



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Ogden Support Services, Inc.

**File:** B-270354.2

**Date:** October 29, 1996

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## **DIGEST**

Protest that proposal was misevaluated is denied where the record shows that the evaluated weaknesses were reasonable and consistent with the evaluation factors.

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## **DECISION**

Ogden Support Services, Inc. protests the award of a contract to SSI Services, Inc. under request for proposals (RFP) No. 95-Z06, issued by the Central Intelligence Agency (CIA) for operations and maintenance services at the CIA Headquarters Compound, Langley, Virginia, and at 13 facilities in the Washington, D.C. metropolitan area. Ogden contends that the evaluations and source selection decision were unreasonable.

We deny the protest in part and dismiss it in part.

The agency previously awarded a contract to SSI under this RFP. Ogden, the incumbent contractor, protested the award on a number of grounds. Our Office sustained that protest in *Ogden Support Servs., Inc.*, B-270354, Feb. 28, 1996, 96-1 CPD ¶ 175, on the basis that the CIA failed to conduct meaningful discussions. Our decision also noted other problems with the procurement: the RFP did not disclose the relative evaluation weight of cost, and the evaluation documentation did not support the technical ratings. We recommended that the agency amend the solicitation, reopen discussions with the competitive range offerors, request revised best and final offers (BAFO), and make a new source selection decision based upon the evaluation of the revised BAFOs.

The CIA subsequently amended the RFP. The amended RFP contemplated the award of a cost-plus-award-fee, level-of-effort contract for 1 year with 4 option years. The RFP stated a best value basis for award with all non-cost evaluation factors combined being significantly more important than cost. The non-cost evaluation factors were technical/management, experience/past performance, and security. Security was to be evaluated on a pass/fail basis and technical/management was three times more important than experience/past performance. The technical/management factor contained the following subfactors listed in descending order of importance: (1) staffing plan; (2) contract phase-in plan; (3) logistics management plan; (4) training plan; (5) quality control plan; and (6) health, safety and environmental plan. The experience/past performance factor contained the following subfactors: (1) company experience and (2) record of past performance. The RFP also identified a number of sub-subfactors under each subfactor.

On March 25, 1996, the agency reopened discussions with the four competitive range offerors. Written discussion questions were sent to each offeror addressing the weaknesses, deficiencies, and concerns which the agency had determined to exist in the proposals upon which the prior source selection was based, and offerors were invited to submit questions concerning the RFP or the written discussion questions. All the offerors submitted questions, to which the CIA responded in writing. The CIA then requested submission of best and final offers (BAFO) by May 6. BAFOs were to be complete proposals and not just a statement of revisions to the terms of the previously submitted proposals. Offerors were advised that CIA intended to evaluate BAFOs and make award without further discussions unless the contracting officer determined that further discussions were necessary.

All four offerors (Ogden, SSI, [DELETED], and [DELETED]) submitted revised BAFOs. The results of the evaluations with weighted evaluation scores appear below:<sup>1</sup>

Offeror	Technical (750)	Experience (250)	Total (1,000)	Cost (\$)
SSI	675	200	875	92,928,753
[DELETED]	630	180	810	94,070,289
[DELETED]	510	200	710	83,310,320
Ogden	488	180	668	88,051,242

<sup>1</sup>All four proposals passed under the security factor.

The Source Selection Authority (SSA) determined that SSI had submitted the highest rated proposal representing the best value to the government, considering both cost and non-cost factors. In this regard, the SSA found that SSI "clearly . . . submitted the most technical superior" BAFO; that SSI's higher cost was attributable to its proposed staffing approach with [DELETED]; and that SSI's proposed technical approach reflected substantial added value for the evaluated cost.

With respect to Ogden's proposal, the SSA determined:

"[Ogden's] lower cost is centered in [DELETED]. This approach provides less service and a higher degree of risk to critical operations. I believe that the potential cost savings are not sufficient to justify awarding to a lower rated technical approach. Ogden's technical rating is lower than [DELETED] and the proposed cost is higher than [DELETED]. Therefore, the Ogden proposal is rated fourth."

The SSA had similar concerns about [DELETED]'s proposal and determined that even at the lowest proposed and evaluated cost, the potential cost savings were not sufficient to justify selecting this offeror's lower-rated technical approach over the superior approach of SSI. On July 18, CIA awarded the contract to SSI. This protest followed with allegations concerning the evaluation of both Ogden's and SSI's proposals and a contention that meaningful discussions were not conducted.

The evaluation of proposals is primarily a matter within the contracting agency's discretion, since it is responsible for defining its needs and for deciding on the best methods of accommodating them. Smith Bright Assocs., B-240317, Nov. 9, 1990, 90-2 CPD ¶ 382. In reviewing protests of agency evaluations, our Office will not question an agency's evaluation unless the record shows that it is unreasonable or inconsistent with the RFP's evaluation criteria. Cubic Defense Sys., Inc. and Metric Sys. Corp., B-248649.2; B-248649.3, Sept. 25, 1992, 92-2 CPD ¶ 205. The protester bears the burden of proving that an evaluation is unreasonable; mere disagreement with the agency does not render the evaluation unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450. Ogden has not met its burden here.

