



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** GZA Remediation, Inc.

**File:** B-272386

**Date:** October 3, 1996

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Alvin S. Nathanson, Esq., Nathanson & Goldberg, for the protester.  
Joseph A. Camardo, Jr., Esq., for Abscope Environmental, Inc., an intervenor.  
Frances S. Higgins, Department of the Army, for the agency.  
John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Agency properly considered the past performance of the awardee's subcontractor under the relevant evaluation factor where the solicitation did not prohibit the use of subcontractors to perform the contract or prohibit the consideration of a subcontractor's prior contracts in the evaluation of proposals.
  2. Award to higher priced offeror which had higher-rated proposal under nonprice factors is proper where there is a reasonable factual basis for the selection decision and that decision is consistent with the solicitation's evaluation scheme.
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## DECISION

GZA Remediation, Inc. protests the award of a contract to Abscope Environmental, Inc. under request for proposals (RFP) No. DACA41-96-R-0017 issued by the Corps of Engineers for removal of underground storage tanks and related work at Griffiss Air Force Base, Oneida County, New York.

We deny the protest.

The solicitation contemplated award of a firm, fixed-price contract for work at two sites including the removal of a 25,000-gallon underground storage tank and related equipment and pipelines, demolition of a building and removal of five underground storage tanks, including four 50,000-gallon fuel tanks with residual fuel and one 2,000-gallon underground tank. The work is related to the closure of the Air Force base and is to include excavation and sampling of soils to determine if there is contamination due to leakage.

The RFP stated that award was to be made to the offeror whose proposal offered the best value to the government "in terms of tradeoffs between [price] and technical merit as determined by evaluation of proposals according to the established evaluation criteria." The solicitation listed five evaluation factors in descending order of importance: (1) Price; (2) Technical expertise; (3) Past Performance; (4) Local business preference; and (5) Subcontracting with local and small businesses. The solicitation explained that prices would not be scored but in selecting the best overall proposal, the agency would consider "the value of each proposal in terms of the quality offered for the cost."

Nineteen proposals were submitted. Based on an initial evaluation by a source selection evaluation team (SSET) and based on the prices of those proposals, a source selection board (SSB) recommended a competitive range of three, including GZA and Abscope. The contracting officer accepted that recommendation. After discussions with the competitive range offerors, and the submission of revised proposals, the SSET met to assign consensus scores to each proposal under each evaluation factor and subfactor. A contract specialist then calculated weighted scores by multiplying the consensus scores by weights assigned by a source selection plan.<sup>1</sup> The weighted scores for GZA and Abscope were as follows:

Factors	GZA	Abscope
Technical expertise	320	306
Past performance	180	180
Local business preference	0	200
Subcontracting	100	100
TOTAL SCORES:	600	786

The agency then requested and received best and final offers (BAFO). GZA's BAFO was priced at \$1,141,002.25, and Abscope's BAFO was priced at \$1,413,794.95. The SSB determined that Abscope's proposal offered the best value to the government consistent with the evaluation factors set forth in the RFP and recommended award to Abscope. That recommendation was approved by the contracting officer, as the source selection authority, and the contract was awarded to Abscope.

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<sup>1</sup>Consistent with the descending order of importance set out in the RFP, the evaluation factors were assigned weights of 400 points for the technical expertise factor, 300 points for the past performance factor, 200 points for the local business preference factor, and 100 points for the subcontracting factor.

GZA first argues that in the past performance evaluation, Abscope was unreasonably given credit for the work of a proposed subcontractor. According to GZA, the RFP did not permit consideration of subcontractors' prior contracts under the past performance factor.

We do not agree. A proposed subcontractor's prior contracts properly may be considered under relevant evaluation factors where the RFP allows for the use of subcontractors to perform the contract and does not prohibit the consideration of a subcontractor's contracting history in the evaluation of proposals. Seair Transp. Servs., Inc., B-252266, June 14, 1993, 93-1 CPD ¶ 458. There is no dispute that the RFP permitted the use of subcontractors to perform the contract. In addition, under the past performance evaluation factor, the RFP stated "[t]he offeror's rating on this factor will be based on the demonstrated level of performance on previous government as well as commercial contracts." The solicitation called for offerors to "[p]rovide . . . information for [government and commercial] contracts completed within the last five years. Provide this information on at least the last 7 projects comparable to this project, but no more than the last 10." These provisions of the RFP are silent as to whether subcontractors' prior contracts would be considered. In addition, the protester refers to no other provision of the RFP that limited the prior contracts that would be considered under the past performance factor to those of the prime contractor/offeror.

Also under the past performance factor, GZA argues that Abscope's proposal did not include the required "7 [government and commercial] projects comparable to this project," since according to the protester, the proposal did not list past contracts for the removal of a 25,000-gallon underground storage tank and four 50,000-gallon tanks. GZA's allegation here is two pronged. First, the protester argues that only one of the commercial contracts listed in Abscope's proposal was comparable since, while the proposal included comparable contracts of Abscope's subcontractor, only one of Abscope's own listed contracts involved removal of a tank the size of those to be removed under this contract. Second, GZA argues that none of the listed government contracts of either Abscope or its subcontractor involved removal of tanks the size of those to be removed under this contract. According to GZA, Abscope's proposal was scored too high.

