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Comptroller General  
of the United States

United States General Accounting Office  
Washington, DC 20548

**Matter of:** International Resources Recovery, Inc.

**File:** B-287160

**Date:** March 30, 2001

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Sam Z. Gdanski, Esq., for the protester.

Clarence D. Long, III, Esq., and Wayne A. Warner, Esq., Department of the Air Force, for the agency.

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#### **DIGEST**

Discussions with protester concerning unrealistic prices were meaningful where agency identified specific line item prices that it considered too low and stated that the overall price was too low, and provided the protester an unrestricted opportunity to submit final proposal revisions.

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#### **DECISION**

International Resources Recovery, Inc. (IRRI) protests an award to Urrutia, Inc. under request for proposals (RFP) No. F08651-00-R-0035, issued by the Department of the Air Force for refuse, recycling, and compost collection and disposal services at Eglin Air Force Base, Florida.

We deny the protest.

The RFP, issued July 12, 2000, contemplated the award of a fixed-price, requirements contract for a base period with 4 option years. The RFP included 150 contract line item numbers (CLIN). The RFP stated an evaluation scheme under which the offer deemed most advantageous to the government would be selected for award from among the technically acceptable proposals, based on a trade-off analysis of past performance and price.<sup>1</sup> The RFP stated that past performance is significantly more important than price. RFP at 52.

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<sup>1</sup> The RFP did not require technical proposals; rather, an offeror only had to include a statement that it can meet the requirements and specifications of the RFP without exception. RFP at 52.

The RFP required past performance information for five of an offeror's most recent and relevant contracts as well as past performance questionnaires from at least three of the contract references. Although the references were to send the questionnaires directly to the Air Force, the RFP stated that it was "the sole responsibility" of the offeror to track and ensure that questionnaires were received by the Air Force by proposal submission date. The RFP stated that an adjectival past performance rating would be assigned to each offeror based on the offeror's recent and relevant contract performance as determined from the past performance questionnaires and information independently obtained from other government and commercial sources. The adjectival rating was to reflect the agency's assessment of confidence in determining an offeror's ability to perform the solicited contract requirements. The RFP stated six possible ratings ranging from a high of exceptional/high confidence to a low of unsatisfactory/no confidence, and included a rating of neutral/unknown confidence for offerors with no relevant past performance history. RFP at 52-54.

Price was to be evaluated for reasonableness and realism. The RFP stated that unrealistically low or high prices may be grounds for eliminating a proposal from consideration for award on the basis that the offeror either does not understand the requirement or has made an improvident proposal. RFP at 54.

The RFP stated that the agency would make award without discussions, but reserved the right to conduct discussions if it was deemed in the best interests of the government to do so. The closing date for submission of proposals was August 18. RFP amend. 0002.

The Air Force received nine proposals. All proposals were determined to be technically acceptable. The agency conducted discussions with all nine offerors between August 28 and November 15.<sup>2</sup> Agency Report at 4.

Discussions with IRRI addressed both past performance and price. By letter of August 28, the agency identified and requested correction of discrepancies between IRRI's unit and extended prices on the CLINs, and stated that the agency had received only two of the three past performance questionnaires required by the RFP. Agency Report, Tab 14, IRRI Discussion Letter (Aug. 28, 2000). Following submission of proposal revisions and other communications between the agency and IRRI, the agency's final discussion letter stated that IRRI's prices on 75 CLINs as well as its overall price appeared low, requested IRRI to verify its prices, and stated that the agency still had not receive additional past performance questionnaires for IRRI. This letter also stated the following:

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<sup>2</sup> The agency sent letters to the offerors on August 28, which were not intended to constitute discussions but which the agency subsequently determined had indeed opened discussions. Agency Report, Tab 17, Memorandum for Record (Aug. 31, 2000).

This concludes discussions. Your firm is hereby provided the opportunity to submit a Final Proposal Revision [which] must be received . . . by 28 Nov 00, 4:30 PM . . .

Agency Report, Tab 20, IRRI Discussion Letter (Nov. 15, 2000).

