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Decision

Matter of: One Largo Metro LLC; Metroview Development Holdings, LLC; King Farm Associates, LLC

File: B-404896; B-404896.2; B-404896.3; B-404896.4; B-404896.5; B-404896.6; B-404896.7

Date: June 20, 2011

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DIGEST

1. Protest is sustained where the agency failed to consider both the variety and quantity of amenities offered under the access to amenities subfactor, as required by the solicitation.

2. Protest is sustained where the head of the contracting activity did not meaningfully consider the evaluated differences in the offerors' proposals in her selection decision.

DECISION

One Largo Metro LLC, of Upper Marlboro, Maryland; Metroview Development Holdings, LLC, of Largo, Maryland; and King Farm Associates, LLC, of Vienna, Virginia, protest the selection of Fishers Lane/JBG Companies, of Rockville, Maryland, as the apparent successful offeror under solicitation for offers (SFO)

No. 08-011, issued by the General Services Administration (GSA) for office space for the Department of Health and Human Services (HHS).

We sustain the protests.

BACKGROUND

The SFO, issued by GSA in July 2008, sought offers for a 15-year lease of up to 935,401 rentable square feet of office space in suburban Maryland to collocate HHS operating divisions that are currently housed in four separate locations.¹ See Contracting Officer's (CO) Statement at 1. Suburban Maryland was defined by the SFO as consisting of Montgomery and Prince George's counties. SFO at 7.

Offerors were informed that award would be made on a "best value" basis, considering price and three technical factors: location; building characteristics; and past performance and key personnel. SFO at 11. The location and building characteristics factors were stated to be of equal weight, and to be each significantly more important than the past performance and key personnel factor. SFO amend. 7, at 1. Price was stated to be significantly less important than the combined weight of the technical factors. SFO at 11.

The following subfactors were identified under each non-price evaluation factor:

Location	
	Access to Existing Metrorail
	Access to Amenities
Building Characteristics	
	Number of Buildings
	Planning Efficiency and Flexibility
	Quality of Building Architecture, Building Systems, and Construction
Past Performance and Key Personnel	
	Past Performance
	Key Personnel

SFO amend. 7, at 1. Under the location factor, the access to existing Metrorail subfactor was stated to be significantly more important than the access to amenities subfactor and more important than any other subfactor. The SFO indicated that the

¹ The majority of HSS employees in these locations are housed in the building offered by the awardee. Agency Report (AR), Tab 18, Program of Requirements (POR), at 1.1.

subfactors under the building characteristics factor were in descending order of importance. Id.

With regard to access to an existing Metrorail station, offerors were required to calculate the distance from the main entrance of their proposed buildings to the entrance of the nearest Metrorail station. SFO at 11. In addition, offerors were required to identify the walking route for distances less than 2,500 walkable linear feet (wlf). For distances greater than 2,500 wlf, offerors were required to propose a shuttle schedule. The SFO also stated that the highest evaluation credit would be provided based upon how close a proposed building was to an existing Metrorail station.² Id.

With regard to access to amenities, offerors were informed that “[o]ffers will be evaluated for amenities within the building or otherwise available” within one mile of the building’s main entrance, and that evaluations would consider “the quantity and variety of the following amenities: fitness facilities, postal facilities . . . restaurants, day care center, fast food establishments, dry cleaners, [banks and ATMs], convenience shops, card/gift shops, hair salons, automotive service stations, and drug stores.”³ SFO amend. 8, at 1-2. The SFO further advised that the best rating would be given to offers that provide the greatest variety and quantity of amenities existing at the time of occupancy within the building or within 1,500 wlf of the building.⁴ SFO amend. 8, at 2. The SFO stated that amenities must currently exist or

² GSA prepared a source selection plan (SSP) for the procurement, which provided for the assignment of the following adjectival ratings: superior, highly successful, successful, marginal, and poor. See AR, Tab 5, Revised SSP, at 12-18. For example, under the access to existing Metrorail subfactor, the SSP provided for a superior rating where the building distance from the Metrorail station was within 1,500 wlf; a highly successful rating where the distance was more than 1,500 but less than 2,500 wlf; a successful rating where the distance was more than 2,500 wlf but less than 1 mile; a marginal rating where the distance was more than 1 mile but less than 2 miles; and a poor rating where the distance was more than 2 miles but less than 3 miles. Id. at 15.

³ The SFO incorporated by reference the agency’s POR, SFO at 6, which required offerors to provide space within the building for a number of facilities, including a post office, health unit, child care center, food service/cafeteria, fitness center, and credit union. See AR, Tab 18, POR, at 1.4.

⁴ The SSP provided for the assignment of adjectival ratings under the access to amenities subfactor based upon the number of amenities being offered in categories identified in the SFO within a certain distance from the proposed building. For example, a superior rating reflected having at least [Deleted]. A highly successful rating reflected having at least [Deleted]. A successful rating reflected having at

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the offeror must provide evidence that the amenities will be available near the time of occupancy, such as construction contracts, signed leases or service contracts, letters of intent, “or any other credible or verifiable evidence.” Id.

