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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Mechanical Contractors, S.A.

**File:** B-277916.2

**Date:** March 4, 1998

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Fredrick Kunkel for the protester.

Carlos A. De Obaldia, Esq., De Obaldia & Garcia De Paredes, for Formal Management Systems, Inc., an intervenor.

Glenn A. Heisler, Esq., Panama Canal Commission, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Contracting agency did not conduct meaningful discussions with the protester, where the agency did not inform the protester of the deficiencies in its proposal, the deficiencies were essentially informational in nature, and the contracting officer cited the deficiencies as reasons for not selecting the protester's proposal for contract award.

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## **DECISION**

Mechanical Contractors, S.A. (MCSA) protests the award of a firm, fixed-price contract to Formal Management Systems, Inc. (FMS), under request for proposals (RFP) No. CC-97-33, issued by the Panama Canal Commission (PCC) for cleaning and painting of four miter gate leaves in the Panama Canal. The contract was awarded to FMS on August 21, 1997. MCSA protested the award and, in Mechanical Contractors, S.A., B-277916, Oct. 27, 1997, 97-2 CPD ¶ 121, we sustained MCSA's protest because the evaluations of MCSA's and FMS's proposals were not adequately supported and lacked reasonable bases. Id. at 3-6. We recommended, among other things, that the PCC reevaluate both MCSA's and FMS's proposals and make a new selection decision. Id. at 7.

After reevaluating the proposals, the PCC affirmed its original decision to award FMS the contract. MCSA protests that the agency improperly did not hold discussions with it concerning deficiencies that the new evaluation board found in MCSA's proposal during the reevaluation. MCSA also contends that the new evaluation board unreasonably downgraded its proposal.

We sustain the protest.

Issued on May 12, 1997, the RFP solicited proposals for abrasive blast cleaning and exterior painting above the water line using inorganic zinc primer and coal tar polyurethane; and below the water line using hot-applied coal tar enamel; and for performing mechanical, electrical, and other related work. The RFP specified that the work would be performed in 13 separate phases and included performance specifications describing in great detail the manner in which the work was to be done. Offerors were to submit technical proposals and price schedules.

Technical proposals were to be evaluated on the basis of two equally weighted technical factors (worth 100 technical points each): technical approach and performance capability. The technical approach factor included seven subfactors: (1) removal of existing coatings; (2) surface preparation and paint application procedures; (3) equipment to be utilized; (4) safety plan; (5) ventilation system; (6) air cleaning system; and (7) handling and disposal of waste materials. The performance capability factor included five subfactors: (1) organization; (2) specific personnel; (3) specialized experience; (4) past performance; and (5) quality control plan. The RFP stated that price would be evaluated for fairness and reasonableness. The RFP further stated that the contract would be awarded to the offeror whose proposal was determined to be most advantageous to the government after consideration of price and other evaluation factors. In determining which proposal was most advantageous, the RFP indicated that the agency would consider the relative advantages and disadvantages of offers and the relative price for each technical point received by each offer.

Three proposals, including those of MCSA and FMS, were received by the July 3, 1997, deadline for submission. After evaluation of the technical portion of each proposal by the evaluation board, all three proposals were included in the competitive range.<sup>1</sup> Subsequently, each offeror was advised of areas of its proposal which needed to be further addressed and each was requested to submit a best and final offer (BAFO). The BAFO scores were as follows:

|      | Technical Approach | Performance Capability | Total Points  |
|------|--------------------|------------------------|---------------|
| MCSA | 60.85 points       | 66.2 points            | 127.05 points |
| FMS  | 72.7 points        | 81.55 points           | 154.25 points |

MCSA's price of \$2,564,500 was lower than the FMS price of \$2,640,000. The evaluation board performed a price/technical tradeoff analysis and determined that the FMS proposal was the most advantageous because it had a lower price per technical point than the MCSA proposal. The evaluation board's recommendation

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<sup>1</sup>The third offeror's proposal is not relevant and will not be discussed further.

was adopted by the source selection official, and the contract was awarded to FMS. Shortly thereafter, MCSA filed its original protest, which we sustained because we found that the technical evaluation was not adequately documented and because there were multiple, material errors in the PCC's evaluation of both MCSA's and FMS's proposals on the specialized experience and past performance evaluation subfactors of the performance capability evaluation factor. In light of the conclusions contained in our decision and the prejudicial errors contained in the evaluation, we recommended that the PCC reevaluate both proposals; document the reevaluation; and make a new selection decision.<sup>2</sup>

Subsequently, the PCC empaneled a new evaluation board and reevaluated MCSA's and FMS's proposals. The new evaluation board did not limit its reevaluation to those portions of the original evaluation in which we had found prejudicial errors (i.e., the specialized experience and past performance evaluation subfactors). The PCC also decreased the weight given to the specialized experience and past performance evaluation subfactors before conducting its de novo reevaluation. Based upon the FMS proposal's higher technical score in the reevaluation, the evaluation board recommended that the award to FMS be affirmed.

