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**United States General Accounting Office  
Washington, DC 20548**

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## Decision

**Matter of:** Shumaker Trucking and Excavating Contractors, Inc.

**File:** B-290732

**Date:** September 25, 2002

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### **DIGEST**

1. Challenge to agency's evaluation of protester's proposal is denied where the record shows that the agency reasonably evaluated the protester's proposal in accordance with the solicitation's evaluation factors.
  2. Agency's decision to select a higher technically rated, higher priced proposal is unreasonable where the record shows that the agency mechanically applied the solicitation's evaluation methodology; neither the source selection documentation nor the evaluation record establish a valid rationale for why the agency found the higher priced, higher technically rated proposal to be most advantageous to the government.
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### **DECISION**

Shumaker Trucking and Excavating Contractors, Inc. protests the award of a contract to URS Group, Inc., under request for proposals (RFP) No. R1-11-02-001, issued by the Forest Service, Department of Agriculture, for the reclamation of the New World Mine in Park County, Montana. Shumaker alleges that the evaluation of its technical proposal was unreasonable and that the agency's selection decision was improper.

We sustain the protest.

The RFP, issued on April 1, 2002, contemplated the award of a fixed-price contract for the consolidation and capping of mine waste in the McLaren Pit, as the second phase of the New World Mine reclamation project. The solicitation established four technical evaluation factors: past performance, experience in similar work,

technical approach to perform the work, and key personnel.<sup>1</sup> The RFP notified offerors that the experience factor was more important than technical approach, which was slightly more important than the past performance and key personnel factors, which were of equal importance. The solicitation also established that all four technical evaluation factors, when combined, were approximately equal in importance to price. RFP § M-2. The RFP stated that the Forest Service intended to make award, without discussions, “to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Government.” RFP § M-1.

Four offerors, including Shumaker and URS, submitted proposals by the May 1 closing date. Shumaker submitted the lowest-priced offer of \$3,591,956.15, and URS the second-lowest price of \$3,987,695.20. A technical evaluation panel (TEP) rated the technical proposals under the weighted evaluation factors utilizing a point scale rating system.<sup>2</sup> The technical evaluation scores of the proposals of URS and Shumaker, the two highest rated, were as follows:

<b>Technical Factor</b>	<b>URS</b>	<b>Shumaker</b>
Past Performance (30)	26	22
Experience (55)	48	39
Technical Approach (45)	43	20
Key Personnel (30)	17	12
<b>Total (160)</b>	<b>134</b>	<b>93</b>

Agency Report, Tab E, Record of Proposal Evaluation, at 2. After evaluating technical proposals, and being informed of the offerors’ prices, the TEP recommended that contract award be made to URS. The contracting officer also concluded that the difference in technical scores between URS and Shumaker justified the higher price, and recommended to the source selection authority (SSA) that award be made to URS.<sup>3</sup> Agency Report, Tab D, Memorandum of Negotiation,

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<sup>1</sup> The RFP also informed offerors of the various criteria, or subfactors, within each technical factor.

<sup>2</sup> The TEP rated proposals by having each member identify strengths and weaknesses and assign a numeric rating to each technical subfactor and factor. The TEP then developed consensus ratings based upon discussions among the members of the strengths and weaknesses of each proposal.

<sup>3</sup> The SSA approved the contracting officer’s recommendation without comment. Agency Report, Tab D, Memorandum of Negotiation, at 3.

at 2. The Forest Service informed Shumaker of the award decision on June 6, and this protest followed.<sup>4</sup>

Shumaker protests that the agency's decision to make award to URS was improper. Specifically, the protester contends that the Forest Service's evaluation of its technical proposal, especially in comparison with that of URS, was unreasonable. Shumaker also alleges that the agency's selection decision improperly failed to explain why selection of a higher-priced proposal represented the best value to the government here. Shumaker argues that if the Forest Service had reasonably evaluated its technical proposal, and conducted a proper best value determination, then Shumaker would have been awarded the contract here.

While the record shows that the agency's evaluation of Shumaker's technical proposal was reasonable, we find that the Forest Service failed to properly explain its award selection decision, and we sustain the protest on this basis.

