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United States General Accounting Office
Washington, DC 20548

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Decision

Matter of: M&S Farms, Inc.

File: B-290599

Date: September 5, 2002

Richard C. Bradley III, Esq., Daniel, Coker, Horton & Bell, for the protester.
Bryce C. Ruth, Jr., Esq., for Carr's Wild Horse and Burro Center, an intervenor.
Jeanne A. Anderson, Esq., and Alton E. Woods, Esq., Department of the Interior, for the agency.
Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's source selection decision under a "best value" selection plan is unreasonable where the evaluation and selection decision contain material defects under all of the evaluation criteria, including price, such that the agency has not made a cost/technical tradeoff determination that reasonably considers the relative merits of the proposals.

DECISION

M&S Farms, Inc. protests an award to Carr's Wild Horse and Burro Center under request for proposals (RFP) No. NAR020009, issued by the Department of the Interior, Bureau of Land Management (BLM), for a wild horse and burro adoption/holding facility. M&S Farms protests the agency's evaluation of proposals and source selection decision.

We sustain the protest.

The RFP, issued December 19, 2001, contemplated the award of a fixed unit price, indefinite-delivery/indefinite-quantity contract for 1 year with 2 option years.

The RFP identified a two-step evaluation process. The first step was an "initial review" for the proposal's compliance with the general requirements of the RFP. RFP § M.3. Specifically, proposals were required to comply with paragraph C.3 of the RFP's statement of work (SOW), which stated:

a. The Adoption/Holding facility shall be centrally located within the Eastern States jurisdiction. Centrally located is defined as an area between the two districts (Milwaukee, Wisconsin and Jackson, Mississippi). Further, the selected facility site shall in no case be more than 24 hours drive for a loaded livestock semi-truck from Elm Creek, NE BLM facility, nor shall the selected facility site be more than 24 hours drive for a loaded livestock semi-truck from either Ocala, FL or Rutland, VT.

b. Due to the stress on the animals caused by long distances and significant climatic changes, all areas outside the area specified in Section C.3.a. will not be considered for an Adoption/Holding Facility.

RFP § M.3 stated that proposals for locations "that are not in the boundaries specified will be rejected and not be subject to further review."

Proposals found to be in compliance with this and other terms of the RFP would proceed to the second step of the evaluation process, a "best value" evaluation considering the following evaluation factors, listed in descending order of importance: (1) past performance, (2) objective suitability, and (3) price. The RFP further stated that past performance was "predominant in importance," and that the non-price factors "when combined, or alone, are significantly more important than price." RFP § M.4.

Under the past performance factor, the RFP identified three evaluation criteria of equal importance: (A) contracts in the last 3 years similar in size, content, and complexity to the instant acquisition; (B) cost overruns or underruns, completion delays, performance problems, and terminations; and (C) responses on past performance questionnaires (to be submitted by an offeror's customers). RFP § M.5.

Under the objective suitability factor, the RFP again stated that proposals not compliant with the boundaries specified at section C.3 would not be subject to further review, and then identified five criteria for evaluating proposals under this factor. In addition, the RFP stated six sub-criteria under the first criterion (animal care, facility, and equipment at facility) and three sub-criteria under the second (personnel qualifications). The RFP stated that these criteria and sub-criteria were listed in "descending order of importance."[1] Id.

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[1] The RFP also stated that the evaluation under the objective suitability factor would be point scored and erroneously stated that the points associated with each criterion or sub-criterion were listed in the RFP; no points were listed for any criterion or sub-criterion.

Under the price factor, the RFP stated that price would not be numerically weighted or scored, but that the agency would evaluate price for reasonableness and, as necessary, price realism. For evaluating price realism, the RFP stated that the agency would apply proposed unit prices to an abstract of a hypothetical delivery order to ascertain price realism between competing offers.[2] Id.

The agency received and evaluated initial proposals, and established a competitive range that included the proposals of M&S Farms and Carr. M&S Farms proposed a facility located near Jackson, Mississippi and Carr (the incumbent contractor) proposed its facility near Nashville, Tennessee.