Ogden makes numerous allegations of unreasonable or improper assessments of specific aspects of its proposal. These include allegations that the agency unreasonably evaluated as proposal weaknesses the qualifications of specific personnel, the trade staffing skill mix, the contract phase-in plan, the logistics management plan, the training plan, and the record of Ogden's past performance. Ogden also asserts that the evaluation of its proposal was unreasonable because, as the incumbent contractor with an excellent record of award fee performance, its proposal should not receive lower scores than those of other offerors. While we do not discuss herein all of Ogden's allegations, we have reviewed them all and, as

illustrated by the following examples, find that the record (with one immaterial exception)<sup>2</sup> supports the agency's technical evaluation of Ogden's proposal.

For example, Ogden alleges that the CIA unreasonably determined that the person Ogden proposed for the position of MIS System Administrator had limited applicable experience in operation/administration of a MAXIMO/LAN<sup>3</sup> system. Ogden's BAFO stated the responsibilities of the system administrator position and that the person proposed for this position:

"has three years' experience using MAXIMO and has completed training courses in Arcserve Ver.5x, MAXIMO Report Writer School, MAXIMO Series 5 System Administrator School, MAXIMO Series 5 Basic Training, PC Support Specialist MAXIMO Series 3 Basic Training."

Since Ogden's BAFO did not list any actual system administration experience for this person, the CIA could reasonably find this person's relevant experience was limited in this respect. While Ogden contends that the CIA could not expect all experience of this individual to be described in the proposal, the RFP stated under the most important evaluation subfactor--staffing plan--that "years of experience for key personnel" would be evaluated and the record shows that the CIA informed Ogden during discussions that the agency considered this position to be key:

"Provide updated resumes for all on-site key personnel including, but not limited to . . . MIS Administrator and staff, if any."<sup>4</sup>

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<sup>2</sup>We found one immaterial instance of unreasonable evaluation with respect to Ogden's past performance under a contract with the General Accounting Office (GAO). Although the evaluators noted as a weakness Ogden's failure to provide past performance data for the GAO contract, the record shows that Ogden's BAFO provided a detailed description of its performance under that contract. However, even if Ogden's proposal received the 20 additional points for this subfactor that Ogden states that it lost because of this miscalculation (or even the maximum possible score for this subfactor--an additional 40 points), its score would still be the lowest technical score given the four proposals.

<sup>3</sup>MAXIMO is an integrated facilities management software package used by the agency. LAN means local area network.

<sup>4</sup>Ogden unpersuasively contends that, since the offeror determines who its key personnel are, this discussion question only advised it to submit a resume if it proposed the system administrator as a key personnel, which Ogden did not do.

(continued...)

In sum, the agency reasonably determined that this person lacked experience relevant to the position of MIS system administrator, and the evaluation of this as a weakness was consistent with the staffing plan subfactor.

A second example concerns the evaluation under the second most important technical evaluation subfactor--contract phase-in plan. CIA found as a weakness that Ogden's "major restructuring of trade skill mix [was] not documented in [the] transition plan." The protester essentially alleges that, as the incumbent, all of its personnel were already on board, so no delays in hiring personnel would occur. Thus, Ogden asserts that the weakness did not exist and, moreover, it was not given credit for the fact that its proposal would not have hiring delays.

Under this subfactor, the RFP identified two evaluation sub-subfactors--staff hiring plan and transition plan. The agency evaluated the weakness as existing in the transition plan, not in the hiring plan. In its evaluation of the hiring plan, the agency specifically noted as proposal strengths Ogden's retention of current staff, the continuity of Ogden's service, and Ogden's brief hiring period. Thus, the agency did credit Ogden's proposal for not having hiring delays. However, quite apart from hiring new personnel, Ogden proposed to reorganize its trade staffing patterns such that [DELETED]. Ogden's proposed phase-in plan did not provide details about the transition of this restructured skill mix and its impact on performance upon the contract start. Thus, the CIA could reasonably find that this was a weakness in Ogden's transition plan.

Ogden contends that the agency improperly double or triple counted specific weaknesses under more than one evaluation subfactor. It is improper for an agency to exaggerate the stated importance of any one evaluation criterion by considering an element of that criterion under one or more other evaluation criteria. See J.A. Jones Management Servs., Inc., B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244. However, an agency is not precluded from considering an element, such as an offeror's experience, under more than one evaluation criteria where the element is relevant and reasonably related to each criterion under which it is considered. Teledyne Brown Eng'g, B-258078; B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223. Here, the alleged examples of double or triple counting were not improper because the agency legitimately considered elements which were relevant and reasonably related to the various evaluation subfactors under which they were considered.

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<sup>4</sup>(...continued)

We think the question clearly indicated that the agency considered this on-site personnel position to be a key personnel position, for which a resume was expected to be submitted.

