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Decision

Matter of: U.S. Facilities, Inc.

File: B-293029; B-293029.2

Date: January 16, 2004

William A. Roberts, III, Esq., Phillip H. Harrington, Esq., Janet L. Eichers, Esq., and Derek A. Yeo, Esq., Wiley Rein & Fielding, for the protester.
Peter F. Marvin, Esq., and Justin K. Miller, Esq., Marvin, Larsson, Henkin & Scheuritzel, for Elliott-Lewis Corporation, an intervenor.
Kimberly Y. Nash, Esq., and Bruce M. Kasson, Esq., Department of Housing & Urban Development, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that the agency should have rejected, or downgraded, the awardee's proposal for its failure to offer a project manager who would be available during performance is denied where the record shows that the awardee disclosed during negotiations that the project manager identified in its initial proposal had been promoted and would eventually be unavailable to serve as offered, and shows that, after discussion with the agency, the awardee promised in its final revised proposal that, if it were selected for award, the project manager would serve as offered until completion of the transition phase of the contract, and until a replacement suitable to both parties could be found.
2. Even when there is no requirement in a solicitation to obtain commitments from non-key incumbent personnel, an agency reasonably may favorably evaluate an offeror's stated intent to retain as many of the non-key incumbent employees as possible.
3. Protester's contention that the agency unreasonably evaluated different approaches in the offerors' price proposals is denied where the record shows that the solicitation contained a patent ambiguity that neither offeror raised prior to submission of its proposal, and where both offerors took affirmative and reasonable steps to clearly explain their approach to the ambiguity.

4. Protester's assertion that it should have received a higher past performance rating, and the awardee a lower one, based in part on the protester's performance of the incumbent contract for the previous 5 years, is denied where the record shows that the agency credited the protester for its performance as the incumbent, but reasonably placed greater value on certain experiences the awardee presented in its proposal.

5. Protester's allegation that the agency held improper discussions with only the awardee after submission of final revised proposals is denied where the record shows that the contracting officer appropriately sought confirmation of the awardee's prices, or a request to correct a mistake, but did not invite the awardee to modify or revise its proposal.

6. A source selection official's adoption of an evaluation panel's findings and recommendation for award does not, without more, provide evidence that the selection official abdicated his responsibility to make independent judgments; protester's assertion that he did so is denied where the record shows that the selection official was clearly involved in the procurement from its outset to its conclusion.

DECISION

U.S. Facilities, Inc. (USF) protests the award of a contract to Elliott-Lewis Corporation (ELC), by the Department of Housing and Urban Development (HUD), pursuant to request for proposals (RFP) No. R-OPC-22360, for facility management services at HUD's headquarters building in downtown Washington, D.C. USF argues that HUD's evaluation of proposals was unreasonable in several ways, that HUD improperly held discussions only with ELC after both offerors had submitted final revised proposals, and that the source selection official failed to make an independent selection decision.

We deny the protest.

BACKGROUND

The RFP here was issued on December 20, 2002, to procure, on a consolidated basis, all management, supervision, labor, materials, supplies, repair parts, tools, and equipment needed for facilities management services for HUD's headquarter's building for a base period of 1 year, followed by up to four 1-year options. RFP at I-C-1, F-2. The solicitation identified eight types of services covered by the RFP. These were: (1) operations and maintenance (O&M) services, (2) elevator services, (3) electrical services, (4) space alteration services, (5) moving services, (6) lock and key services, (7) painting services, and (8) courier services. Agency Report (AR), at 2. The specific tasks required in each service area were identified in the RFP's statement of work, while a detailed 427-page pricing schedule, organized by service area, was set forth in section B of the solicitation.

The RFP anticipated the award of a hybrid fixed-price, indefinite-quantity contract to the offeror whose proposal was found to provide the best value to the agency considering the combined relative merit of technical proposals and price. Id. at L-1, M-1. To determine the proposal with the greatest technical merit, the RFP identified three evaluation factors--(1) management and plan of operation, (2) offeror's experience and qualifications, and (3) subcontracting plans/commitment--and advised that the factors were identified in descending order of importance. Id. at M-2, M-3. The first two of these evaluation factors included subfactors. For the management and plan of operation factor, the RFP identified five subfactors: (1) operating plan, (2) organizational plan, (3) work schedule, (4) phase-in plan, and (5) quality control plan; for the offeror's experience and qualifications factor, the RFP identified two subfactors: (1) corporate experience/past performance, and (2) key personnel. Id. With respect to price, the RFP advised that the technical evaluation factors identified above would be "significantly more important" than cost or price. Id. at M-1.