The contracting officer made several revisions to the evaluation board's scoring, and the revised BAFO scores were as follows:

|      | Technical Approach | Performance Capability | Total Points  |
|------|--------------------|------------------------|---------------|
| MCSA | 50.0 points        | 64.0 points            | 114.0 points  |
| FMS  | 69.5 points        | 71.25 points           | 141.25 points |

After conducting a cost/technical tradeoff analysis, which favored the award to FMS, the contracting officer looked at the advantages and disadvantages of both proposals. Based primarily upon the evaluation board's determinations that MCSA's proposal was deficient on three items (i.e., removal of existing coatings, surface

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<sup>2</sup>See Mechanical Contractors, S.A., supra, for a detailed discussion of the circumstances of this procurement, MCSA's original protest arguments, PCC's responses, and our rationale for sustaining that protest.

preparation and paint applications, and specific personnel), the contracting officer concluded that: "In my opinion the project's schedule would be put at risk were the contract awarded to [MCSA] since, based on the information submitted, it is not established that [MCSA] has a good understanding of all phases of the work."

By letter of November 13, 1997, the contracting officer affirmed the award to FMS and notified MCSA of his decision. After being debriefed, MCSA filed this protest. The head of the contracting activity determined that urgent and compelling circumstances would not permit the PCC to await our resolution of the protest and authorized FMS to proceed with performance under the contract.

The protester points out that, upon reevaluation, its proposal received poor ratings (25 percent) on two evaluation subfactors--the removal of existing coatings subfactor of the technical approach evaluation factor and the specific personnel subfactor of the performance capability evaluation factor. MCSA also points out that its proposal received a fair rating (49 percent) upon reevaluation on the surface preparation and paint application procedures subfactor of the technical approach evaluation factor. MCSA argues that the PCC should have held discussions with it concerning these perceived deficiencies because the reevaluation went beyond the scope of the original protest (the original protest and our decision on it were limited to a discussion of the PCC's evaluation of the specialized experience and past performance evaluation subfactors of the performance capability evaluation factor).

In negotiated procurements, contracting agencies generally must conduct discussions with all offerors whose proposals are within the competitive range. 41 U.S.C. § 253b(d)(1)(A) (1994); Federal Acquisition Regulation § 15.610(b) (June 1997). 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 so that the agency leads the offeror into areas of its proposal which require amplification or correction. Professional Servs. Group, Inc., B-274289.2, Dec. 19, 1996, 97-1 CPD ¶ 54 at 3. Discussions cannot be meaningful if an offeror is not advised of the weaknesses, deficiencies, or excesses that must be addressed in order for the offeror to be in line for the award. CitiWest Properties, Inc., B-274689.4, Nov. 26, 1997, 98-1 CPD ¶ 3 at 5; Columbia Research Corp., B-247631, June 22, 1992, 92-1 CPD ¶ 539 at 5.

In his November 10, 1997, source selection memorandum, the contracting officer cited three deficiencies that the new evaluation board found in MCSA's proposal as reasons for not selecting MCSA's proposal for contract award. In his November 13 letter notifying MCSA that the award to FMS was affirmed, the contracting officer summarized the three deficiencies of MCSA's proposals as follows:

- a. Removal of existing coating from the interior and the exterior of the miter gates: You did not include all the information required by

the RFP, the description of the work was not adequate for the work required, and you did not show good understanding of the work.

b. Surface preparation and paint application procedure: The proposal did not include all required information, nor does it give details of the different activities to be performed.

c. Specific Personnel: You did not include all required information, and the information submitted was inadequate.

The record shows that the original evaluation board rated MCSA's proposal as excellent or better on the removal of existing coatings, surface preparations and paint application procedures, and specific personnel evaluation subfactors; therefore, the PCC did not conduct discussions with MCSA on areas of its proposal that related to these subfactors after the original evaluation was completed. In its de novo reevaluation, the new evaluation board severely downgraded MCSA's proposal, finding deficiencies on each of these evaluation subfactors, but the PCC did not hold discussions with MCSA regarding the deficiencies found in MCSA's proposal. Because the perceived deficiencies were critical to the contracting officer's decision not to select MCSA's proposal, we think that the PCC should have conducted discussions with MCSA concerning these matters and allowed MCSA an opportunity to revise or clarify its proposal after discussions. CitiWest Properties, Inc., supra; Columbia Research Corp., supra.

Removal of existing coatings was one of the two equally weighted, most important evaluation subfactors of the technical approach evaluation factor. The original evaluation board gave MCSA's proposal a 60-percent (excellent) rating on this subfactor. Upon reevaluation of MCSA's same proposal, the new evaluation board severely downgraded the proposal, giving it only a 25-percent (poor) rating on this subfactor, which, under the PCC's evaluation guidelines, meant that the proposal contained some deficiencies which could be corrected with further explanation/revision by the offeror. The new evaluation board criticized the proposal's narrative because it did not describe who would perform the various activities and did not indicate the labor or equipment available to perform the work, stating: "The description of work is not adequate for the work required. It does not show that [MCSA] understands fully the project."

