

**Matter of:** Ogden Government Services

**File:** B-253794.2

**Date:** December 27, 1993

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**DIGEST**

1. Protest challenging evaluation of proposed staffing under awardee's proposal is denied where agency reasonably concluded that the awardee's staffing plan in connection with stated efficiencies resulting from particular equipment and approach proposed presented an acceptable approach to successfully accomplishing the solicitation requirements.
2. Agency performed appropriate price analysis under solicitation which contemplated award of fixed-price contract where the agency determined that awardee's price was reasonable on the basis of a comparison to the other prices offered.
3. Protest that agency failed to conduct meaningful discussions by not advising protester that its proposed staffing level exceeded the agency's needs is denied where the solicitation contained performance specifications and did not call for any particular staffing requirement.

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**DECISION**

Ogden Government Services protests the Department of State's award of a contract to ARA Environmental Services, Inc. under request for proposals (RFP) No. 0000-225038-HF, for janitorial services at the Department of State headquarters and the Blair House in Washington, D.C. Ogden protests that the agency failed to properly evaluate ARA's technical proposal, failed to conduct a "cost realism" analysis of

offerors' proposed prices, failed to engage in meaningful discussions, and improperly awarded ARA a contract before ARA obtained certain required security clearances.

We deny the protest.

#### BACKGROUND

The RFP was issued on June 22, 1992, and contemplated award of a contract for a base year with 4 option years. The solicitation required offerors to submit prices for six line items for each contract period. Contract line item number (CLIN) 0001, the majority of the contract work requirements, required offerors to submit firm, fixed prices for each contract period for "custodial services at [State Department headquarters]"; the services required under CLIN 0001 were described in Appendix B to the solicitation. CLIN 0002 required offerors to submit a firm, fixed price for "weekend servicing and policing" of specified areas at State Department headquarters. Neither CLIN 0001 or 0002 specified any number of estimated or required labor hours. In this regard, the solicitation explained:

"The Office of Federal Procurement Policy has published . . . a policy letter that Agencies [should] use performance-based contracting methods to the maximum extent practicable when acquiring services . . . . Accordingly, Section C, the statement of work of this solicitation, describes the majority of the work on a performance specification basis, e.g. 'what' is the required work output, rather than 'how' (number of personnel, types of equipment, etc.) the work is to be accomplished by the offeror."

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<sup>1</sup>Appendix B consisted of 46 pages of performance specifications under the headings "work requirements" and "quality standards." In short, Appendix B provided a detailed outline of the functional tasks to be accomplished and the quality standards to be maintained in performing those tasks.

In contrast, CLINs 0003 through 0005 listed a level of "fixed hours" for particular services and required offerors to submit fixed hourly rates;<sup>2</sup> CLIN 0006 listed a specified number of "est[imated] hours."<sup>3</sup>

Section M of the RFP provided that price would be "substantially more important than technical merit." In this regard, the RFP advised offerors of Ogden's price under the preceding contract, but stated:

"OFFERORS ARE STRONGLY ENCOURAGED TO INDEPENDENTLY COMPUTE THEIR OWN PRICE ESTIMATES FOR THIS SOLICITATION AND NOT RELY ON THE OGDEN CONTRACT FOR COMPARATIVE PURPOSES." [Capitalization in original.]

The RFP listed four technical evaluation factors in descending order of importance: (1) operation plan; (2) experience and past performance; (3) management plan; and (4) quality control plan,<sup>4</sup> and stated that each factor would be assigned an adjectival rating of "highly acceptable," "acceptable," "marginally acceptable," or "unacceptable."

Section L of the RFP provided that offerors must obtain security clearances for its facility and certain specified employees before a contract would be awarded, stating:

"In the event an offeror is selected for contract award who does not possess the required TOP SECRET security clearance for the company and/or the certain custodial employees, the offeror will be notified of the selection, but final contract

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<sup>2</sup>CLIN 0003 required offerors to submit a fixed hourly rate for 104 labor hours per working day to perform utility services at State Department headquarters. CLIN 0004 required offerors to submit a fixed hourly rate for 46 labor hours per working day to perform custodial services at in "VIP/communications center rooms" at State Department headquarters. CLIN 0005 required offerors to submit a fixed hourly rate for 16 labor hours per day to provide custodial services at the Blair House.