HUD received three proposals in response to its solicitation, one from USF (an entity that acquired the incumbent contractor, Halifax Technical Services), one from ELC, and one from a third offeror later excluded from the competitive range. The proposals were forwarded to a technical evaluation panel (TEP) where they were separately assessed under each of the eight service areas covered by the RFP and given adjectival ratings (excellent, very good, good, poor, and unsatisfactory) under the first two evaluation factors and their subfactors; under the third evaluation factor, subcontracting plans/commitment, the proposals were evaluated on an overall basis (rather than by service area). See Initial TEP Report at 1st unnumbered page following p. 5. At the conclusion of this review, the TEP determined that both ELC and USF had submitted acceptable proposals, that both proposals presented low performance risk, and that discussions should be held with both companies. AR at 7-9.

During the course of this competition, and especially during negotiations, two matters were developing that are related to protest issues discussed later in this decision. The first involves the availability of ELC's proposed project manager; the second involves an apparent omission from the RFP's pricing schedule and the impact of that omission on this competition.

In its initial evaluation of ELC's proposed project manager, the TEP noted that the individual had 15 years of experience in the management of facilities maintenance and construction services. This experience apparently contributed to the TEP's rating of the proposal as "good" under the key personnel subfactor of the experience and qualifications evaluation factor. Initial TEP Report at 12.

During oral negotiations, ELC advised HUD that its proposed project manager had been promoted since the time he had been identified in the initial proposal, and ELC

and HUD discussed how this matter should be addressed. In its final proposal revisions (FPR), ELC represented that if it were selected for award, its proposed project manager would serve as project manager during the transition phase of the contract, despite his promotion. The FPR also assured HUD that its project manager was “committed to remain [as project manager] until a replacement that is suitable to [ELC] and HUD is found and is familiarized with the HUD facility and [ELC’s] processes.” AR, Tab 4 (ELC FPR, O&M Technical Proposal, question 5).

The second matter related to the protest issues discussed below involves the pricing of portions of the O&M work required by this solicitation. As initially issued, one of a myriad of requirements in the O&M portion of the RFP was that potential offerors replace the equivalent of two complete floors of suspended ceiling tile, and floor tile, in corridors and other common areas of the building during each year of the contract. RFP at I-C-28. Despite the numerous requirements related to O&M, the initial RFP contained only a single contract line item number (CLIN) for pricing all O&M work. RFP at B-71.¹ Prior to the submission of initial proposals, the RFP was amended to add separate sub-CLINs for some of the different types of O&M work, but the amendment did not include a sub-CLIN for the ceiling and floor tile work described above. RFP amend. 3, at 3.

HUD received a written question from USF asking about the apparent omission of a sub-CLIN for the ceiling and floor tile work. This question, and the answer thereto, was published in amendment 0006 to the RFP. Specifically, the question pointed out the apparent omission, and asked if HUD wanted a separate price for the cost of the work. HUD replied: “Yes, a separate price for ceiling tiles and grid work is required.” RFP amend. 6, at 6. Despite this answer, HUD did not revise the pricing schedule in section B to add a sub-CLIN for the O&M ceiling and floor tile work before receiving and evaluating initial proposals. On July 2, 2003, HUD issued a final amendment to the solicitation again revising the pricing schedule for use by offerors in submitting their FPRs. RFP amend. 8. Again, the revised pricing schedule in amendment 8 did not add a sub-CLIN for the O&M ceiling and floor tile work.

ELC and USF addressed this conflict in HUD’s solicitation in different ways. The ELC proposal submitted prices for each of the sub-CLINs in the pricing schedule, and submitted a higher price (significantly higher than the total of the identified sub-CLINs) for the overall category of O&M. The narrative portion of ELC’s FPR advised that the company had made its best efforts to break out the costs associated with the O&M sub-CLINs identified by HUD. The proposal also advised that all other costs associated with O&M services were included within the overall O&M CLIN. ELC FPR at 5. In contrast, USF altered the solicitation’s price schedule to add two sub-

¹ For the sake of brevity, we cite here, and throughout the decision, only the O&M CLIN for the base period, rather than include the citations for the CLINs covering all of the option periods.

