



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

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Matter of: Ogden Support Services, Inc.

File: B-270012.3

Date: April 24, 1996

Ronald K. Henry, Esq., and Mark A. Riordan, Esq., Kaye, Scholer, Fierman, Hays & Handler, for the protester.

Dennis J. Riley, Esq., and Joseph G. Billings, Esq., for Riley & Artabane, an intervenor.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency intends to preserve the contract award in implementing the recommendations made in a prior General Accounting Office decision sustaining the protester's challenge to the award is dismissed as premature.
2. Request for reconsideration of the remedy, recommended in a prior General Accounting Office decision sustaining the requester's protest is denied because it is based on the erroneous premise that the prior decision found that the requester's proposal represented a lower cost than the awardee's proposal, when, in fact, the prior decision found the awardee's proposal represented the lower evaluated cost.

DECISION

Ogden Support Services, Inc. protests the corrective action that may be undertaken by the Central Intelligence Agency (CIA), Office of Information Technology, pursuant to our decision in Ogden Support Servs., Inc., B-270012.2, Mar. 19, 1996, 96-1 CPD ¶ 177, which sustained Ogden's protest against the award of a contract to American Systems Corporation (ASC) under request for proposals (RFP) No. 95-W001, for mail and courier support services. Additionally, the protester requests clarification/reconsideration of the remedy recommended in the prior decision.

We dismiss the protest because it merely anticipates improper action that has not yet taken place and deny the request for reconsideration because it provides no basis for reconsidering our prior decision.

Our decision found with respect to the evaluation of ASC's proposal, which had been rated technically equal to Ogden's, that there was "insufficient information and analysis in the record to establish a reasonable basis for the past performance score ASC received vis-a-vis Ogden's past performance score." We sustained the protest on the basis that it was unclear whether the agency, under a proper evaluation, would have considered the difference in the two firms' evaluated past performance to be a meaningful discriminator, such that Ogden's proposal would have been considered technically superior, or whether Ogden's and ASC's proposals would still have been considered technically equal. While not the basis for sustaining the protest, we also noted that the source selection authority misapprehended several facts when he made the award decision; specifically, he erroneously believed that ASC proposed a more accelerated phase-in schedule and offered more man-hours for the basic contract work. We concluded that if the two proposals are reasonably found technically equal, then ASC's lower evaluated cost would result in that firm's selection, but if Ogden's proposal is found technically superior to ASC's lower cost proposal, the agency would have to perform a cost/technical tradeoff to determine which proposal represents the best value to the government. We recommended that the CIA reevaluate the offerors' technical proposals, determine and document whether they are technically equal, and, if the agency determined that award should more appropriately be made to Ogden, that ASC's contract be terminated and an award made to Ogden.

Ogden protests that the CIA intends to preserve the award to ASC by papering the file in a manner that will retain ASC's past performance score from the prior evaluation, and that it will not properly account for the other flaws in the procurement as found in our prior decision. Since Ogden is speculating as to whether the agency will take appropriate action in accordance with our decision, we find that this basis of protest is premature. We do not consider premature protests. See General Elec. Canada, Inc., B-230584, June 1, 1988, 88-1 CPD ¶ 512. Thus, we dismiss Ogden's protest.

Ogden requests reconsideration/clarification on the basis that our decision found that Ogden's proposal in fact offered the lowest cost, and that Ogden should therefore receive the award, even if the proposals are considered to be technically equal. Ogden's request is based on an erroneous premise—our prior decision found that ASC's proposal, not Ogden's, represented the lower cost.

As indicated above, our decision expressly concluded that ASC's proposal reflected the lower cost, notwithstanding that Ogden's proposal offered the lower cost. The cost evaluation methodology used by the agency was to divide the number of hours offered by each offeror into that offeror's total proposed costs. This cost evaluation methodology essentially normalized the labor hours in determining which offer represented the lowest cost. ASC's proposal reflected the lowest cost because ASC's cost proposal reflected a lower hourly rate for its proposed personnel and both offerors were to supply the same 22 persons working the same hours for the

bulk of the contract work.¹ While we noted that the cost evaluation methodology had the effect of exaggerating ASC's cost advantage because the two offerors proposed different levels of efforts for the phase-in period (for which the agency did not properly account), ASC's proposal, by virtue of its lower hourly rates for the basic contract work, still represented the lowest cost, even counting ASC's greater number of hours for the phase-in period.² Ogden has not shown that our conclusion in this regard was in error and therefore provides no basis for reconsideration.

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¹ASC's proposal reflected lower hourly rates as well as a greater number of labor hours for the basic contract work because its labor rates were based on a man-year with a greater number of hours than Ogden's man-year.

²Our prior decision indicated that if a probable cost analysis had been performed, Ogden's evaluated cost would reasonably have been found even higher because of its failure to justify its proposed indirect rates.