The agency conducted discussions with the competitive range offerors. Among the discussion items for M&S Farms was a request for more information about the calculation of drive time to Rutland, Vermont. The offeror's initial proposal contained copies of trip directions, compiled by "AAA Map'n'Go 6.0" software (published by DeLorme), for trips to Nebraska, Florida and Vermont. Agency Report, Tab 5, M&S Farms' Initial Proposal, at 6-8. These documents stated the trip distance in miles and the drive time. The document for the trip to Rutland, Vermont stated a total distance of 1,387 miles, and a total drive time of 22 hours and 56 minutes. Id. at 8. The agency's discussion letter stated that this "is very close to the limit of 24 hours driving distance" and requested more details about the basis for this estimate, "i.e. number of breaks and drivers anticipated." Agency Report, Tab 11, Agency's Letter to M&S Farms (Feb. 14, 2002), at 2. M&S Farms responded with a copy of an alternate travel route, generated by "Tripmaker" software (published by Rand McNally & Co.), using a command to generate the quickest route. The total distance for that route was 1,406 miles with a total driving time of 20 hours and 26 minutes. M&S Farms explained that the drive time was calculated using the legal speed limit for the roads used, and using two drivers in accordance with U.S. Department of Transportation requirements. The offeror stated that the remaining 3-½ hours could be used for refueling, eating, and other purposes. Agency Report, Tab 13, M&S Farms' Response to Discussion Items (Feb. 26, 2002), at 15-19. M&S Farms also responded to all other discussion items.

The technical proposal evaluation committee (TPEC) evaluated the responses of the competitive range offerors and determined that more information was required from all offerors. On March 26, 2002, the agency requested final proposal revisions, which included additional points of discussion for each offeror. Included in the request sent to M&S Farms was a statement that the agency considered the offeror's estimate of drive time to Rutland to be unrealistic, considering highway construction and traffic delays. Agency Report, Tab 18, Agency's Request for Final Proposal Revisions (Mar. 26, 2002), at 1. M&S Farms again responded to this issue, providing

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[2] The agency developed no such hypothetical delivery orders to evaluate price realism.

another alternative route generated by "AAA Map'n'Go 6.0." This document identified the total distance of the trip as 1,408 miles with a total drive time of 20 hours and 31 minutes. The offeror also stated that the route uses the interstate highway system for all but 51 miles and avoids as many large metropolitan centers as possible. Agency Report, Tab 20, M&S Farms' Final Proposal Revisions, at 10-12.

The final evaluated scores under the objective suitability factor were [DELETED] points for M&S Farms' proposal and [DELETED] points for Carr's. The difference in scores was due entirely to slightly lower ratings for M&S Farms' proposal under two sub-criteria--a [DELETED]-point deduction under the fourth sub-criterion of the first criterion due to questions about the drive-time to Rutland,[3] and a [DELETED]-point deduction under the third sub-criterion of the second criterion due to the proposal not describing the specific duties that are to be performed by specific staff members.[4] Contrary to the terms of the RFP, the scoring of proposals was based on all criteria under this factor receiving equal weight and the sub-criteria under each applicable criterion receiving equal weight. Agency Report, Tabs 16 and 17, Final Evaluation Rating Sheets; Tab 22, Contracting Officer's Memo to File.

With regard to the past performance factor, there is little evidence of the evaluation. The report of the TPEC initial consensus evaluation contains a summary statement that a review of all past performance information was made with all offers receiving a "satisfactory" rating and that "[n]o one firm was more impressive than the others." Agency Report, Tab 9, Initial TPEC Report, at 1. Subsequently, without further explanation, the competitive range determination made by the contracting officer, who also served as the source selection authority (SSA), stated that, though all offerors were found to have had satisfactory past performance, Carr's proposal was "rated slightly higher due to the number of" questionnaires received from references. Agency Report, Tab 10, Competitive Range Memo, at 13. The SSA's selection decision stated with regard to past performance that all offerors had "impressive" credentials "with Carr's and [another offeror's proposals] being rated slightly higher than M&S in this category." Agency Report, Tab 24, Source Selection Statement, at 2. The record contains, and the agency states that there is, no other documentation of

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[3] An undated memo to the file from the contracting officer states that the technical evaluation score for M&S Farms' proposal did not change as a result of the discussions. Agency Report, Tab 22, Contracting Officer's Memo to File.