CLINs for pricing the ceiling and floor tile work. USF FPR, Schedule B, Sub-Clins '0003AI' and '0003AJ'. As with ELC's proposal, USF submitted a higher price for the overall category of O&M than the sum of its prices for the O&M sub-CLINs. Id. at CLIN 0003.

On July 2--the same date amendment 0008 was issued--HUD requested submission of FPRs not later than July 15. In its final evaluation of proposals, the TEP noted that, of the eight service areas identified in the solicitation, both USF and ELC proposed to subcontract all but O&M, and that both offerors proposed the same subcontractors for six of the seven remaining service areas. Thus, the only perceived difference between the two technical proposals was in the O&M service area, the most important of the eight areas, and in the subcontractor identified to provide courier services, the least important of the eight areas. With respect to courier services, the TEP concluded that the two courier subcontractors did not provide a basis for distinguishing between the proposals. As a result, the TEP focused on the evaluation of the portion of the proposals dedicated to the most important service area, O&M services. Final TEP Rep. at 21.

In its review of FPRs, the TEP did not recite each of the final adjectival ratings by factor and subfactor. Rather it prepared a top-level summary of the results of the evaluation, set forth below, and turned its focus to the ways in which the two proposals could be distinguished in the area of O&M services.

Summary of Final Evaluation Results

	ELC	USF
Technical Evaluation	Very Good	Good
Subcontracting Plan Evaluation	Excellent	Excellent
Total Price	\$23.8 million	\$25.3 million

Final TEP Rep. at 28.

The TEP's final report identified two areas for discriminating between the proposals--the quality control plan (the fifth enumerated subfactor under the management and plan of operation evaluation factor), and experience (considered under the experience and qualifications evaluation factor). The TEP concluded that the ELC quality control plan was more detailed than USF's plan and described techniques that provide greater levels of accountability than USF's approach. This difference, among others, led the TEP to conclude that ELC would provide a more aggressive approach to quality control than would USF. Final TEP Rep. at 21-24.

With respect to experience, the TEP concluded that ELC had "demonstrated historical performance that is characterized by flexibility to meet customer needs and commitment to economical performance of duties." Id. at 25. In contrast, the TEP concluded that USF's past performance submissions did not contain

information sufficient to demonstrate successful results and the use of alternative strategies. Id. at 26. Thus, the TEP concluded that the ELC proposal was technically superior to the proposal of USF, that ELC's demonstrated experience exceeded that of USF, and that ELC's lower evaluated price made its proposal the best value to the government. Id. at 27-28. As a result, the TEP recommended award to ELC at its evaluated price of \$23.8 million, rather than to USF at its evaluated price of \$25.3 million. Id. at 28.

On September 26, the source selection official (SSO) here indicated his concurrence with the recommendation of the TEP, and added his signature to the last page of the final TEP report. Id. at 29. On September 30, the contract was awarded to ELC and this protest followed.

DISCUSSION

USF's protest challenges the evaluation in three areas--the assessment of ELC's interim project manager; HUD's acceptance of the two different approaches to pricing the ceiling and floor tile work required within O&M services; and past performance. USF also contends that HUD improperly held discussions only with ELC after both offerors had submitted FPRs, and that the SSO failed to make an independent assessment of proposals when he adopted the TEP's final report with his signature.

Turning first to USF's challenges to the evaluation, our standard in reviewing such challenges is to examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Based on our review, we agree with the agency's assessments; our reasons are set forth below.

The Evaluation of Key Personnel, including ELC's Project Manager

USF argues that HUD should have rejected ELC's proposal for its failure to offer a project manager who would be available during performance. Alternatively, USF contends that any favorable assessment of ELC's proposed project manager renders the evaluation unreasonable, given that the agency knew that the project manager would be replaced with an, as yet, unknown individual who might, or might not, have the same strengths or weaknesses as the project manager HUD evaluated.