With respect to the evaluation of price, offerors were informed that the agency would calculate a present value of the annual price per square foot, including any option prices. SFO at 16. The offerors were instructed to propose an itemized lease rate per square foot that would include property financing, insurance, taxes, management, and profit. See id. at 19. In this regard, the SFO provided that the lessor’s building rent could be adjusted to account for changes in real estate taxes after the tax base for the property was established. Id. at 26. The tax base would be established after the first full tax year of occupancy, and would take into account all improvements in any fully renovated or newly constructed building. Id. at 26-27.

The SFO also informed offerors that the agency was required to comply with the National Environmental Policy Act (NEPA) for each offered site. Id. at 24. Offerors were required to provide a basis for GSA to determine—in accordance with the NEPA, as implemented by the GSA NEPA Desk Guide—that the proposed building site would receive either a categorical exclusion from the requirement to prepare an environmental assessment or a finding of no significant impact.⁵ The SFO provided that proposals that offered sites that would require the preparation of an environmental impact statement would be considered technically unacceptable and ineligible for award.⁶ Id. at 25.

In December 2008, GSA received proposals from five firms, including Fishers Lane, One Largo, Metroview, and King Farm. CO’s Statement at 6. Fishers Lane offered to renovate the building that currently contains the majority of the HHS staff impacted by the lease; the other four offerors offered to construct new buildings. Because of funding constraints, the procurement was suspended until February 2010. Then the SFO was amended to revise anticipated occupancy dates, request revised offers, and

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least [Deleted]. A marginal rating reflected having at least [Deleted]. AR, Tab 5, Revised SSP, at 16.

⁵ A finding of no significant impact means that a building site has no significant impact on the human environment, which reflects the relationship of humans with the natural and physical environment. See 40 C.F.R. §§ 1508.13, 1508.14 (2010).

⁶ When a project is likely to significantly impact the quality of the human environment, the agency must provide a detailed written statement on the environmental impact of the proposed project and alternatives to the proposed project. See 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.11.

to, among other things, reduce the minimum ceiling height from 8'6" to 8'0".⁷ After receiving revised offers from all five firms in March 2010, GSA engaged in several rounds of clarifications and discussions, and requested final revised offers. CO's Statement at 7-9.

With regard to the requirement for an environmental assessment, GSA asked the offerors to address any identified possible impacts related to their offered site in the agency's draft environmental assessment.⁸ See, e.g., AR, Tab 107, One Largo Negotiation Letter, Nov. 3, 2010, at 2. The offerors were requested to demonstrate how any possible impacts and mitigation measures would be addressed to allow for a finding of no significant impact. Id.

Initial Evaluation of Offers

Offers were evaluated by the agency's technical evaluation teams⁹ (TET), which assigned adjectival ratings under each non-price evaluation factor supported by a narrative discussion that identified the offerors' respective strengths and weaknesses. See id., Tabs 71, 72, and 73, TET Revised Evaluation Reports. The evaluation reports were provided to the agency's source selection evaluation board (SSEB), which also evaluated the offerors' revised proposals. The SSEB assigned adjectival ratings under each subfactor and for the proposals overall, but did not, at this juncture, provide an adjectival rating for the three top-level evaluation factors. See id., Tab 76, SSEB Final Evaluation Report, at 3.

The SSEB rated the proposals of Fishers Lane, One Largo, and Metroview as superior overall (the highest technical rating), while King Farm's proposal was rated highly successful overall (the next highest rating). Id. at 45. The SSEB's adjectival ratings were also supported by narrative discussions of the offerors' respective

⁷ In response to the offerors' questions, GSA stated that the ceiling height was reduced to reflect HHS's requirements. See SFO amend. 10, questions and answers, at 3. The CO also states, however, that the required ceiling height was reduced to maximize competition. CO's Statement at 7.

⁸ GSA prepared a draft environmental assessment in September 2010 that examined the possible impact of the lease consolidation for each of the offerors' proposed sites, and invited public comment. See AR, Tab 173, Draft Environmental Assessment; CO's Statement at 13. One Largo raised objections to the draft environmental assessment, which it repeats in its protest here. See AR, Tab 184, One Largo Comments on Draft Environmental Assessment. In March 2011, GSA completed the final environmental assessment, which concluded that each offered site would result in a finding of no significant impact. CO's Statement at 14.

⁹ GSA assigned a separate technical evaluation team for each non-price evaluation factor.

strengths and weaknesses under each of the evaluation subfactors. For example, under the location factor subfactors, the SSEB discussed the offerors' differing access to existing Metrorail stations and amenities. See id. at 45-46. In this regard, the SSEB recognized significant differences in the distance of the offered buildings from existing Metrorail stations. Thus, One Largo, which offered a building less than 525 wlf from the nearest Metrorail station, received a superior rating, while King Farm, which offered a building approximately 1.3 miles from the nearest Metrorail station, received a marginal rating. See id. at 7-11, 45-47. King Farm's marginal rating under the access to existing Metrorail subfactor resulted in that firm's proposal receiving an overall highly successful rating rather than a superior rating. Id. at 45. Similarly, under the equally weighted building characteristics factor, the SSEB noted the differing strengths and weaknesses of the offerors' proposed buildings. Id. at 45-47.

