

Curcio



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A.G. Personnel Leasing, Inc.

File: B-238289

Date: April 24, 1990

Amarendu Ghosh, for the protester.
Frances L. Sullivan, Office of Thrift Supervision,
Department of the Treasury, for the agency.
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of the decision.

DIGEST

Protest challenging elimination of protester's proposal from competitive range is sustained where the contracting agency improperly evaluated the proposal, and, if it had been evaluated properly, the protester would be the lowest-priced offeror in the competitive range and would have had a reasonable chance of receiving award.

DECISION

A.G. Personnel Leasing, Inc. (AGPL), protests the elimination from the competitive range of the proposal it submitted in response to request for proposals (RFP) No. C99208, issued by the Office of Thrift Supervision (OTS), Department of the Treasury.

We sustain the protest.

The RFP was issued on August 16, 1989, for mail operation and transportation services for a 1-month transition period, a base year and 3 option years. The RFP provided for the evaluation of technical factors and price for the transition and base year periods, with price subordinate to the cumulative technical factors in the award decision except between proposals that were considered technically equal. The RFP listed the technical evaluation factors as: (A) corporate personnel resources; (B) understanding of the services solicited; (C) corporate experience; (D) proposed staff; and (E) management, in descending order of importance except that factors (D) and (E) were equal in importance. The evaluation was based on 100 total points

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with factor (A) worth 45 points; factor (B), 20 points; factor (C), 15 points; and factors (D) and (E), 10 points each.

Nine offerors responded to the RFP. The proposals were evaluated by three members of the technical proposal evaluation committee who first scored the proposals individually and then reached a consensus score. The evaluations and proposals were next reviewed by a contract specialist who placed eight of the nine proposals, with scores ranging from 65-100 points, in the competitive range. AGPL, which was included in the competitive range, received a score of 70 points for its technical proposal. The prices proposed by the offerors in the competitive range were from \$248,805.96 to \$562,428.

Subsequently, OTS decided that due to a change in its requirements, the number of on-site full-time personnel proposed by all eight offerors should be reduced. On December 6, OTS sent each of the eight offerors a notice with the specific number of on-site personnel required and requested best and final offers (BAFOs) by December 15. All eight offerors responded with revised price proposals which ranged from \$187,310.92 to \$292,452.80. AGPL submitted the second-lowest priced proposal of \$210,821.96.

At this time, the contracting officer reviewed the evaluations and determined that the contract specialist should not have included in the competitive range the proposals of AGPL and one other offeror, Consolidating Consultants, Inc., which had submitted the lowest-priced proposal but also received a lower technical score. The contracting officer further determined, in consultation with the chairman of the evaluation committee, that the remaining six proposals, which ranged in score from 80-100 points, were technically equal. OTS then awarded the contract to Facilities Management Co., Inc. (FMC), the lowest-priced offeror of the six remaining in the competitive range, at a price of \$221,357.58. FMC received 86 points for its technical proposal.

AGPL protests that OTS improperly evaluated the firm's technical proposal and that if it had been properly

evaluated, AGPL would have been the lowest-priced offeror in the revised competitive range.^{1/}

As a preliminary matter, OTS notes that there is a lower-priced offeror, Consolidating Consultants, which like AGPL, was included in the original competitive range, but later was excluded by the contracting officer. OTS asserts that if the second competitive range determination, which resulted in the exclusion of AGPL and Consolidating Consultants, is found improper, Consolidating Consultants, not AGPL, is in line for award. OTS thus argues that we should dismiss the protest because AGPL is not an interested party to pursue it.

We disagree. AGPL is not protesting OTS' decision to make a second competitive range determination or that any offeror other than AGPL was improperly excluded from the competitive range. AGPL only protests that if its proposal had been properly evaluated, AGPL would have been included in the revised competitive range. Since the lower-priced offeror, Consolidating Consultants, has not challenged its elimination from the competitive range, if we agree with AGPL concerning the evaluation of its technical offer, AGPL will be the lowest-priced offeror in the competitive range with a reasonable chance of receiving the award. Thus, AGPL is an interested party to maintain this protest. See Pan Am World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446.

