



Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

**Matter of:** Ogden Logistics Services

**File:** B-257731.5

**Date:** April 13, 1995

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., Crowell & Moring, for Cortez III Service Corporation, an interested party.  
Paul S. 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. Protester's challenge to the adequacy of an agency's cost realism review is denied where there is no showing that the agency unreasonably calculated the composite labor escalation rate applied to either the protester's or the awardee's proposal, or failed to consider issues that the protester claims would have changed the outcome of the review, and where the record shows that the protester was not prejudiced by the adjustments about which it complains.

2. Contention that agency conducted an improper cost/technical tradeoff is denied where the agency did not deviate from the stated evaluation scheme and reasonably concluded that the awardee's higher-rated and slightly higher-cost proposal was more advantageous to the government than the protester's lower-rated proposal.

### 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 was based on an unreasonable cost realism evaluation and an improper cost/technical tradeoff.

We deny the protest.

#### BACKGROUND

After limiting the competitive range to the proposals submitted by Ogden and Cortez, NASA made adjustments to each offeror's proposed costs.<sup>1</sup> In total, NASA added approximately \$4 million to Cortez's proposed costs, and approximately \$5.8 million to Ogden's proposed costs, as shown below:

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

Before discussing in detail the specific adjustments made to the cost proposals, we note that the RFP here minimized the potential variations between proposals by specifying approximately half of the anticipated costs--\$54 million--as well as the number of labor hours and the labor categories needed to perform these services. In addition, a significant majority of labor positions and personnel were covered by either the Service Contract Act (SCA), or by specific collective bargaining agreements. Given that so many of the elements of direct labor costs for this effort were set in advance, the first year labor costs of the two offerors were nearly identical--in fact, they varied by only approximately \$15,000--and the entire variation of proposed costs can be traced to differing amounts in the following areas: (1) salaries and fringe benefits for managers; (2) indirect rates; or (3) labor escalation rates.

NASA's cost realism review here resulted in only two adjustments to the offerors' proposed costs:

- (1) application of a weighted composite escalation rate to direct labor for the first year of the contract; and
- (2) application of a second weighted composite escalation rate to direct labor for years 2 through 5 of the contract.

The methods of calculating these two composite rates--the source of much apparent confusion in this case--are set forth below.

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<sup>1</sup>This decision resolves issues related to the cost realism review performed by NASA of the proposals submitted by Ogden and Cortez in response to this RFP. In an earlier decision, Ogden Logistics Servs., B-257731.2; B-257731.3, Dec. 12, 1994, 95-1 CPD ¶ 3, our Office resolved Ogden's challenges to the adequacy of discussions and to the technical evaluation.

The composite escalation rate for the first year was applied to adjust the union wage rates under expired, or expiring, collective bargaining agreements; the rate was not applied to adjust the SCA rates, or to adjust the rates for exempt personnel. To achieve this limited adjustment, the rate was calculated by multiplying the number of employees in a particular occupation by the applicable rate of increase--i.e., 3.5 percent for union employees times the number of union employees; 0 percent for SCA employees times the number of SCA employees; and 0 percent for exempt employees times the number of exempt employees. The resulting rates were then totaled and divided by the number of employees to arrive at a composite rate of escalation. In this case, the composite rate of 1.66 percent was applied to total labor dollars for the first year of performance.<sup>2</sup>

Similarly, to calculate the composite rate for years 2 through 5, NASA applied a 3.5 percent escalation rate to all union employees and to all SCA employees, but accepted the rates proposed by each offeror for its exempt employees. (Ogden proposed 3 percent, Cortez proposed 2.5 percent.) As above, the rate was calculated by multiplying the number of employees in a particular occupation by the applicable rate of increase--i.e., 3.5 percent for union employees times the number of union employees; 3.5 percent for SCA employees times the number of SCA employees; and 3 percent for Ogden's exempt employees, and 2.5 percent for Cortez's exempt employees, times the number of each offeror's exempt employees. Again, the resulting rates were totaled and divided by the number of employees to arrive at a composite rate of escalation--3.42 percent for Ogden; 3.33 percent for Cortez--to be applied to the total labor dollars for years 2 through 5. After NASA adjusted proposed labor costs, each offeror's proposed indirect rate was applied to the increased direct costs to calculate that offeror's most probable cost.

The RFP identified four evaluation factors: (1) mission suitability; (2) cost; (3) relevant experience and past performance; and (4) other considerations. Mission suitability and cost were the most important of the evaluation factors and were weighted equally; the other two evaluation factors were less important than the first two factors and were also weighted equally. Upon completion of the cost realism review and the evaluation of technical proposals, the Source Selection Official (SSO) concluded

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<sup>2</sup>The composite rate of 1.66 percent was the same for both Cortez and Ogden because the number of positions was generally fixed in the RFP, and because neither offeror proposed escalation for union employees in the first year of the contract.

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.