The results of the agency's evaluation of Urrutia and IRRI final proposals were as follows:

Offeror	Past Performance	Price
Government Estimate	--	\$6,066,666
Urrutia	Exceptional/High Confidence	5,881,556
IRRI	Neutral/Unknown Confidence <sup>3</sup>	3,358,955

Agency Report at 4. IRRI's price was substantially lower than Urrutia's. Of the remaining seven proposals, the proposed prices ranged from 9.9 percent lower to 19.9 percent higher than Urrutia's price. Agency Report, Tab 22, Source Selection Decision, at 1.

IRRI's final proposed price reflected a slight increase over its initial price; however, it did not otherwise address the basis for its low price. The Air Force determined that IRRI's price was unrealistically low and that the offeror did not understand the requirements. Agency Report, Tab 23, Price Competition Memorandum, at 5. The bases for this determination were that the structure of IRRI's proposed CLIN unit prices were inconsistent with the extended prices, even after this issue was addressed with IRRI during discussions, and IRRI's prices were significantly lower than the government estimate and all of the other offerors' prices. Id.; Agency Report, Tab 22, Source Selection Decision.

The source selection authority (SSA) determined that Urrutia's proposal represented the best value to the government. On December 26, the Air Force awarded the contract to Urrutia. This protest followed.

IRRI alleges that the agency failed to conduct meaningful discussions because it failed to afford IRRI an opportunity to respond to the agency's concerns about IRRI's low prices. Essentially, IRRI contends that, since the November 15 discussion letter notifying IRRI of the Air Force's concern about IRRI's prices also

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<sup>3</sup> The agency received only two past performance questionnaires for IRRI. Agency Report, Tab 18, Evaluation of IRRI's Past Performance, at 18-19. The agency reviewed the information on these contracts and the remaining contract history identified in IRRI's proposal. All of IRRI's experience was on small waste collection contracts, which the agency determined were not relevant to the solicited requirements in terms of size or complexity, and thus assigned IRRI a neutral rating for past performance. Id.; Agency Report, Tab 21, Proposal Evaluation Report, at 3.

stated, "This concludes discussions," the agency denied IRRI any opportunity to address this concern.

When conducted, discussions must be meaningful, that is, an agency must point out weaknesses and deficiencies in a proposal as specifically as practical so to lead the offeror into areas of its proposal that require amplification or correction, and afford the offeror an opportunity to revise or clarify its proposal after discussions. Mechanical Contractors, S.A., B-277916.2, Mar. 4, 1998, 98-1 CPD ¶ 68 at 4; Quality Elevator Co., Inc., B-271899, Aug. 28, 1996, 96-2 CPD ¶ 89 at 7.

The agency's discussions with IRRI specifically identified the individual CLINs for which the agency considered IRRI's proposed prices too low, which constituted half of the CLINs, as well as that IRRI's overall price was too low. It then afforded IRRI an unrestricted opportunity to submit final proposal revisions. The record thus shows that the Air Force conducted meaningful discussions on the issue. See SEEMA, Inc., B-277988, Dec. 16, 1997, 98-1 CPD ¶ 12 at 5 n.4. IRRI has provided no persuasive basis to support its contention that the terms of the agency's November 15 letter, which specifically invited final proposal revisions, precluded IRRI from presenting justification for its low prices with its final proposal revisions. Although IRRI's protest submissions now offer an explanation for its low prices, the protester could have provided this information in response to the concerns raised by the agency during discussions. It did not do so, and the agency reasonably evaluated the proposal based on IRRI's failure to address the agency's stated concerns. See Quality Elevator Co., Inc., *supra*, at 8-9.

IRRI also alleges that the agency's source selection decision is not based on a tradeoff between past performance and price consistent with the evaluation plan stated in the RFP. This protest basis is meritless. The source selection decision stated the differences in price and past performance ratings between each proposal and the awardee's proposal before determining that Urrutia's represented the best value under the stated price/past performance tradeoff plan. Agency Report, Tab 22, Source Selection Decision. In particular, the source selection decision stated that IRRI's price was unrealistically low. The face of the source selection document thus belies the protester's charge that the SSA did not consider the price differences between proposals in the selection decision. Although the SSA also emphasized the superior past performance record of Urrutia, that emphasis is entirely consistent with the greater importance of past performance over price in the evaluation plan stated in the RFP, and does not show, as the protester alleges, that the SSA did not consider price in the selection decision.

The protest is denied.

Anthony H. Gamboa  
General Counsel