evaluators expressed the opinion that, under the Ogden proposal, the Government [would] receive more service for the relatively small increase in price.

Ogden accounted for the entire price difference between the two proposals and since Ogden had proposed significantly lower general and administrative (G&A) and profit rates than Instruments & Controls, a higher percentage of contract funds would go toward actual operation of the building under Ogden's proposal.^{2/} The evaluators further noted that Ogden's proposal was superior to the protester's in the areas of scheduling of shifts, maintenance plan, sub-contracting, and phase-in plan. We, therefore, have no basis upon which to question the agency's judgment that Ogden's proposal offered the best combination of technical merit and price.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} The RFP specified under the staffing and organization evaluation factor that, to the extent that an offeror exceeded the RFP minimum requirements, "the proposal will be rated accordingly."