



Comptroller General  
of the United States

Washington, D.C. 20548

REDACTED VERSION'

## Decision

**Matter of:** Ogden Logistics Services

**File:** B-257731.2; B-257731.3

**Date:** December 12, 1994

Donald E. Barnhill, Esq., and Joan K. Fiorino, Esq., East & Barnhill, for the protester.  
Kenneth M. Bruntel, Esq., Paul Shnitzer, Esq., and Nabil W. Istafanous, Esq., for Cortez III Service Corporation, an interested party.  
Paul Brundage, National Aeronautics and Space Administration, for the agency.  
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Protest that agency held inadequate discussions by failing to advise protester of weaknesses in its proposal and by asking significantly more questions of the intended awardee is denied where the record shows: (1) that the agency, the National Aeronautics and Space Administration, was conducting the procurement under its alternate source selection procedures, which essentially limit discussions to proposal clarification after which a final contract is negotiated with a selected offeror; (2) that the discussions with both offerors were limited to clarification questions, as required by the alternate procedures, and neither offeror was unfairly helped by the questions; and (3) that the greater number of questions directed to the intended awardee were not unfair to the protester, but were the result of a greater need for clarification of the awardee's proposal.

2. Protest that agency improperly evaluated technical proposals and impermissibly selected the offeror with higher proposed costs is denied where the record indicates that the agency technical evaluation was reasonable and consistent

The decision was issued on December 12, 1994, and contained proprietary and source-selection sensitive information subject to a General Accounting Office protective order. Since all parties have waived any objection to its release, this decision is now removed from the coverage of the protective order.

with the solicitation's evaluation criteria, and where the agency reasonably concluded that the awardee's superior proposal warranted its slightly higher cost.

3. Agency is not required to evaluate an alternate proposal first submitted in response to the agency's request for best and final offers where the record shows that the proposal was technically unacceptable on its face, and discussions regarding the acceptability of the proposal would have required reopening negotiations.

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### DECISION

Ogden Logistics Services protests the proposed award of a contract to Cortez III Service Corporation under request for proposals (RFP) No. 5-03343/111, issued by the Goddard Space Flight Center of the National Aeronautics and Space Administration (NASA). The RFP was issued to procure logistics support and other support services at Goddard. Ogden, the incumbent contractor, argues that the selection of Cortez for further negotiations leading to award should be overturned because NASA held improper discussions, conducted an improper evaluation of cost and technical proposals, and failed to evaluate Ogden's alternate proposal.

We deny the protest.

### BACKGROUND

The solicitation, issued September 17, 1993, seeks offers for a cost-plus-award-fee, level-of-effort contract for approximately 206 work years of effort annually. It anticipates award of a 1-year base contract with a priced option for 4 follow-on years. In addition, the solicitation includes options for additional levels of effort, and anticipates the award of a separate 1-month phase-in contract.

The RFP at section M identifies four evaluation factors: (1) mission suitability, (2) cost, (3) relevant experience and past performance, and (4) other considerations. Mission suitability and cost are described as the most important of the evaluation factors, and are weighted approximately equal in importance. The last two evaluation factors--relevant experience and past performance, and other considerations--are described as less important than the first two factors, and as approximately equal in weight to each other.

Of the four factors, the RFP advised that only the mission suitability factor would be scored, according to the scheme set forth below:

MISSION SUITABILITY -- 1000 POINTS

Subfactor:	Understanding the Requirement	450
Element:	Technical Approach	250
Element:	Professional Employees Compensation Plan	75
Element:	Sample Problems	125
Subfactor:	Key Personnel	200
Subfactor:	Executive Plans	250
Element:	Management Plan	150
Element:	Staffing Plan	100
Subfactor:	Company Resources	100

In addition, the RFP set forth numerous subfactors under the three unscored evaluation factors--cost, relevant experience and past performance, and other considerations.<sup>1</sup>

