

Comptroller General
of the United States

Washington, D.C. 20548

146251

Decision

Matter of: CBIS Federal Inc.

File: B-245844.2

Date: March 27, 1992

Joseph J. Petrillo, Esq., and Jessica C. Abrahams, Esq.,
Petrillo & Hordell, for the protester.

John R. Tolle, Esq., Barton, Mountain & Tolle, for Telesec
Library Services, an interested party.

Curtis Wilburn, Jr., Department of Agriculture, for the
agency.

Richard P. Burkard, Esq., and John Brosnan, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Protest is sustained where awardee could not reasonably expect that two of its proposed key personnel would be available for contract performance at the time it submitted its best and final offer.

2. Protest alleging that agency engaged in technical leveling is denied where record does not show that agency helped awardee bring its proposal up to the level of the protester's by pointing out weaknesses in awardee's proposal during successive rounds of discussions.

3. Technical leveling does not occur where agency requests clarification about offeror's experience or the qualifications of proposed personnel, even if such requests are made through successive rounds of discussions.

4. General Accounting Office review of an agency's technical evaluation is limited to ensuring that the evaluation is reasonable and consistent with the evaluation criteria; mere disagreement with the agency does not itself render the evaluation unreasonable.

DECISION

CBIS Federal Inc. protests the award of a contract to Telesec Library Services under request for proposals (RFP) No. 12-3K06-91, issued by the Department of Agriculture, National Agricultural Library (NAL) for library support services. CBIS argues that Telesec proposed key personnel that it did not intend to use in contract performance. The

protester also argues that NAL unreasonably evaluated both its own and Telesec's technical proposal. CBIS also contends that the agency engaged in improper "technical leveling" by "coaching" Telesec in multiple rounds of discussions to improve its technical proposal to the level of CBIS's.

We sustain the protest because the awardee proposed key personnel in its best and final offer (BAFO) whom it could not reasonably expect to be available to work on the project. We deny the remainder of the protest.

BACKGROUND

The RFP required that the successful offeror provide personnel to perform specified tasks including receiving and distributing lending branch mail, responding to requests for material in the NAL collection, maintaining the NAL collection, providing a delivery service, processing interlibrary borrowing materials, performing bibliographic searching, and processing microforms into the collection. The RFP, which was issued on September 25, 1990, and amended five times, contemplated the award of a firm, fixed-price contract for a base and four 12-month option periods. Offerors were required to propose fixed monthly rates for the base services and 16 optional services which were designated in the RFP schedule by letters A-P.

The solicitation provided that proposals would be assigned a point value in each of two categories, price and technical, with 25 possible price points and 75 possible technical points. The solicitation provided a formula to assign a point score for price and set forth the following technical evaluation factors and their point scores:

Understanding of the Project	17 points
Plan of Operation	18 points
Management and Operation	20 points
Key Personnel	10 points
Responsibility and Similar Experience	10 points

Plan of Operation and Management and Operation were further divided into three and four subfactors, respectively. The solicitation provided that "proposals which meet all applicable requirements will be evaluated to determine which proposal is most advantageous to the Federal Government." The RFP stated that although technical merit would be of paramount importance in the evaluations, price would be an important factor in source selection. The RFP provided

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further that "in the case of technically superior-- technically equal proposals, price may become the controlling factor in the award decision."

The RFP contained instructions about information that offerors must furnish for each evaluation factor and subfactor. For example, with respect to the factor of Understanding of the Project, the RFP requested "a detailed description of how you propose to perform the work required and maintain performance schedules." It provided further that "this description must include detailed flowcharts which illustrate your understanding of the work flow . . . , decision points, and quality control check points."

The agency received six proposals in response to the RFP. All technical proposals were submitted to a technical evaluation panel (TEP) composed of a chairperson and three members who were tasked with evaluating and scoring the technical proposals. The TEP determined that four proposals, including those submitted by CBIS and Telesec, were to be included in the competitive range.