HUD disputes USF's contentions and argues that the situation here must be distinguished from situations where an offeror knowingly misrepresents the availability of key personnel. HUD points out that ELC candidly advised the agency during discussions that the project manager identified in its initial proposal had been promoted, and would eventually be unavailable to serve as offered. After discussion of the matter, ELC represented in its FPR that if it were selected for award, the proposed project manager would remain through the transition phase of the

contract, despite his promotion, and until a replacement suitable to ELC and HUD was found. HUD explains that, once it received these commitments, it properly based its evaluation of key personnel, in part, on ELC's proposed project manager.

We agree with HUD's view that the situation here is different--and distinguishable--from those where an offeror misrepresents the availability of key personnel in a way that materially influences an agency's consideration of the offeror's proposal. For example, USF points to our prior decision in CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308, where we stated that "[p]roposing 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.'" Id. at 5 (citing Informatics, Inc., B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53). In our view, there are important differences between the facts in CBIS, and those here.

In CBIS, an offeror answering a negotiation question about its key employees failed to advise the agency that one of its key employees had expressly withdrawn her name from availability to work on future contracts. CBIS, supra, at 6. Likewise, several of the cases cited in the CBIS decision also involve situations where, during negotiations, awardees withheld from procuring agencies the knowledge that proposed key personnel had become unavailable since they were initially proposed. See, e.g., Omni Analysis, B-233372, Mar. 6, 1989, 89-1 CPD ¶ 239 at 3 (protest sustained where the awardee's final proposal contained continued assurances that its personnel team remained intact, even though it knew that two key individuals had become unavailable after submission of the initial offer).

In marked contrast, there was no misrepresentation here. The awardee disclosed the promotion of its project manager, and discussed with the agency a possible remedy for the situation. In its FPR, the awardee then promised that, if it were selected for award, the proposed project manager would serve during the critical transition phase and remain on the job until the contractor and the agency agreed on a replacement. In this situation--unlike in Informatics, Omni, CBIS, and their progeny--there is no concern that the contractor's actions have harmed the integrity of the competitive procurement system.

While we recognize the differences between the misrepresentation cases identified above and the situation here, we note that in several of those cases we advised that when an offeror knows prior to submission of a final proposal that proposed key employees are no longer available, the offeror should withdraw the individuals and propose substitutes who will be available. See, e.g., CBIS, supra, at 5; Omni Analysis, supra. USF submits that this principle should apply in any case where offered key personnel are no longer available--regardless of whether there was a misrepresentation--and contends that it was unreasonable for the agency not to require ELC to propose a replacement for its project manager.

In further support of its contention, USF directs our attention to at least one case where there was no misrepresentation by the offeror, but where the agency directed a wholesale substitution of 13 of 18 evaluated key personnel approximately 1 hour after contract award. In that case, we sustained the protest on the basis that the agency, in effect, held discussions with only the awardee and improperly allowed the awardee to modify its proposal without giving other offerors an equal opportunity to do so. KPMG Peat Marwick, LLP, B-259479, May 9, 1995, 95-2 CPD ¶ 13 at 10-12.

Although the Peat Marwick case was ultimately decided on different grounds from those at issue here, we think the facts there are instructive for--and very different from--the situation at hand. In Peat Marwick, the agency improperly based a selection decision, at least in part, on the strength of proposed key personnel from which it received no benefit, not even for a day. Here, the agency will receive the benefits of ELC's proposed project manager during the period of transition from one contractor to another--often considered one of the critical periods of contract performance--and will continue to receive those benefits until such time as a mutually agreed-upon replacement is obtained. Further, we think HUD could reasonably conclude that having access to this manager during the transition period provides a benefit to the agency, given the manager's 15 years of experience. Since HUD is, in fact, obtaining ELC's project manager (at least during the transition period), and since the agency will have access to the project manager until an acceptable replacement is provided, we are not prepared to say that consideration of the proposed project manager rendered the evaluation here unreasonable.

USF also raises two other challenges to the evaluation of key personnel here. First, it argues that HUD should have discriminated between ELC's project manager and the one offered by USF, who has 20 years of experience, including serving as the project manager on the incumbent contract. Second, it argues that it was unreasonable for HUD to view favorably the awardee's stated intent to hire as much of the incumbent workforce as possible.

