



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Laidlaw Environmental Services (GS), Inc.

**File:** B-271903

**Date:** August 6, 1996

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## **DIGEST**

1. Protester's contention that in selecting the awardee's proposal for disposing of hazardous and nonhazardous waste the source selection board applied an unannounced evaluation criterion--proximity of proposed disposal facilities to sites covered by the solicitation--is denied where proximity of proposed disposal facilities was reasonably encompassed by the stated evaluation factors concerning technical approach and method of operation.
2. Protester's contention that the technical evaluation board (TEB) improperly evaluated proposals is denied where the record shows that the TEB evaluated in accordance with the criteria announced in the solicitation, and the record reasonably supports the evaluators' conclusions.
3. Award to offeror submitting a higher-rated, slightly higher-cost proposal is unobjectionable where the evaluation scheme announced in the solicitation gave more weight to the technical area than to cost, and the source selection board reasonably concluded that the awardee's superior proposal was worth the premium.

## **DECISION**

Laidlaw Environmental Services (GS), Inc., the incumbent, protests the award of a contract to Philip Environmental National Services, Inc. under request for proposals (RFP) No. N44255-95-R-6173, issued by the Engineering Field Activity, Northwest, Naval Facilities Engineering Command, for hazardous and nonhazardous waste disposal from the Puget Sound Naval Shipyard in Washington State. The protester contends that the agency deviated from the announced evaluation scheme and improperly evaluated the competing proposals.

We deny the protest.

## BACKGROUND

The RFP, issued December 8, 1995, contemplated award of a requirements contract for a base period, with up two 1-year option periods. Section I of the RFP stated that the services would consist of inventory, analysis, removal, transporting, treatment, storage and disposal/recycling of hazardous and nonhazardous industrial wastes from the Puget Sound Naval Shipyard and several off-station sites. Section M of the RFP listed quality (technical management and capability) and price as the only two evaluation factors, with quality considered more important than price. Within the quality factor, the RFP listed the following subfactors: (1) experience and past performance; (2) technical approach; (3) method of operation; and (4) proposed organization. The experience and past performance subfactor was equal in weight to the other three quality subfactors combined. The RFP stated that price would be evaluated for fairness and reasonableness and to determine the offeror's understanding of the work required by the RFP. Award was to be made to the responsible offeror whose proposal was deemed to be most advantageous to the government.

The agency received four proposals by the time set on January 8, 1996, for receipt of initial proposals. A technical evaluation board (TEB) evaluated proposals by rating each subfactor as either highly acceptable (HA); acceptable (A); unacceptable, but susceptible of being made acceptable (UB); or unacceptable (U), and assigning an overall proposal rating. Price was evaluated separately.

Following the initial evaluation, one of the four proposals was rejected as unacceptable; the other three proposals, including the protester's and the awardee's, were each rated "UB." The agency then conducted discussions with the three firms whose proposals remained in the competition, and requested and received best and final offers (BAFO). The TEB reevaluated and ranked the proposals as follows:

Offeror	Rating	Rank	Price
Philip	HA	1	\$10,285,048
B	HA	2	12,669,669
Laidlaw	A	3	10,024,647

A source selection board (SSB) reviewed these results and concluded that Philip's higher-rated proposal was worth its slightly higher price and recommended award to that firm. The contracting officer awarded the contract to Philip on April 18. This protest to our Office followed a debriefing by the agency.

## PROTESTER'S CONTENTIONS

Laidlaw generally contends that the agency deviated from the evaluation scheme announced in the RFP in two respects. First, it maintains that in selecting Philip for award, the SSB improperly used an unannounced evaluation factor--proximity--when it emphasized the geographic location of Philip's proposed facilities. Second, the protester argues that the agency improperly evaluated the proposals under the experience and past performance subfactor. Laidlaw also maintains that selection of Philip's higher-priced proposal was improper.

## DISCUSSION

Laidlaw argues that the SSB applied an unannounced evaluation criterion--proximity--in evaluating Philip's proposal. In this regard, the record shows that Philip owns the four treatment, storage, and disposal facilities (TSDF) it proposed to use, all of which are located in Washington State, where the contract is to be performed. The TEB noted that Philip's ownership of the facilities it proposed meant that the contractor could be expected to exert tight control over scheduling transporters, as well as prevent problems associated with temporary storage of waste in the local area. In addition, the TEB noted that the proximity of the proposed TSDFs meant an enhanced ability for Philip to effectively meet the government's needs, particularly with respect to timely pick-ups and delivery, and facilitate quality assurance by the agency. The TEB also found that local facilities would facilitate the agency's oversight of the contractor's compliance with the regulatory and statutory requirements announced in the RFP.

Solicitations must identify all significant factors and any significant subfactors that will be considered in awarding the contract, and the evaluation of proposals must be based on the factors set forth in the solicitation. Federal Acquisition Regulation §§ 15.406-5, 15.605(d). We see no violation of that rule here.

The RFP specifically required offerors to explain the expected timeframes for processing waste samples at the proposed laboratories. In this connection, offerors were also required to describe the laboratory testing facilities to be used, including the location of the facilities and the method of delivering samples, as well as the timeframes required for completing and validating laboratory analyses. The RFP also reflected the agency's concern for timely contract performance. In this regard, under the method of operation subfactor, offerors were specifically required to describe their response times during normal operation as well as during emergencies, and to describe procedures for ensuring timely and effective responses to meet the government's needs, including the contractor's ability to respond to emergency situations. The RFP also required offerors to describe their proposed

methods of treatment, storage, and disposal of waste, and to provide a description of the proposed disposal facilities, including their location and capacity, in order to permit the agency to evaluate the offerors' capability to meet contract requirements.