GSA also calculated a net present value per square foot for the awardee's and protesters' final revised proposals, as follows:

[Deleted]	[\$[Deleted]]

AR, Tabs 145, 146, 147, and 148, Present Value Analyses.

The SSEB conducted a tradeoff analysis and recommended that the lease be awarded to King Farm as reflecting the best value to the agency. Id., Tab 76, SSEB Final Evaluation Report, at 48-50. The SSEB found that the proposals of Fishers Lane, One Largo, and Metroview were essentially technically equal, and that the price of Fishers Lane was lower than the prices of One Largo and Metroview. The SSEB then compared the Fishers Lane higher-rated proposal to King Farm's lower-priced proposal. The SSEB found that the higher technical rating of the Fishers Lane proposal primarily reflected that offeror's proposal of a building that was closer to the nearest Metrorail station. The SSEB also found, however, that King Farm had mitigated that advantage by offering a free shuttle service.¹⁰ Id. at 48. The SSEB concluded that although the Fishers Lane proposal had a higher rating, the two offerors' proposals approached "technical equality," and the perceived benefit in the Fishers Lane proposal did not merit the additional cost to the agency. Id. at 50.

¹⁰ The SSEB also noted the [Deleted] price difference between King Farm's proposal and the Fishers Lane proposal over the term of the lease. Id. at 50.

Review by the Source Selection Authority

The SSEB's January 2011 evaluation report and award recommendation were provided to the agency's source selection authority (SSA). The SSA was concerned with the SSEB's rationale for its ratings of the offers and directed the SSEB to reevaluate and review its source selection recommendation. See id., Tab 78, Source Selection Decision, at 1. The SSA stated, among other things, that the SSEB's report did not indicate that the evaluation board had recognized that the location and building characteristics factors were of equal weight and that price was significantly less important than the technical factors. Id.

In February, the SSEB reviewed its evaluation ratings as directed and affirmed its subfactor ratings. AR, Tab 77, SSEB Addendum, at 2. To account for the equal weighting of the location and building characteristics factors, the SSEB decided to assign adjectival ratings at the factor level as part of its reassessment. Id. The SSEB also concluded that all five of the offers merited an overall highly successful rating, and should be viewed as technically equivalent, based on the factor-level ratings and on each offer's strengths and weaknesses. Id. at 3. For example, with respect to the King Farm proposal's overall rating, the SSEB considered its distance from Metrorail as a major weakness, but also considered the many strengths of King Farm's offer, such as the number of amenity categories, wide column spacing, lobby design, and past performance reviews suggesting the "ability to complete large projects with positive results." Id. at 4. Because the SSEB found that all offers were technically equal, the board again recommended that the lease be awarded to King Farm on the basis of its low price. Id. at 3, 7.

The SSA reviewed the SSEB's addendum evaluation report and agreed with the board's subfactor ratings and its recommendation to make award to King Farm. The SSA, however, disagreed with the SSEB's conclusion that the offers were technically equal. AR, Tab 78, SSA Decision, at 1. The SSA concluded that, although the proposals were technically very close, One Largo's offer was technically superior to the proposals of Fishers Lane, Metroview, and King Farm.¹¹ Id. In performing a tradeoff analysis, the SSA compared One Largo's superior offer with King Farm's low-priced, highly successful-rated offer. At the conclusion of her review, the SSA agreed with the ultimate conclusions of the SSEB, and decided that King Farm's offer represented the best value to the government. Id. at 3.

The SSA noted, for example, that even though King Farm's proposed site was the furthest from a Metrorail station--and therefore received a marginal rating under the

¹¹ The SSA also found that the fifth offeror's proposal, which was higher priced than One Largo's, was technically superior to the proposals of Fishers Lane, Metroview, and King Farm. The fifth offeror did not protest the award to Fishers Lane, and discussion of its proposal is not relevant to this decision.

access to existing Metrorail subfactor--King Farm's location was only three-tenths of a mile farther than the distance necessary to receive a successful rating (as defined by the SSP). The SSA also noted that King Farm's distance from the Metrorail station would be mitigated by King Farm's proposed shuttle and local bus service. Id. The SSA also found that King Farm offered a savings of over [Deleted] over the life of the lease as compared to One Largo. Id.

Review by the Head of the Contracting Activity

The SSA's selection decision was provided to GSA's commissioner for the National Capital Region Public Buildings Service, who also serves as the Head of the Contracting Activity (HCA) for this region. The HCA reviewed the SFO, SSP, TET reports, SSEB reports, and the SSA's decision, and disagreed with the SSA's conclusion that King Farm's proposal offered the best value to the government.¹² AR, Tab 79, HCA Decision, at 1. In making her determination, the HCA stated that she relied upon the SSEB's subfactor and overall ratings, and on the narrative discussion in the board's evaluation report (before the SSA required the SSEB to review its ratings and before the SSEB provided factor-level ratings). While the HCA relied on the SSEB's earlier ratings, she did not accept the SSEB's tradeoff analysis or its recommendation for award. Id. at 5. The evaluation ratings relied upon by the HCA in her decision were as follows:¹³

¹² The authority of agency officials to make source selections and awards under competitive proposal procedures flows from the procurement authority granted to the head of the agency. See Federal Acquisition Regulation § 1.601; Advanced Sci., Inc., B-259569.3, July 3, 1995, 95-2 CPD ¶ 52 at 18. Here, the procurement authority of GSA's Administrator to make selection decisions was delegated through the HCA to the SSA. Inherent in the authority to appoint source selection officials is the authority to review selection decisions, reverse, vacate, and make new selection decisions. Advanced Sci., Inc., supra, at 19.