[4] The only comments in the evaluation document that provide any explanation for the lowered score under the third sub-criterion of the second criterion were in the TPEC's initial evaluation worksheets. One evaluator stated that a discussion question should be asked of M&S Farms regarding "who will do what," and another evaluator stated a single weakness: "A little unclear as to exact responsibilities of personnel." Agency Report, Tab 7, Initial Evaluation of M&S Farms' Proposal, at 51, 109.

the evaluation under the past performance factor. Agency Supplemental Submission (July 30, 2002).

Under the price factor, the agency calculated total prices and determined that Carr proposed the lowest price of $[DELETED], followed by M&S Farms' price of $[DELETED]. Agency Report, Tab 23, Price Negotiation Memo, at 6. The SSA determined that Carr's was the highest-rated and lowest-priced proposal, and selected it for award. Agency Report, Tab 24, First Source Selection Statement, (Apr. 9, 2002), at 2. On April 24, the agency awarded a contract to Carr.

After receiving notice of the award, M&S Farms timely requested a debriefing. The agency could not conduct a debriefing "for some time," and provided M&S Farms some pricing information in the interim. Agency Report at 2. On May 10, M&S Farms filed an agency-level protest alleging that the agency price evaluation contained mathematical errors and that M&S Farms had submitted the lowest price.

On May 15, the SSA issued an amended source selection decision. The SSA acknowledged error in the price evaluation and that M&S Farms had actually proposed the lowest price. The SSA then stated that Carr's proposal nevertheless represented the best value. Under the past performance factor, the SSA again noted that the agency received more references for Carr than for M&S Farms, and added that the responses for Carr "were slightly more positive than those of M&S." Agency Report, Tab 30, Source Selection Statement Addendum, at 1. Under the objective suitability factor, the SSA stated that Carr's proposal was rated higher under two sub-criteria, and that M&S Farms' proposal "was not as technically sound as" Carr's, specifically because M&S Farms had not adequately established that its proposed facility was within a 24-hour drive of Rutland. The SSA then cited trip-mapping tools other than those relied upon by M&S Farms that estimated the drive time to be greater than 24 hours, and that:

> [n]either M&S nor the Government's estimate for driving time takes into account that the horses would need to be rested for an hour or so at a time for 4 or more times in a 24-hour period so that they could rest their muscles during the drive. Another intangible is the fact that during the summer many of the Interstates across the country routinely undergo road construction, which would significantly increase the amount of time required to get from Mississippi to Vermont.

Id. at 2. Under price, the SSA considered additional costs to the agency for shipping animals from either M&S Farms' or Carr's facility to various individual adoption sites, and determined that the additional costs were lower using Carr's facility by $[DELETED] per year. Although the amended source selection decision did not

state the actual proposed prices of Carr and M&S Farms,[5] the agency determined that, considering these additional shipping costs, Carr's proposal continued to represent the lowest price to the government. The SSA stated that, upon this more detailed review of "all technical, price and other factors . . . this office still recommends Carr's for award." Id. at 2-3.

On May 23, the agency conducted the debriefing for M&S Farms. This protest followed. M&S Farms alleges that the agency's evaluation and source selection decision, even as corrected, are unreasonable and inconsistent with the evaluation criteria stated in the RFP.

In reviewing a protest of an agency's evaluation and source selection decision, we will not re-evaluate proposals, but will review the record to determine whether the evaluation and selection decision are reasonable and consistent with the stated evaluation criteria, and with applicable procurement laws and regulations. Gemmo Impianti SpA, B-290427, Aug. 9, 2002, 2002 CPD ¶ ___ at 3; Duncan Sec. Consultants, Inc., B-290574, Aug. 8, 2002, 2002 CPD ¶ ___ at 3. Our review shows that the agency's evaluation and source selection decision were materially defective under each evaluation factor.

First, it is unreasonable for the agency to now suggest, as it does, that M&S Farms' proposal was unacceptable under the objective suitability factor on the basis of the length of the drive between the offeror's proposed facility and Rutland. On three separate occasions during the competition, M&S Farms submitted evidence from published travel sources showing that the location of its proposed facility was within a 24-hour drive of Rutland. The agency did not reject the proposal as unacceptable under the requirement, and, consistent with that, the record shows that the proposal does satisfy the requirement.[6]

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[5] Spreadsheets (which the agency states were prepared June 4 (after the protest was filed)) identify the proposed prices as $[DELETED] for Carr and $[DELETED] for M&S Farms, exclusive of proposed unit prices for contract line items for which no estimated quantities were stated on the price schedule; the total prices inclusive of all line items for which proposed unit prices were required were identified as $[DELETED] for Carr and $[DELETED] for M&S Farms. Agency Report, Tab 39, Price Abstract; Tab 41, Price Abstract With All Costs.