On November 22, 1993, NASA received proposals from seven offerors. After completing an initial evaluation, the agency concluded that only two of the offerors' proposals should be included in the competitive range--the proposals submitted by Cortez and Ogden, which were rated excellent and very good, respectively. After the competitive range determination, NASA provided written and oral discussion

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<sup>1</sup>NASA's evaluation of certain of these subfactors will be discussed in the decision. The complete list of subfactors for the unscored evaluation factors follows: (1) under the cost factor, the subfactors are realism, probable cost, ceiling limitations, patent royalties, duty charges, and use of government property; (2) under the relevant experience and past performance factor, the subfactors are experience, technical performance, schedule performance, and cost performance; and (3) under the other considerations factor, the subfactors are financial condition and capability, labor management relations, business systems, small business and small disadvantaged business concern participation in subcontract arrangements and mandatory small disadvantaged business concerns goal, scope and impact of deviations and exceptions to contract terms and conditions, compliance with RFP, stability of work force, incentive approach to award fee, and pension portability.

questions to Ogden and Cortez, concluded negotiations, and requested best and final offers (BAFO) by March 25, 1994.

On May 10, the results of the final evaluation were presented to the source selection official (SSO). These results showed that while both proposals received very high ratings, the initial point spread between Cortez and Ogden had widened. Specifically, the initial and final scores for Cortez and Ogden under the mission suitability evaluation factor are set forth below:

	<u>Total Avail.</u>	<u>Cortez Init.</u>	<u>BAFO</u>	<u>Ogden Init.</u>	<u>BAFO</u>
Understanding the Requirement					
Technical Approach	250	250	250	200	200
Professional Employees					
Compensation Plan	75	45	75	75	75
Sample Problems	125	125	125	100	100
Key Personnel	200	200	200	160	160
Executive Plans					
Management Plan	150	150	150	120	120
Staffing Plan	100	100	100	80	80
Company Resources	<u>100</u>	<u>60</u>	<u>80</u>	<u>100</u>	<u>100</u>
TOTAL	1000	930	980	835	835

In adjectival terms, the Cortez proposal was rated excellent under the mission suitability factor, while the Ogden proposal was rated very good.

Cortez's and Ogden's cost proposals were also evaluated and adjusted to reflect the agency's view of their most probable cost. As shown below, NASA added approximately \$4 million to Cortez's proposed costs, and approximately \$5.8 million to Ogden's proposed costs. Thus, the proposed and evaluated costs of the two offerors were:

	(Costs in millions)	
	<u>Proposed</u>	<u>Evaluated</u>
Cortez	\$ 107.3	\$ 111.3
Ogden	\$ 102.8	\$ 108.6

After reviewing the results of the evaluation, the SSO concluded that Cortez's proposal was superior to Ogden's in the area of mission suitability. The SSO also concluded that the other two evaluation factors--relevant experience and past performance, and other considerations--did not

provide a basis for discriminating between the two offerors, and that the merits of Cortez's proposal outweighed the relatively small cost advantage of the Ogden proposal. Thus, the SSO selected Cortez for further negotiations leading to award.

On June 13, 1994, NASA held a debriefing to explain the basis for its selection decision, and on June 27, Ogden filed its initial protest with our Office. Ogden filed additional bases of protest with our Office on August 2, and August 29.

#### OVERVIEW

During the pendency of this protest, Ogden raised more than 50 separate challenges to NASA's selection decision. While we have fully considered each contention, we will address only Ogden's major concerns. Generally, Ogden argues that NASA held improper discussions, conducted an improper evaluation of cost and technical proposals, and failed to evaluate Ogden's alternate proposal. In its specific challenges, Ogden raises several subjects which cut across more than one of its general protest areas. For example, on the subject of Cortez's sick leave policy, Ogden raises issues relating to both the technical and cost evaluations, as well as whether the agency conducted unfairly helpful discussions with Cortez. Likewise, on the subject of the failure of two Ogden key personnel to meet RFP requirements, Ogden raises issues related both to its evaluation and the adequacy of discussions. Our review of Ogden's general concerns will address these recurring specific challenges.