#### ANALYSIS

Ogden argues that the selection decision here was improper because the agency conducted an unreasonable cost realism review, and thus the difference in proposed costs should have been even greater than the SSO believed when he selected Cortez. Specifically, Ogden argues that NASA's use of a composite escalation rate was unreasonable; that the agency improperly ignored certain labor cost savings identified in Ogden's BAFO; that the agency unreasonably failed to make an upward adjustment to Cortez's labor costs associated with that company's sick leave policy; and that the agency's cost realism review was insufficiently detailed to support its conclusions. In addition, Ogden argues that NASA made an unreasonable cost/technical tradeoff when it selected Cortez for further negotiations leading to award.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated costs are not dispositive, because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) § 15.605(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. CACI, Inc.-Fed., 64 Comp. Gen. 71 (1984), 84-2 CPD ¶ 542. Contracting officers are required to document this evaluation, FAR § 15.608(a)(1), and when properly documented, our review of an agency's exercise of judgment in this area is limited to determining whether the agency's cost evaluation was reasonably based and not arbitrary. General Research Corp., 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, aff'd, American Mgmt. Sys., Inc.; Dept. of the Army--Recon., 70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492; Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325.

Ogden's challenge to NASA's use of a composite escalation rate raises several different issues: (1) whether NASA reasonably rejected Ogden's proposed attrition rates first identified in its BAFO; (2) whether it was reasonable to escalate first year labor costs; (3) whether it was reasonable to escalate labor costs in later years; and

(4) whether the method used to calculate the escalation rates improperly blurred salary differences and ignored promises that certain personnel would forgo pay increases. For the reasons stated below, we conclude that NASA reasonably rejected Ogden's proposed attrition rates, and that in its remaining challenges, Ogden has failed to show how it was prejudiced by the agency's actions.

Ogden initially proposed labor escalation for all personnel for all 5 years of contract performance. In its BAFO, however, Ogden proposed to lower the rates paid to several of its exempt personnel during the later years of performance. Specifically, Ogden proposed selective attrition for certain of its exempt employees beginning in the third year of contract performance, and proposed to replace these selected employees--including Ogden's proposed project manager--with employees paid lower wages, in order to reduce its labor costs in years 3, 4, and 5.

Since this replacement strategy first appeared in Ogden's BAFO, there was no opportunity for clarification questions. In addition, NASA noted that Ogden proposed replacing 10 of its 14 key personnel despite statements in its technical proposal that all key personnel were committed for the entire 5-year term of the contract. As a result, NASA applied the composite rate to these positions using their initial rates, and not the lower rate proposed in the BAFO.

Ogden argues that the agency's rejection of its proposed approach was unreasonable and contends that NASA should have permitted Ogden to explain the basis for its revised approach. We disagree. First, there is no requirement that an agency reopen discussions to permit offerors to explain information first submitted in an offeror's BAFO. Mine Safety Appliances Co., B-242379.5, Aug. 6, 1992, 92-2 CPD ¶ 76. In addition, NASA states that if it had accepted Ogden's pricing strategy, it would have been necessary to downgrade Ogden under the key personnel and staffing plan portions of the mission suitability evaluation factor--worth approximately 30 percent of the total available points for the factor. Given the possible effect on Ogden's mission suitability score, and the discrepancy between the BAFO plan and the representations in the technical proposal, we find nothing unreasonable about NASA's decision to reject Ogden's approach in this area.

With respect to Ogden's remaining arguments regarding the composite evaluation factor, we conclude that Ogden was not prejudiced by the agency's approach. First, Ogden's contention that the composite rate unreasonably ignored statements by certain exempt personnel to forgo wage increases during the first year of contract performance is simply wrong. As explained above, the composite rate was

calculated as a weighted average. Specifically, it was based on a 0 percent increase for exempt employees and SCA employees. Also, although Ogden argues that the method blurs salary differences, Ogden has failed to refute--despite invitations to do so--NASA's and Cortez's detailed calculations showing that such blurring is, at best, de minimis, especially in light of the mere \$15,000 difference between the two offerors' first year labor costs.

With respect to the escalation factor applied in years 2 through 5, Ogden can not escape the fact that the escalation factor was approximately the same for both offerors, and any blurring that occurred by calculating a composite rate for each offeror made an insignificant difference in evaluated costs, and, in fact, slightly favored Ogden. Since Ogden failed to address Cortez's detailed calculations showing that the escalation rate alone--when examined apart from the attrition issue discussed above--is either insignificant or results in a greater escalation of Cortez's costs than Ogden's suggested approach, and since our review of the record shows that there is no reasonable possibility that Ogden was prejudiced by this approach, we will not consider this issue further.<sup>1</sup> See Colonial Storage Co.--Recon., B-253501.8, May 31, 1994, 94-1 CPD ¶ 335.

Ogden also argues that NASA's cost realism review was unreasonable for failing to consider what it contends are hidden costs associated with Cortez's sick leave policy.