[6] Although the agency provided information from published travel sources showing that the drive from Jackson to Rutland was longer that 24 hours, this information was generated after the initial award decision, and the agency never used it to determine that M&S Farms' proposal was technically unacceptable. Agency Report, Tabs 42, 43, 44, 45, 46 (Travel Route Descriptions). Even so, one of the agency's sources calculated that the drive time was less than 24 hours. Agency Report, Tab 46, Rand McNally Travel Route Description. We note that the RFP does not identify, as either a requirement or preference, any source or method for determining

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Furthermore, while the agency deducted points for M&S Farms' alleged failure to demonstrate its compliance with this requirement, the RFP did not provide for evaluating this aspect of the proposals beyond a "go/no-go" determination under the first step of the evaluation process. Not only did the SOW and the stated evaluation plan expressly provide for evaluating this aspect prior to proceeding to the technical evaluation under the objective suitability factor, the proposal preparation instructions stated that this information was to be provided in volume I of proposals, "Offer and Other Documents," and not in volume III, "Objective Suitability." RFP § L.18(b)(3). Although the sub-criteria under which the agency downgraded the protester's proposal for driving time to Rutland might, at a glance, suggest that the agency could evaluate driving times on a relative basis, such a conclusion would be unwarranted. The RFP stated this sub-criterion, the fourth sub-criterion under the first criterion of the objective suitability factor, as follows:

> [Criterion] (1) Animal Care, Facility, and Equipment at the Facility: Adequacy of the offeror's discussion on the current capability, understanding, and ability to document Animal Care, Facility, and Equipment at the Facility:
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> . . . . .
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> > [Sub-criterion] d) Describe the geographic location of the proposed facility. Diagram and relate distances and accessibility to the major highways and the closest interstate system. Describe the facility

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driving time. Nor does the agency show that any of the sources submitted by M&S Farms was unacceptable under the RFP. Also, while the agency references other considerations, such as unknown delays due to traffic congestion, road construction and refueling, it has not attempted to quantify the effect of these considerations on drive time. The record does not otherwise show a basis for applying such considerations to all proposals, nor did the agency attempt to do so. Moreover, while the SSA's amended selection decision states that M&S Farms' calculation of driving time to Rutland does not consider four separate hour-long stops for resting the horses, the agency has since stated that this was only the topic of a recent symposium, was not a requirement, and was not an appropriate consideration in the calculation of driving time. Contracting Officer's Statement at 12. The agency's difficulty in establishing driving time suggests that the requirement, as stated in the RFP, is not clear enough for the purpose of meeting the agency's actual minimum needs and for providing offerors with a common basis for preparing proposals. Indeed, M&S Farms states that if it had been adequately advised of a more restrictive requirement than that stated in the RFP, it could have located its facility nearer to Rutland. Protester's Comments at 7.

> access (ie. width, type of surface, etc.) and type of road maintenance.

RFP § M.5. Based on the information requested, it is apparent that the sub-criterion addresses only local geography concerning location of nearby highways, and the capacity and condition of routes leading to them. The RFP in no way indicated that the relative drive time to Rutland or to any other long-distance destination would be evaluated. Nor did the agency otherwise attempt to do so, as no proposal was evaluated as having a strength for drive times significantly less than 24 hours for any of the three specified destinations. On this record, the agency had no reasonable basis under the RFP to downgrade the protester's proposal based on the driving time to Rutland.

There is another defect in the agency's evaluation under the objective suitability factor. The RFP stated that the evaluation under this factor would be under a descending-order-of-importance weighting scheme for both criteria and sub-criteria. The agency's evaluation erroneously applied equal weight to all criteria and sub-criteria in awarding Carr's proposal [DELETED] points and M&S Farms' proposal [DELETED] points. During the course of this protest, the agency acknowledged this defect and re-scored the proposals applying the following weights to the criteria:

Criterion 1	---	120 points
Criterion 2	---	90 points
Criterion 3	---	80 points
Criterion 4	---	60 points
Criterion 5	---	50 points