In addition, as a preliminary matter, AGPL complains that the "consensus score" its proposal received from the technical evaluation panel as a whole (70 points) is 3 percent lower than the "cumulative score" it received (72.5 points), calculated by adding the scores of the individual evaluators and averaging them. AGPL questions whether there were additional criteria used to evaluate the proposals to reach the consensus scores, and whether the conversion from cumulative score to consensus score affected which proposals were included in the competitive range.

^{1/} In its protest, AGPL also initially complained that the notice requesting BAFOs did not detail changes in the scope of work or inform AGPL of deficiencies in its proposal. OTS responded to these issues in its protest report and AGPL did not dispute the agency's response. Consequently, we consider these issues abandoned and will not consider them on the merits. See Herman Miller, Inc., B-234704, July 10, 1989, 89-2 CPD ¶ 25.

The consensus scores were reached after the individual evaluators met to discuss the proposals, and, in our view, there is nothing inherently improper in this procedure. See Medical Care Dev., B-235299, Aug. 17, 1989, 89-2 CPD ¶ 149. In any case, our review of the record shows that no additional criteria were used to reach the consensus score, and that the conversion to the consensus scores did not change the relative positions of the offerors in the competitive range.

Turning to the merits of the protest, the evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties arising from a defective evaluation. Accordingly, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Damon Corp., B-232721, Feb. 3, 1989, 89-1 CPD ¶ 113. As we discuss below, AGPL questions the evaluation of its proposal in two areas: corporate experience and proposed staff. We find that the agency's consideration of the protester's corporate experience was reasonable. We conclude that AGPL's proposed staff was not properly evaluated and sustain the protest on that basis.

CORPORATE EXPERIENCE

AGPL first challenges OTS' evaluation of its proposal concerning evaluation factor (C), corporate experience.^{2/} AGPL received a score of 3 out of 15 points for this factor. OTS explains that this score was based on the evaluators' concern that AGPL had only limited experience generally, and no experience conducting mail distribution and courier services for the federal government. AGPL responds that it has been performing mail management services for more than 49 months, and that it has performed such services for a

^{2/} AGPL's protest focuses on the evaluation of its proposal under evaluation factors (C), corporate experience, and (D), proposed personnel. While AGPL also appears to question the evaluation of its proposal under the three other evaluation criteria, it raises no specific challenges and merely states that it complied with all the requirements of the solicitation. Our review shows that AGPL scored well on the other three factors, and, in any event, we see no basis to question the agency's evaluation under those factors.

large utility company which, according to AGPL, is equivalent to a federal agency. Moreover, AGPL argues, mailroom operations of federal civilian agencies, military departments and industrial concerns adhere to standard rules and regulations. Finally, AGPL states that it has performed a contract for the Air Force for 17 months and that it is currently operating a postal service center at Andrews Air Force Base.

We do not agree that OTS' evaluation of AGPL's corporate experience was unreasonable. The RFP defines this factor as follows:

"Corporate Experience-The Offeror's general history of successful mail service operations showing former and current Federal Government clients."

Thus, AGPL was on notice that OTS was interested in a firm's experience with the federal government and would consider such specific experience when evaluating its technical proposal. Insofar as AGPL argues that it referenced an Air Force contract in its proposal, that contract was for warehouse management services, not mailroom operation; OTS could reasonably find that this experience did not merit the full number of evaluation points. Finally, while in its comments on the agency's protest report AGPL states that it is currently performing a mail operations contract for the Air Force, this contract was not referenced in AGPL's proposal and, in fact, AGPL only began performance on this contract sometime after the evaluations were completed. Accordingly, OTS could not take this contract into consideration when it performed the evaluation. Based on these factors, we have no basis on which to question OTS' evaluation of AGPL's corporate experience.

