



Comptroller General
of the United States

Washington, D.C. 20548

Mr. Pogany

1215294

REDACTED VERSION*

Decision

Matter of: Ogden Plant Maintenance Company, Inc.

File: B-255156.2

Date: April 7, 1994

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.
Sam Zalman Gdanski, Esq. for Laro Maintenance Corporation, an interested party.
Elliot M. Carlin, Esq., and Eileen P. Collins, Esq., Internal Revenue Service, for the agency.
Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results; in exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Where low offeror's proposal was technically acceptable and represented a great savings in price, contracting agency rationally awarded to that firm based on its determination that the proposal represented the best value to the government.

DECISION

Ogden Plant Maintenance Company, Inc. protests the award of a contract to Laro Maintenance Corporation under request for proposals (RFP) No. IRS-NA-92-12, issued by the Internal Revenue Service for operations and maintenance of all mechanical, electrical, and utility systems at Brookhaven Service Center, New York. Ogden, the incumbent contractor, principally contends that the agency improperly made price the most important evaluation factor for award, contrary to the evaluation scheme set forth in the RFP.

We deny the protest.

*The decision issued April 7, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

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The RFP contemplated award of a combination firm, fixed-price/time-and-materials contract.¹ The RFP contained a base period and 5 option years. The RFP stated that award would be made to the offeror whose proposal was most advantageous to the government from a technical and cost standpoint. The RFP, in Section M, contained the following evaluation factors, listed in their descending order of importance: (1) technical and (2) price. Technical proposals were to be scored (100 points maximum); price proposals were not to be scored. The RFP further stated that "[i]n making the award, the government is more concerned with obtaining superior technical features than with making an award at the lowest overall cost." However, the RFP stated that the agency would not award a contract at a significantly higher overall cost to achieve slightly superior technical features. Concerning the evaluation of price, the RFP stated that offerors' price proposals would be evaluated "in accordance with FAR [Federal Acquisition Regulation] text 15.805-2."²

The technical evaluation subfactors and their numerical weights (as reflected in the agency's evaluation plan) were as follows:

1. Management Capability (30 points)
2. Key Personnel (25 points)
3. Corporate Experience (25 points)
4. Phase-in Plan (5 points)
5. Contract Financing (15 points)

The RFP stated that proposals would be evaluated to determine each offeror's compliance with the requirements set forth in Section C of the RFP (Statement of Work).

¹The firm, fixed-price portion of the contract involved the furnishing of basic services, including minor repairs. For these services, the RFP required offerors to insert monthly prices. The time-and-materials portion represented optional services which were solicited on the basis of hourly rates for various tasks and services.

²FAR § 15.805-2 prescribes price analysis techniques that a contracting officer may use to ensure a reasonable price, such as comparison of proposed prices with an independent government estimate, or comparison of proposed prices received in response to the solicitation.

Four firms submitted initial proposals by the March 1, 1993, closing date, including Ogden and Laro.³ The agency convened a technical evaluation panel (TEP) which conducted a preliminary review of proposals with the following results:

<u>Offeror</u>	<u>Score</u>	<u>Price</u>
Ogden	90.3	[DELETED]
Laro	74.3	[DELETED]

On March 22, the agency sent letters to the offerors requesting clarifications of price and technical proposals. Clarifications were received by the agency, and the TEP again evaluated technical proposals with the result that both firms showed improvements in their technical scores. By letters dated May 4, the agency advised Ogden and Laro of technical and price weaknesses and requested the firms to submit best and final offers (BAFO). Ogden was notified that the TEP considered its preventive maintenance proposal to be weak and that its proposed price was substantially in excess of the government estimate. Laro was notified that the TEP was concerned about its financing plan and corporate support, that its proposed price was in excess of the government estimate, and that the agency required clarifications concerning the firm's price escalation provisions and employee benefits required by the applicable collective bargaining agreement. Laro was also asked to provide supporting data concerning its proposed hourly rates for relamping, emergency call back services, overtime, and major repairs.

The agency received BAFOs on May 11. The TEP evaluated BAFOs and provided its third evaluation, awarding Ogden a near perfect technical score of 98.5, while awarding Laro a technical score of 84.5. On June 10, the agency conducted face-to-face discussions with Ogden and Laro primarily for the purpose of discussing concerns with the labor escalation factors in each offeror's BAFO. Ogden was informed that the escalation factors in its price proposal were higher than the industry average. Laro was informed that its price proposal must include labor escalation factors. On June 25, both offerors submitted revised BAFOs with revised prices. Subsequently, the agency's Director, Office of Procurement Policy, advised the contracting officer that labor escalation rates should not in fact have been included in

³The two other firms besides Ogden and Laro were subsequently eliminated from the competitive range. Our discussion of the evaluation is therefore limited to the agency's findings and determinations concerning Ogden and Laro.

the offerors' BAFOs because the proposed contract would be subject to the terms of the collective bargaining agreement between Ogden, the incumbent, and its current labor force. The agency therefore again requested a new round of BAFOs (third round) which excluded all escalation factors.

The third and final set of BAFOs were received and evaluated by the TEP with the following results:

<u>Offeror</u>	<u>Score</u>	<u>Price</u>
Ogden	98.5	[DELETED]
Laro	85	[DELETED]

The contracting officer then conducted a price/technical tradeoff evaluation. While recognizing the technical superiority of Ogden's proposal, she determined that "the technical features which resulted in Ogden's higher technical score did not justify making an award" at the premium price. The contracting officer noted that in the most important technical subfactor, Management Capability (worth 30 points), both offerors were awarded 28.5 points in the final evaluation, which indicated that both offerors understood the work. With respect to the other subfactors, the contracting officer believed that Ogden's superior technical scores were essentially the result of Ogden's incumbency or otherwise resulted from the TEP's familiarity with Ogden as the incumbent contractor. She concluded that the superior technical features of Ogden's proposal simply did not justify award at its much higher price. Having determined that Laro's proposal was most advantageous to the government in view of its substantially lower price, the contracting officer, on September 27, awarded the contract to Laro; this protest followed.