On both fronts, we see no reason to question the evaluation here. First, there is no basis in this record to support a finding that the agency failed to recognize certain differences between the two project managers proposed for this contract--even if the agency did not conclude that the differences merited different ratings. For example, the initial evaluation narrative expressly identifies the experience of the proposed project managers, and in so doing, recognizes that USF's proposed project manager has 5 years more experience than ELC's proposed project manager (20 years of experience versus 15 years of experience). Initial TEP Rep. at 12-13 (ELC project manager), 52-53 (USF project manager). The evaluation narrative also recognizes that USF's proposed project manager served as the project manager on the incumbent contract. Id. at 53. At the conclusion of the initial evaluation both offerors received a rating of "good" under the key personnel subfactor, which incidentally, considered the merits of other key personnel as well, not just the merits of the proposed project managers. At the conclusion of negotiations, and after

review of FPRs, the final TEP report did not identify key personnel as a basis for discriminating between these proposals. Based on our review of the record, and of USF's challenges, we have no reason to find that the agency was required to reach a contrary conclusion.

With respect to the fact that the agency apparently valued ELC's stated intent to hire as many of the incumbent employees as possible, USF argues that any favorable consideration of this matter is unreasonable without letters of commitment or other concrete evidence. We disagree. Despite the various ways agencies attempt to address this issue in solicitations, the incumbent workforce is often the best possible source of individuals who will be familiar with the day-to-day requirements of performing these services. We also recognize that once competitions end, and the proverbial smoke clears, many incumbent employees are interested in retaining their jobs, regardless of the corporate entity that holds the contract with the government. Accordingly, we have held that, even where there is no requirement in an RFP to obtain commitments from incumbent personnel, an agency may nonetheless reasonably draw favorable conclusions about an offeror's stated intent to retain as many of the incumbent employees as possible. Orbital Technologies Corp., B-281453 et seq., Feb. 17, 1999, 99-1 CPD ¶ 59 at 5-7.

Evaluation of Prices for Ceiling and Floor Tile Work

USF next argues that the agency did not evaluate the price proposals of the two offerors on an equal basis. In this regard, USF contends that its price proposal contained specific and clearly identifiable prices for ceiling and floor tile work, as required by the RFP, and that ELC's proposal did not. In addition, USF notes that its price for this work exceeds the evaluated price difference between the two proposals.

As indicated in detail above, the solicitation here contained conflicting instructions about how offerors should price ceiling and floor tile work. Specifically, after the agency initially released the RFP with only a single CLIN for pricing all O&M work, amendment 0003 to the RFP added separate sub-CLINs for some types of O&M work, but not for ceiling and floor tile work. When USF asked whether HUD wanted a separate price for the ceiling and floor tile work, HUD responded, in amendment 0006, "[y]es, a separate price for ceiling tiles and grid work is required." Despite this answer, HUD's final revised pricing schedule, published in amendment 0008 to the solicitation, did not add sub-CLINs for the O&M ceiling and floor tile work.

As also indicated above, USF and ELC addressed this matter differently in their proposals—i.e., USF altered the pricing schedule to add sub-CLINs for the ceiling and floor tile work, while ELC submitted prices for the sub-CLINs as HUD revised them, and submitted a price for the overall O&M CLIN that was higher than the sum of the prices for the separate sub-CLINs.

As a preliminary matter, HUD's conflicting directions on providing separate prices for ceiling and floor tile work, without providing a separate sub-CLIN for submitting those prices, created a patent ambiguity in this solicitation. In situations where solicitations contain patent ambiguities, an offeror has an affirmative obligation to seek clarification prior to the first due date for submission of proposals following introduction of the ambiguity into the solicitation. 4 C.F.R. § 21.2(a)(1) (2003); American Connecting Source d/b/a Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3. The purpose of our timeliness rule in this regard is to afford the parties an opportunity to resolve ambiguities prior to the submission of offers, so that such provisions can be remedied before offerors formulate their proposals. Gordon R. A. Fishman, B-257634, Oct. 11, 1994, 94-2 CPD ¶ 133 at 3. Where a patent ambiguity is not challenged prior to submission of proposals, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations as the only permissible interpretation. Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10.

To the extent that USF claims that the agency, in essence, was not evaluating prices on a common basis in light of the different approaches taken by USF and ELC, we disagree. With regard to USF's approach, we think the agency reasonably accepted the company's altered pricing schedule reflecting its attempt to separately price the ceiling and floor tile work in accordance with the instructions provided in amendment 0006 to the solicitation.