#### ADEQUACY OF DISCUSSIONS

Much of Ogden's initial protest argues that NASA's approach to conducting written and oral discussions was unfairly helpful to Cortez because Cortez received more questions than Ogden, and received more detailed questions. Similarly, Ogden argues that NASA failed to advise Ogden of weaknesses in its proposal that could have been easily remedied, and once remedied, would have increased Ogden's standing in the final evaluation. In response, NASA states that its discussions with the offerors were fair and in compliance with NASA's alternate source selection procedures. For the reasons stated below, we agree that adequate discussions were held.

Generally, agencies are required to hold discussions with all offerors whose proposals are in the competitive range for award. 10 U.S.C. § 2305(b)(4) (1988 and Supp. V 1993) (applicable to the Department of Defense (DOD), NASA, and

the Coast Guard); 41 U.S.C. § 253b(d) (1988) (applicable to all other executive branch procuring agencies); Jaycor, B-240029.2; et al., Oct. 31, 1990, 90-2 CPD ¶ 354. The implementing regulation for this statutory requirement, Federal Acquisition Regulation (FAR) § 15.610(c)(2), requires a contracting agency to "[a]dvice the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the government's requirements." Our Office has held that while such discussions need not be all-encompassing, they must be meaningful, which means that the agency must point out weaknesses, excesses, and deficiencies in proposals unless doing so would result in technical transfusion or technical leveling. FAR § 15.610(c), (d); Mikalix & Co., 70 Comp. Gen. 545 (1991), 91-1 CPD ¶ 527; American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49.

Despite these general requirements, the FAR expressly acknowledges that NASA and DOD have developed alternate "source selection procedures that limit discussions with offerors during the competition, and that differ from other procedures prescribed in [FAR] Subpart 15.6." FAR § 15.613(a). In essence, NASA's alternate procedures, set forth at 48 C.F.R. § 18-15.613-71, limit discussions to clarification of proposals. Our Office has recognized NASA's alternate procedures as one legitimate approach to the statutory requirement for holding discussions with competitive range offerors. Taft Broadcasting Corp., B-222818, July 29, 1986, 86-2 CPD ¶ 125; Support Sys. Assocs., Inc., B-215421, Sept. 4, 1984, 84-2 CPD ¶ 249; Program Resources, Inc., B-192964, Apr. 23, 1979, 79-1 CPD ¶ 281.

In limiting discussions, NASA's alternate procedures advise contracting officers negotiating cost reimbursement contracts (or contracts for research and development) to "point out instances in which the meaning of some aspect of a proposal is not clear." 48 C.F.R. § 18-15.613-71(b)(5)(ii)(B). The procedures warn, however, that when a proposal is clear but contains weaknesses "inherent in an offeror's management, engineering or scientific judgment or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses." 48 C.F.R. § 18-15.613-71(b)(5)(ii)(C).

Here, after NASA completed its initial evaluation and its competitive range determination, it concluded that the Ogden proposal was very good, while the Cortez proposal was excellent. With respect to Ogden, NASA concluded that the proposal responded to each element of the solicitation in a

clear and unambiguous way.<sup>2</sup> As a result, NASA provided only two written questions to Ogden: one involved a request to Ogden to extend the expiration date for the required letters of commitment from key personnel; the other asked Ogden to provide its overhead and fringe benefit rates for the life of the contract, as the initial proposal left this area blank.

With respect to Cortez, NASA asked a total of 14 questions: one involved the same request for an extension of commitment letter expiration dates raised with Ogden; five involved technical issues; five involved cost issues; and three involved business issues. Of the five cost questions, two involved costs regarding the separate phase-in period anticipated in the RFP in the event that an offeror other than the incumbent, Ogden, prevailed in the competition.

NASA explains that although Cortez received a higher score on its initial proposal, the Cortez proposal required more clarification than did the proposal submitted by Ogden. Thus, NASA contends that the discrepancy between the number of questions raised with the two offerors is not evidence that the agency was unfairly helpful to Cortez, but instead reflects an appropriate attempt to clarify the Cortez proposal. NASA also denies Ogden's contentions that the oral discussion questions were more helpful to Cortez than to Ogden.