In its initial evaluation of proposals, the TEP found that CBIS, as the incumbent, had an "advantage of intimate knowledge of workflow, decisions to be made, problems, etc. and put it to use in their flowcharts and textual descriptions of the work to be performed." The TEP noted also that the weakest parts of CBIS's proposal were the flowcharts and narratives associated with option H, "Expanded Eligibility and AVs (audio visual)," the work which CBIS had not been performing under the previous contract. The protester's initial proposal was the highest technically rated at 56.72 and was considered to be "technically unacceptable but susceptible to being made acceptable." It was the highest priced offer at \$6,235,687.

Telesec's proposal received a technical point score of 43.7 and was also considered to be "technically unacceptable but susceptible to being made acceptable." The TEP found that the proposal was "confusing due to the method of flow-charting" and the description of the workflow. The evaluators noted that Telesec's proposal described the work in "Units" rather than in tasks. Consequently, the flowcharts contained numerous errors, omissions, and "dead-ends" which "demonstrated a lack of understanding of the work flow and its complexity." The proposed organization, key personnel, and experience, however, led the TEP to believe that Telesec's proposal, which was priced at \$4,817,102, could be significantly improved.

The agency provided detailed discussion questions to each offeror; Telesec was provided with 81 questions while CBIS was asked 92 questions. The agency also requested and

received revised proposals. As a result of its revised proposal, CBIS's technical score increased to 62.68 and that firm's proposal remained the highest technically rated and highest priced. Telesec's proposal improved to a rating of 56.78, the second highest technical score and, like CBIS, the firm did not change its price.

The agency then provided each offeror with another list of questions--this time 58 questions were directed toward Telesec and 30 to CBIS--and conducted face to face discussions with all offerors in the competitive range. The agency received BAFOs on July 17, 1991. The revised scores and final rankings for CBIS, Telesec, and the other firms in the competitive range are as follows:

	Technical Score		Price	Price Score	Total
Telesec	62.45 (1)		\$5,192,381	19.26 (2)	81.71 (1)
Firm A	55.48 (3)		x x x	25.00 (1)	80.48 (2)
CBIS	60.06 (2)		\$6,948,028	14.40 (4)	74.46 (3)
Firm B	42.47 (4)		x x x	18.82 (3)	61.29 (4)

The agency concluded that the BAFOs of both CBIS and Telesec were outstanding and technically equal despite the minor difference in score. The agency was quite concerned by CBIS's price, which was by far the highest of the offerors in the competitive range--more than 30 percent higher than the next highest-priced offeror.¹ The selection official therefore decided that the advantage of incumbency offered by CBIS was simply not worth the price premium and selected the considerably lower priced but technically equal offer of Telesec. Following a debriefing, CBIS filed this protest with our Office on September 25.

PROTEST ALLEGATIONS

Telesec's Personnel

CBIS asserts that none of Telesec's proposed key personnel are performing under the contract and that the awardee knew or should have known that the individuals it proposed would not in fact be available for performance under the contract.²

¹In addition, the agency notes that CBIS's proposed price exceeded historical prices for the same work by 79 percent.

²Telesec proposed a total of four key personnel. One of the proposed individuals, the photocopy unit supervisor, was available to work on the contract at the time of award and is currently working for Telesec on other projects. The agency permitted Telesec to replace this individual after
(continued...)

Proposing to employ specific personnel that the offeror does not expect to actually use during the contract performance has an adverse effect on the integrity of the competitive procurement system and generally provides a basis for proposal "rejection." Informatics, Inc., 57 Comp. Gen. 217 (1976), 78-1 CPD ¶ 53. This does not mean that an offeror must use the personnel it proposed or risk losing the contract for which it is competing in every case. For example, where the offeror provides firm letters of commitment and the names are submitted in good faith with the consent of the respective individuals (that is, the offeror is not proposing personnel it has no intention of providing), the fact that the offeror, after award, provides substitute personnel does not itself make the award improper. Unisys Corp., B-242897, June 18, 1991, 91-1 CPD ¶ 577.

Conversely, however, an offeror may not be awarded a contract where it does not have the individuals' permission to use their names for key positions for which they are proposed and cannot provide a satisfactory explanation for its use of the names. Ultra Technology Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42. Similarly, where an offeror knows prior to submission of its BAFO that proposed key employees are no longer available, the offeror should withdraw the individuals and, in its BAFO, propose substitutes who will be available. Omni Analysis, 60 Comp. Gen. 300 (1989), 89-1 CPD ¶ 239. To do otherwise is, in effect, to misrepresent the availability of proposed personnel which, in turn, compromises the validity of the technical evaluation, regardless of whether post-award substitutions of key personnel may later be made and approved by the agency pursuant to a clause in the awardee's contract. Ultra Technology Corp., supra.