The evaluation of proposals is primarily a matter within the contracting agency's discretion, since it is responsible for defining its needs and for deciding on the best methods for accommodating them. Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Thus, we question the evaluation only if the record demonstrates that it was unreasonable or inconsistent with the RFP's evaluation criteria. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169.

We conclude that the agency reasonably found that the contracts listed in Abscope's proposal were comparable to the contract awarded here. As explained above, the

solicitation did not prohibit consideration of the prior contracts of subcontractors and Abscope's proposal, including previous contracts of O'Brien and Gere, Abscope's subcontractor, listed experience under commercial contracts removing 5,000, 20,000, 30,000, and 50,000-gallon tanks. Concerning the second prong of GZA's argument, although GZA argues that the government contracts listed in Abscope's proposal did not involve removal of tanks as large as the 50,000-gallon tank to be removed under this contract, we do not think it was unreasonable for the agency to credit the firm with experience with removal of tanks of the appropriate size based on the commercial experience listed in the proposal. In addition, the government contracts listed in Abscope's proposal included other experience relevant to this contract, such as experience with tank cleaning, liquid and solid waste disposal, soil sampling and analysis, and excavation and backfilling. GZA's disagreement with the agency does not render the evaluation unreasonable. Litton Sys., Inc., B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115.

GZA also argues that Abscope's proposal was improperly given credit under the technical expertise factor. GZA notes that four of the six key personnel proposed by Abscope are employees of O'Brien & Gere, Abscope's subcontractor, which is not a small or local firm. According to GZA, credit for proposed key personnel that are not employees of a small, local firm is inconsistent with the local firm preference included in the RFP. GZA also maintains that, if Abscope is given credit for the employees of its nonlocal subcontractor, Abscope's use of a nonlocal subcontractor should result in reduced points under the fourth evaluation factor concerning local business preference.

There is no merit to these allegations. Again, the RFP did not prohibit the use of subcontractors or of subcontractors that are not local. In fact, a subcontractor proposed by GZA is not a local firm. It also did not require that all personnel proposed for key positions be employees of the prime contractor; on the contrary, the RFP requested that offerors "[p]rovide a resume for each of the key personnel for both the prime and the subcontractors."

As for the fourth evaluation factor, the agency explains that it was included in the RFP pursuant to the policy set forth in base closure legislation, 10 U.S.C. § 2687 note (1994), and implemented by Defense Federal Acquisition Regulation Supplement (DFARS) § 226.7102, which states:

"Businesses located in the vicinity of a military installation that is being closed or realigned under a base closure law, including 10 U.S.C. 2687, and small and small disadvantaged businesses shall be provided maximum practical opportunity to participate in acquisitions that support the closure or realignment, including acquisitions for environmental restoration and mitigation."

The fourth evaluation factor stated that "[t]he offeror's rating on this factor will be based on the firm's geographical location," and defined local businesses as those located in specified counties on or before September 1993.

Under this factor, the agency assigned the maximum possible points to Abscope's proposal and no points to GZA's proposal, since Abscope is located in one of the specified counties and GZA is not. We see nothing in the RFP which suggests that a local company should not be entitled to the maximum score because of its intended use of a non-local subcontractor. In fact, the extent to which offerors proposed to subcontract with small and local firms was encompassed by the fifth factor. Therefore, we find nothing unreasonable with the scoring of Abscope's proposal in this area.<sup>2</sup>

GZA also challenges the score assigned to Abscope's proposal under the fifth evaluation factor concerning subcontracting with local and small businesses. In assigning scores under this factor, the evaluators used scoring sheets which called for assigning the highest available points to proposals under which "[m]ore than 50% of subcontracted work will be awarded to local or small/small disadvantaged business OR the company is a local or small/small disadvantaged business performing more than 50% of the work in-house." GZA argues that Abscope's proposal was incorrectly assigned the highest available score on this factor since the proposal showed that Abscope itself was to perform only 37 percent of the work and other small and local firms were to perform only 39 percent of the work. Thus, according to the protester, Abscope did not qualify under the first part of the test set forth in the scoring sheets since it did not propose that 50 percent of the work would be performed by qualifying local, small firms and it did not qualify under the second part of the test because it did not propose to perform 50 percent of the work itself.

The evaluation of Abscope's proposal under this factor was reasonable. Abscope's proposal shows that 63 percent of the work will be subcontracted, and more than half of that, 39 percent, is to be performed by subcontractors that are small firms located in counties designated by the RFP as local. Thus, since more than half of the subcontracted work was to be subcontracted to small, local firms, assigning

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<sup>2</sup>GZA also notes that Abscope's proposal stated that there was a "teaming arrangement" between Abscope and its subcontractor, and argues that, as a result, the subcontractor's status as a nonlocal firm should have been considered in the evaluation under the fourth evaluation factor. Although Abscope's proposal referred to a "teaming arrangement" with O'Brien & Gere, that reference did not change the fact that Abscope was the offeror and the prime contractor and that under the RFP only Abscope's location was to be considered under the fourth factor.