Our review of both the written and oral discussion questions raised with Ogden and Cortez shows that NASA did, in fact, focus on ambiguities and matters needing clarification, as required by NASA's alternate source selection procedures.<sup>3</sup>

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<sup>2</sup>In explaining its conclusion that the proposal required little clarification, NASA states that Ogden's description of its proposal in its initial protest filing was basically correct--i.e., Ogden claims that:

"each element [of the proposal], no matter how minor, was fully developed and presented by [Ogden] through the presentation of extraordinary innovations, achieving and surpassing each and every requirement of the solicitation, no matter how seemingly minute."

While NASA declined to embrace Ogden's superlatives, it conceded that the proposal did, in fact, fully and clearly address the requirements of the RFP.

<sup>3</sup>As part of its agency report, NASA provided transcripts of the meetings wherein the agency conducted oral discussions  
(continued...)

Id. For example, with respect to Cortez's sick leave policy, the initial evaluation stated:

"A weakness cited in this area is that employees earn one hour of sick leave for every hour worked in excess of 40 hours per week. This proposal is out of character for Cortez. We will be asking a question regarding how this would affect their employees. Since the subcontractor did not submit a professional compensation plan, one will be requested. If [Cortez's subcontractor's] plan is adequate, and the sick leave issue is addressed, the score is expected to increase."

As a result of the concerns identified about Cortez's unorthodox sick leave policy, NASA asked both a cost and technical question of Cortez on this subject. The cost question asked:

"Please provide rationale for the calculation of the productive work year for exempts, in particular the absence of sick leave."

The technical question asked:

"Please explain your company's policy concerning sick leave. How does this policy retain a professional workforce?"

In our view, there was nothing unusual, unfair, or overly helpful to Cortez about NASA's desire to understand--both as a matter related to retaining professional employees, and as a matter of calculating probable costs--how Cortez's sick leave policy would be implemented. Although Ogden complains that the evaluation panel described the sick leave plan as a weakness--and therefore argues that NASA should have identified for Ogden its weaknesses as well--the comments, and the questions themselves, reveal that NASA's inquiries sought clarification about how, and whether, the plan would work. We view NASA's questions regarding whether the policy would have unintended effects on retention or costs as reasonable and appropriate given that the policy is unusual and was not thoroughly explained in Cortez's proposal.

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<sup>3</sup> (...continued) with Ogden and Cortez. Although Ogden claims that the oral discussion questions provide additional evidence that NASA was unfairly helpful to Cortez, we have reviewed the transcripts and find no basis for Ogden's claim. Instead, our review noted much similarity in the questions directed to the two companies.

Finally, for the same reasons, we also reject Ogden's contention that NASA acted unfairly by raising this issue again during oral discussions. Given the unusual nature of the policy, NASA's decision to revisit the issue during oral discussions appears reasonable and prudent, not biased or unfair.

As also required by NASA's alternate procedures, NASA did not alert Ogden to issues where its proposal was weak or deficient. For example, Ogden complains that NASA acted unfairly by not pointing out the weaknesses NASA perceived with Ogden's proposed key personnel. The initial evaluation concluded that Ogden had assembled a very good management team, but that 2 of the 18 proposed key personnel--the project logistics branch head, and the transportation branch head--did not meet the requirements for their positions. Ogden complains that NASA's failure to mention this issue deprived Ogden of meaningful discussions, and notes that it might have been able to increase its score from 160 points to the maximum available 200 points had the matter been discussed.

Although we will discuss NASA's evaluation of these two positions as part of our review of the technical evaluation, we point out here that Ogden's complaint that it was deprived of meaningful discussions on this point is based on a misapprehension of NASA's alternate source selection procedures. In its response to the protest, NASA explained that there was no ambiguity with respect to the weaknesses of these two key personnel--no ambiguity with respect to whether they met the RFP requirements, or whether they possessed sufficient compensating experience to waive the RFP's requirements. Thus, NASA's decision not to raise this issue during discussions is consistent with its alternate source selection procedures. 48 C.F.R. § 18-15.613-71.