¹³ The percentage weighting assigned by the SSP to the factors and subfactors was not disclosed in the SFO. See AR, Tab 5, Revised SSP, at 14.

	King Farm	Metroview	One Largo	Fishers Lane
Location ([Deleted]%)				
Access to Existing Metrorail ([Deleted]%)	Marginal	Superior	Superior	Highly Successful
Access to Amenities ([Deleted]%)	Highly Successful	Marginal	Successful	Superior
Building Characteristics ([Deleted]%)				
Number of Buildings ([Deleted]%)	Superior	Superior	Superior	Superior
Planning Efficiency and Flexibility ([Deleted]%)	Superior	Superior	Superior	Highly Successful
Quality of Building Architecture, etc. ([Deleted]%)	Superior	Superior	Superior	Superior
Past Performance & Key Personnel ([Deleted]%)				
Past Performance ([Deleted]%)	Superior	Neutral	Neutral	Superior
Key Personnel ([Deleted]%)	Superior	Highly Successful	Superior	Superior
OVERALL	Highly Successful	Superior	Superior	Superior

AR, Tab 76, SSEB Final Evaluation Report, at 52.

The HCA ranked the offers, based on the percentage of superior ratings received, in the following order: One Largo, Metroview, Fishers Lane, and King Farm. For example, the HCA concluded that One Largo’s offer was the highest-rated because it received a superior rating for 85 percent of the stated subfactors, including the three most important subfactors--access to existing Metrorail ([Deleted]%), number of buildings ([Deleted]%), and planning efficiency and flexibility ([Deleted]%). *Id.*, Tab 79, HCA Decision, at 7.

The HCA stated that the Fishers Lane offer presented the best value to the government and selected Fishers Lane for award. *Id.* at 7. With regard to One

Largo's higher-rated offer, the HCA acknowledged One Largo's technical superiority--based on the adjectival ratings--but stated that One Largo offered no technical advantage to justify its higher per square foot price [Deleted]. The HCA's tradeoff between the proposals of One Largo and Fishers Lane did not, however, identify One Largo's technical advantages or explain why these advantages did not justify the higher price. Id. Similarly, the HCA found that Metroview's offer was not the best value to the government, based on Metroview's lower rating and higher price than One Largo, but without any further explanation of the underlying merits of the proposals. Id.

The HCA also compared the Fishers Lane offer with King Farm's lower-priced offer, observing that the King Farm and Fishers Lane offers received the "same or similar" adjectival scores for all technical subfactors except for access to an existing Metrorail station.¹⁴ Id. at 6. As noted above, the Fishers Lane offer was rated highly successful under the access to existing Metrorail subfactor, and King Farm's offer was rated marginal. The HCA stated that this was the distinguishing difference between the offers, and selected the Fishers Lane higher-priced offer as the best value to the government. Id. GSA announced its selection decision on March 20, 2011, and these protests followed. GSA has stayed award of the lease pending our resolution of these protests.

DISCUSSION

The protesters raise numerous objections to the evaluation of offers and the HCA's selection decision. As explained below, we sustain the protesters' challenges to GSA's evaluation of offers under the access to amenities subfactor, and to the agency's source selection decision. We deny the remainder of the specific challenges to GSA's proposal evaluation and One Largo's challenge to the agency's environmental assessment. In resolving the protests, we have considered all of the parties' arguments, but address only the more significant protest grounds.¹⁵

¹⁴ In reaching a tradeoff decision, the HCA acknowledged that, for this procurement, price is significantly less important than the combined weight of the technical factors, but that the importance of price increases as offers approach technical equality. AR, Tab 79, HCA Selection Decision, at 5.

¹⁵ In this regard, One Largo argues that GSA's actions were biased in favor of Fishers Lane; we find no basis in the record to support that argument. Moreover, One Largo's challenge to the solicitation amendment lowering the acceptable ceiling height concerns an alleged apparent solicitation impropriety which was required to be filed, but was not, before the next closing date for revised proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a) (2010).

Access to Amenities Subfactor

King Farm argues that GSA's evaluation of proposals under the access to amenities subfactor was not in accordance with the SFO. King Farm Supp. Protest (B-404896.5) at 28-30. Specifically, King Farm contends that offerors were advised that the agency would consider the quantity, variety, and proximity of amenities offered. Instead of considering the quantity and variety of amenities, King Farm argues that the agency only considered the number of amenity categories offered. Id.