Shumaker first contends that the Forest Service improperly evaluated its proposal. Specifically, Shumaker alleges that with regard to each of the four technical factors, the agency's evaluation was unreasonable and not in accordance with the evaluation criteria, especially in relation to how the agency evaluated URS's proposal. While we discuss only some for illustrative purposes, we have examined each of the protester's arguments in detail and find no basis to question the agency's evaluation.

In reviewing a protest against an agency's evaluation of proposals, we examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ostrom Painting & Sandblasting, Inc., B-285244, July 18, 2000, 2000 CPD ¶ 132 at 4. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4. As demonstrated below, we find that the Forest Service's evaluation of Shumaker's proposal was reasonable and consistent with the evaluation criteria.

For example, Shumaker challenges the rating the TEP assigned to its proposal under the past performance factor. The solicitation required that offerors provide a list of all jobs completed in the past 3 years, to include project description, contract amount, and contact person. Offerors were also to provide information on any problems encountered and the corrective actions taken, cost control methods and

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<sup>4</sup> The agency notified our office on July 1 of its decision to override the automatic stay of performance (see Federal Acquisition Regulation (FAR) § 33.104(c)(2)), having determined it in the best interest of the government to proceed with contract performance in light of the extremely short construction season available each year for the high-altitude mine reclamation work required here.

procedures used, and cooperation with the customer. RFP § L-2. The RFP informed offerors that the agency would evaluate past performance by considering the quality of products and services, customer satisfaction, timeliness, cost control, and the ability to solve problems that arose during contract performance. RFP § M-2.

The protester argues that the past performance point score it received (22 of 30 points) was unreasonably low (or alternatively, the past performance point score that URS received (26 of 30 points) was unreasonably generous), given Shumaker's outstanding references and full descriptions of its recently completed projects.<sup>5</sup> Our review shows that the agency's evaluation under this factor was reasonable.

In organizing its technical proposal, Shumaker did not format it into sections consistent with the stated evaluation factors. Instead, Shumaker's technical proposal contained eight major divisions, and the information relevant to each evaluation factor was spread among multiple sections.<sup>6</sup> With regard to the past performance factor, Shumaker's proposal included several reference letters, as well as a separate listing of contracts completed during the past 3 years. Shumaker's list of completed contracts included each project's name, contract amount, and contact person, but little if any detail about the type and scope of the projects performed. The method by which Shumaker organized its proposal adversely affected its evaluation; specifically, the TEP determined that while Shumaker's proposal contained a long list of completed projects, the brief descriptions provided of the projects made it difficult to determine the type and scope of work performed. Agency Report, Tab E, Record of Proposal Evaluation, at 3.

The protester argues that its proposal did provide detailed project descriptions of its past performance--by means of the solicitations of Shumaker's prior contracts--that the agency failed to adequately consider. We disagree. Shumaker's decision to use prior solicitations as the means to convey descriptions of its prior work resulted in a

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<sup>5</sup> The protester makes a similar argument regarding the TEP's evaluation and scoring of Shumaker's experience with mine reclamation projects, to include high elevation mine reclamation projects, given the detailed descriptions provided in its proposal.

<sup>6</sup> The first part of Shumaker's proposal was an executive summary, which included the offeror's technical approach and tentative work schedule. The second section, "past work history," included a company resume with brief narrative of recent contracts performed, a partial equipment list, a listing of Shumaker's experience with reclamation projects, and a listing of the contracts completed in the last 3 years. The third section, "original project descriptions," contained copies of the solicitations of Shumaker's prior contracts--relevant to both the past performance and experience evaluation factors. Shumaker's technical proposal was then organized into separate sections for reference letters, key personnel, the contractor's resources, the offeror's quality control plan, and the offeror's general safety policy.

proposal containing a large amount of extraneous information (e.g., bid submission instructions, listing of contract clauses, payment procedures, bid schedules). More importantly, as Shumaker's proposal listed its past performance contracts in one part, and then attempted to provide the necessary descriptions of the prior work performed in another, the TEP reasonably found it difficult to determine the type and scope of the protester's past performance. In this regard, it was Shumaker's responsibility to submit a proposal with adequately detailed information and in such a manner as to allow a meaningful review by the agency, see Interstate Gen. Gov't Contractors, Inc., B-290137.2, June 21, 2002, 2002 CPD ¶ 105 at 5; it was not the agency's obligation during the evaluation process to decipher a poorly organized proposal. As Shumaker failed to submit an adequately written proposal here, we have no basis to question the reasonableness of the agency's evaluation.<sup>7</sup>