#### TECHNICAL EVALUATION

Ogden also argues that NASA's evaluation of proposals was unreasonable and deviated from the requirements of the RFP. According to Ogden, NASA's conclusion that Cortez submitted a superior proposal in the area of mission suitability--the only scored evaluation factor--was based on the agency's failure to properly consider several issues. These issues include the adequacy and appropriateness of Cortez's sick leave policy for professional employees; the qualifications of two of Ogden's key personnel; and the decision to upgrade Cortez's evaluation after discussions from 60 to 80 of 100 available points under the company resources subfactor of the mission evaluation factor. In addition, Ogden offers numerous arguments to support its contention that NASA erroneously concluded that there were no discriminators

among the other two evaluation factors--i.e., relevant experience and past performance, and other considerations. According to Ogden, if the evaluation had reasonably assessed the proposals under these two factors, Ogden's proposal would have been evaluated as preferable to the proposal of Cortez.

In considering protests against an agency's evaluation of proposals, we 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. A protester's disagreement with the agency's judgment, without more, does not show that the judgment was unreasonable. Id.

Based on our review of the proposals, the evaluation materials, Ogden's detailed challenges to the evaluation, the responses to those challenges by NASA and Cortez, and Ogden's replies to those responses, we find that the evaluation was reasonable and did not deviate from the stated evaluation criteria. We will discuss below two representative challenges to the mission suitability evaluation factor--i.e., the evaluation of Cortez's sick leave policy, and the evaluation of Ogden's key personnel--and one representative challenge to the other considerations evaluation factor--i.e., the evaluation of Cortez's goal for awarding subcontracts to minority-owned small businesses.

#### Cortez's Sick Leave Policy

As described in our review of the adequacy of discussions, Cortez's proposal contained a unique approach to providing sick and personal leave for its professional employees. In essence, Cortez's policy provides for 1 hour of sick and/or personal leave for every hour worked in excess of 40 hours per week, in lieu of overtime. Because of this issue (and an unrelated matter), NASA initially awarded Cortez only 45 of 75 available points under the Professional Employees Compensation Plan element under the Understanding the Requirement subfactor of the mission suitability evaluation factor.

After NASA raised concerns during written and oral discussions about how the Cortez policy would affect employee retention and costs, Cortez responded with a detailed discussion of its sick leave policy. Because of the response (and the resolution of the unrelated issue), NASA raised Cortez's score to the maximum amount allowable for this element, 75 points. In its protest, Ogden argues that NASA acted unreasonably in increasing Cortez's score under this evaluation element because, in Ogden's view,

Cortez's responses did not adequately address the agency's concerns.<sup>4</sup>

Our review of Cortez's proposal and its responses to NASA's questions leads us to conclude that there was nothing unreasonable in the agency's decision to increase Cortez's score under this element. Although Ogden alleges that NASA never obtained a full understanding of how the policy worked, we note that NASA asked three questions on this issue to be sure that it understood how the policy would operate. In response, Cortez provided a detailed explanation of its policy. Also, while Cortez was willing to implement a different policy to please NASA, its employees expressed a preference for the existing policy. Since one major purpose of evaluating this issue is to ensure that Cortez is offering benefits that will permit it to retain a competent and stable professional work force, we see nothing unreasonable in NASA's decision to draw a favorable conclusion from the Cortez responses and the support shown for the policy by Cortez employees.

#### Ogden's Key Employees

As also set forth in our review of the adequacy of discussions above, Ogden complains that NASA unreasonably concluded that 2 of its 18 proposed key employees--i.e., the Project Logistics Branch Head, and the Transportation Branch Head--did not meet the education and/or experience requirements in the RFP. In its challenge, Ogden focuses on several discrepancies in the record that ultimately have little to do with whether the agency's evaluation was reasonable. Rather than answer each of these challenges, we will simply address whether NASA reasonably concluded that the proposed employees met the requirements.