GSA acknowledges that the SFO provided for the evaluation of the variety, quantity, and proximity of amenities but argues that this was accomplished by assessing the number of amenity categories offered by each offeror. See Supp. AR at 20. Thus, for example, GSA contends that its assignment of a highly successful rating to King Farm's offer under the access to amenities subfactor was reasonable, where King Farm offered 13 amenities from only 8 amenity categories within 1,500 wlf of its building. In comparison, the Fishers Lane offer was rated superior under this subfactor for its offer of 18 amenities in 9 amenity categories. Id. at 21. GSA also argues that even if their ratings under the access to amenities subfactor were improved, King Farm and Metroview were not prejudiced by GSA's actions because this subfactor represented only [Deleted] percent of the total evaluation, and thus would not have altered the overall technical ratings or the results of the tradeoff analysis. Id. at 19.

We find that GSA's approach to evaluating this SFO provision was inconsistent with the terms of the provision.¹⁶ The SFO provided:

Offers will be evaluated for both the quantity and variety of the following amenities: fitness facilities, postal facilities . . . restaurants, day care center, fast food establishments, dry cleaners, [banks/ATMs], convenience shops, card/gift shops, hair salons, automotive service stations, and drug stores. . . . The final evaluation will consider all of the available amenities and the offers will be scored based on the quantity, variety, hours and proximity of such amenities. . . . The best rating will be given to offers that provide the greatest variety and quantity of amenities with good hours of operation existing at the time of occupancy within the building or within 1,500 walkable linear feet of the building.

¹⁶ Where a dispute exists as to the actual meaning of a particular solicitation provision, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions; to be reasonable, an interpretation of a solicitation must be consistent with such a reading. The Boeing Co., B-311344 et al., June 8, 2008, 2008 CPD ¶ 114 at 35.

SFO amend. 8, at 1-2 (emphasis added). The plain language of the SFO requires GSA to evaluate both the overall number of amenities offered as well as the number of amenity categories (*i.e.*, the variety). In this regard, the SFO stressed the importance of having adequate eating facilities nearby, *see id.* at 1, but GSA's simple counting of categories, such as hair salons or automotive service stations, ignores the type of amenity being offered. For example, King Farm and Fishers Lane offered different quantities of amenities within a number of different categories. GSA's counting of amenity categories disregarded King Farm's identification of three restaurants and three fast food establishments within 1,500 wlf of its building, as compared to identification by Fishers Lane of only one restaurant and four fast food establishments within 1,500 wlf. Similarly, GSA's evaluation does not account for the fact that 7 of 18 amenities offered by Fishers Lane were automotive service stations.

In short, we find that GSA's assignment of adjectival ratings based only upon how many amenity categories were offered was not reasonable.¹⁷ We also disagree that the protesters were not prejudiced by the agency's evaluation under this subfactor. GSA's arguments ignore the requirement, noted below, that agencies must look beyond the adjectival ratings assigned to competing proposals to consider actual differences in the technical quality. Accordingly, we sustain King Farm's protest of the agency's evaluation of proposals under the access to amenities subfactor.¹⁸

¹⁷ We note that the SFO also informed offerors that the hours of operation of the amenities would be considered in the evaluation of proposals under the access to amenities subfactor. SFO amend. 8, at 1-2. However, the record does not indicate that GSA considered the hours of operation in its evaluation.

¹⁸ Metroview raised a number of other challenges to the agency's evaluation of its proposal under this subfactor, none of which we find have merit. For example, Metroview complains that GSA did not consider five amenities that Metroview offered because these amenities were required to be within the building under the POR. Metroview Comments at 8. Metroview's interpretation that it should receive credit under the access to amenities subfactor for amenities required by the SFO to be provided in the building is illogical. The purpose of the subfactor is to encourage offerors to identify as many amenities within walking distance as possible. Metroview's argument that the evaluation under this subfactor should also have counted amenities that were required to be sited within the building by the POR does not achieve those ends. Moreover, Metroview does not explain how crediting it for amenities that all of the offerors were required to provide within the building would change its competitive standing *vis-à-vis* the other offerors.

Metroview also argues that GSA unreasonably did not consider additional on-site (not required) amenities that it offered, noting that the SFO expressly permitted offerors to offer amenities on-site for consideration under the access to amenities subfactor. GSA agrees that the SFO provided that the agency would consider such additional on-site amenities under the subfactor, but states that, despite being

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Source Selection Decision

As set out below, all three of the protesters here raise challenges to the HCA's selection decision. King Farm argues that the HCA failed to perform the required tradeoff analysis, and failed to articulate any rationale for paying the [Deleted] price premium [Deleted] for the Fishers Lane proposal. King Farm Supp. Protest (B-404896.5) at 19. King Farm argues that such a rationale is necessary, particularly where the evaluation record provided to the HCA included the SSA's tradeoff analysis, which found that the cost savings and shuttle service offered by King Farm's proposal mitigated King Farm's lower rating in the access to existing Metrorail subfactor. *Id.* at 21-22.

