



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Matter of: Consolidated Engineering Services, Inc

File: B-279565.2; B-279565.3

Date: June 26, 1998

Thomas J. Madden, Esq., Jerome S. Gabig, Jr., Esq., and Johana A. Reed, Esq., Venable, Baetjer, Howard & Civiletti, for the protester.
Jacob B. Pompan, Esq., and Gerald H. Werfel, Esq., Pompan, Murray, Ruffner & Werfel, for Halifax Technical Services, Inc., an intervenor.
Richard A. Marchese, Esq., Department of Housing & Urban Development, for the agency.
David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where (1) protester argues that agency's relative assessment of proposals improperly failed to reflect specific beneficial features that allegedly made its proposal superior to awardee's, (2) it appears from record that the features in fact may have offered some significant benefit, and (3) the agency only generally asserts that the evaluation took the features offered by all offerors into consideration, without explaining or providing evidence showing why the protester's proposed features did not result in a superior score for protester's proposal under the relevant evaluation factor.
2. Agency improperly downgraded protester's proposal relative to awardee's based on awardee's more detailed description of proposed elevator maintenance subcontractor's experience; since protester and awardee proposed same subcontractor, they should have received same score for subcontractor's experience.

DECISION

Consolidated Engineering Services, Inc. (CESI) protests the Department of Housing & Urban Development's (HUD) award of a contract to Halifax Technical Services, Inc., under request for proposals (RFP) No. DU100C000018529, for commercial facilities management services with respect to the HUD headquarters building in Washington, D.C. CESI challenges the evaluation results.

We sustain the protest.

The solicitation provided for award of a contract for a base year with four 1-year options, for custodial, security, operation and maintenance, elevator maintenance, landscape, mail, messenger, audio-visual, moving/receiving, parking, painting, electrical, space alteration, and locksmith services. Award was to be made on a best value basis, with technical factors more significant than cost/price (the contract is to contain both cost-reimbursement and fixed-price elements). A maximum of 300 evaluation points were to be available under two technical evaluation factors--management and plan of operations (140 points), and experience and qualifications (160 points)--each of which included a number of subfactors. An additional maximum of 14 extra points were available under a small business subcontracting program evaluation factor.

HUD received proposals from Halifax, CESI and six other offerors; Halifax's, CESI's and three other proposals were included in the competitive range. At the conclusion of discussions, the agency requested best and final offers (BAFO). Based upon the evaluation of BAFOs, the technical evaluation panel (TEP) recommended award to Halifax. The TEP noted that Halifax's proposal received the highest technical score--289 points, compared to CESI's next highest 282 points--and found Halifax's proposal to be "technically superior because it received the maximum scores in factors for which other offerors had weaknesses." Source Selection Recommendation of February 5, 1998, at 4. Further, Halifax's evaluated cost, \$45,159,742, was slightly lower than CESI's \$45,595,733. (Another proposal was slightly lower-cost than Halifax's, but the agency determined that this was offset by Halifax's proposal's technical superiority.) The source selection official concurred in the TEP's recommendation and made award to Halifax.

EVALUATION OF BENEFICIAL FEATURES

CESI argues that the evaluation of Halifax's and CESI's proposals failed to reflect certain beneficial features of CESI's proposal which warranted CESI's proposal being rated technically superior to Halifax's. In this regard, although CESI's proposal received the maximum 140 available points under the management and plan of operations factor, Halifax's also received a near perfect rating of 139 points.

In reviewing protests against allegedly improper evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and in accord with the RFP's stated evaluation criteria. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176 at 2-3. Where a best value evaluation approach is to be employed, offerors have a reasonable basis for expecting technical proposals to be evaluated and ranked in a way that reflects an offeror's relative technical superiority over a competitor. National Test Pilot School, B-237503, Feb. 27, 1990, 90-1 CPD ¶ 238 at 3-4. This is particularly so when technical factors are weighted more heavily than price. Tritek Corp., B-247675.2, Aug. 6, 1992, 92-2 CPD ¶ 82 at 5.

In order for us to find an agency's selection determination reasonable, an agency must present adequate documentation to support that determination. Arco Management of Washington, D.C., Inc., B-248653, Sept. 11, 1992, 92-2 CPD ¶ 173 at 3. While adjectival ratings and point scores are useful as guides to decision-making, for purposes of our review they must be supported by documentation of the relative differences between proposals, their weaknesses and risks, and the basis and reasons for the selection decision. Federal Acquisition Regulation § 15.612(d)(2) (June 1997); Engineering and Computation, Inc., *supra*, at 3.