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<sup>4</sup>In a supplemental protest filing, Ogden also alleges that the evaluation of Cortez's sick leave policy was unreasonable because the policy violates certain provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 207 (1988). Since Congress granted jurisdiction over FLSA matters to the Department of Labor and the district courts, not our Office, see 29 U.S.C. §§ 216, 217 (1988 and Supp. V 1993), we need not reach a conclusion about whether the Cortez policy meets FLSA requirements. We note, however, that since there was no evidence that the agency was aware of any possibility that the Cortez plan might not pass muster under the FLSA, and since both NASA and Cortez have effectively rebutted Ogden's contention regarding the statute, we will not conclude that the evaluation was unreasonable for failure to consider this issue.

With respect to Ogden's proposed Logistics Branch Head, we note that the RFP required 10 years of logistics experience and 5 years of supervisory experience. Although Ogden complains that the evaluation was unreasonable--and cites for support the proposed employee's statement that he met all applicable requirements, and the failure of NASA to advise Ogden of any shortcomings during discussions--NASA concluded that the resume for this individual showed only 2 years of logistics experience and 2 years of supervisory experience, as opposed to the required 10 and 5 years experience, respectively. While Ogden now attempts to show how various past experience of this individual should have been interpreted to establish his compliance with the experience requirements, our review shows nothing unreasonable in NASA's conclusion that he did not, based on the information in Ogden's proposal. Ogden, not NASA, bears responsibility for explaining in its proposal how its key personnel meet the RFP's requirements.

Likewise, NASA concluded that Ogden's proposed Transportation Branch Head did not meet the education requirements of the position for which he was proposed. While Ogden complains that the evaluation materials do not mention this deficiency--and that it is only explained in the May 26 written notice to Ogden that Cortez had been selected for further negotiations leading to award, and in the contracting officer's statement prepared in response to the protest--we note that Ogden concedes the deficiency. According to Ogden, even though the individual proposed did not possess the required bachelors degree in Engineering or Business Administration, NASA acted unreasonably and unfairly by failing to conclude that the candidate's graduate-level course work offset his failure to meet the education requirement.

Our review leads us to conclude that NASA correctly noted this individual's failure to meet the RFP's minimum education requirement--a point Ogden concedes--and reasonably decided that graduate-level course work in an area unrelated to that of the minimum educational requirement was not adequate offsetting experience. In addition, we note that this candidate failed to meet the 10 year experience requirement set forth in the RFP. Despite this individual's experience providing these services under Ogden's current contract with NASA, the agency could not properly ignore that the 2 years of experience fell far short of the required 10 years.

As a final matter, we note that Ogden was not prejudiced by NASA's conclusions regarding its key employees. Even if these two key employees were upgraded from unacceptable to acceptable, the record strongly suggests that Ogden's score

would not be upgraded from "very good" to "excellent" under the key personnel subfactor. NASA explains that 6 of Ogden's 18 key personnel would continue to be rated "adequate," while 16 of Cortez's 18 key personnel were rated as "exceeding requirements." Under these circumstances, we conclude there was nothing unreasonable in NASA's evaluation of the key personnel subfactor.

#### Minority Business Subcontracting

In addition to its challenges to the mission suitability evaluation, Ogden argues that NASA unreasonably concluded that there were no discriminators under the remaining two evaluation factors of relevant experience and past performance, and other considerations. We have reviewed these arguments and find them unpersuasive.

For example, the other considerations evaluation factor contained a subfactor entitled "small business and small disadvantaged business concern participation in subcontract arrangements and mandatory small business concerns goal." The RFP advised offerors that specific subcontracting plans could be submitted after selection but prior to award. Although Ogden's proposal discussed its proposed subcontract goals in greater detail than Cortez, Cortez's proposal identified a minority-owned small business subcontractor with whom Cortez planned to subcontract approximately 50 percent of the total value of the contract.<sup>5</sup> Because of the magnitude of the 8(a) subcontractor's participation in Cortez's proposal, the subcontractor also submitted proposal materials for NASA's review. After NASA completed its review of this subfactor, Cortez received an "excellent" rating, while Ogden was rated "very good."