Shumaker also challenges the agency's scoring under the technical approach factor. The RFP required that offerors describe, among other things, the detailed construction methods and sequencing, equipment, and procedures to be used on this project, and provide a proposed schedule of work with timeframes allocated to each significant phase of the work. RFP § L-2. The TEP determined that Shumaker's technical approach to the project contained but a general description, and lacked details regarding specific equipment, public safety considerations, and wildlife conflicts. The TEP also found that Shumaker's tentative work schedule was a basic bar diagram. The protester argues that its technical proposal provided adequate information describing its technical approach to performing this project. We find that the record does not support the assertion that the agency's evaluation here was unreasonable.

Shumaker's proposal, with regard to its technical approach to perform the work, was little more than one page in length. Moreover, the technical approach described by Shumaker was very generic in nature. In its evaluation here, the TEP concluded that Shumaker's proposal was deficient because it did not display a detailed technical approach plan for this specific project, and because it did not provide a detailed schedule of the tasks that Shumaker would perform at each stage of the mine

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<sup>7</sup> Shumaker also argues that the agency should have rejected URS's proposal because, contrary to the terms of the RFP, the awardee did not provide a list of all jobs completed during the past 3 years. URS's failure to list all such contracts did not make its proposal unacceptable because the solicitation requirement was intended to provide the agency with sufficient information upon which to reasonably evaluate an offeror's past performance, which was achieved. Moreover, URS did not mislead the agency here, but clearly made it known that its proposal contained but a demonstrative sampling of the hundreds of projects completed during the past 3 years. While Shumaker argues that URS's failure to list all recent projects permitted the awardee to conceal negative performance information, this contention is at best mere speculation.

reclamation work. The RFP expressly informed offerors that the “technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed description of the techniques, procedures, and program for achieving the objectives of the specifications/statement of work.” RFP § L-2. Contrary to Shumaker’s arguments, it was not unreasonable for the agency to assign a lower rating to a proposal that contained minimal detail of the technical approach to perform the work. The record, therefore, supports the agency’s evaluation of Shumaker’s proposal.

Shumaker also protests that the agency’s selection decision fails to adequately explain the agency’s best value determination. Specifically, Shumaker alleges that in making its price/technical tradeoff, the agency failed to compare the advantages of URS’s proposal to those of Shumaker’s proposal or explain why any advantages in the awardee’s proposal were worth the approximately \$400,000 higher price. We agree.

So long as the solicitation’s evaluation criteria permit it, agencies may make price/technical tradeoffs, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. KPMG Peat Marwick, L.L.P., B-271673, July 15, 1996, 96-2 CPD ¶ 53 at 5. Where a price/technical tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. FAR § 15.308; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 5. This explanation can be given by the source selection authority in the award decision, or it can be evidenced from the documents on which the source selection decision is based. TRW, Inc., B-260788.2, Aug. 2, 1995, 96-1 CPD ¶ 11 at 4. The propriety of the price/technical tradeoff decision turns not on the difference in the technical scores or ratings per se, but on whether the selection official’s judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP’s evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. We find that the record does not establish a valid rationale for the agency’s tradeoff decision here.

As stated above, the solicitation notified offerors that contract award would be based on that technically acceptable proposal whose “price/technical relationship” was most advantageous to the government. In making such a best value award selection decision, the RFP specified as follows:

Trade-offs may be made among cost and other non-cost factors that allow the government to accept other than the low cost proposal. The critical factor in making any cost/technical trade-offs is not the spread between the technical ratings, but rather the significance of that difference. The significance of the difference in ratings will be determined on the basis of what that difference is and what it would cost the Government to take advantage of it. Award may not

necessarily be made for technical capabilities that would appear to exceed those needed for fulfilling the requirements of this contract. The Government reserves the right to make cost/technical trade-offs that are the best value to the Government.

RFP § M-1. While the RFP correctly noted the standard for tradeoff decisions, the agency nonetheless failed to provide a valid rationale for its award selection decision here.

The source selection decision document, prepared by the contracting officer and concurred in by the SSA without comment, stated:

It is the recommendation of the Contracting Officer that the major difference in technical scores does justify the slightly higher price in this case.