Our earlier decision in this case contained a detailed discussion of Cortez's sick leave policy in connection with both the agency's conduct of discussions and the evaluation of the policy as part of NASA's review of mission suitability. As we explained therein, 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. We also pointed out that the agency initially identified Cortez's sick leave policy as a matter requiring additional clarification on both the cost and technical fronts, and we found reasonable the agency's attempts during discussions to ascertain whether the plan would have

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<sup>1</sup>Ogden was provided with all relevant materials and with Cortez's proposal under the terms of a protective order issued by our Office. Despite its access to these materials, and the fact that Ogden was permitted to file additional arguments and comments at every juncture--in fact, our Office held a conference call with all parties inviting Ogden to show how it was prejudiced by the agency's approach--Ogden nevertheless failed to rebut NASA's and Cortez's arguments about prejudice.



unintended effects on employee retention or proposed costs. Because NASA raised these concerns during both written and oral discussions, and because Cortez responded with a detailed discussion of its sick leave policy, our Office concluded that the agency reasonably evaluated the policy.

Ogden correctly notes that our prior decision considered NASA's evaluation of the Cortez leave policy from the aspect of discussions and the technical evaluation, but not from the aspect of the cost evaluation. For the reasons below, we conclude that the agency reasonably accepted the policy without an upward adjustment to costs.

Our review of the record, as stated above, shows that NASA carefully considered the Cortez leave policy, and during discussions expressly raised the issue of whether the policy might have an impact on costs. After receiving a detailed explanation from Cortez explaining how the policy worked, and concluding that Cortez's responses adequately addressed the agency's concerns, NASA accepted the policy as offered. Although Ogden offers numerous speculative scenarios for how the Cortez leave policy could trigger additional labor costs, Cortez explains that it has never been forced to hire additional employees to replace employees who have taken sick leave against their uncompensated overtime, and explains that it provides long-term disability insurance to cover employees' lost wages due to illness or disability for absences greater than 7 days. In our view, given the agency's focus on the policy, and given Cortez's answers to the questions raised then and now, the protester has not shown that the agency acted unreasonably in accepting Cortez's leave policy without making an upward adjustment to its proposed costs.

We also reject the contention that the cost realism review was flawed for failing to address either the decision to reject Ogden's BAFO attrition rate or failing to mention Cortez's sick leave policy. Even though there is no mention of the sick leave policy in the cost realism review, the record clearly shows that NASA was aware of the policy, had questions about how it would work and whether it would affect proposed costs, and required Cortez to address the policy in both written and oral discussions. With respect to the decision to reject Ogden's attrition rate, we likewise conclude that the agency reasonably rejected this feature of Ogden's BAFO and we see no reason to conclude that the agency's cost realism review was unreasonable because it failed to mention this issue.

Ogden also alleges that the cost realism review was flawed because the contracting officer accepted certain audit information from the Defense Contract Audit Agency (DCAA) without performing additional review to ensure that the

information was correct. Ogden makes no claim that the DCAA information was incorrect, or was used in some way that prejudiced Ogden. In fact, we note that NASA accepted Ogden's proposed overhead and general and administrative rates without question. Under these circumstances, Ogden has failed to show why we should conclude that NASA acted improperly in this area.

Ogden's final challenge is to the agency's decision to select Cortez's higher-cost, higher-rated proposal over Ogden's. Ogden argues that this tradeoff decision was improper because it elevated the mission suitability evaluation factor above the cost factor, and because it failed to consider the evaluation factors of relative experience and past performance, and other considerations. We disagree on both counts.

As set forth in detail in our prior decision, NASA concluded that the Cortez proposal was excellent under the mission suitability evaluation factor, while the Ogden proposal was very good. Despite its detailed assertions, to the contrary, addressed in our prior decision, Ogden failed to show that this assessment of the relative merits of the two proposals was in any way unreasonable. Since the PFP stated that mission suitability and cost were the most important evaluation factors, and would be accorded equal weight, the SSO stated that his selection decision was based on the conclusion that the slightly higher evaluated costs of the Cortez proposal--less than 3 percent above those of Ogden--were outweighed by the technical superiority of the Cortez proposal. In our view, the SSO's decision in no way violates the stated evaluation scheme in making a reasoned tradeoff between these two equally important evaluation criteria.

Likewise, with respect to the two less important evaluation factors--relative experience and past performance, and other considerations--our prior decision rejected Ogden's contentions that the agency misevaluated the proposals under either one. Given Ogden's failure to show that the agency unreasonably concluded that there were no discriminators under these two factors, we find nothing unreasonable in NASA's decision to focus its tradeoff decision on the two more important evaluation factors.

#### CONCLUSION

Our review of the cost realism adjustments here, as well as the assessment of the technical approach considered in our prior decision, reveals no area where Ogden has shown that NASA acted unreasonably or improperly in its evaluation or its selection decision. While NASA's documentation of its



cost realism review is sparse, the record provides sufficient justification for the decision to select Cortez for further negotiations leading to award.

The protest is denied.

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for Robert P. Murphy  
General Counsel