Ogden argues that Cortez's rating is unreasonable because Cortez's proposed subcontractor could abandon the project, leaving Cortez, whose proposal was otherwise less specific about its intent to use small and minority-owned small businesses, with less of a commitment than Ogden to use such businesses. Ogden also speculates that Cortez's proposed subcontractor will be used to make purchases of material in order to make its participation in performing the contract seem larger.

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<sup>5</sup>Cortez's proposed subcontractor participates in the minority set-aside program conducted by the Small Business Administration pursuant to section 8(a) of the Small Business Act, as amended, 15 U.S.C. § 637(a) (1988 and Supp. V 1993).

In our view, there is nothing unreasonable in NASA's decision to make this minor distinction between the two competing proposals in this area. Ogden's speculation about whether the subcontractor will actually perform as promised does not present an effective challenge to the evaluation conclusion. Also, we note that the SSO concluded that there were no discriminators between the offerors in these two unscored evaluation factors, and Ogden's argument--even if correct--would not likely provide such a discriminator. In a nutshell, none of the arguments Ogden raises in this area would reasonably cause a sufficient shift in the relative merits of the two offerors to change the outcome of the selection decision here.

#### COST REALISM ANALYSIS

In its initial protest, Ogden argued that NASA failed to conduct a reasonable review of the offerors' proposed costs and improperly increased Ogden's proposed costs more than Cortez's. According to Ogden, NASA's decision to select the more expensive Cortez proposal to obtain the benefits of its higher-rated technical proposal was improper since the difference in proposed costs should have been even greater than the SSO believed when making the decision.

In NASA's agency report prepared in response to the protest, NASA provided an explanation of its cost realism adjustments that was too limited to adequately explain the basis for the adjustments. Specifically, NASA's documentation of its cost realism adjustment included two documents: two pages of the photocopied briefing slides used to present the evaluation results to the SSO--one slide for Cortez, one for Ogden; and the Source Selection Statement used to select Cortez for further negotiations for award. Both provided one paragraph narrative explanations of how the proposed costs of the two offerors were adjusted.

On November 8, our Office convened a conference call with the parties to discuss this matter. This call led to NASA's production of additional documents on that day, and again on November 21, when NASA provided a detailed narrative explanation of its cost realism adjustments.

On November 25, in response to NASA's filings, Ogden submitted several challenges to the cost realism review. Since Ogden was not in a position to raise these issues earlier, and since NASA provided this information too late for consideration in this decision, we will treat Ogden's challenge to the cost realism adjustments as a new protest which will be addressed in a separate decision.

## FAILURE TO EVALUATE ALTERNATE PROPOSAL

As a final matter, Ogden claims that the agency acted improperly in failing to evaluate its alternate proposal. Based on our review of this issue, we conclude that Ogden's contention is without merit.

Ogden's protest fails to mention that its alternate proposal was first submitted to the agency along with its best and final offer (BAFO). BAFOs are intended to be the final submission from offerors prior to an agency's selection of an awardee, see Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76, or in NASA's case, prior to the selection of an intended awardee. See generally 48 C.F.R. § 18-15.613-71. As a result, when NASA determined that Ogden's alternate proposal was technically unacceptable--among other things, the proposal sought to alter the type of contract anticipated by the agency--NASA was not required to reopen discussions in order to clarify ambiguities in the alternate proposal. Inter-Continental Equip., Inc., B-224244, Feb. 5, 1987, 87-1 CPD ¶ 122. In addition, in competitions for contracts with high dollar values like this one, NASA contracting officials are admonished against reopening negotiations after submission of BAFOs without obtaining high-level approval. 48 C.F.R. § 18-15.611.

Under these circumstances, we conclude that NASA's decision to reject Ogden's alternate proposal without further consideration was reasonable.

The protest is denied.

Robert P. Murphy  
General Counsel