We are not unmindful of the difficulty faced by a nonincumbent contractor of securing a qualified work force sufficient to secure an award. Nevertheless, we believe that an offeror has a responsibility to propose persons who it reasonably may expect will be available for contract performance without the RFP having to provide that the offeror must do so. This is particularly so where the solicitation expressly states that a proposal should include only those persons the contractor intends to use for performance and that the proposal will be evaluated based upon the qualifications of those persons. Otherwise, there is no assurance to the government that it will receive what

² (...continued)

award with the incumbent supervisor. Another key person proposed by Telesec, the proposed mail unit supervisor, began work under the contract but was later terminated.

was offered. See e.g., Management Serv., Inc., B-184606,
Feb. 5, 1976, 76-1 CPD ¶ 74.

Here, the record shows that, at the time it submitted its BAFO, Telesec could not reasonably have expected that two of the four individuals it proposed as key personnel would be available to perform the contract.

With respect to one of Telesec's proposed key personnel, the collection control and circulation unit supervisor, the record shows that in February 1991, after the submission of Telesec's initial proposal, this individual "withdrew temporarily from work availability" because of the illness of her mother. Telesec states that she was "supposed to call when she became available again" and that "Telesec assumed she would be available to work on the contract." In its revised proposal, dated February 26, 1991, Telesec answered an agency discussion question concerning this supervisor's qualifications. Telesec did not apprise the agency that, at this point, she had "temporarily" withdrawn her name from work availability.

In July, prior to submission of its BAFO, Telesec called the proposed supervisor to "check on (her) status" and was told that she had gone to England. The February conversation with her was the last time Telesec spoke to her. Telesec proposed her again in its BAFO, which also included a response to an agency discussion question about her. Telesec has, to date, been unable to reach her and has substituted another supervisor for her.

Telesec did not have a letter of commitment from the proposed supervisor as required by the RFP for all key employees. While in some cases where the individual is a current active employee of the offeror this is excusable, her mere registration for temporary work with the firm did not provide Telesec with an adequate assurance of her availability or comply with the RFP requirement. While Telesec takes the position that it assumed that this proposed supervisor would be able to work on the contract since it had heard nothing to the contrary and she never formally withdrew her commitment she gave Telesec, we do not think that such an assumption was reasonable.

With respect to the proposed project manager, the record shows that she signed a letter of intent on November 7, 1990, which was provided to the agency with Telesec's proposal. Prior to the award of the contract, the project manager advised Telesec that her circumstances had changed and that she was no longer available to work on the contract. The record is not clear whether the proposed project manager withdrew her name just before or just after the submission of the BAFO. Even if we accept Telesec's

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assertion that it did not receive the news of the proposed project manager's withdrawal until after BAFO submission, in view of the fact that the proposed project manager signed the letter of intent more than 8 months earlier and Telesec had not communicated with her during that period, Telesec could not reasonably expect that this individual would be available for contract performance.

While Telesec had a two point advantage in technical score as well as a significant price advantage, the evaluators thought highly of the two key individuals Telesec proposed who in fact were not available and considered these positions to be important to successful performance of the contract. We conclude that it is possible that the selection would have been different but for Telesec's failure to assure the availability of the personnel it proposed. We sustain the protest for this reason.

We have reviewed the remaining protest allegations and, for the reasons discussed below, deny them.

Technical Leveling

CBIS argues at length that the agency engaged in improper "technical leveling" by helping or coaching Telesec through discussions to transform its "dismal proposal" to one which was considered technically "outstanding." The protester points out that the agency conducted two rounds of written discussions and a round of oral negotiations which, in effect, gave Telesec step-by-step detailed instructions in how to improve its deficient proposal. In this regard, CBIS quotes the Federal Acquisition Regulation (FAR) which defines technical leveling as "helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposals." FAR § 15.610(d). The protester interprets this regulation, when "viewed as a whole," as prohibiting discussions when they help an offeror compensate for its lack of diligence, competence, or inventiveness.