With respect to ELC's approach, we think the agency could just as reasonably rely on ELC's representation that all of the O&M costs not separately priced are included in the overall O&M CLIN. In addition, there is no evidence in this record suggesting that ELC failed to recognize this matter--in fact, there is evidence that it did. ELC's price proposal contained a narrative paragraph reiterating its intent to include in the overall O&M pricing CLIN all costs not separately identified with sub-CLINs on the price schedule. We note that this is not a blanket assertion covering the entire solicitation, as USF seems to suggest, but an assurance tailored to the O&M CLIN, where the matter was clearly raised by HUD's instructions in amendment 0006 to the solicitation. Given that both offerors took reasonable, affirmative steps to make clear their pricing with respect to O&M services, and given the failure of USF to raise this patently obvious issue prior to proceeding with its reasonable, but not exclusively so, approach, we see no basis to object to the agency's actions here.

Evaluation of Past Performance

The third area of the evaluation challenged by USF is the assessment of past performance. In this regard, USF raises numerous issues to support its view that it should have received a more favorable past performance assessment, and ELC should have received a less favorable one. These include assertions that HUD improperly ignored favorable information about USF's performance of the incumbent contract, treated the two offerors unequally in assessing past

performance, wrongly considered ELC's performance under a contract not relevant to any of the facility management services required here, and failed to give USF an opportunity to respond to adverse past performance ratings. We have reviewed each of these contentions and conclude that none of them provides a basis for overturning this procurement. We will, however, provide examples of why we disagree with USF's contentions.

Before turning to specific arguments, a few additional facts regarding the evaluation of past performance are needed here, as well as some observations about the application of USF's arguments to this procurement. As indicated above, there was no separate evaluation factor in this solicitation for past performance. Rather, past performance was joined with corporate experience as a single subfactor under the experience and qualifications evaluation factor. In addition, because proposals were rated under each factor and subfactor, for each of the eight services required here, the rating for this subfactor considered significantly more information than just the offeror's past performance. Since, however, both offerors proposed to subcontract seven of the eight services, and both offerors proposed to perform only the O&M services themselves, we will limit this discussion to the rating given this subfactor under the O&M services portion of the review. We thus note that at the end of the initial evaluation, the TEP concluded that USF's proposal merited a rating of "good" under this subfactor, while ELC's proposal merited a rating of "very good." Initial TEP Rep. at 11-12 (ELC), 52 (USF).

In reaching its conclusion about a difference between the two proposals under this subfactor, the TEP noted that ELC's proposal claimed to have achieved significant cost savings on two identified contracts "by improving the operations and functionality of the sites while reducing maintenance, repair, and operations costs." Id. at 12. The TEP then concluded that ELC might be able to achieve similar cost savings for HUD. Id. With respect to USF, the report noted that the company had been satisfactorily providing O&M services at HUD for the past 5 years. The report noted no special strengths or weaknesses about USF's proposal in this area. Id. at 52.

As indicated earlier, the final TEP report did not focus on the specific ratings assigned by factor and subfactor, but on areas where the evaluators perceived a basis for discriminating between these offerors. In reading the report's explanation of the differences between the USF and ELC proposals in this area, we note that while both receive favorable commentary, the evaluators seem particularly impressed with ELC's description of how it achieved favorable results, how it quantified those results, and how it controlled costs for its customers. Final TEP Rep. at 27. In contrast, the TEP felt that USF provided only "generalized statements about results achieved, did not provide specific details describing how results were achieved, did not quantify results, did not describe problems encountered, and did not describe corrective actions taken to resolve problems." Id. Given the TEP's approach to the evaluation, many of the protester's contentions raise matters that

shed little light on whether these evaluation assessments were, or were not, reasonable.

In this regard, USF raises multiple arguments about whether HUD considered all of the quarterly performance reports generated over the 5-year life of the incumbent contract, and considered other favorable information available to the agency. These arguments include that HUD did not consider certain quarterly reports that dated back to the first 2 years of contract performance; that HUD did not consider certain recent quarterly reports; and that HUD considered, but did not give USF an opportunity to comment on, at least 2 quarterly reports that USF considers unfavorable. USF also argues that HUD ignored favorable references and letters of commendation regarding its past performance.