We agree with the protester that the record does not establish that HUD properly evaluated the relative merits of CESI's and Halifax's proposals. Specifically, neither the contemporaneous evaluation record nor the agency's response to CESI's protest adequately explains why the two proposals were rated similarly despite the beneficial features enumerated in CESI's proposal, which it again set forth in its protest, Protest of March 20, 1998, at 11-12 and Attachment 3, and again discussed at length in its comments on the agency report. Comments of May 13, 1998, at 5-7 and Attachment 2. Instead of providing such an explanation, or supporting documentation with the necessary information, HUD stated conclusorily in its report that "[a]ll information provided was considered by the TEP," that "[w]here proposals contained various attributes which may not have been directly called for in the solicitation, the TEP took that information into consideration," that both CESI's and Halifax's proposals were "excellent in this area," and that the evaluation was "in accordance with the requirements of the RFP and . . . reasonable." Report of May 4, 1998 at 15-16. Aside from these conclusory statements, the agency has not specifically addressed, and the record does not show, why the specific features proposed by CESI under the management and plan of operations factor did not warrant according CESI's proposal a significant advantage over Halifax's under this factor.¹

¹In a May 19 supplemental report, HUD again failed to provide any specific explanation of the evaluation of CESI's proposed features. In response to the protester's specific, subfactor-by-subfactor discussion in its comments, with respect to the evaluation under the management and plan of operations factor, the agency stated as follows:

[I]n preparing its Final Report, the TEP had no obligation to specifically address each individual "feature" included as part of CESI's proposal. As a review of the proposals submitted by all five offerors included within the competitive range indicates, each proposal contained numerous distinct "features" differing in a variety of ways from the basic requirements of the RFP. All "features" included within the proposals of all offerors were considered by the TEP in conducting
(continued...)

We have reviewed CESI's proposed features and find that, on their face, they appear to be potentially beneficial to the agency such that they reasonably could be expected to be reflected in the evaluation results. For example, as noted in its protest, CESI stated in its proposal that as the facilities management and maintenance subsidiary of its corporate parent, The Charles E. Smith Companies, which owns and manages more than 34 million square feet of office space and about 21,000 residential units, with 130 buildings in the Washington area, CESI would have access for emergency support and other purposes to significant additional corporate resources beyond those committed on a full-time basis to the HUD building. CESI Proposal at E-1, A-253/A-254. CESI specifically noted the availability of 80 radio-dispatched mobile maintenance vehicles, more than 400 skilled building operating and crafts personnel, equipment overhaul and repair shops, and in-house professional engineers and experts. *Id.* at E-1 to E-2, A-29 to A-30, A-61 to A-62, B-5, B-11. CESI further proposed [DELETED]. *Id.* at A-67, B-9. CESI, although recognizing that HUD [DELETED], proposed to [DELETED]. *Id.* at A-82 to A-83; Solicitation Clause H-6(A)(4). In addition, CESI proposed to [DELETED]. *Id.* at E-1, E-8 to E-9, A-4, A-80/A-81, A-81 to A-82, A-260 to A-261, B-5 to B-6, B-9 to B-10.

In contrast, Halifax proposed [DELETED], and proposed [DELETED]. However, there was no indication in Halifax's proposal that it would [DELETED], comparable in scope and extent to that proposed by CESI. Halifax Proposal at 1-11, 1-13, 1-15, 1-92 to 1-94, 1-114, 2-4 to 2-5; Halifax BAFO of November 21, 1997, at 12, 24 to 27. Nor did Halifax propose to [DELETED]. (Halifax instead proposed [DELETED]. Halifax Proposal at 1-51, 1-63, 2-3.)

In the absence of a specific response from the agency explaining why the apparently unique and potentially advantageous features of CESI's proposed approach in the areas specified by CESI did not warrant a higher relative score for CESI's proposal, there simply is no basis for concluding that the agency's essentially equal assessment of the proposals under the management and plan of operations factor was reasonable. HUD correctly asserts that in documenting a source selection decision, a contracting agency need not address each and every proposed,

¹(...continued)

its evaluation. See the TEP's individual handwritten scoresheets, which reference the specific portions of the individual proposals in which the TEP found information supporting its point scores. . . . In conducting its evaluation of the proposals, the TEP concluded that, all "features" of all offerors considered, Halifax's proposal represented the best value to the Government.

Supplemental Report of May 19, 1998, at 4.

purportedly beneficial feature of an offeror's approach. However, where, as here, a protester challenges the agency's evaluation conclusions, the agency must establish that it had a reasonable basis for its conclusions. HUD has failed to do so with regard to the evaluation of the relative merits of CESI's and Halifax's proposals.