Under the Competition in Contracting Act of 1984, 41 U.S.C. § 253b(d) (1988) and FAR § 15.610(b) written or oral discussions must be held with all responsible sources whose proposals are within the competitive range. Such discussions must be meaningful, and at a minimum must point out deficiencies and resolve any uncertainties in the offeror's proposal. FAR § 15.610(c); Aydin Vector Div., B-243430, July 22, 1991, 91-2 CPD ¶ 79. In this regard, the content and extent of discussions are within the discretion of the contracting officer, since the number and type of proposal deficiencies, if any, will vary among the

proposals. See FAR § 15.610(d); Pan Am World Servs., Inc. et al., B-231840 et al., Nov. 7, 1988, 88-2 CPD ¶ 446. Consequently, it is proper for an agency to individualize the discussions according to the evaluated deficiencies of each offeror. Id.

On the other hand, in any discussion with competing offerors agencies must avoid unfairness and unequal treatment. 51 Comp. Gen. 621 (1972). Disclosure of one offeror's approach to another is unfair and is prohibited as "technical transfusion." FAR § 15.610(d)(2); Id. Similarly technical leveling is to be avoided. FAR § 610(d). This arises only where, as a result of successive rounds of discussions, the agency has helped to bring one proposal up to the level of other proposals such as by pointing out inherent weaknesses that remain in the proposal because of the offeror's lack of diligence, competence, or inventiveness after having been given an opportunity to correct them. Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190.

CBIS bases a significant portion of its argument that the agency's discussions with Telesec constituted leveling on its view that leveling may occur at any point during discussions. The protester contends, for example, that a number of questions put to the awardee in the first round of discussions resulted in technical leveling. In our view, the concept of technical leveling is inapplicable to the first round, as by definition, leveling requires repeated rounds of discussions. This is not to say, however, that the initial round of discussion questions cannot be used as a basis for an argument that, in the context of the initial round questions, subsequent questions resulted in leveling.

Similarly, CBIS bases some of its arguments on requests made by the agency during discussions for substantiation of the qualifications of proposed personnel and of the relevant experience of the firm. Under the circumstances here, this does not constitute technical leveling. Allowing an offeror to provide information about the qualifications of proposed personnel or concerning its prior experience does not result in any unfairness to other offerors, since whether an individual or a firm has the required experience is generally not subject to change as a result of discussions. Where, as here, the primary purpose of discussions is to ascertain what the offeror is proposing to furnish rather than to raise the offeror's technical proposal to the level of the protester's proposal, technical leveling has not occurred. Aquasis Servs., Inc., B-240841.3, July 26, 1991, 91-2 CPD ¶ 94.

We conclude that Telesec's technical proposal did not improve as a result of technical leveling caused by

discussions in the first round and did not improve as a result of technical leveling under the evaluation factor of Key Personnel or Responsibility and Similar Experience. The protester also challenges the form of the questions put to Telesec and the propriety of the second round of discussions which concerned the remaining technical factors: Understanding of the Project; Plan of Operations; and Management and Operations.

CBIS contends that the agency, through its questions, provided Telesec with explicit information and guidance on what was wrong with its proposal and how to correct it. For example, the protester asserts that in many instances the agency's questions are simply a duplication of the TEP's comments and that the agency provided specific guidance as to Telesec's overstatement and understatement of staffing levels. According to the protester, questions of this sort, by their very nature, guide the offeror to the answers preferred by the agency and thus lead to technical leveling.

We have reviewed the record and find the form of the questions here did not necessarily lead to technical leveling. While, predictably, the agency's questions do correspond to the TEP comments, they do not, as the protester suggests, "spoon-feed" answers to Telesec. The questions ask Telesec to "address," "explain," or "discuss" aspects of its proposal. For example, typical questions are, "please address microforms reproduction" or "please address processing request from on-site patrons who may want a photocopy or a loan sent to the Circulation Desk." Even where the agency identifies a particular problem in the proposal, it does not suggest the solution. For example, in round 2, question No. 20, the agency states, "the flow of 'subject or expanded eligibility apply?' 'N' is incorrect. Please address."