PROPOSED STAFF

AGPL also challenges the evaluation of its proposal under factor (D), proposed staff. For this factor, AGPL received 3 out of 10 points.^{3/} OTS reports that while two of the

^{3/} As initially issued, the RFP provided that proposed staff would be evaluated on the basis of two equally weighted subfactors, (1) personnel qualifications, based upon resumes of key personnel and typical nonsupervisory personnel; and (2) adequacy of proposed staff size. The second subfactor later was effectively eliminated from the evaluation for all offerors when OTS advised offerors of the specific number of

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three evaluators and the contracting officer found the qualifications of AGPL's proposed staff very good or excellent, the third evaluator was concerned that the proposed staff had primarily a military background. The evaluator also questioned the proposed supervisors' ability to manage a civilian staff.

In response, AGPL questions why relevant experience gained in the military is less desirable than similar experience gained in a civilian capacity. AGPL also observes that not all of its managers have a military background, and that the two supervisors with military experience have been employed in a civilian capacity for more than 2 years. Finally, AGPL questions how it could have received high scores in two related categories (factor (A), corporate personnel resources, 40 out of 45 points; and factor (E), management, 9 out of 10 points) but only 3 out of 10 points for factor (D)).

We agree with AGPL that OTS' evaluation of the firm's proposal regarding the qualifications of the proposed personnel was unreasonable. AGPL received a consensus score of 3 out of 10 points for this factor. The record shows that of the three evaluators, one rated AGPL 10 out of 10 points, finding that the qualifications of its proposed staff were "very good." The second and third evaluators rated AGPL 0 out of 10 points for this factor, the second evaluator being concerned that the background of the proposed staff was military and the third noting only that the qualifications of the proposed staff were "excellent." We fail to see how the third evaluator reasonably could find that AGPL's proposed staff had excellent qualifications, yet rate the proposal 0 out of 10 on this factor. Nor has OTS explained in the evaluations or the protest report why experience in mailroom management obtained in the military is less desirable than if it was obtained in a civilian capacity. In this regard, the RFP does not distinguish between military and civilian experience, and the evaluator's worksheet states only that civilian staff is "preferred." Finally, the contracting officer also concluded that the qualifications of AGPL's proposed staff were excellent. Given these factors, we find that OTS' evaluation of AGPL's proposal for this factor was unreasonable.

3/(...continued)

full-time on-site personnel they were required to provide. Thus, all 10 evaluation points for this factor related to the personnel qualifications subfactor.

In view of our conclusion that the evaluation of AGPL's proposal regarding personnel qualifications was unreasonable, the question becomes what impact this had on the award decision. As noted above, the six proposals that were included in the competitive range had technical scores between 80 and 100 points and were considered technically equal. AGPL received a score of 70 points for its technical proposal, with 3 out of 10 for proposed staff. If AGPL's proposal received the maximum 10 points for proposed staff, its aggregate technical score increases from 70 points to 77 points and thus it is quite possible that the proposal would be included in the revised competitive range, particularly since the agency report on the protest provides no detailed rationale for the contracting officer's decision to limit the competitive range to offerors with scores of 80 and above.^{4/} Given that AGPL would then have submitted the lowest-priced proposal in the revised competitive range, we cannot conclude that with a proper evaluation of its technical proposal AGPL would not have been chosen for award.

Consequently, we recommend that the contracting officer reevaluate the decision to award the contract to FMC in light of the conclusions reached in our decision. If the contracting officer determines that AGPL is in line for award, the contract awarded to FMC should be terminated and an award made to AGPL. We also find that AGPL is entitled to recover the costs of filing and pursuing this protest. Bid Protest Regulations, 4 C.F.R. § 21.6(d)(1) (1989).

The protest is sustained.

for 
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^{4/} In giving AGPL the maximum score for this factor, we recognize that in a supplementary report furnished to our Office OTS notes that AGPL did not submit the resumes of typical nonsupervisory personnel as required by the RFP. That fact, however, was mentioned only in the supplemental report; it was not cited as a deficiency in AGPL's proposal in any of the individual evaluator's score sheets or in the consensus score sheet. Further, despite the omission, one evaluator found the qualifications of AGPL's proposed staff excellent and another gave AGPL the maximum score for this factor. Accordingly, we have no basis to conclude that this omission would lower AGPL's score significantly.