



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

A protected decision was issued on the date below and was subject to a GAO Protective Order. This version has been redacted or approved by the parties involved for public release.

Matter of: Professional Services Group, Inc.

File: B-274289.2

Date: December 19, 1996

Stan Hinton, Esq., and Paul W. Searles, Esq., Baker & Botts, for the protester.
Rand McMains, Esq., International Boundary and Water Commission United States and Mexico, for the agency.

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

DIGEST

Agency failed to conduct meaningful discussions with the protester where during discussion the agency did not reasonably inform the protester that its proposed staffing was considered inadequate.

DECISION

Professional Services Group, Inc. (PSG) protests the award of a contract to Wheelabrator EOS, Inc. under request for proposals (RFP) No. 96-11, issued by the United States Section of the International Boundary and Water Commission (USIBWC), for operation and maintenance of the South Bay International Wastewater Treatment Plant.¹ PSG protests that it did not receive meaningful discussions.

We sustain the protest.

The RFP, issued on March 14, 1996, contemplated the award of a firm, fixed-price, contract, for a base period with 4 option years. The evaluation scheme in the RFP

¹The plant is a 25 million gallon per day facility located in San Diego County, California that treats wastewater originating in Tijuana, Baja California del Norte, Mexico, under the authority of the USIBWC.

provided for a best value award with technical/management worth more than cost/price. The technical merit factors were as follows:²

Merit Factor 1 - Professional qualifications necessary for satisfactory performance of the required services/past performance.

Merit Factor 2 - Specialized experience and technical competence in the type of work required.

Merit Factor 3 - Technical proposal quality and responsiveness to the scope of work.

Merit Factor 4 - Capacity to accomplish the work in the required time.

Merit Factor 5 - Financial stability and professional reputation of the firm.

In addition to these factors, the RFP listed several subfactors under each merit factor. Under Merit Factor 3, the RFP listed "Adequacy of the Staffing Plan" as the most important subfactor.

USIBWC received [DELETED] proposals by the closing date for the receipt of initial proposals on April 29. Both Wheelabrator and PSG submitted proposals. The proposals were evaluated by a proposal evaluation board (PEB), which determined all proposals to be technically acceptable and within the competitive range. Wheelabrator's proposal with a score of [DELETED] points was the highest rated, and PSG's proposal with a score of [DELETED] points was the third highest rated.

In letters dated June 25, USIBWC initiated discussions, in which each offeror was requested to clarify and provide more detail regarding their price proposals, and to provide a detailed staffing plan, including a schedule indicating all personnel, including operations and maintenance personnel, and the shifts during the day which they work.³ Offerors were requested to submit revised proposals by July 12. After the revised proposals were reviewed, telephonic discussions were conducted with all offerors regarding their price proposals. USIBWC then announced that "discussions" were "concluded" and that best and final offers (BAFO) were to be submitted by August 1. Wheelabrator's BAFO failed to include cost details deemed essential by the agency, which led the agency to conduct a third round of

²The RFP stated that merit factor 1 is at least three times the importance of merit factors 4 and 5, merit factors 2 and 3 are approximately equal in importance and merit factors 4 and 5 are equal in importance.

³PSG's initial proposal did not contain a detailed staff plan.

discussions with all offerors to allow Wheelabrator to address the problem; none of the other offerors received discussion questions during this round. The revised BAFOs were received on August 5. Wheelabrator's revised BAFO priced at [DELETED] received the same [DELETED] score and PSG's revised BAFO priced at [DELETED] received a [DELETED] score.

USIBWC then prepared a "source selection determination" which set forth the technical scores and prices of the five proposals. Wheelabrator had the highest technical rating and PSG the third highest rating. The determination reported "significant differences in the technical and management proposals," particularly in the area of staffing. The determination noted that Wheelabrator proposed a staff of [DELETED], whereas PSG proposed a staff of [DELETED], and concluded that in the agency's "best business judgment, the plant cannot be operated effectively with only [DELETED]." For this reason, and those involving the other offerors, USIBWC determined Wheelabrator's proposal to represent the best value and awarded the contract to it on August 13. After a debriefing, this protest was filed on September 12 with PSG protesting, among other things, that USIBWC failed to conduct meaningful discussions.⁴

In negotiated procurements, contracting agencies generally must conduct discussions with all offerors whose proposals are within the competitive range. Federal Acquisition Regulation (FAR) § 15.610(b) (FAC 90-31); E.L. Hamm & Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156. Although discussions need not be all-encompassing, they must be meaningful; that is, an agency is required to point out weaknesses or deficiencies in a proposal as specifically as practical considerations permit so that the agency leads the offeror into areas of its proposal which require amplification or correction. E.L. Hamm & Assocs., Inc., *supra*; Northrop Worldwide Aircraft Servs., Inc., B-262181, Oct. 27, 1995, 95-2 CPD ¶ 196. Discussions cannot be meaningful if an offeror is not advised, in some way, of the weaknesses, excesses, or deficiencies in its proposal that must be addressed in order for the offeror to be reasonably in line for award. Ogden Support Servs., Inc., B-270354, Feb. 28, 1996, 96-1 CPD ¶ 175. Here, USIBWC failed to conduct meaningful discussions with PSG because the agency conducted several rounds of discussions, but never once hinted to PSG that its proposed staffing was considered inadequate.