With respect to Telesec's proposed staffing, CBIS argues that the agency's questions were improper since they indicated the agency's view of the appropriateness of the number of hours and the labor skill level proposed. The protester also objects to the agency's conversion of Telesec's proposed level of effort from staff hours to full time equivalents (FTEs).³ For example, the protester objects to the following question:

"Item C- Shelfreading. You have proposed 1.53 FTE to perform this effort; however, the Government believes that the quantity of hours is understated. Also the labor skill may be less than required. Please address."

³The RFP specified that the offerors' levels of effort were to be expressed in FTEs.

Where a proposal offers a significantly lower level of effort for some functions than the agency believes reasonable, as occurred here, the agency should disclose its concern about staffing levels during discussions. See Pan Am World Servs., Inc. et al., supra. Not only do we find the questions to Telesec about proposed staffing to be appropriate, but the record shows that the agency's questions to CBIS were phrased similarly. Consequently, we do not agree that these types of questions necessarily lead to technical leveling or were otherwise improper. See E.H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278. While the agency did not have to convert proposed staff hours to FTEs in considering CBIS's proposal, that was a relatively simple conversion which was entirely reasonable for the agency to perform.

Turning to the allegedly repetitive second round discussion questions directed toward Telesec, the majority of these questions concerned Telesec's flowcharts. Consequently, any improvements in the firm's proposal would be reflected in the agency's evaluation and scoring of the Understanding of the Project evaluation factor. The second round questions were organized in terms of the Telesec flowcharts; the list of questions identified a flowchart and enumerated a series of detailed questions about that flowchart. In its BAFO, Telesec included significantly more flowcharts, 31, than it had initially provided, 8, and the TEP found that they were much improved. As a result, Telesec received a final evaluation score of 14.56 out of a possible 17 points under the Understanding of the Project factor, almost a 5 point increase from the score received for its revised proposal.

CBIS complains that many of the second round questions concerning the Telesec flowcharts improperly helped the awardee by focusing on questions asked in the first round to which Telesec had provided an unsatisfactory response. CBIS asserts that the agency, in some instances, repeated questions concerning the flowcharts which were already asked in the first round.⁴

⁴CBIS argues that the agency should not have conducted a second round of discussions at all, since offerors had one opportunity to address all weaknesses and deficiencies contained in the proposals. We are aware of no requirement that agencies limit discussions to one round. Rather, the extent of discussions is a matter within the discretion of the contracting agency, and we think that the agency properly used the flexibility inherent in the negotiation process to conduct more than single round of discussions. See Mantech Serv. Corp., B-222462, Aug. 5, 1986, 86-2 CPD ¶ 149.

The protester has provided our Office with a chart which sets forth the technical areas of Telesec's proposal which initially were considered weak or deficient. With respect to each weakness or deficiency, the chart purports to duplicate each discussion question, for both rounds, which correlates to that weakness or deficiency. CBIS identifies approximately 20 second round questions concerning Telesec's flowcharts which it alleges "more explicitly repeated issues which Telesec had failed to address in its answers to the similar questions in the TEP'S initial round of questions."

We have reviewed the allegedly improper pairs of questions and find, for the reasons stated below, that the second round questions were proper. In some instances, the second round question identified by the protester has nothing to do with the first round question. For example, CBIS argues that the agency's second round question No. 6 was improper in light of its first round question No. 10. The record shows, however, that question No. 6 relates specifically to Telesec's Mail Unit Flowcharts I and Ia. The first round question No. 10, on the other hand, relates to an entirely different flowchart, the Collection Control Flowchart. The protester also argues that question No. 22 from round 2 repeats question No. 61 from the first round. Question No. 61 states "UMD (University of Maryland) return list processing was omitted," while question No. 22 pertains to "Flowchart V - Loan & Booking AVS," and states, "please describe what material is being processed if not an NAL holding or UMD format and what information is being communicated to the patron." Question No. 22 is simply a new question relating to a specific aspect of a particular flowchart. Consequently, we do not consider these types of questions as examples of technical leveling.