As an initial matter, we are not aware of any procedural requirement that HUD establish that it reviewed each and every quarterly performance report generated during USF's incumbency in order to make a reasonable assessment of USF's past performance. We are also not aware of any requirement that HUD show that it considered every favorable reference letter or comment generated during that period. Instead, HUD responds that it evaluated USF's past performance, fully considered USF's incumbency as a "material benefit," and recognized that USF's knowledge about certain facets of the HUD headquarters facility is "advantageous." Final TEP Rep. at 26. In short, USF's contentions, even if true, are unlikely to rise to a showing that the agency's assessment of the protester's past performance was unreasonable.

We also think that the cases cited by USF in this area do not support its claims. For example, USF contends that the favorable information that it believes should have been reflected in the evaluation was "too close at hand" to permit HUD not to include the information in its assessment. USF is referring to our prior decision in International Bus. Sys., Inc., B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 4, where we held that "some information is simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider the information."

In International Bus. Sys., we reviewed a selection decision made by a contracting officer who did not consider one of the two contract references provided by the protester because the individual within the agency responsible for providing feedback about the protester's past performance did not return the assessment form. Id. at 3-4. Not only was the contracting officer located in the same agency as the individual who failed to provide the needed information, but the contracting officer had also managed the referenced contract wherein the protester provided the same services sought under the protested procurement. In addition, the record showed that the contracting officer had penned a letter to the SBA only 4 months earlier describing the protester's performance as "exemplary." Id. at 5.

We think withholding from an offeror any rating whatsoever on a contract submitted for a past performance assessment, as the agency did in the International Bus. Sys. protest, is a far cry from the situation here. USF pointed to its prior performance of the HUD contract and received favorable credit for it. The fact that USF can now identify distinct pieces of information that may, or may not, have played a role in making a determination about USF's past performance does not, in and of itself, render USF's favorable rating unreasonable. Simply put, we have seen nothing in the evaluation record here, or in any of the challenges raised by USF, that leads us to conclude that the agency's favorable evaluation of past performance was unreasonable.

Improper Discussions

In its supplemental protest, filed after receipt of the agency report, USF argues that the record shows that HUD improperly engaged in discussions only with ELC after negotiations were closed, and after the offerors had submitted their FPRs. The record confirms, and HUD concedes, that the agency contacted ELC, but our review of the exchange leads us to conclude that the agency's communication was a request for clarification, not discussions.

As indicated above, FPRs in this procurement were required to be submitted not later than July 15, 2003. HUD explains that on September 4, the contracting officer telephoned a representative of ELC and requested that the company "verify its prices and confirm that ELC had used the correct multiplier for CLIN 0002." Contracting Officer's Supp. Statement, at 1. On September 5, the ELC representative sent an e-mail asking the contracting officer to clarify her request, but before receiving a response, sent a second e-mail that attempted to respond to the contracting officer's request by explaining ELC's pricing method. Id. The contracting officer explained that the response did not answer her question, and that she did not consider it. Id. Instead, the contracting officer prepared a written confirmation of her oral request, which stated:

The purpose of this letter is to confirm in writing my oral request that [ELC] verify its offered prices for the one-year contract term and each of the four one-year option periods. In order to confirm the absence of any mistake, I am specifically requesting that ELC confirm that it relied upon the correct multiplier in calculating its prices for line items:

002AA [letter lists it by its CLINs for each of the five years]

002AB [letter lists it by its CLINs for each of the five years]

Please respond with either verification that the offered prices are correct or an explanation of any pricing mistake and a request to correct the pricing mistake.

Supp. AR, Exh. 4 (Letter from Contracting Officer to ELC, Sept. 5, 2003). By e-mail provided later that same day, ELC confirmed the price in its FPR and indicated that it had verified the multiplier used to generate those prices. Supp. AR, Exh. 5. As a result, ELC did not request to correct a mistake.

USF argues that the exchange here constitutes improper discussions with only ELC after submission of FPRs under the rule established by our decision in Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79. According to USF, the agency was required to also hold discussions with it, and advise it that its price was too high to be in line for award. We disagree.

In Priority One we repeated our standard that “[t]he acid test for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. Id. at 5 (citing Raytheon Co., B-261959.3, Jan. 23, 1996, 96-1 CPD ¶ 37 at 11). For the reasons set forth below, we do not agree that the contracting officer’s request that ELC either verify its prices, or request permission to correct a mistake, was an invitation to modify or revise its proposal.

The process followed by the CO here appears squarely within the scope of the process described by the Federal Acquisition Regulation (FAR) for investigating whether an offeror’s proposal contains a mistake. See FAR § 15.306(b)(3)(i) (which refers contracting officers to additional guidance at FAR § 14.407, addressing mistakes in bids). In the event that ELC had indicated the presence of a mistake in its proposal, FAR § 14.407 sets forth guidelines for contracting officers to use in deciding whether correction of the claimed mistake is permissible. Since this process must be followed, and since certain affirmative conclusions must be reached before correction of a mistake is permitted, we do not think the contracting officer’s request for verification here was an invitation to modify or revise the proposal. See Jack Faucett Assocs., B-254421.2, Feb. 18, 1994, 94-1 CPD ¶ 204 at 7-8; Peterson Bros. Investments, B-254338, B-254338.2, Dec. 10, 1993, 93-2 CPD ¶ 312 at 6.

SSO’s Adoption of the Final TEP Report

As a final matter, USF argues that the SSO here failed to make an independent judgment or analysis to support his selection decision because he simply adopted the final report of the TEP with his signature, and did not prepare his own selection document. In addition, USF argues that even if the SSO is permitted to adopt the recommendation of the final TEP report as his own decision, the selection decision is fatally flawed because the final TEP report does not include a discussion of the panel’s decision to accept, and base the evaluation on, ELC’s interim project manager, and because there is no indication that the SSO was otherwise aware of this matter.

With respect to USF's first contention, we will not view an SSO's concurrence with the findings of those whose expertise he relies on as evidence that the SSO has abdicated his responsibility to make independent judgments. See Allied Tech. Group, Inc., B-271302, B-271302.2, July 3, 1996, 96-2 CPD ¶ 4 at 10 (holding that the mere fact that the SSO adopted language and findings made by his evaluators did not indicate that he failed to exercise his independent judgment); see also Lear Siegler Servs., Inc., B-280834, B-280834.2, Nov. 25, 1998, 98-2 CPD ¶ 136 at 5 (where selection authority indicated his concurrence with the findings and recommendations of a contract award panel by marking an "X," our Office proceeded with review of the basis for the award panel's recommendations in the same manner as if the selection authority had prepared a separate document). In this regard, we have long held that agency selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results in making their determination. Juarez & Assocs., Inc., B-265950.2, Feb. 8, 1996, 96-1 CPD ¶ 152 at 3.

In addition, the SSO here provided a statement in response to the protester's assertion that he had failed to exercise independent judgment. In that statement, the SSO explained that he participated in this procurement from its outset to its conclusion: he attended acquisition planning meetings, read and approved the source selection plan, was familiar with the solicitation's statement of work, read the reports on the initial proposals of the service area advisory teams, read the TEP's initial and final reports, and agreed with the TEP's assessment that the ELC proposal represented the best value to the government. SSO's Statement, Dec. 15, 2003, at 2-3. Under these circumstances, we have no basis to conclude that SSO here abdicated his responsibilities.

Finally, we turn to USF's assertion that the SSO's concurrence with the award recommendation in the final TEP report must be overturned because the final TEP report made no mention of the panel's decision to accept, and base the evaluation on, ELC's interim project manager. In response to this assertion, HUD explained that the TEP did not discuss this matter in its final report because--once it received ELC's assurance that its proposed project manager would remain in his position until the transition was complete, and until HUD and ELC mutually agreed on a replacement--it considered the issue resolved. Supp. AR at 15.

In reviewing HUD's response, we recognize--as we did in considering the reasonableness of the agency's approach to evaluating this issue--that while we think it would have been preferable to provide a narrative explanation of the TEP's consideration of this issue in its final report, the decision to do otherwise does not vitiate the report's selection recommendation. As explained above, the approach of the final TEP report was not to revisit each and every topic raised during the evaluation, but to focus instead on the bases for discriminating between these proposals. Since the report did this, and since the protester has not shown that any of the conclusions about the relative merits of these proposals were unreasonable,

we see nothing unreasonable about the recommended selection decision, or the SSO's adoption of it.

The protest is denied.

Anthony H. Gamboa
General Counsel