The new technical scores resulted in Carr's proposal still receiving a higher point score with [DELETED] points as compared to M&S Farms' proposal with [DELETED] points. Agency Report at 14-15. However, the re-scoring applied equal weight to the sub-criteria under each criterion that had them. This re-scoring thus fails to accord sub-criteria descending weights consistent with the evaluation scheme stated in the RFP. Since the sub-criteria under which the protester's proposal was scored lower than the awardee's were all at or near the bottom of the lists of sub-criteria, and thus should be accorded less weight than any of the evaluation schemes applied by the agency to date, the difference in overall technical scores (prior to any correction of other defects identified in this decision) should be less than calculated by the agency.[7]

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[7] This scoring scheme is also suspect because it was devised only after the protest was filed, and it works to disproportionately increase the score advantage of the awardee's proposal under the first criterion (even though, as discussed above, this advantage was not supported by the record). See Boeing Sikorsky Aircraft Support,

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The protester also alleges that discussions related to the agency's evaluation under the third sub-criterion of the second criterion of the objective suitability factor were unequal and resulted in the awardee receiving an unfair advantage in the agency's evaluation. We agree.

In negotiated procurements, contracting agencies generally must conduct discussion with all offerors whose proposals are within the competitive range. 41 U.S.C. § 253b(d)(1)(A) (2000); Federal Acquisition Regulation (FAR) § 15.306(d)(1). Where discussions are held they must be meaningful, that is, sufficient information must be furnished to offerors in the competitive range as to the areas in which their proposals are believed to be weak so that offerors have a reasonable opportunity to address those areas of weakness that could have a competitive impact. DevTech Sys., Inc., B-284879, B-284879.2, June 16, 2000, 2000 CPD ¶ 200 at 5. An agency has not satisfied its obligation to conduct meaningful discussion if it misleads an offeror or conducts prejudicially unequal discussions. National Med. Staffing, Inc., B-259402, B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163 at 3-4.

The RFP stated the following with regard to this sub-criterion:

> [Criterion] (2) Adequacy of the offerors discussion on the qualifications of both the firm's corporate officials and the individuals who will be working on this contract . . .
>
> > [Sub-criterion] c) State the names (if available) of each individual who will be involved and what each will do and provide a resume [c]iting as a minimum: The background and experience of each individual in handling livestock particularly ungentled or wild and unbroken horses, previous employers, length of tenure, and references.

RFP § M.5 (emphasis added). The agency's initial evaluation under this sub-criterion downgraded M&S Farms' proposal for not identifying what each individual would do, and downgraded Carr's proposal to the same degree because its resumes did not list references. Agency Report, Tab 7, Initial Rating Sheets for M&S Farms' Proposal, at 51, 109; Tab 8, Initial Rating Sheets for Carr's Proposal, at 22, 51. Discussions with M&S Farms did not include a question regarding this sub-criterion, or otherwise

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B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15 (reevaluation in the heat of an adversarial process may not represent the fair and considered judgment of the agency, and it is inappropriate to accord it any significant weight).

identify the concern for which M&S Farms' proposal was downgraded,[8] Agency Report, Tab 11, Discussions with M&S Farms, but discussions with Carr did include a question that disclosed the agency's concern under this sub-criterion. Agency Report, Tab 12, Discussions with Carr (Feb. 14, 2002), at 2. Carr then provided the requested references and the agency increased Carr's score to the maximum points available under the sub-criterion, which accounts for the majority of the difference in technical scores between these proposals. Agency Report, Tab 14, Carr's Response to Discussions, at 34; Tab 17, Revised Rating Sheets for Carr's Proposal, at 3. The agency thus treated the offerors unequally on this point, with the awardee receiving a prejudicial competitive advantage as a result.

Another example of unreasonable evaluation is apparent in the agency's evaluation under the past performance factor. Prior to the competitive range determination and source selection decisions, the only mention of the past performance evaluation was in the initial TPEC report, which rated all proposals satisfactory; the TPEC report did not describe the evaluation that was performed under any of the three criteria for this factor stated in the RFP, although it states that no offeror was more impressive than the others. Agency Report, Tab 9, Initial TPEC Report, at 1. Neither the competitive range determination nor the selection decisions stated that the SSA had re-evaluated past performance, yet the SSA stated that all proposals were "impressive" and that Carr's proposal was slightly higher rated than that of M&S Farms. The SSA also stated that Carr's proposal was higher rated than M&S Farms' due to more questionnaire responses and to slightly more positive responses on those questionnaires.[9] Agency Report, Tab 10, Competitive Range Memo, at 13; Tab 30, Source Selection Statement Addendum, at 1.