Abscope the maximum possible points under this factor was consistent with the first test set forth in the evaluator scoring sheets.<sup>3</sup>

Finally, GZA challenges that agency's "best value" determination. As the protester points out, the RFP called for the contract to be awarded based on a tradeoff between price and technical merit and listed five evaluation factors in descending order of importance. GZA notes that its proposal was priced 19 percent less than Abscope's proposal, and therefore it was superior on the most important factor; it was higher rated on the second factor; it was assigned the same ratings as Abscope's proposal on the third and fifth factors; and it was assigned no points compared to 200 points for Abscope's proposal on the fourth factor. GZA complains that even though its price and technical expertise--the two most important factors--were superior to Abscope's, it has been deprived of an award because GZA is not a local business in spite of the fact that the RFP stated that this factor was only the fourth most important. According to the protester, "[n]ot only is this scenario illogical, but it is misleading to a bidder. Quite frankly, GZA would not have bid this project if it had known in advance that its price, technical expertise and past performance would be negated by it not being a local contractor and/or small business even though the bid documents indicate the contrary."

Under a solicitation like the one here, which calls for award on the basis of best overall value to the government, there is no requirement that award be made on the basis of low price. Agency source selection officials have discretion in determining the manner and extent to which they will make use of the technical and price

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<sup>3</sup>GZA also argues that the agency erroneously calculated a "consensus" score for GZA on one of the technical expertise subfactors. GZA notes that under most the subfactors, the consensus score apparently was determined by simply assigning the score which most of the three evaluators had assigned in their individual evaluations. Nonetheless, GZA notes that for one subfactor, this practice was not followed on its proposal; rather, GZA was assigned a consensus score of only "1," under a subfactor on which it had received individual scores of "5," "5" "1." In response to this contention, the Army maintains that the consensus scores reflected the reasoned judgment of all of the evaluators as a result of their initial evaluations and the discussions among the evaluators that followed. Agency evaluators may discuss their individual evaluations with each other in order to reach a valid consensus since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. See The Cadmus Group, Inc., B-241372.3, Sept. 25, 1991, 91-2 CPD ¶ 271. Thus, a consensus score need not be the score the majority of the evaluators initially awarded--the score may properly be determined after discussions among the evaluators. We do not find that the Army's process for determining consensus scores was flawed.

evaluation results. Litton Sys., Inc., supra; Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Technical and price tradeoffs are permitted but the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. We will accord due weight to the judgment of selection officials concerning the significance of the difference in technical merit of offers and whether that difference is sufficiently significant to outweigh the price difference. See Institute of Modern Procedures, Inc., supra.

The selection decision here was based on an SSET report which listed only total prices and total evaluation scores for each offeror. That report recommended award to Abscope and included the following explanation for that recommendation:

"When compared to Abscope, [GZA] offered 76.3% of the technical expertise for 80.7% of the price, while [the other competitive range offeror] offered 87.5% of the technical expertise for 92.4% of the price."

The contracting officer, as the source selection authority, accepted the SSET's recommendation and awarded the contract to Abscope based on the SSET's report; no separate selection statement was prepared. Thus, the selection decision contains no indication that the source selection authority was aware that all of the difference in "technical expertise" between Abscope and GZA was based on the fact that Abscope is a local firm and GZA is not.

Nonetheless, in response to the protest, the contracting officer explains:

"The SSB and the [source selection authority] were concerned that the Government receive the best quality as part of the 'Best Value' formula and they were also concerned that the public policy established by DFAR 226.7102 related to BRAC [Base Realignment and Closure Act] closures should also be fulfilled to the maximum extent practicable. For this reason they selected Abscope as providing the 'Best Value' to the Government, based on a subjective analysis of the results of the technical scores and price proposal evaluation, and a comparison of measures of value of Abscope's proposal to the other offerors in the Competitive Range."

We conclude that, consistent with the evaluation scheme set forth in the RFP, the contracting officer could rationally decide that Abscope's proposal offered the best value to the government. Although Abscope's price was 19 percent higher than GZA's price, Abscope's proposal scored 186 points, or approximately 30 percent higher than GZA's proposal on the nonprice factors. While this technical advantage was based on the fourth least important factor concerning local preference, this was

simply a result of the relative equality of the two proposals on the other scored factors and was not inconsistent with the RFP. The protester disparages the result here and argues that the local preference factor should not have had such an impact. Nonetheless, what is determinative is whether we can discern from the record a reasonable factual basis for the agency's choice. See Litton Sys., Inc., supra. Here, given the evaluation factors, the relative assessments made of the competing proposals, at the agency's desire to give effect to the policy of DFARS § 226.7102, we cannot say that there was no reasonable basis for the selection decision. Accordingly, we have no legal ground upon which to question the agency's exercise of its discretion in choosing the higher-priced offeror.

The protest is denied.

Comptroller General  
of the United States