One Largo, the highest-rated offeror, argues that the HCA's recitation of offerors' scores and prices--without additional explanation weighing the strengths and weaknesses of each proposal--was insufficient to support the HCA's determination that the Fishers Lane proposal represented the best value to the government. One Largo Supp. Protest (B-404896.6) at 2-3. In this regard, One Largo complains that the HCA failed to credit One Largo for its evaluated technical superiority by looking behind its higher ratings to discern the substantive differences in the proposals. *Id.* at 5. For example, One Largo contends that, while its proposal received a superior rating under the access to existing Metrorail subfactor--which represented [Deleted] percent of the total rating--compared to the highly successful rating of the Fishers Lane proposal, the HCA failed to evaluate the true difference between the proposals under that subfactor, that is, the actual difference in distances from a Metrorail station. One Largo's location was assessed as less than 525 wlf from the nearest Metrorail station, whereas the Fishers Lane location was assessed as roughly 2,407 wlf from the nearest Metrorail station--more than four times farther.

Finally, Metroview argues that the HCA failed to meaningfully consider whether Metroview's proposal, which received a higher percentage of superior ratings than the Fishers Lane proposal, merited the cost premium, based each proposal's strengths and weaknesses. Metroview Supp. Protest (B-404896.7) at 3. Metroview notes, for example, that the HCA did not consider the higher rating its proposal

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requested to provide additional support for its claims about these amenities, Metroview did not provide the requested documentation. Our review of the record shows that Metroview did not provide support for its offer of these amenities.

Metroview also complains that GSA improperly disregarded five additional amenities located within 987 wlf of the building. Metroview Supp. Protest (B-404896.7) at 7. The record supports GSA's finding that the amenities that Metroview states would be located within 987 wlf of the building were also not identified by supporting documentation.

received compared to the Fishers Lane proposal under the access to existing Metrorail subfactor, based on the location of Metroview's offered building, which was approximately 1,280 wlf from the nearest Metrorail station, as compared to the Fishers Lane building located approximately 2,407 wlf, or almost double the distance. Id.

Metroview also challenges the HCA's failure to consider in her selection decision the merits of Metroview's proposal with regard to other proposals. Id. at 4. Metroview argues that, although Metroview's proposal received only [Deleted] percent fewer superior ratings than One Largo's proposal, the HCA did not substantively discuss the technical strengths and weaknesses of the two proposals to determine whether they were technically equal or whether one was technically superior, but instead mechanically applied the adjectival ratings to determine technical superiority. Id. Moreover, Metroview asserts that the evaluation record does not provide clear support for any one proposal. In this regard, Metroview notes that the SSEB concluded in its final evaluation report that all proposals were technically equal and recommended King Farm based on its lower price; the SSA disagreed with the SSEB's determination of technical equality and selected King Farm's proposal after a tradeoff analysis; and the HCA disagreed with the conclusions of both the SSEB and the SSA to select the Fishers Lane proposal.¹⁹ Id.

In summary, the crux of the protesters' challenges to the HCA's selection decision is that the HCA failed to consider the evaluated differences between the firms' proposals in her tradeoff analysis.

In reviewing an agency's evaluation of proposals and source selection decision, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. Although source selection officials may reasonably disagree with the ratings and recommendations of evaluators, they are nonetheless bound by the fundamental requirement that their independent judgments be reasonable, consistent with the stated evaluation scheme, and adequately documented. Earl Indust., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 7. In this regard, ratings, whether numerical, color, or adjectival, are merely guides for intelligent decisionmaking. Citywide Managing Servs. Of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. An agency's source selection decision cannot be based on a mechanical comparison of the offerors' technical scores or ratings per se, but must rest upon a qualitative assessment of the underlying technical differences

¹⁹ Metroview also argues that the SSEB and the SSA also did not provide adequate justification for their cost/technical tradeoff decisions. Id. However, we need not resolve this argument.

among competing offers. See The MIL Corp., B-294836, Dec. 30, 2004, 2005 CPD ¶ 29 at 8; Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61 at 5.

GSA argues that the HCA reasonably exercised her discretion in determining that the Fishers Lane proposal represented the best value to the government. Supp. AR at 1-2. GSA further argues that the HCA's review of the SSEB report and the SSA decision, which each contained a detailed discussion of the merits of each proposal, provided sufficient basis for the HCA's selection decision. Id. at 4. In particular, GSA notes that the HCA adopted the overall technical ratings assigned by the SSEB in its January 2011 report. Id. GSA also contends that our prior decisions do not require agency selection officials to discuss every detail regarding the relative merit of the proposals in the selection decision document. Id. at 6.

We recognize that while agency selection officials may rely on reports and analyses prepared by others, the ultimate selection decision reflects the selection official's independent judgment. See, e.g., Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 (SSA concurred with recommendation in detailed price negotiation memorandum without preparing separate source selection decision). However, the independence granted selection officials does not equate to a grant of authority to ignore, without explanation, those who advise them on selection decisions. University Research Co., LLC, B-294358, et al., Oct. 28, 2004, 2004 CPD ¶ 217 at 8.

Here, unlike in Puglia, the HCA did not concur with the recommendations of the lower-level evaluators. Although the HCA adopted the subfactor-level adjectival ratings assigned by the SSEB, she did not adopt either the SSEB's or the SSA's analyses concerning the relative merits of the proposals or selection recommendations. Rather, without explaining the basis for her disagreement with the conclusions of the lower-level evaluators, the HCA proceeded to make conclusory pronouncements concerning which proposal offered the best value to the government. Moreover, contrary to the agency's contentions concerning the clarity of support for the HCA's selection decision, the record shows considerable disagreement between the SSEB and the SSA concerning the relative merits of the proposals.