It was the recommendation of the technical evaluation board that the URS Group has presented the best value based on its overall technical evaluation and price. It received the highest technical evaluation, scoring 134 points, versus 93 points for Shumaker Trucking. This represents a technical difference of 44 percent ( $134/93=1.44$ ). Also the difference on item number 3, which is the technical approach to perform the work, the difference was even greater, being 20 points for Shumaker Trucking and 43 points for URS. This represents over 100 percent difference in this important aspect.

The URS Group's bid, while being below the Government Estimate, is within 2 percent. The URS Group was selected for recommendation of award as they offer the best overall value to the Government. This is based on their high technical score and the price being fair and reasonable. While they are somewhat higher than the second rated firm (Shumaker Trucking) the Technical Evaluation Board and the Contracting Officer felt the difference in cost of \$395,739.05 is justified based on the superior scoring on past performance and technical approach provided in their proposal.<sup>8</sup>

Agency Report, Tab D, Memorandum of Negotiation, at 2.

The record shows that the focal point of the agency's price/technical tradeoff decision here was URS's higher technical point score, without discussing what, if anything, the spread between the technical scores of URS and Shumaker actually

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<sup>8</sup> The record contains no statement from the SSA providing additional explanation, contemporaneous or otherwise, for the agency's selection decision.

signified. The record contains no evidence that the agency compared the advantages of the awardee's proposal to those of Shumaker's proposal, or considered why any advantages of the awardee's proposal were worth the approximately \$400,000 higher price. As we have previously stated, point scores are but guides to intelligent decision making. Ready Transp., Inc., B-285283.3, B-285283.4, May 8, 2001, 2001 CPD ¶ 90 at 12. In this case the Forest Service's tradeoff is inadequate because its mechanical comparison of the offerors' point scores was not a valid substitute for a qualitative assessment of the technical differences between the offers from URS and Shumaker, so as to determine whether URS's technical superiority justified the price premium involved. Opti-Lite Optical, supra, at 5.

In its report filed in response to Shumaker's protest, the agency contends that the award selection decision here was proper because it was based on a number of factors: URS had an 11 percent higher price but a 44 percent higher technical score; URS outscored Shumaker in each technical factor; with regard to the two most important technical factors--experience and technical approach--URS outscored Shumaker by 23 percent and 115 percent, respectively; and URS's price was below the government estimate. Memorandum of Law at 5. The agency argues that since its price/technical tradeoff decision did not rely solely upon the difference in total technical scores, the explanation was sufficient. We disagree.

First, contrary to the statements in the agency's post-protest Memorandum of Law, the source selection decision document nowhere notes that URS had outscored Shumaker in each technical factor, or that URS had outscored Shumaker with regard to the most important technical factor, experience. See Agency Report, Tab D, Memorandum of Negotiation, at 2. More important, an agency's mechanical comparison of the point scores for individual technical factors is no more sufficient an explanation than a mechanical comparison of total point scores; it is not a valid determination of what the difference in technical scores signifies, such that it warrants the additional price involved. See Johnson Controls World Servs., Inc., supra. While, as the agency argues, it would not be unreasonable for the contracting officer to equate a higher technical score with a significantly more detailed understanding of the work to be performed and of the technical approach to be used, Memorandum of Law at 15, we will not make such assumptions on the agency's behalf where the contemporaneous record is bereft of any evidence of this.<sup>9</sup>

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<sup>9</sup> Although not argued by the agency, we recognize that the TEP also concluded that URS's proposal represented the best value to the government. Agency Report, Tab E, Record of Proposal Evaluation. There is no evidence in the record, however, that the SSA took into account the TEP's recommendation in making the award selection determination. In any event, as with the source selection decision document, the TEP's recommendation largely merely acknowledges the technical point score difference between the proposals of URS and Shumaker, without determining its significance.



As the record, including the source selection decision document, fails to show why the agency determined that URS's higher technically rated, higher priced proposal was the best value to the government, it simply is not possible to conclude that the SSA reasonably decided that URS's proposal was worth the price premium involved. Accordingly, we sustain the protest on this basis.

We recommend that the agency perform and document a proper price/technical tradeoff. If, based on this analysis, URS's proposal is no longer found to represent the best value to the government, the agency should terminate the contract and award a contract for the remainder of the work to the offeror whose proposal is selected. Additionally, we recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (2002). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. Bid Protest Regulations, 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa  
General Counsel