<sup>3</sup>CLIN 0006 required offerors to submit a fixed hourly rate for an estimated 300 hours for cleaning and servicing during "unusual events such as conflict or a hostage incident."

<sup>4</sup>The solicitation provided that factors 1 and 2 were of equal importance.

award will be withheld pending the successful obtaining of the required TOP SECRET security clearance . . . ."

By the August 11, 1992, closing date, the agency received 15 proposals, including those of ARA and Ogden. ARA's proposed approach to performing CLIN 0001 relied on significantly fewer personnel than the approach proposed by Ogden; specifically, ARA proposed 81 staff years to perform the solicitation objectives, while Ogden's proposal contemplated 107 staff years.

By letters dated March 19, the contracting officer advised each of the offerors of weaknesses and deficiencies in their respective proposals. Among other things, the agency sought information from both Ogden and ARA relevant to the first technical evaluation factor, "operation plan." In its letter to Ogden, the agency noted that Ogden had not clearly indicated the work assignments for 59 of the 107 personnel it had proposed under CLIN 0001. In its letter to ARA, the agency noted that ARA had proposed only 81 personnel for CLIN 0001, and requested more information regarding ARA's plan to accomplish the required tasks with that level of staffing.

On or before April 7, 1993, the offerors submitted revised proposals responding to the March 19 letters. Following these submissions, the agency conducted oral discussions with each offeror. During discussions with ARA, the agency sought specific information regarding how ARA intended to accomplish the workload requirements.<sup>5</sup> ARA responded by explaining that its technical approach to performing the required tasks centered around its use of particular products and advanced equipment, along with a specialized training program that ARA employed. ARA stated that the advanced equipment it proposed would significantly enhance employee productivity.

The agency subsequently requested best and final offers (BAFO) which were submitted by May 20. The BAFOs were evaluated with the following results.

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<sup>5</sup>These discussions were recorded and subsequently transcribed; the transcripts of the discussions were submitted as part of the protest record.

<u>Offeror</u>	<u>Technical Rating</u>	<u>Price</u>
ARA	Highly Acceptable	\$16,196,501
Offeror #2	Highly Acceptable	18,516,422
Offeror #3	Highly Acceptable	19,662,402
Ogden	Highly Acceptable	22,041,299
Offeror #5	Highly Acceptable	22,561,027
Offeror #6	Acceptable	16,722,685
Offeror #7	Acceptable	16,901,466
Offeror #8	Acceptable	18,579,240
Offeror #9	Acceptable	18,913,406
Offeror #10	Acceptable	19,424,594
Offeror #11	Acceptable	20,352,238
Offeror #12	Acceptable	20,581,443
Offeror #13	Acceptable	21,201,277
Offeror #14	Acceptable	22,229,516
Offeror #15	Acceptable	23,918,702

The agency selected ARA for award on the basis of ARA's "highly acceptable" BAFO which offered the lowest price.<sup>6</sup> Upon making the source selection decision, the contracting officer contacted State Department security officials and requested permission to proceed with contract award despite the fact that ARA had not, at that time, obtained all necessary security clearances. The security officials responded that they had no objection to such action provided all contractor personnel for whom security clearances had not been obtained be escorted in restricted areas by appropriately cleared personnel. On June 8, the contracting officer awarded a contract to ARA, with performance scheduled to begin on July 1. This protest followed.