These provisions clearly reflected the agency's concern with contractor performance, including response times during both normal operation and in emergencies. Such a concern is encompassed by both the technical approach and the method of operation subfactors under which the features, advantages, and disadvantages of the proposed facilities logically were to be evaluated. In this regard, we point out that not every evaluation consideration has to be set forth in an RFP—agencies properly may consider evaluation elements that logically are encompassed by the evaluation factors and subfactors contained in the RFP. See generally Akal Sec., Inc., B-271385.3, July 10, 1996, 96-2 CPD ¶ \_\_\_. Accordingly, we find nothing improper in the TEB's consideration of proximity of the proposed facilities in the evaluation of proposals.

Next, the protester argues that the agency improperly evaluated the proposals under the experience and past performance subfactor. Specifically, Laidlaw complains that its proposal was rated acceptable under the experience and past performance evaluation subfactor, while Philip's proposal was rated highly acceptable. In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. Based on our review of the record, we find no basis to object to the evaluation under this subfactor.

The TEB concluded that Laidlaw's proposal demonstrated an extensive range of prior experience, including the current contract; a similar contract for the Public Works Center, San Francisco; and numerous other contracts with the Defense Marketing and Reutilization Service. The TEB noted, however, that Laidlaw had experienced performance problems in its current contract, particularly with respect to returning manifests within the times required by the contract; modifying manifests after shipment; and receiving wastes without signing the required manifest. The TEB not only concluded that these were weaknesses in Laidlaw's past performance, but that these practices violated applicable regulations controlling waste disposal.

In addition, the TEB found that Laidlaw had experienced high turnover among its key personnel, resulting in substandard work quality and affecting "the timeliness of profile approvals and the identification of treatment, storage, and disposal methods." The record shows that while the evaluators concluded that the firm had taken some steps to address these performance problems, the TEB was not convinced that the proposed solutions would be effective in the long run. The protester does not argue that the agency erred in identifying any of these weaknesses which resulted in a

rating of acceptable instead of highly acceptable. Accordingly, we see nothing unreasonable in the TEB's decision to rate Laidlaw's proposal as acceptable under this subfactor.

As for the awardee's proposal, the record shows that Philip's highly acceptable rating was based in part on its 26 years of waste management experience, including a similar contract covering the Puget Sound Naval Shipyard. Also, the TEB found that the firm proposed qualified personnel at "efficient staffing levels," with extensive experience with similar contracts. Based on customer interviews, the evaluators found that Philip's performance had earned "high marks" for the firm's commitment to customer service and "extremely timely processing and returning of profiles and manifests." In addition, the TEB found Philip's use of experienced, qualified personnel another strength in its proposal. Based on our review, we conclude that the record reasonably supports the highly acceptable rating assigned Philip's proposal under this subfactor.<sup>1</sup>

As a final matter, Laidlaw contends that the selection of Philip's higher-priced proposal was improper. In a negotiated procurement, there is no requirement that an award be made on the basis of lowest price unless the RFP so specifies. Henry H. Hackett & Sons, B-237181, Feb. 1, 1990, 90-1 CPD ¶ 136. Price/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. Awards to offerors with higher technical scores and higher prices are proper so long as the result is consistent with the evaluation criteria and the procuring agency reasonably determines that the technical difference is worth the cost premium. Bendix Field Eng'g Corp., B-241156, Jan. 16, 1991, 91-1 CPD ¶ 44.

Here, we conclude that the agency had a reasonable basis to award to Philip at its higher price. As stated above, the SSB documented its recommendation for award in a detailed statement. After examining the strengths and weaknesses of the protester's and the awardee's proposal, the SSB concluded that the most apparent distinction between the two was in the area of experience and past performance where Philip's proposal was rated highly acceptable, while Laidlaw's proposal was

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<sup>1</sup>Laidlaw also argues that the TEB improperly evaluated Philip's proposal by crediting the company for the favorable past performance of a predecessor firm to Philip. In this regard, our cases hold that an agency may properly consider the experience of a predecessor firm. See, e.g., Kunkel-Wiese, Inc., B-233133, Jan. 31, 1989, 89-1 CPD ¶ 98. Except for its general statements that the predecessor firm performed under different conditions than contemplated under the RFP, Laidlaw does not explain why the agency should ignore the predecessor firm's performance on similar contracts.

rated acceptable. As discussed above, the record reasonably supports these ratings. On the other hand, the SSB noted that the TEB remained concerned over the protester's past performance; the high turnover rate among Laidlaw's key personnel; the failure of the protester's responses to discussion questions to convince the TEB that Laidlaw adequately appreciated agency concerns; and Laidlaw's recurrent instances of regulatory noncompliance. Under these circumstances, the SSB's conclusion that Philip's proposal was most advantageous to the government is unobjectionable. See Reflectone Training Sys., Inc.; Hernandez Eng'g, Inc., B-261224; B-261224.2, Aug. 30, 1995, 95-2 CPD ¶ 95.

The protest is denied.

Comptroller General  
of the United States