We emphasize that an agency is not required to give evaluation credit for specific features where it reasonably determines that such features will not contribute in a meaningful manner to better satisfying the agency's stated needs. See Tecom, Inc., B-275518.2, May 21, 1997, 97-1 CPD ¶ 221 at 7 (agency reasonably concluded that offeror not entitled to higher rating where requirements were not exceeded in a manner that would provide increased benefit to agency); Computer Sys. Development Corp., B-275356, Feb. 11, 1997, 97-1 CPD ¶ 91 at 7-8. Alternatively, an agency may reasonably determine that the benefit of proposed specific features is not worth any additional cost associated with the proposal. However, the record does not show that HUD made any such determination--and HUD does not suggest that one was made--that the above features proposed by CESI will not provide a meaningful benefit or are not worth the additional associated cost.

EVALUATION OF EXPERIENCE AND QUALIFICATIONS

CESI also challenges the evaluation of the subfactor for proposed elevator maintenance organization, under the experience and qualifications factor. (Halifax's proposal received 150 and CESI's 142 of the available 160 points under the factor.) Although both CESI and Halifax proposed the incumbent HUD elevator maintenance subcontractor (Millar Elevator Service Company), 3 of 15 available subfactor points were deducted from CESI's score--while Halifax received all 15 points--for failure to adequately address the results achieved (e.g., quality of service, timeliness of performance and cost control), by Millar under prior contracts. CESI disputes the agency's position that Halifax's proposal was superior in addressing the results achieved by Millar, and argues that, in any case, since the proposed subcontractor was the incumbent, the evaluators should have been aware of its performance and capabilities.²

HUD reports that the members of the TEP had no personal knowledge of the results achieved by Millar, the incumbent elevator maintenance contractor.

²CESI also challenges other aspects of the evaluation under the experience and qualifications factor, as well as the evaluation of the reasonableness of the proposed prices. Since, as discussed below, we are recommending that the agency reevaluate proposals, these protest grounds are academic and will not be considered. See generally VSE Corp.--Recon. and Entitlement to Costs, B-258204.3, B-258204.4, Dec. 28, 1994, 94-2 CPD ¶ 260 at 2; American Express Bank Ltd., B-228910, Nov. 16, 1987, 87-2 CPD ¶ 488 at 4.

According to the agency, the evaluators confined their evaluation of an offeror's proposal to the information in that proposal. TEP Statement of May 5, 1998, at 4; TEP Response of May 13, 1998, at 8 n.1.

Although an offeror has the burden of submitting an adequately written proposal, and an agency may downgrade a proposal for lack of requested information, Formal Management Sys., Inc., B-259824, May 3, 1995, 95-1 CPD ¶ 227 at 3, an agency may not ignore prior performance information of which it is aware. International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 4-6; G. Marine Diesel; Phillyship, B-232619, B-232619.2, Jan. 27, 1989, 89-1 CPD ¶ 90 at 4; Inlingua Schools of Languages, B-229784, Apr. 5, 1988, 88-1 CPD ¶ 340 at 5.

Even if HUD is correct that CESI's proposal did not provide as much information as Halifax's regarding Millar's experience, since both proposals offered the same subcontractor, the evaluation unreasonably accorded the two proposals different scores in this area. Once the agency became aware of Millar's experience--whether from Halifax's proposal, personal knowledge, or otherwise--it could not reasonably assign Halifax's proposal a higher score than CESI's based on that experience. Accordingly, it appears that CESI's proposal was entitled to the same score as Halifax's under this subfactor, for an increase of 3 points.³

RECOMMENDATION

In view of Halifax's narrow, 7-point evaluated technical advantage, and its only approximately 1-percent cost advantage, we conclude that there is a reasonable possibility that CESI was prejudiced in the competition by the identified evaluation

³CESI argues that the agency improperly failed to evaluate proposals under the small business subcontracting program factor. The solicitation provided in this regard that an additional "Maximum 14 Extra Technical points" were available under the small business subcontracting program factor for "proposals that are found to be technically acceptable or capable of being made technically acceptable"; according to the solicitation, "[i]f the technical merit and the evaluated cost of proposals are essentially equal, [HUD] will use its evaluation of offerors' subcontracting plans as the determining factor in selecting a source among otherwise substantially equal offers." Solicitation Section M, Evaluation Factors For Award. HUD did not evaluate proposals under this factor because it did not find proposals to be equal with respect to the technical and cost factors, but instead determined that Halifax's lower-cost proposal was superior. Although CESI contends that the agency was required to evaluate the proposed subcontracting plans in all circumstances where a proposal was technically acceptable, we find that it was clear under the solicitation that offerors' subcontracting plans would be evaluated only in case of a tie under the remaining factors.

deficiencies. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see also Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). We therefore sustain Halifax's protest. By letter of today to the Secretary of HUD, we are recommending that the agency reevaluate proposals consistent with our decision. If, upon reevaluation, it is determined that Halifax's proposal does not represent the best value to the government, we recommend that the agency terminate Halifax's contract for convenience. We also recommend that CESI be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1998). CESI's certified claim for such costs, detailing the time and costs incurred, should be submitted within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Comptroller General
of the United States