As relevant here, Ogden contends that the RFP specifically requested the submission of proposals that were as technically excellent as possible. Ogden states that it was "drawn by the clear terms of the solicitation to prepare and submit a technically superior offer which in fact Ogden achieved." Ogden argues that had the solicitation not contained the overriding emphasis on technical excellence, it could "have submitted a less costly proposal foregoing technical excellence." Ogden argues that the agency should have conducted a "best value procurement," but converted the evaluation into a "technically acceptable/low price procurement."⁴

⁴The protester raises a variety of other issues which we need only discuss briefly. The protester argues that the agency conducted inadequate discussions with the firm in both the technical and price areas. Concerning its

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors. Id.

Our review of the record shows that Ogden did submit a superior technical proposal. We think the contracting officer recognized this technical superiority in her selection decision. For example, she noted that both offerors had received 28.5 points in the most important subfactor, Management Capability. She also noted that Ogden received the maximum score (25 points) in the subfactor, Key Personnel, while Laro received 22 points; that Ogden received the maximum score (25 points) in the subfactor,

technical proposal, Ogden received virtually a perfect technical score; since there was no room for further improvement, additional technical discussions would not have made a significant difference. Concerning its price proposal, the agency specifically pointed out to the firm during discussions that "its overall price was excessive as compared to the Government estimate." Further, the record shows that the price analysis report that was prepared by the agency essentially stated that Ogden's price was reasonable for its proposed effort. We think that Ogden was led into the area of its relatively high price; further, its price, although relatively high, was considered by the agency to be reasonable. We therefore have no basis to conclude that discussions by the agency were inadequate. Similarly, Ogden complains that the agency conducted successive rounds of discussions with Laro which resulted in technical leveling and an auction. We think the extent and number of discussions an agency has with an offeror is commensurate with the extent and amount of weaknesses or deficiencies present in its offer. Laro's proposal was technically inferior to Ogden's proposal and needed more revisions; we see nothing wrong with an agency discussing a matter (here, for example, its compliance with a collective bargaining agreement) with an offeror on more than one occasion--this simply is not technical leveling or unequal discussions. Rather, it is simply conducting meaningful discussions with each offeror depending on the extent of discussions needed to permit meaningful revisions by an offeror. We note that the third round of BAFOs was requested by the agency solely to eliminate escalation factors, and did not result from weaknesses or deficiencies in Laro's previous BAFO.

Corporate Experience, while Laro received 19.5 points.⁵ In the subfactor, Contractor Financing, she noted that Ogden had received the maximum score (15 points) and that Laro had received 10 points. However, in view of Ogden's reasonable but extremely relatively high price, she concluded that it was simply not worth the high premium to award to Ogden. We think this was a rational decision.⁶

In its comments, Ogden essentially attempts to "nitpick" the evaluation of certain factors by the agency. For example, Ogden argues that Laro offered a proposed approach of using four electricians (plus overtime) instead of the five electricians that were allegedly required by the RFP, which should have been perceived as a deficiency by the agency rather than simply a less "preferable" approach. As another example, Ogden argues that a statement by Laro that it had a cash balance of [DELETED] should not have been relied upon by the agency as objective evidence of adequate contractor financing. We need not consider these minor allegations of

⁵Ogden argues that Laro did not have the requisite corporate experience, which Ogden states was experience for 5 years at a similar facility. Specifically, Ogden argues that the Corporate Experience subfactor constituted a "definitive responsibility criterion," which Laro did not meet. We think that subfactor was one of the technical areas to be evaluated as part of the agency's technical evaluation and did not constitute a definitive responsibility criterion. In any event, we have reviewed Laro's corporate experience as contained in its proposal, and we specifically find that Laro met the minimum requirements by the work it previously performed at an 800,000-foot facility in Hauppauge, New York.

⁶Ogden also argues that the agency's price analysis was flawed because the independent government estimate was artificially low because it did not reflect changes in government requirements contained in the RFP. Regardless of the accuracy of the government estimate, we simply note that the RFP provided that a price analysis would be performed in accordance with FAR § 15.805-2, which permits the contracting officer to simply compare competitive prices received in response to the solicitation. This the agency did, and awarded to the low offeror. Ogden also argues that the agency should have performed a cost analysis because Ogden was not a responsible contractor (relating to corporate experience) and therefore the agency did not receive two or more offers from responsible offerors (amounting to adequate price competition) which would permit dispensing with a cost analysis. Since we conclude that Laro was a responsible firm, we also conclude that adequate price competition existed and therefore the agency did not have to perform a cost analysis.

alleged technical weaknesses or deficiencies in Laro's proposal. The agency found that Ogden had submitted a technically superior proposal but that both offerors "are capable of successfully performing this contract." We have reviewed the proposals, the evaluation record, and the contracting officer's determination and find that Laro's proposal was, at the very least, minimally acceptable. In view of the great disparity in prices, we think it was rational for the contracting officer to determine that the "best value" for the government, considering technical and price, was the Laro proposal. Accordingly, the protest is denied.

Robert P. Murphy
Acting General Counsel