Several other second round questions identified by CBIS as improper merely request information which the agency previously requested but which Telesec continued to omit.³ We find that these questions did not constitute technical leveling. We think that where, as here, an agency simply points out informational deficiencies, technical leveling

³The protester also objects to the agency's second round questions which request flowcharts that Telesec had failed to provide in its initial proposal but were not requested in a first round question. We find that the agency was correct in bringing the deficiency to Telesec's attention, despite its failure to do so in the first round, since the agency has an obligation to point out such deficiencies. See Aviation Contractor Employees, Inc., B-225964, Mar. 30, 1987, 87-1 CPD ¶ 363.

has not occurred since the agency's purpose is to ascertain what the offeror is proposing to furnish. See Ultrasonics Defense, Inc., B-235351, Aug. 31, 1989, 89-2 CPD ¶ 198.

Many of the second round questions identified by CBIS as improper are ones that address aspects first included in Telesec's revised proposal and therefore could not have been the subject of discussions in the first round. For example, question No. 69 in the first round identified various tasks which were omitted. Question No. 36 in the second round stated, "regarding question 69, . . . discuss your rationale for designating Reader/Onsite Patron Requests as a BASE SERVICE." In our view, the agency could properly hold discussions on weaknesses or deficiencies which first became apparent when Telesec submitted its revisions to its initial proposal.

We have also carefully reviewed the numerous other questions that are related to the two evaluation factors of Plan of Operations and Management and Operations in the context of the protester's rather lengthy arguments, and for essentially the same reasons as cited above, we do not agree that the discussions held constitute technical leveling.

Evaluation of Technical Proposals

The protester objects to the evaluation of both Telesec's and its own proposal. The determination of the merits of proposals is primarily the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Viking Instruments Corp., B-238183, April 24, 1990, 90-1 CPD ¶ 414. Accordingly, we will not reevaluate the proposals and independently judge their merits; we will examine an agency's evaluation to ensure that it is reasonable and consistent with the evaluation criteria. White Water Assocs., Inc., B-244467, Oct. 22, 1991, 91-2 CPD ¶ 356. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Evaluation of CBIS's Proposal

CBIS argues that the agency misevaluated its proposal under the Key Personnel factor by downgrading its BAFO based on the evaluation of a stacks services assistant manager first proposed by CBIS in its BAFO. CBIS contends that this position was not required by the RFP and not subject to any minimum standards set forth in the solicitation so that it was improper for the agency to have downgraded Telesec based upon criteria set forth in the RFP for the more important key personnel.

CBIS originally proposed a stacks services assistant manager as one of its key personnel. In its first round of discussion questions, the agency requested that CBIS expand its discussion of this individual's qualifications. After receiving the revised offer, the agency was not satisfied with CBIS's response, noting that it did not adequately address her qualifications to assume responsibility for such "a large and important part of the contract" as supervising a proposed staff of 29. The agency considered the proposed assistant manager CBIS's only weakness under this factor. In fact, the agency increased CBIS' score based on improvements or clarifications regarding other key personnel in its revised proposal.

In its BAFO, CBIS withdrew its proposed candidate for this position and substituted an alternate. The agency found that the individual did not meet the specific minimum qualifications set forth for in the RFP for a unit supervisor.

The solicitation stated that at a minimum project managers and unit supervisors would be considered key personnel but also indicated that the organization was to be established by the offeror and that the firm could designate those positions it considered to be key. Here, CBIS specifically proposed its stacks services assistant manager as one of only four key personnel. The agency reasonably considered this individual, who was to supervise a staff of 29, as a key individual and, in our view, reasonably evaluated the person as such.

Turning to the actual evaluation of the individual proposed in the BAFO, the RFP provided that unit supervisors' experience shall include "two years experience in directing and supervising members of task oriented units, demonstrated experience in problem solving, and specific experience in interlibrary loan, circulation, and library collection maintenance." The agency downgraded him based on the fact that he lacked demonstrated ability to perform the tasks himself and because he did not have experience as a first line supervisor. Rather, they found that his experience was with "management, directing, fill in, and oversight." We have no basis upon which to object to the agency's judgment in concluding that the individual's lack of "hands on" experience made him a less than fully desirable candidate for the position.