Surface preparation and paint application procedures was the second of the two equally weighted, most important evaluation subfactors of the technical approach evaluation factor. The original evaluation board gave MCSA's proposal a 60-percent (excellent) rating on this subfactor. Upon reevaluation, the new evaluation board downgraded the proposal, giving it just a 49-percent (fair) rating on this subfactor, which, under the PCC's evaluation guidelines meant that the proposal met all of the RFP requirements but that its disadvantages outweighed its advantages. The new evaluation board criticized MCSA's proposal for failing to contain information on several different items of work that would be required as part of surface preparation and painting.

Specific personnel was the third most important subfactor within the performance capability evaluation factor. The original board gave MCSA's proposal a 77-percent (outstanding) rating on this subfactor. Upon reevaluation, the new evaluation board severely downgraded MCSA's proposal, giving it only a 25-percent (poor) rating on this subfactor, stating:

Key personnel information was not submitted in accordance with solicitation requirements. Most of the proposed key personnel do not meet the minimum requirements of the project. Because the presentation of the key personnel information is so **poor**, the probability of success is questionable.<sup>3</sup>

It is clear from the evaluation record that almost all of the deficiencies and weaknesses that the new evaluation board found in MCSA's proposal were informational in nature. Where, as here, deficiencies and weaknesses identified in a proposal are basically informational in nature and discussions are held, during the discussions, the agency should alert the protester to the perceived informational gaps in its proposal and allow the protester an opportunity to provide the desired information. See Techniarts Eng'g, B-234434, June 7, 1989, 89-1 CPD ¶ 531 at 6. Although the PCC asked MCSA to clarify certain portions of its original proposal and allowed MCSA to submit a BAFO incorporating MCSA's clarifications after the original evaluation, such action did not constitute meaningful discussions because those clarifications were solicited before the reevaluation took place and MCSA was not informed of the critical deficiencies that the second evaluation board found in MCSA's proposal upon reevaluation. CitiWest Properties, Inc., *supra*, at 5. MCSA was competitively prejudiced by the agency's failure to hold discussions on the deficiencies identified in the reevaluation since the contracting officer specifically cited these later-discovered deficiencies in his November 10, 1997, source-selection memorandum as the "very basic difference" between FMS's and MCSA's offers, leading him to conclude that the contract schedule would be at risk if the contract were awarded to MCSA and to affirm the earlier award to FMS. As the deficiencies were therefore critical to the PCC's decision to select FMS's proposal over MCSA's, the PCC was required to hold discussions concerning these matters and to allow

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<sup>3</sup>The original evaluation board apparently did not believe there was any great performance risk associated with MCSA's proposal, since it concluded in its overall summary:

[MCSA] presents an amalgamation of very strong, well experienced and internationally reputed companies . . . . Their plan was very well presented and left no doubt in the Committee that [MCSA] performance would be in accordance with the expected levels.

MCSA an opportunity to respond to the agency's concerns with additional clarifications or revisions in a new BAFO.<sup>4</sup> Id.

Accordingly, we sustain the protest. However, we are not recommending that the PCC hold discussions with MCSA. The RFP required that all work be completed within 9 months after performance began. Notwithstanding MCSA's second protest, the PCC authorized FMS to proceed with performance on November 26, 1997, on the basis of urgent and compelling circumstances, roughly 3 months ago. On February 9, 1998, the PCC informed our Office that FMS had already completed roughly 25 percent of the contract work. In view of the PCC's determination that urgent and compelling circumstances exist, and because it would take at least several additional weeks for the PCC to conduct discussions with both offerors and to receive and evaluate new BAFOs, we believe that it would be futile to recommend reopening discussions at this time. We therefore recommend that MCSA be reimbursed for its proposal preparation costs as well as the reasonable costs of filing and pursuing this protest. 4 C.F.R. § 21.8(d)(1), (2) (1997). In accordance with 4 C.F.R. § 21.8(f)(1), the protester's certified claim for such costs,

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<sup>4</sup>The agency states that, after reviewing our decision on MCSA's original protest, it was uncertain whether our recommendation contemplated reopening discussions and requesting new BAFOs. The agency reports that, the day after our original decision was issued, its attorney contacted the GAO attorney who had handled the original protest and was advised that it did not. PCC contends that, in deciding not to hold discussions with MSCA, it relied on the GAO attorney's advice. The GAO attorney merely confirmed that our recommendation did not contemplate renewed discussions or a second request for BAFO's. The PCC attorney did not tell the GAO attorney that the PCC intended to conduct a de novo reevaluation of the proposals or to reevaluate proposals in areas that were outside the scope of the original protest.

In recommending corrective action, our Office cannot anticipate every scenario that may arise. Our recommendations therefore necessarily leave the details of implementing appropriate corrective action to the discretion and judgment of the agency. See CitiWest Properties, Inc., supra, at 6. Such discretion must be exercised reasonably and in a fashion that remedies the procurement impropriety that was the basis for our protest recommendation. Id. Here, the PCC's corrective action was not reasonable because, as discussed above, it resulted in MCSA being deprived of meaningful discussions.

detailing the time expended and the costs incurred, must be submitted directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Comptroller General  
of the United States