We find from our review of the record no evidence of any meaningful consideration by the HCA of the evaluated differences in the firms' offers. Rather, the HCA's tradeoff assessment was based upon a mechanical comparison of the percentage of superior and highly successful ratings assigned to each offer. Where, as here, a solicitation provides for award on a best value basis, the decision as to the relative technical merit of the offers must be based upon a comparative consideration of the technical differences of the proposals. See Systems Research & Applications, Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

As noted above, the SSEB documented a number of differences between the offerors' proposals, which would appear to provide discriminators for a

determination of the relative technical merit of the offers. For example, under the most important subfactor, access to existing Metrorail, the offerors' proposed buildings were at differing distances from a Metrorail station. Also, King Farm, which offered a building at the greatest distance from a Metrorail station, proposed a shuttle service plan to mitigate that weakness. See AR, Tab 76, SSEB Final Report, at 48. Similarly, under the planning efficiency and flexibility subfactor, the SSEB noted a number of differing strengths and weaknesses in the offerors' proposed building layouts. See *id.* at 21-28.

In the absence of a documented, meaningful consideration of the technical differences between the offerors' proposals, the HCA could not perform a reasonable tradeoff analysis. That is, the HCA had no basis to determine that the Fishers Lane higher-priced proposal outweighed the cost savings offered by the King Farm lower-rated, but lower-priced offer. Similarly, the HCA had no basis to conclude that the Fishers Lane proposal was more advantageous than the proposals of One Largo and Metroview. Accordingly, we sustain the protesters' challenge to GSA's selection of the Fishers Lane offer as the best value to the government.²⁰

Access to Existing Metrorail Subfactor

King Farm and Metroview also challenge the highly successful rating given the Fishers Lane offer under the access to existing Metrorail subfactor, noting that the evaluation record contains various calculations of the distance of the Fishers Lane building to the nearest Metrorail station. King Farm Supp. Protest (B-404896.5) at 23-28; Metroview Supp. Protest (B-404896.7) at 5-6. That is, the protesters state that GSA initially determined that the Fishers Lane building was 2,600 wlf from the nearest station, and assigned the awardee's initial proposal a successful rating under this subfactor. The protesters complain, however, that the agency later calculated the distance to be 2,407 wlf, and assigned the Fishers Lane final revised proposal a highly successful rating under this subfactor. *Id.*

We find no merit to this argument. The agency's differing calculations of the distance of the Fishers Lane building from the nearest Metrorail station are explained in the contemporaneous record. The Fishers Lane initial offer provided two paths to the Metrorail station: the "existing path" along Parklawn Drive which Fishers Lane estimated was 2,440 wlf, and a "planned path," which Fishers Lane estimated was 2,300 wlf and which originated at the building's main entrance on Fishers Lane (the road) and continued on current sidewalks as well as future sidewalks to be constructed for other development projects near the Metrorail

²⁰ King Farm also objects that the HCA unreasonably assessed the offers at the subfactor level without "roll[ing] up" the subfactor ratings into factor-level ratings. King Farm Supp. Protest (B-404896.5) at 14-18. We agree with GSA that the SFO did not require GSA to roll up the subfactor ratings into factor ratings.

station.²¹ See AR, Tab 38, Fishers Lane Offer, Mar. 26, 2010, Factor A - Access to Existing Metrorail.

In reviewing initial offers, GSA's broker measured the "planned path" distance from the Fishers Lane building's main entrance to the Metrorail entrance as being 2,600 wlf,²² and the TET assigned Fishers Lane a rating of successful for the subfactor. See id., Tab 67, Initial Offer - Location TET Report, at 8. GSA requested clarification from Fishers Lane as to how it measured the "planned path" considering existing conditions. Id., Tab 99, GSA Clarification Letter to Fishers Lane, July 21, 2010, at 1. Fishers Lane provided an "engineered drawing" to clarify the path, noting that the sidewalks were now completed. See id., Tab 104, Fishers Lane Response to Clarification Letter, July 30, 2010, at 3. GSA's broker measured the distance as 2,407 wlf "using new sidewalk through pking [sic] lot," id., Tab 241, Fishers Lane Location Analysis, at 13, and the SSEB assigned Fishers Lane a rating of highly successful for the subfactor. Id., Tab 74, SSEB Report, Sept. 13, 2010, at 12. The protesters have not shown that the agency's distance calculation based upon this drawing was unreasonable.

Taxes

All three of the protesters also complain that Fishers Lane calculated its price per square foot based upon the taxes it currently pays, and argue that these taxes do not reflect the significant renovations Fishers Lane proposed for its building. King Farm Supp. Protest (B-404896.5) at 31-35; One Largo Supp. Protest (B-404896.7), Apr. 28, 2011 e-mail, at 1; Metroview Supp. Protest (B-404896.7) at 8. The protesters further contend that Fishers Lane was required to include in its lease price an estimate of the amount of taxes that would ultimately be assessed once Fishers Lane completed its renovation of the building.²³ Specifically, the protesters contend that GSA Forms 1217, Lessor's Annual Cost Statement, and 1364, Proposal to Lease Space, (which the SFO required offerors to complete) provide that offerors estimate the amount of taxes that would be levied after construction or renovation. Id. In this regard, the protesters focus on the GSA Form 1217 section heading, "Estimated Annual Cost of Ownership Exclusive of Capital Charges," [emphasis added] under which line 28

²¹ Fishers Lane stated that the building entrance on Fishers Lane would serve as the main entrance after the renovation. Id.