For instance, Ogden alleges that the CIA evaluated the experience and education of its proposed Quality Control, Safety and Environmental Manager as a weakness under the staffing plan, the quality control plan, and the health, safety and environmental plan subfactors, thus improperly triple counting the weakness. Ogden's proposal designated as a key personnel one manager responsible for the duties under both the quality control area and the health, safety and environmental area, and the CIA considered this individual's experience under three subfactors. The applicable sub-subfactors stated for these subfactors were:

"Years of experience for key personnel and completeness of resumes" (staffing plan),

"Staff dedicated to quality assurance" (quality control plan),

"Procedures for health, safety and environmental compliance reporting and inspections" (health, safety and environmental plan).

Thus, the RFP provided that the experience of key personnel would be evaluated under the staffing plan subfactor and that the staff dedicated to quality assurance would be evaluated under the quality control plan subfactor. In addition, inasmuch as Ogden's proposed health, safety and environment plan specifically stated that this manager [DELETED] it was apparent that this individual was integral to Ogden's procedures for health, safety and environmental compliance reporting and inspections, which the RFP stated would be evaluated under the health, safety and environmental plan subfactor. Thus, the evaluation of the proposed manager's experience under each subfactor was legitimately related to that subfactor and did not constitute improper multiple counting of an evaluation criterion. See id.

Ogden contends that the overall scoring of its BAFO was unreasonable because, although the CIA told Ogden during a debriefing that its BAFO had improved to some degree over its prior proposal, its score allegedly decreased rather than increased. We find no merit to this argument. The allegation is based on Ogden's computation and comparison of the mathematical average of the evaluators' scores of its prior proposal and its BAFO. However, the agency did not use average scores; the evaluators met as a group to discuss their individual ratings and arrived at a consensus score.<sup>5</sup> Ogden's consensus score increased from 593 for its prior proposal, to the present score of 668 for its BAFO. Thus, we see no merit to this contention.

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<sup>5</sup>As subjective judgments of individual evaluator's may vary greatly, there is nothing improper with this method of consensus scoring. See Syscon Servs., Inc., 68 Comp. Gen. 698 (1989), 89-2 CPD ¶ 258.

Ogden also alleges that the CIA used "risk" as an unstated evaluation factor, citing the SSA's statements that Ogden's proposed approach presented higher risks than SSI's proposed approach. However, an agency is not precluded from considering any proposal risk arising from an offeror's approach or demonstrated lack of understanding that is intrinsic to the stated evaluation factors. 4th Dimension Software, Inc.; Computer Assocs. Int'l, Inc., B-251936; B-251936.2, May 13, 1993, 93-1 CPD ¶ 420. Here, the SSA specifically stated that the risk in Ogden's proposal involved "critical operations" and arose from [DELETED]. Thus, the SSA's assessed the risk in Ogden's proposal arising from the offerors staffing approach. Since staffing plan was the most important subfactor under the most important factor-- technical/management-- consideration of risk here was intrinsic to the stated evaluation factors and was thus proper.

Ogden also alleges that the CIA did not conduct meaningful discussions consistent with the recommendation in our prior decision. We disagree. In the previously protested selection process, the CIA had compiled an extensive list of weaknesses and deficiencies for each proposal, but failed to identify almost all of these items during discussions; we found that these discussions were inadequate. In response to our recommendation, the CIA reopened discussions and provided each offeror a detailed set of questions identifying the evaluated weaknesses and deficiencies it had previously documented. Since the discussions identified all significant weaknesses and deficiencies in the proposals, they were clearly meaningful.<sup>6</sup> To the extent Ogden alleges that the agency should have reopened discussions because of the evaluated weaknesses in its BAFO, we note that the RFP announced that no further discussions were contemplated after the submission of BAFOs and that an agency need not reopen discussions to resolve technical deficiencies first introduced in an offeror's BAFO. IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380.

Ogden also protests the evaluation of SSI's proposal. However, Ogden is not an interested party for the purpose of protesting the evaluation of SSI's proposal as there is an intervening offeror with a higher technical rating and a lower cost (*i.e.*, [DELETED] in line for award ahead of Ogden. Our Bid Protest Regulations, 4 C.F.R. §§ 21.1(a) and 21.0(a) (1996), require a protester to be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., 67 Comp. Gen. 261 (1988), 88-1 CPD ¶ 151. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites.

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<sup>6</sup>We find no merit to Ogden's allegations of misleading discussions.

Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7. Ogden has not challenged the technical evaluation of [DELETED]'s higher-rated, lower cost BAFO; to the contrary, Ogden's protest frequently referenced [DELETED]'s BAFO as technically similar to Ogden's in order to lend credence to Ogden's assertion that its proposed approach was technically sound. Ogden is thus not an interested party for the purposes of protesting issues concerning the evaluation and selection of SSI's proposal, and we therefore dismiss the remainder of Ogden's protest. See Amcare Medical Servs., Inc., B-271595, July 11, 1996, 96-2 CPD ¶ 10.

The protest is denied in part and dismissed in part.

Comptroller General  
of the United States