USIBWC first argues that the communications with the offerors did not constitute discussions but clarifications, and thus the requirement for meaningful discussions did not apply. This argument has no merit. Even assuming the three rounds of

⁴While PSG's protest raises a number of issues concerning the proposal evaluation, we need not consider them because we recommend below that revised proposals be obtained and reevaluated.

communications as to the offerors' pricing could not be considered discussions, a request for BAFOs constitutes discussions. Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168.

USIBWC next argues that it had no obligation to point out any concerns with regard to PSG's staffing because it was not considered a deficiency, but only a relative weakness. The record does not support this argument. PSG's initial proposal did not contain a detailed staffing plan. Under the pertinent adequacy of the staffing plan subfactor, PSG's proposal was assigned a score in the "deficient" range.⁵ PSG submitted a detailed staffing plan in response to the June 25 letter. However, according to the contracting officer, PSG's staffing plan of [DELETED] personnel "revealed inferior staffing" and was "inadequate when compared to those offered by the other offerors," and it was therefore decided not to raise PSG's score for this subfactor. PSG's proposal was rated in the "deficient" range for this subfactor up to award selection and ultimately PSG's proposed staffing, which was considered inadequate to effectively operate the facility, caused its proposal to be rejected in the award selection decision. Thus, although the agency couched its evaluation narrative in relative or comparative terms, in fact it numerically scored and otherwise treated this aspect of PSG's proposal as deficient, such that PSG's staffing had to be addressed if PSG were to have a reasonable chance for award. Accordingly, the agency was obligated to bring this matter to PSG's attention in order to satisfy its obligation to conduct meaningful discussions. Ogden Support Servs., Inc., supra.

The agency also argues that it did not have to make this matter the subject of discussions because PSG made its own business decision to propose such a low staff level. This argument has no merit. Since the staffing level proposed was considered to be a deficiency, the agency was required to provide PSG with the opportunity to either change its staffing level or persuade the agency that its lower level of staffing could satisfy the agency's requirements. Ogden Support Servs., Inc., supra; Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539.

The agency argues that the June 25 letter to PSG requesting a detailed staffing plan satisfied its obligation to conduct meaningful discussions. However, in this letter, PSG (and the other offerors) were informed that "all firms" were requested to provide a detailed staffing plan in a particular format. Such a generic request for more detailed information hardly advises PSG that the agency had concerns about PSG's level of staffing, particularly where it has been advised that the same request

⁵"Deficient" is defined in agency's evaluation plan as:

"Does not meet minimum requirement with major but correctable deficiency. Poor understanding with high risk to the [g]overnment."

has been made of the other offerors. See Advanced Sciences, Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52.

Finally, USIBWC claims that pointing out the weakness in PSG's proposal could have resulted in prohibited technical leveling since the other offerors initially proposed sufficient staffing levels. Technical leveling occurs where the agency conducts successive rounds of discussions to help an offeror to bring its proposal up to the level of other proposals by continuing to point out the same concern. FAR § 15.610(d). Since there were no technical discussions, it would not have constituted technical leveling for the agency to bring PSG's evaluated deficient staffing to its attention at least one time, particularly where, as here, the agency did seek further detail from Wheelabrator regarding its cost proposal, despite having done so previously. Price Waterhouse, *supra*; Columbia Research Corp., *supra*.

We recommend that USIBWC reopen and conduct appropriate discussions with the competitive range offerors, request revised BAFOs, and make a new source selection. If award to other than Wheelabrator is appropriate, USIBWC should terminate the contract with Wheelabrator and make award to that offeror. In addition, we recommend that the protester be reimbursed its costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, section 21.8(d)(1), 61 Fed. Reg. 39039, 39403 (1996) (to be codified at 4 C.F.R. § 21.8(d)(1)). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. Bid Protest Regulations, section 21.8(f)(1), 61 Fed. Reg. 39039, 39403 (1996) (to be codified at 4 C.F.R. § 21.8(f)(1)).

The protest is sustained.

Comptroller General
of the United States