



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: OHM Remediation Services Corporation

File: B-274644; B-274644.2; B-274644.3

Date: December 23, 1996

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DIGEST

1. Where record shows that evaluation of protester's proposal was reasonable and consistent with the criteria established by the solicitation, the protester's mere disagreement with the evaluation provides no basis for sustaining a protest.
2. Where evaluation standards, used in evaluation of proposals for environmental restoration contract, listed criteria for assigning the appropriate adjectival rating under each evaluation subfactor and subsubfactor, rating of the awardee's proposal as "excellent" under five subsubfactors was not unreasonable simply because proposal failed to meet one listed criterion for an "excellent" rating, where there is no allegation or evidence that the proposal did not meet the remaining criteria for an "excellent" rating.
3. Where protester waited a month after receipt of agency report to provide detailed basis for protest of its own evaluation, the protest is untimely despite an earlier protest that broadly challenged the evaluation as inconsistent with the protester's superior experience in similar contracts; such detailed grounds constitute new and independent allegations which must independently satisfy timeliness requirements.
4. Protest that agency improperly failed to conduct a price/technical tradeoff is denied where, in selecting a higher-rated offeror, selection officials reasonably determined that offerors were essentially equal in price.

DECISION

OHM Remediation Services Corporation protests the award of a contract to ICF Kaiser Engineers, Inc. under request for proposals (RFP) No. DACW05-96-R-0011, issued by the Corps of Engineers for environmental remediation services. OHM contends that the evaluations of its proposal and that of ICF Kaiser were unreasonable and inconsistent with the RFP and that the selection decision therefore was flawed.

We deny the protests.

BACKGROUND

On May 20, 1996, the agency issued the RFP for an indefinite delivery, indefinite quantity contract for a 4-year base period with two 3-year option periods to remedy hazardous toxic radioactive waste (HTRW) sites within the geographic boundaries of the South Pacific Division of the Corps of Engineers. The sites include some currently owned or controlled by the government, some formerly used sites where an agency of the government is identified as a generator or potentially responsible party, and some where the Corps is authorized to respond.

The contract is one of a contemplated series of total environmental restoration contracts (TERC); the instant effort is known as TERC II. The contracts represent an effort to provide continuity of personnel and institutional knowledge through the use of a single contractor for all phases of HTRW remediation projects. Under the TERCs, the Corps issues task orders covering most aspects of the investigation and definition of HTRW sites, as well as the development of plans and operations for site remediation. The RFP requires the successful offeror to ensure coordination and compliance with a variety of local, state, and federal agencies. It requires employment of a wide spectrum of specialists, including geologists, hygienists, physicians, regulatory experts, and specialists in public relations. The effort therefore includes performance of a wide variety of as-yet undefined tasks involving a multitude of specialties, over a wide geographical area.

The solicitation here advised offerors that the Corps would select a contractor through formal source selection procedures, using a source selection organization consisting of a source selection evaluation board (SSEB), with separate technical and cost evaluation teams, a source selection advisory council (SSAC), and a source selection authority (SSA). The RFP provided that the SSEB would perform the initial evaluation and forward the results to the SSAC. The SSAC would rank the proposals and recommend to the SSA the offer it considered most advantageous to the government, price and other factors considered.

The technical evaluation factors were as follows: factor 1: Business/Management/Technical Approach; factor 2: Past Performance and Quality, Experience, Organization, and Personnel; factor 3: Operational Management Plan; factor 4: Acquisition Management Plan; and factor 6: Sample Project. Each factor contained several subfactors; most subfactors contained subsubfactors described in section L of the RFP, the instructions for preparing proposals. The RFP provided that factors 1 and 2 were of greater but equal importance, factor 3 was less important, and factor 6 was less important than factor 3. Factor 4 was the least important technical factor.

Factors 5 and 7 were price factors, and the RFP provided that the agency would subjectively evaluate price rather than score it. The chief consideration in factor 5, the price proposal, was subfactor 1, overall price of doing business; factor 7 involved a price realism and reasonableness evaluation of the offeror's price proposal for the sample project, the technical portion of which evaluators would consider under factor 6. The RFP did not indicate that either factor 5 or factor 7 would carry more weight than the other.