²² The broker's handwritten notes indicated that the 2,600 wlf measurement was based on a path along a fence. AR, Tab 241, Fishers Lane Location Analysis, at 13.

²³ As noted above, Fishers Lane was the only offeror to propose renovating an existing building rather than constructing a new building.

requires offerors to input the amount of real estate taxes.²⁴ Id. The protesters contend that, by excluding estimated taxes on the building as renovated, Fishers Lane submitted an artificially low price.

We agree with GSA that the forms do not specifically instruct offerors to estimate the amount of real estate taxes, although the offerors reasonably concluded that, where new construction will be required, the agency would expect to have an estimate of post-construction taxes included in rental calculations. The instructions for GSA Form 1217 merely require offerors to “include all applicable real estate taxes imposed upon the property.” Likewise, GSA Form 1364 requires offerors to include in the cost of shell rent “current real estate taxes.” Moreover, to the extent that Fishers Lane used a lower amount for taxes in calculating its offered rent, we note that the lease at issue here will be fixed-price; as a result, a firm may, in its business judgment, submit a below-cost offer, or an offer that may be an attempted buy-in. See Property Analysts, Inc., B-277266, Sept. 12, 1997, 97-2 CPD ¶ 77 at 6.

King Farm also argues that, because the SFO provides for lease adjustments for increased taxes, Fishers Lane will be entitled to an increase in its price after its building is renovated. King Farm Supp. Comments at 2-3, 10-11. The protester misreads the SFO, however. The SFO provides that the real estate tax base will be established based on a full assessment for the first full tax year following the commencement of the lease. SFO at 26. The full assessment takes into account all contemplated improvements to the property. Id. at 26-27; see also Kimbrell v. Fischer, 15 F.3d 175 (Fed. Cir. 1994) (“full assessment” means an assessment on the improved property). The SFO provision King Farm cites provides that the government shall pay its share of any increases in real estate taxes above the real estate tax base. Therefore, Fishers Lane will be responsible for all of the real estate tax increase resulting from the renovation; according to the SFO, the government would only be responsible for its share of any tax increases above the tax base set after renovation.

Environmental Assessment

One Largo also challenges GSA’s environmental assessment, complaining that GSA neglected to include two additional intersections as part of its environmental assessment of the Fishers Lane site. One Largo claims that 80 percent of the traffic in the vicinity travels through the two intersections. One Largo Comments at 13.

GSA responds that it reasonably relied on the analysis performed by its independent consultant, who consulted with officials in Montgomery and Prince George’s

²⁴ GSA Form 1364 requires offerors to include in their shell rent “current real estate taxes” and directs offerors to line 28 on GSA Form 1217.

counties.²⁵ AR at 37. The agency notes that the Montgomery County Department of Economic Development acknowledged that any increase in traffic at the Fishers Lane location would be negligible, because there would be only a net increase of 200 employees compared to the number of HHS employees currently at the awardee's building. See AR, Tab 267, Montgomery County Dept. of Econ. Dev. Comments on Final Env. Assessment.

One Largo disagrees with GSA's analysis that the Fishers Lane proposed site would not require an environmental impact statement, but does not show that the agency's judgment was unreasonable in this regard.²⁶

RECOMMENDATION

We recommend that GSA reevaluate offers under the access to amenities subfactor in accordance with the terms of the SFO and perform and document a new selection decision consistent with our decision. If the Fishers Lane proposal is not found to reflect the best value to the government, the agency should award the lease to the offeror whose proposal is determined to be the best value to the government. We also recommend that the protesters be reimbursed their reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' certified claims for such costs, detailing the time

²⁵ GSA also argues that our Bid Protest Process does not address compliance with the procedural requirements of environmental statutes and regulations such as NEPA. AR at 30. GSA is correct that we generally do not review compliance with NEPA. Here, however, the SFO provided that offerors must provide a basis for GSA to conclude that the offered sites would not require an environmental impact statement to be technically acceptable. SFO at 25.

²⁶ Although One Largo raised its objections to the omission of the two intersections in its comments on the draft environmental assessment, One Largo also stated "that the Draft [environmental assessment] provides sufficient basis for GSA to issue a [finding of no significant impact letter] under NEPA and its implementing regulations" AR, Tab 184, One Largo Comments on Draft Environmental Assessment, at 1. It was only after GSA's selection of the Fishers Lane proposal for award that One Largo challenged GSA's judgment that the Fishers Lane site merited a finding of no significant impact.

expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.²⁷

Lynn H. Gibson
General Counsel

²⁷ We have considered all of the protesters' remaining arguments, and conclude that they have no merit.