#### DISCUSSION

##### Technical Evaluation of ARA's Proposal

Ogden first challenges the "acceptable" rating given to ARA's proposal under the first evaluation factor, "operation plan." Under this evaluation factor, proposals were to be evaluated to determine whether the proposed plan was realistic and demonstrated a clear understanding of the RFP requirements. Ogden notes that ARA's initial proposal was initially rated "marginally acceptable" in this area and that, during discussions, the agency specifically questioned whether ARA's approach would ensure proper performance of all required tasks. Ogden maintains that ARA never provided

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<sup>6</sup>ARA's overall rating of "highly acceptable" reflected a rating of "acceptable" for evaluation factor 1 and ratings of "highly acceptable" for factors 2, 3, and 4.

a response to the agency's inquiry and that ARA's proposal should have been rated "unacceptable" because its operation plan relied on unrealistic personnel productivity.

The agency responds that during discussions, ARA provided clarifying information regarding its operation plan, explaining that its proposed plan relied on the use of advanced equipment, particular products, and a specialized training program. During discussions, ARA explained its use of various types of equipment including "backpack" vacuum cleaners, "whirl-a-matic" burnishers, blind cleaning machines, and rider scrubbers. On the basis of this information, the agency determined that ARA's proposed operation plan was "acceptable" and upgraded ARA's proposal accordingly.

It is not the function of this Office to substitute its judgment regarding the merits of proposals for the judgment of the procuring agency. Rather, we will examine an agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since the relative merit of competing proposals is primarily a matter of administrative discretion. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203.

Here, as discussed above, the RFP specifically advised offerors that, for the majority of the work under this solicitation, proposals were to be prepared on the basis of the particular tasks identified, not on any specified level of labor hours or on the use of any particular type of equipment. ARA proposed an approach which relied on a more efficient use of personnel than that proposed by Ogden. This approach was explained to the agency to its satisfaction during discussions, and the record provides no basis to question the agency's judgment that ARA had proposed an acceptable approach to successfully accomplishing the required tasks.

#### Price Evaluation

Ogden next protests that the agency's evaluation of price proposals was improper. Specifically, Ogden maintains that the agency "was required to conduct a cost realism analysis so that each element of cost for each offeror could be examined for realism in accordance with [Federal Acquisition Regulation] § 15.801 and § 15.805-3." Ogden further complains that it was improper for the agency to ultimately disregard the price estimate the agency established prior to receipt of proposals.

The agency responds that it initially established a cost estimate, based on the past cost history of these contract requirements, which was substantially higher than the majority of the prices offered. Upon receiving a substantial number of proposals that were technically "acceptable" or better, which offered prices significantly lower than its cost estimate, the agency concluded that its cost estimate was unreliable. Accordingly, the agency assessed the reasonableness of ARA's price by comparing it to the prices offered by other offerors and considering whether ARA's proposed technical approach was reasonable. The agency found that there were two other proposals rated technically "acceptable" that offered prices which were less than 5 percent higher than ARA's price, and another proposal rated "highly acceptable" that offered a price less than 15 percent higher than ARA's price. Based on a comparison of ARA's price to the others received, in conjunction with the agency's recognition of ARA's more efficient use of personnel, the agency concluded that ARA's price was reasonable.

Where, as here, the award of a fixed-price contract is contemplated, a proposal's "cost realism" is not ordinarily considered since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. Culver Health Corp., B-242902, June 10, 1991, 91-1 CPD ¶ 556; Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. Rather, under the Federal Acquisition Regulation (FAR), the procuring agency in its discretion may provide for performance of a price analysis to determine that the proposed prices are fair and reasonable. FAR §§ 15.805-1 and 15.805-2; Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6. Here, although the RFP did not provide for any specific type of cost or price evaluation, the agency conducted a price analysis. The FAR provides a number of price analysis techniques that may be used to determine whether prices are fair and reasonable, including a comparison of the prices received with each other. FAR § 15.805-2. The depth of an agency's price analysis is a matter within the sound exercise of the agency's discretion. Research Mgmt. Corp., 69 Comp. Gen. 368 (1990), 90-1 CPD ¶ 352; Family Realty, supra.

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<sup>7</sup>"Price analysis" is a process of examining and evaluating a proposed price without evaluating its separate cost elements; "cost analysis" involves the examination and evaluation of an offeror's separate cost elements and proposed profit. FAR § 15.801.