On July 11, 1996, the agency received six offers in response to the RFP, which it referred to the SSEB for evaluation. The SSEB had adopted standards for proposals to meet in order to earn scores of "satisfactory," "very good," and "excellent," the ratings relevant to this protest. A rating of "satisfactory"--that is, a proposal that met the adopted standards for a "satisfactory" proposal--would result in a raw score in the range of 41-60, with a rating of "very good" resulting in 61-80 points and a rating of "excellent" earning 81-100 points. Further, evaluators would provide an assessment of each proposal's standing within those ranges--*i.e.*, "high 'satisfactory,'" as opposed to "low 'satisfactory'" or simply "satisfactory." After individual scoring, the SSEB compiled the scores into a consensus evaluation under this plan for each factor, subfactor, and subsubfactor for each offeror with a list of advantages and disadvantages supporting the consensus raw score.

The SSEB presented its report to the SSAC on August 19. The SSEB ranked the proposals of ICF Kaiser and OHM as first and second in technical merit. ICF Kaiser's raw technical score of 4420 points was 100 points higher than OHM's raw technical score of 4320 points. OHM offered a slightly lower price of doing business--an overall measure of price--but the evaluators found this price uncertain for all offerors and rated both OHM's and ICF Kaiser's proposals "acceptable" for factor 5. ICF Kaiser's price for the sample project, factor 7, was lower and the evaluators considered it more realistic and reasonable. Overall, ICF Kaiser received the highest technical score of any offeror under three of the four most heavily weighted evaluation factors--factors 1 (Business/ Management/Technical Approach), 3 (Operational Management Plan), and 6 (Sample Project), while OHM received the highest technical score of any offeror under factor 4 (Acquisition Management Plan), the least important technical factor, and a higher raw score than ICF Kaiser

for factor 2 (Past Performance and Quality, Experience, Organization, and Personnel). Based on ICF Kaiser's apparent superiority under the more important evaluation factors and its more realistic price, the SSEB recommended selection of ICF Kaiser's proposal to the SSAC.

The SSAC reviewed the report and developed weighting factors for the raw technical score. There was no change in relative technical ranking; ICF Kaiser's score was recomputed as 89.10 points and OHM's as 86.66 points. In the final analysis, none of the other four offerors was competitive with the overall excellence, technical and price of ICF Kaiser and OHM. Between these two, the SSAC concluded that ICF Kaiser had provided a better proposal but that OHM had offered a slightly lower overall cost of doing business. The SSAC found a slight but marked advantage for ICF Kaiser, both in its higher technical score and the lower cost of its sample project. The SSAC therefore recommended award to ICF Kaiser. After reviewing the basis for this recommendation, the SSA followed it, selecting ICF Kaiser for the award made on September 6. The Corps provided a debriefing to OHM on September 10, and the first of these three protests followed.

In these protests, the protester raises multiple issues related to the evaluation, five related to the evaluation of the awardee's proposal and 14 related to its own evaluation. Except in three instances, where the protester failed to provide a basis for protesting its evaluation, the agency responded to each argument, justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis for sustaining the protest. We will discuss only the more significant arguments in this decision.

ICF KAISER EVALUATION

OHM protests the evaluation of ICF Kaiser's proposal under five subsubfactors. Factor 1, Business/Management/Technical Approach, included five subfactors. The third of these subfactors, subfactor 1.C, was Capabilities. The subfactor Capabilities included six subsubfactors. OHM contends that the evaluators gave ICF Kaiser's proposal too high a rating under four of these six subsubfactors. OHM makes the same contention regarding ICF Kaiser's rating under subfactor 2.B, Company Past Performance/Quality and Experience, Completed HTRW Contracts, of factor 2, Past Performance and Quality, Experience, Organization, and Personnel. Subfactor 2.B contained no subsubfactors.

What is at issue here is whether ICF Kaiser's proposal met all of the criteria in the evaluation standard applicable to the rating that the SSEB awarded. In general, the record shows that the evaluation standards contained several criteria that a proposal had to meet to earn a rating of "excellent." In each case, while the evaluators noted one or more disadvantages to the awardee's proposal, they rated its proposal as "excellent." It is generally the agency's position that, despite some

disadvantages and the failure to meet one of the criteria, the proposal met the other criteria for an "excellent" rating and that the SSEB therefore properly gave that rating to the proposal under the contested subsubfactors and subfactor.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. An offeror's mere disagreement with the agency's judgment does not show that the judgment was unreasonable. McDonnell Douglas Corp., supra. Here, we agree that the Corps reasonably gave the ICF Kaiser proposal a rating of "excellent," in areas where the proposal met most of the criteria for an "excellent" rating. A discussion of the evaluation under two subsubfactors of the Capabilities subfactor follows.

The second subsubfactor under the Capabilities subfactor was Depth and Size of Organization, for which both OHM's and ICF Kaiser's proposals received an "excellent" rating, [REDACTED] of 100 available points. The evaluation standard for "excellent" reads as follows:

[REDACTED]

The consensus rating listed four advantages to the awardee's proposal, including a [REDACTED], but noted that the proposal offered limited resources in [REDACTED] and that some offices did not have an [REDACTED] of personnel. Specifically, the proposal offered some [REDACTED]. For this reason, OHM argues, ICF Kaiser's proposal was no better than "very good," warranting a score in the 70-80 point range.

As indicated above, [REDACTED] was one of the criteria for assigning an "excellent" rating to a proposal. However, it was only one of four criteria, and the agency asserts that the awardee's proposal met all other criteria for an "excellent" rating. Specifically, while its individual offices did not all offer [REDACTED], ICF Kaiser did propose [REDACTED] offices and suboffices located throughout [REDACTED], staffed with a mixture of [REDACTED]; the evaluators considered the total number of personnel--[REDACTED] in all--[REDACTED]. According to the consensus evaluation summary, the evaluators also considered OHM's staffing [REDACTED], but awarded the protester's proposal the same "excellent" rating. OHM offered [REDACTED] offices located in two cities and not as widely dispersed as ICF Kaiser's and staffed entirely by subcontractor staff, [REDACTED] in all. In neither case, however, did the evaluators consider the disadvantages enough to

offset the other advantages of the proposals, which earned both of them a rating of "excellent." Given that there is no allegation that ICF Kaiser did not meet the other criteria for an "excellent" rating, we conclude that the evaluation under this subsubfactor was reasonable.

For an "excellent" rating under the third subsubfactor, General Personnel, the evaluation standard was as follows:

[REDACTED]

Under this subsubfactor, the evaluators rated OHM's proposal "excellent," assigning a score of [REDACTED] points, while rating ICF Kaiser's proposal in the low "excellent" range, with [REDACTED] points. As the evaluators noted, the awardee failed to address all personnel listed in section C.4 of the statement of work, and OHM argues that the proposal thus should not have received an "excellent" rating.

The agency concedes that ICF Kaiser failed to key its proposed personnel to section C.4 of the statement of work. Nevertheless, the agency states that the proposal did demonstrate that the awardee's organization included personnel with the required disciplines. The awardee offered a widely based personnel pool, which, all in all, indicated the ability to staff rush work without significantly depleting resources available for work elsewhere. Despite the failure to [REDACTED] to the disciplines listed in section C.4 of the statement of work, the evaluators concluded that the awardee's proposal met the standard of an [REDACTED]. Given their conclusion that the proposal demonstrated excellence in the other of the two areas being measured by this subsubfactor--[REDACTED]--we see no basis to conclude that assigning an "excellent" rating to the proposal was unreasonable.

OHM EVALUATION

Initial Protest

The Corps provided OHM with a debriefing on September 10, 4 days after the award. What the agency told the protester at the debriefing formed the basis for OHM's initial protest challenging the evaluation of its own proposal under five subfactors. The Corps responded to the points raised, and the protester in responding to the agency report did not address two of the protested subfactors, effectively abandoning those issues. Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328. As to the remaining issues, we conclude that the evaluation was reasonable. We discuss two of the issues below.

OHM raises two issues affecting the evaluation of its proposal under the first subsubfactor under subfactor 1.B, Teaming Arrangements, of factor 1. First, the agency advised the protester at the debriefing that it considered the extent of

subcontracting with large business a disadvantage in OHM's proposal. The protester disputes the agency's understanding that, with the exception of one contract, all work was going to large business; OHM states that it in fact proposed two major subcontracts with small businesses. The record shows that the evaluators simply did not consider the second subcontract major because it was for public relations work and did not constitute a significant part of the work effort. We see nothing unreasonable about this, and OHM's disagreement with the assessment provides no basis for sustaining its protest. McDonnell Douglas Corp., supra.

Second, OHM contends that its rating for this subsubfactor of high "satisfactory"-- [REDACTED] points--was inconsistent with the high score that the protester received for submitting the same exhibit in volume IV of its proposal, to be evaluated under factor 4. We see no merit to this contention. The subsubfactor essentially called for evaluation of a matrix provided by the offeror setting out its teaming arrangements. Volume IV of OHM's proposal simply identified the total costs set aside for small and small disadvantaged businesses; by contrast, the purpose of the matrix, to be submitted in proposal Volume I and evaluated under factor 1, was to provide information on the exact nature of the work so set aside. The identical exhibits reasonably received different scores because, in the one case, the exhibit provided what the evaluators needed, and in the other, it did not. We see no basis for considering the evaluation under this subsubfactor either unreasonable or inconsistent with the solicitation.

Supplemental Protests

On October 24, 10 days after receiving the agency report on its initial protest, OHM filed a second protest alleging that under 14 listed evaluation subfactors and subsubfactors, the Corps had either given ICF Kaiser unreasonably high scores or given OHM unreasonably low scores. Its arguments were based on its allegedly superior experience with HTRW work. However, as the agency pointed out in response, OHM did not break out the protested subfactors or subsubfactors, or compare the information in its proposal¹ to the evaluation standards or the evaluation results. Subsequently, on November 7 (within 10 days of receiving a copy of the awardee's proposal), OHM identified five of these 14 issues as relating to evaluation of the ICF Kaiser proposal and provided detailed grounds of protest, which our Office treated as a third protest.²

¹Our Office had not yet released the awardee's proposal to the protester.

²The issues raised in this third protest are those discussed in the preceding section of this decision.

Apart from the five issues preserved by the filing of the third protest, we dismiss the remainder of OHM's second protest because the protester's subsequent submissions simply have not addressed, in any meaningful way, its basic assertion in the second protest that the relative experience of OHM and ICF Kaiser was improperly evaluated. See Birch & Davis Assocs., Inc.--Protest and Request for Recon., B-246120.3; B-246120.4, Apr. 20, 1992, 92-1 CPD ¶ 372 (submission that does not refer to the original protest issues or the agency report on those issues does not constitute comments).³ To the extent that OHM raises specific objections to the evaluation of its own proposal in the areas referenced in its second protest, it did not raise such objections until it filed its November 12 comments on the second agency report.⁴ There is no direct link between the general allegation in the second protest--focusing on the evaluation of the offerors' experience--and the issues discussed in the comments on the agency report responding to that protest. In fact, of the 14 areas listed in the second protest, OHM only mentioned one subfactor under factor 2, Past Performance and Quality, Experience, Organization, and Personnel, the only evaluation factor specifically related to past performance. Similarly, while OHM did assert that the Corps's evaluation was improper under subsubfactor 1, Health and Safety Program, of subfactor 2.C, Compliance with HTRW Health and Safety Requirements, OHM did not state whether the evaluation was improper for ICF Kaiser's proposal, its own proposal, or both, until its November 12 comments on the second agency report. At that time, OHM first identified the issue it was raising, that the Corps improperly downgraded its proposal for not [REDACTED].⁵

³To the extent that OHM argues that the Corps did not meet statutory and regulatory requirements to conduct past performance evaluations when making contract award determinations, its allegations are untimely. The RFP advised offerors how the agency would treat past performance in the evaluation and selection process, and the allegation that this treatment does not satisfy statutory and regulatory standards is one that, under our Bid Protest Regulations, must be filed prior to the time set for receipt of initial proposals. § 21.2(a)(1), 61 Fed. Reg. 39039, 39043 (1996) (to be codified at 4 C.F.R. § 21.2(a)(1); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

⁴The supplemental protest broadly mentioned 14 subfactors and subsubfactors. The second supplemental protest broke out five of these subfactors and subsubfactors as relating to the ICF Kaiser evaluation. The November 12 comments identified six of the remaining nine issues as relating to the OHM evaluation. OHM has provided nothing to support its allegation of an improper evaluation under the remaining three subfactors and subsubfactors.

⁵The only link to the second protest was the argument that, even if OHM had not
(continued...)

Clearly, the issues raised in the November 12 comments, which for the first time discuss the evaluation results in relation to the contents of OHM's proposal, constitute new and independent allegations. Such allegations must independently satisfy our timeliness requirements; thus, any further challenge to the evaluation of OHM's proposal, beyond those raised in the initial protest, should have been raised no more than 10 days after receipt of the agency report, which provided the documents that formed the basis of protest. Westinghouse Elec. Corp., B-250486, Feb. 4, 1993, 93-1 CPD ¶ 229. Since they were not, the issues are untimely. Our regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Id.

In any event, although we consider these issues to be untimely, we have reviewed the evaluation in those areas and find no merit to the allegations. For example, under subfactor 3.C, it appears that while OHM is correct in arguing that only the awardee had to submit a complete health and safety program, the RFP required all offerors to submit a table of contents for the plan, which should have included the elements required by Appendix B to the statement of work, above. OHM was downgraded for not mentioning these elements, not for not providing them. Similarly, the evaluators considered limitations on the authority of OHM's project manager a disadvantage. OHM argues that it has successfully performed contracts with the organizational approach used, but its chief argument is that the difference in authority given to ICF Kaiser's project manager in the awardee's proposal is "illusory." Thus, OHM argues that the evaluators should either award OHM the same advantage even though it is not offered in the proposal, or charge ICF Kaiser with the same disadvantage, even though it does not exist in that proposal. This position is unreasonable. See Compliance Corp., supra.

Finally, in its initial protest, OHM asserted that the Corps improperly failed to perform a price/technical tradeoff. The record here shows that it was essentially unnecessary to make one because selection officials reasonably determined that, as between the two price factors specified in the RFP, OHM had the lower overall price of doing business, while ICF Kaiser submitted a lower price for the sample project. OHM essentially argues that since the RFP stated that the evaluation factors for factor 5 were listed in descending order of importance, it was reasonable to assume that all subsequent price factors, including those in factor 7 were of less

⁵(...continued)

submitted a complete plan, its extensive experience in HTRW work should have substituted for the information missing from its proposal. This argument has no merit; the offeror must prepare an adequately written proposal which can be evaluated in accordance with the criteria set forth in the solicitation and runs the risk of being rejected if it does not do so. Compliance Corp., B-254429; B-254429.2, Dec. 15, 1993, 94-1 CPD ¶ 166.

importance than the overall price of doing business, the first subfactor of factor 5 and the one in which the agency considered the protester's proposal to offer an advantage. This argument has no merit. First, there is nothing in the solicitation stating that factor 7 is of less importance than factor 5 and no reason to presume that, if they were scored, the two price factors were to be other than equal in weight. Further, the RFP specifically stated that the two factors would not be scored, but that the agency would evaluate price subjectively. The SSAC's recommendation and the SSA's determination demonstrate that, despite the excellence of OHM's proposal, the Corps simply considered ICF Kaiser's proposal to be better, in addition to offering greater price reasonableness and realism, to an extent that outweighed any advantage that OHM might have had in the overall price of doing business. The record supports the agency's consideration of price and technical factors in the selection decision as reasonable and consistent with the criteria listed in the RFP.

The protests are denied.

Comptroller General
of the United States