As indicated above, the evaluation documentation regarding past performance is sparse and conclusory. Where an agency fails to document or retain evaluation materials, it bears the risk that there will be inadequate supporting rationale in the record for the evaluation and source selection decision and that we will not conclude that the agency had a reasonable basis for the decision. Kathpal Techs., Inc.; Computer & Hi-Tech Mgmt., Inc., B-283137.3 et al., Dec. 30, 1999, 2000 CPD ¶ 6 at 12. In addition to the lack of documentation supporting the past performance

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[8] Under the second sub-criterion, which dealt with identifying who would handle and feed the horses, the agency also downgraded M&S Farms' proposal and the agency did ask M&S Farms a corresponding discussion question. Agency Report, Tab 11, Discussions with M&S Farms (Feb. 14, 2002), at 2. M&S Farms responded to this question, and the agency increased its score under that sub-criterion to the maximum points available. Agency Report, Tab 13, M&S Farms' Response to Discussions, at 5; Tab 16, Revised Rating Sheets for M&S Farms' Proposal, at 3.

[9] We note that this distinction only relates to one of three equally important past performance criteria; there is no discussion of the other two criteria in the record.

evaluation, the SSA's stated conclusions in the evaluation documentation in this area were unreasonable or unsupported by the record.

First of all, basing the evaluation on the raw number of questionnaires received appears to be a tenuous basis for rating the relative quality of an offeror's past performance. This is particularly so here because all of the questionnaires received for Carr were from personnel under the same contract, some of who may lack knowledge of the contractor's performance sufficient to provide a meaningful evaluation. Indeed, one of the awardee's references, who, in declining to respond to a question asking if she would recommend the contractor for another award, stated that she had only limited experience with the contractor.[10] Agency Report, Tab 6, Carr's Proposal, Questionnaires.

Furthermore, and perhaps more significantly, the SSA's determination that the responses for Carr "were slightly more positive than" for M&S Farms is also not supported by the record. Indeed, three of the questionnaires rated the awardee [DELETED]. Agency Report, Tab 6, Carr's Proposal, Questionnaires. In contrast, one of these respondents, [DELETED], also submitted a questionnaire for M&S Farms, where [DELETED] rated M&S Farms [DELETED]. Agency Report, Tab 5, M&S Farms' Proposal, Questionnaires.

In sum, this record provides no reasonable basis to rate Carr slightly higher than M&S Farms under the questionnaire criterion of, or overall under, the past performance factor.

Finally, the agency's price evaluation was also materially defective for two reasons (even after the agency corrected its mistaken calculation of prices and rightly recognized M&S Farms' proposal as offering the lowest price).

First, as noted by the protester, the agency, in the revised source selection statement determined that the cost of Carr's proposal was actually lower than M&S Farms'

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[10] This respondent indicated that her relationship and time involved with the contractor concerned satellite adoptions for approximately 1 year. Although the agency's defense of the past performance evaluation during this protest stated, as an apparent basis for giving responses for Carr more weight, that all of the questionnaires for the awardee were based on relationships with that contractor of 3 or more years, Contracting Officer's Statement at 8, the record shows that this is not correct for two of Carr's respondents. We also note that a third respondent indicated that her experience with the contractor was for 3 years, but stated under a question regarding her working relationship with the contractor that she had "sporadic contact" with the contractor, and on another question she stated that she was "only on site 6 weekends per year." Agency Report, Tab 6, Carr's Proposal, Questionnaires.

lower-priced proposal by adding to the offerors' proposed prices the estimated costs of shipping animals between the proposed facilities and individual adoption sites (including return shipping costs for unadopted animals). Agency Report at 19-20; Tab 30, Source Selection Statement Addendum, at 2-3. However, the contracting officer admits that the RFP does not contain a requirement for delivery of animals to any site. Contracting Officer's Statement at 11. Moreover, the RFP does not indicate in any way that the cost of such deliveries would be considered in the price evaluation, or otherwise indicate that price would be evaluated based on location of a proposed facility.[11] It is improper for an agency to evaluate price based on an evaluation scheme not set forth in the RFP. See P.G. Elecs., Ltd., B-261883, Nov. 1, 1995, 95-2 CPD ¶ 202 at 5; Department of the Air Force et al., B 253278.3 et al., Apr. 7, 1994, 94-1 CPD ¶ 247 at 13; Environmental Techs. Group, Inc., B-235623, Aug. 31, 1989, 89-2 CPD ¶ 202 at 4.