CBIS also argues that during negotiations the agency "suggested" that it replace the assistant manager originally proposed with the individual who was later found by the agency to be unqualified. The protester argues that it merely "followed the advice of the agency" by substituting him as assistant manager in its BAFO.

The agency reports that it did not suggest that CBIS propose this individual or tell CBIS that the proposed substitute assistant manager was qualified. The agency acknowledges that CBIS provided it with a "verbal description" of this individual's background, experience, and skills, and stated that his resume would be included in the written, formal response." The agency disputes the protester's position that CBIS was advised that its candidate was acceptable and points out that without reviewing the resume, which was first submitted with the BAFO, the evaluators could not determine if the individual was qualified.

It is improbable that the agency "approved" CBIS's candidate during discussions in the manner described by the protester. First, as the agency states, the evaluators were in no position to do so without reviewing the resume and BAFO. Second, contracting agencies generally do not, and should not, conduct evaluations of proposals during discussions, and offerors should not expect them to or rely on statements of the agency made during discussions as a preview of what it expects the evaluation to be. Thus, we do not think that it was reasonable for the protester to rely on such general statements. Moreover, the agency's "acceptance," of the substituted assistant supervisor does not preclude the agency from awarding less than a perfect score in its evaluation. Federal Elec. Int'l, Inc., B-232295.2, Dec. 21, 1988, 88-2 CPD ¶ 610.

CBIS also questions its evaluation score under the Management and Operation factor, which decreased as a result of the evaluators' views that CBIS (1) overestimated the number of hours to perform the tasks, (2) failed to provide "time and motion studies" supporting the level of proposed labor hours, and (3) proposed a supervisor to employee ratio that was too low.

With respect to the protester's arguments (1) and (2), the record shows that these were cited by the agency as CBIS weaknesses in the evaluation subfactor of staffing levels, for which CBIS was awarded 4.19 points out of a possible 7. Specifically, the agency found that no documentation was provided justifying its hourly production rates. The protester referred to "time and motion studies" in its initial proposal and that the agency asked CBIS to provide the studies during discussions. CBIS explained that no such studies existed and that they were actually the CBIS project manager's "discretionary labor hour estimates" of the RFP's increased tasks.

The protester argues that the agency "accepted that no formal documents existed and therefore acknowledged the validity" of the project manager's observations. While the evaluators may have acknowledged that they understood the

studies to be estimates, there is no support in the record for the conclusion that they accepted the estimates as sufficient substantiation for CBIS's staffing levels. After specifically requesting the studies in the first round of questions, the TEP found that "no documentation was provided justifying the hourly production rates or the resulting proposed increases in staffing levels." In its second round of questions, the agency specifically stated that "the Government believes that the manpower estimates are high," and that "the Government believes that the manpower proposed on the following options are high: options F,G,I, and O."

Turning to the final evaluation of CBIS staffing levels, the evaluators found that loan processing, mailing services, interlibrary borrowing group, and bibliographic searching estimates still appeared high and exceeded the agency's overall estimate. Throughout the evaluation, the TEP believed that CBIS overestimated the number of hours needed to perform many of the tasks. The agency's concerns were communicated to the protester. Based on this judgment and the failure of the protester to justify its estimates, we have no basis to conclude that the agency's rating of the CBIS proposal in the subfactor of staffing levels was without a rational basis.

The protester also argues that the agency improperly evaluated its proposal under the subfactor of organization and control by deducting points based on CBIS's proposed supervisor to staff ratio. CBIS argues that during negotiations the agency indicated that CBIS's management approach of using "team leaders" to compensate for the relatively low number of supervisors would be "acceptable." While the agency may have approved of the "concept," the record shows that the evaluators did not find that it adequately remedied the low supervisor to staff ratio. We do not think it was reasonable for CBIS to conclude, based on the evaluators' acceptance of its approach, that the agency could not award it less than a perfect score for this subfactor, particularly since technical acceptability represented satisfaction of a minimum standard only. See American Dev. Corp., B-224842, Jan. 7, 1987, 87-1 CPD ¶ 26. The evaluators found that "the serious weaknesses in the organization were primarily related to the number of staff directly supervised by a single supervisor." The agency concluded that the addition of team leaders did not improve the organization because they would not perform daily supervision. We have no basis to object to the evaluators' judgment in downgrading the proposal under this subfactor.

Evaluation of the Telesec proposal

CBIS asserts that Telesec's proposal did not deserve the outstanding rating it received in the areas of Key Personnel

and Responsibility and Similar Experience. The protester states that the evaluators had concerns about Telesec's proposed project manager's qualifications and refers to the evaluation of Telesec's initial and revised proposals where the evaluators indicated that they did not have sufficient information about the proposed project manager's interlibrary loan experience, her experience as a supervisor and as a manager of projects of similar size and scope, and her experience with statistical analysis.

Contrary to CBIS' assertion, the record shows that Telesec provided the agency with additional information about the proposed project manager's qualifications during discussions and that the evaluators were satisfied that she met the RFP standards.

CBIS raises similar arguments about the agency's evaluation of Telesec's proposal under the factor of Responsibility and Similar Experience. The protester asserts that the evaluators were unable to "definitively determine whether Telesec possessed any relevant experience or was really capable of performing a contract of the size and scope of the NAL." Contrary to the protester's assertion, the agency evaluators found that Telesec possessed relevant experience that demonstrated its capability to perform the contract. The agency concluded in its BAFO evaluation that Telesec had "excellent related and similar experience in management and performance of library projects of this size and complexity," and noted that activities performed included handling interlibrary loans. We think that this conclusion was reasonable based on Telesec's extensive experience with library projects and its seven current library contracts, including projects for the National Institutes of Health Library and National Library of Medicine.

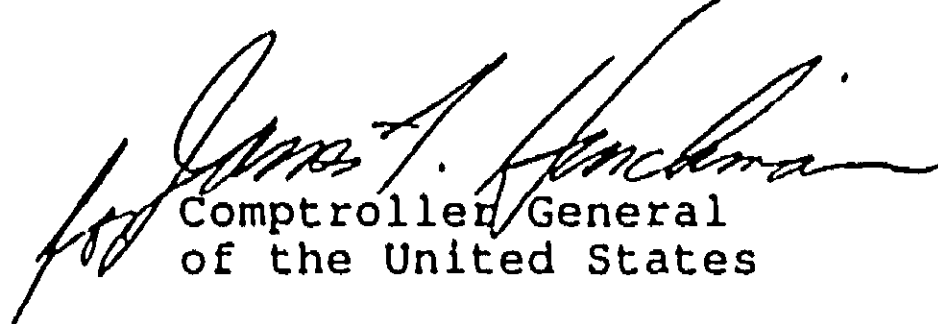
The protester also argues that Telesec's proposed staffing estimates were too low. While the record supports the protester's position that during the evaluation the TEP believed that Telesec's proposed estimates were low, the BAFO evaluation indicates that the evaluators finally concluded that the firm's staffing plan was "clearly adequate to perform the project." Further, to the extent some doubt lingered as to Telesec's proposed staffing level, it was reflected in the evaluators' final score, as the firm received its lowest rating of "fair" for the staffing level subfactor and was awarded only 4.19 points out of a possible 7. Consequently, we have no basis to conclude that the agency's evaluation of Telesec's proposed staffing was unreasonable.

RECOMMENDATION

In sum, we conclude that the record simply does not support CBIS's arguments concerning the agency's use of negotiations and its evaluation of the proposals. Nevertheless, we agree with the protester that Telesec could not reasonably expect that key personnel it proposed were available, and had the proposal been accurate and updated in this respect, the agency might have made a different selection.

We are recommending that the agency reopen negotiations and request additional BAFOs from the firms in the competitive range. With respect to protest costs, except as limited below, CBIS is entitled to recover its costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d)(1) (1991). CBIS is not entitled to recover its costs or attorney's fees which are allocable to its protest allegation that the agency engaged in technical leveling. While the protester directed much of its efforts to that protest ground, which was separately filed and denied, the issue is in our view, so severable from its initial protest as to constitute a separate and unsuccessful protest. See Department of Commerce--Recon., B-238452.3, Oct. 22, 1990, 90-2 CPD ¶ 322. CBIS should submit its claim for costs directly to the agency. 4 C.F.R. § 21.6(e).

The protest is sustained in part and denied in part.


Comptroller General
of the United States