Here, since there were 15 offerors in the competitive range, the agency reasonably determined that adequate price competition existed and that a cost analysis was not required. FAR § 15.805; ServAir, Inc.--Recon., 58 Comp. Gen. 362 (1979), 79-1 CPD ¶ 212; Sperry Corp., B-225492; B-225492.2, Mar. 25, 1987, 87-1 CPD ¶ 341. Further, on the basis of the range of prices submitted and their proximity to ARA's proposed price, along with the agency's technical evaluation of ARA's proposed approach, we have no basis to question the agency's determination that ARA's proposed price was reasonable.

#### Meaningful Discussions

Ogden next asserts that the agency failed to conduct meaningful discussions because "Ogden was never informed that its staffing level exceeded the agency's minimum needs and in turn that Ogden's price proposal was too high."

The agency responds that, while it did not believe Ogden's proposed staffing was excessive given its technical approach to contract performance, it nonetheless questioned Ogden regarding its proposed staffing during discussions. Specifically, in the letter sent to Ogden on March 19, the agency advised Ogden that its proposal did not indicate what tasks would be performed by a majority of the staff Ogden had proposed. Also, during the subsequent oral discussions, the agency advised Ogden that, in preparing its BAFO, Ogden should "look at your hours so you can be the most competitive," suggesting that Ogden should "show the change clearly in hours." In short, the agency asserts that, while it viewed Ogden's proposed staffing level to be generally consistent with its proposed technical approach, it advised Ogden that the agency believed there was a potential for cost reduction in that area.

Contracting officers are required to conduct discussions with all offerors whose proposals are within the competitive range. FAR § 15.610(b). Such discussions must be meaningful, and in order for discussions to be meaningful, agencies generally must point out weaknesses, excesses, or deficiencies in proposals, unless doing so would result either in disclosure of one offeror's technical approach to another or in technical leveling. The Paxon Co., 67 Comp. Gen. 39 (1987), 87-2 CPD ¶ 425. Agencies are not obligated to afford offerors all-encompassing discussions; rather, agencies must lead offerors into the areas of their proposal which require attention. See, e.g., Wyle Laboratories, B-239671, Sept. 19, 1990, 90-2 CPD ¶ 231. Although offerors are entitled to an equal opportunity to revise their



proposals, discussions need not be identical; rather, a procuring agency should tailor its discussions to each offeror since the need for clarification or revision will vary with the proposals. See, e.g., Indian Community Health Serv., Inc., B-217481, May 15, 1985, 85-1 CPD ¶ 547.

Ogden's complaint that it "was never informed that its staffing level exceeded the agency's minimum needs" reflects a fundamental misunderstanding of the way this procurement was conducted. As discussed above, the agency did not establish any particular staffing level that it required or expected offerors to provide. Instead, the solicitation stated the agency's requirements in terms of the particular tasks to be performed and standards of quality to be maintained and advised each offeror to prepare its proposal on the basis of its own analysis and proposed technical approach. The record shows that, during discussions, the agency questioned Ogden's proposed staffing levels to determine if they were consistent with, and warranted by, its particular technical approach. It would have been inappropriate for the agency to assess and discuss Ogden's staffing levels on the basis of a different technical approach proposed by a competing offeror. Accordingly, the record provides no basis to conclude that the agency failed to conduct meaningful discussions with Ogden.

#### Security Clearances

Finally, Ogden protests that the agency erred in awarding a contract to ARA before ARA had obtained all of the required security clearances for its facility and personnel. The agency acknowledges that it was improper to award a contract to ARA before ARA had obtained all of the required security clearances, and when the matter was brought to its attention by Ogden's June 17 protest, the agency immediately advised ARA that it would not be permitted to begin contract performance on July 1, as scheduled. The agency subsequently extended Ogden's contract until ARA obtained the required clearances. Since the agency took quick and appropriate corrective action which cured any possible shortcoming, we view this issue as academic. East West Research, Inc.--Recon., B-233623.2, April 1, 1989, 89-1 CPD ¶ 379.

The protest is denied.

James F. Hinchman  
General Counsel