The agency states that it considered these transportation costs as part of its price realism analysis. Even though price realism is not ordinarily considered in the context of a competition for a fixed-price contract, a solicitation properly may (and did here) provide for the agency to consider price realism. See Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 4. The nature and extent of a price analysis are matters within the agency's sound exercise of discretion; in appropriate circumstances, a price analysis may include a reasonable review of an offeror's cost and pricing data or risks of additional costs to the government unique to a given proposal. See Cardinal Scientific, Inc., B-270309, Feb. 12, 1996, 96-1 CPD ¶ 70 at 4-5 (consideration of cost and pricing data); Allied-Signal Aerospace Co., B-250822, B-250822.2, Feb. 19, 1993, 93-1 CPD ¶ 201 at 10-14 (consideration of risk of increased costs unique to a proposed approach). Here, however, the agency did neither a price nor a cost realism analysis, but only added to the proposal prices the cost of services not within the scope of the RFP and not implicated by either offeror's proposal. This improper action has nothing to do with price realism, and the term "price realism" cannot properly be used as a talisman to defend it.

Also, as pointed out by the protester, the agency failed to consider costs to government for line items for which the offerors actually proposed unit prices in their proposals. Specifically, the price schedule at line item 0001H (and corresponding line items for the option years) required offerors to propose a unit price per day for providing additional labor at adoption events.[12] Although the RFP

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[11] The protester states that, prior to preparing a proposal, it asked the agency if there was any preference for location of a facility, as the protester was prepared to relocate if there was. The agency informed M&S Farms that, other than satisfying the RFP's requirement for being centrally located, there was no preference based on location of a proposed facility. Protest at 4.

[12] M&S Farms proposed a lower price than Carr for this line item.

price schedule only provided space to insert a proposed unit price on the item said to be supplied on an "as required" basis, and did not state an estimated quantity or provide a space for total proposed price per contract year for that line item, the RFP nevertheless elsewhere identified the level of work that the agency anticipated--the SOW stated that approximately one adoption event would be held each month, and that each event would require the contractor to keep its facility open to the public and provide full staffing necessary to facilitate the adoption event for 9 hours a day for 3 consecutive days.[13] RFP § C.8(a), (c). The total prices evaluated by the agency, which the SSA relied upon in the source selection decision, did not include proposed prices for this item. However, since an estimate of this item was identified in the SOW, there is a reasonable basis to determine the associated total cost that the agency will incur under each proposal for this item. Thus, we think the terms of the RFP entitled the offerors to assume that the proposed prices for providing labor at adoption events would be considered in determining total evaluated price. See Aurora Assocs., Inc., B-215565, Apr. 26, 1985, 85-1 CPD ¶ 470 at 3.

The agency's evaluation of additional costs not identified in the stated evaluation scheme and the failure to consider all proposed prices were prejudicial to the protester. In fact, as is apparent in the SSA's revised selection decision, the effect of the agency (improperly) considering additional shipping costs and failing to consider the price for line item 0001H, was to make M&S Farms' proposal price appear higher than that of Carr's. Agency Report, Tab 30, Source Selection Statement Addendum, at 3.

Because of the material evaluation defects discussed above, the agency has not performed a proper cost/technical tradeoff based on a reasonable evaluation consistent with the terms of the RFP and the actual cost to the government of the proposals. We recommend that the agency review its actual needs and amend the solicitation as appropriate, reopen discussions, request and evaluate revised proposals, and make a new source selection decision consistent with the terms of the RFP and this decision. If an offeror other than Carr is selected for award, the agency should terminate the contract previously awarded to that firm. We also recommend that the agency reimburse the protester its cost of pursuing this protest, including reasonable attorney's fees. 4 C.F.R. § 21.8(d) (2002). The protester should

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[13] An explanation in the RFP for line item 0001H stated that prices were to cover all work "with the full intent of the specifications relating to the holding of adoption events for the time period specified," and that it was the offeror's responsibility to review the specifications. RFP at B-2.

submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days of receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel