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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Finlen Complex, Inc.

File: B-288280

Date: October 10, 2001

Frank Taras for the protester.
Phillip E. Johnson, Federal Contract Specialists, Inc., for Best Western Butte Plaza Inn, an intervenor.
Col. Michael R. Neds, Capt. Ryan M. Zipf, and Matthew W. Bowman, Esq., Department of the Army, 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. Notwithstanding statement in solicitation that simplified acquisition procedures were being used and authority at Federal Acquisition Regulation (FAR) § 12.602(a) not to disclose the relative weight of evaluation factors when using simplified procedures, an agency's failure to disclose the relative weight of evaluation factors was unreasonable because basic fairness dictated disclosure of the relative weights where the agency required offerors to prepare detailed written proposals addressing unique government requirements.

2. Protester's contention that an agency's decision to assign a weight of 5 percent to a solicitation's past performance evaluation factor violates FAR § 12.206 (providing that past performance should be an important element of every evaluation) is denied as the FAR provision is discretionary, not mandatory.

3. Even in a commercial acquisition using simplified procedures, where an agency requests detailed written proposals, a selection decision is improper where it lacks a rationale which sets forth a basis for the tradeoffs made, including an explanation of any perceived benefits associated with additional costs.

DECISION

Finlen Complex, Inc. protests the award of a contract to the Best Western Butte Plaza Inn by the Department of the Army's Directorate of Contracting, Fort Knox, Kentucky, pursuant to request for proposals (RFP) No. DABT23-01-R-0010, issued to

procure meals, lodging, and transportation for applicants arriving for processing at the Military Entrance Processing Station (MEPS) in Butte, Montana. Finlen argues that the agency either unreasonably evaluated its excellent past performance, or improperly undervalued the past performance evaluation factor. Finlen also contends that, under the circumstances of this procurement, the agency wrongly withheld the relative weight of the evaluation factors from the offerors, and specifically, wrongly withheld the fact that the past performance factor was worth only 5 percent of the total weight of evaluation factors. Finally, Finlen contends that the "best value" decision here was improper.

We sustain the protest.

BACKGROUND

The RFP here--issued to implement a procurement described on the solicitation's cover sheet as a "commercial acquisition, using simplified acquisition procedures"--anticipated award of a fixed-price, indefinite-quantity requirements contract, for a base period followed by four 1-year options, to the offeror whose proposal was considered most advantageous to the government. RFP at 28. The RFP advised that offers would "be evaluated on facility quality, food and transportation proposal, facility location, quality control, past performance and price factors." Id. The RFP also advised that the "technical/quality factors [would be] more important than cost or price." Id. Otherwise, the RFP was silent on the relative weight of the non-price evaluation factors. The RFP was also silent on the role in the selection decision of any non-price evaluation factor other than past performance. As for the role of past performance, the solicitation set forth considerable detail, including how the agency would use the past performance assessment, and what it would consider. (Although not disclosed to potential offerors, the relative weights set for this procurement were: facility quality, 30 percent; food and transportation, 25 percent; facility location, 20 percent; quality control, 20 percent; and past performance, 5 percent. Agency Report (AR), Tab G.)

In response, the agency received six proposals, including those of Finlen and Best Western. Finlen, the incumbent contractor for these services, proposed its hotel, built in 1924, and located in downtown Butte's National Historical Landmark District, approximately two blocks from the MEPS facility. Best Western's proposal identified its newer hotel--assessed by one of the evaluators as approximately 30 years old--located approximately three miles from the MEPS facility. AR, Tab H.

After determining that two of the proposals were unacceptable, a three-member technical evaluation team conducted a detailed evaluation of the remaining four proposals, and inspected each offeror's lodging and dining facilities. The results of their evaluation and inspection are set forth on more than 85 pages of handwritten notes and completed forms included in the agency report. AR, Tabs I-J. Two of the three members of the technical evaluation team assigned point scores to the proposals; the third evaluator did not score the proposals. The two evaluators who

scored proposals used different scales--one rated proposals on a 100-point scale, the other used a 115-point scale. Affidavit of the MEPS First Sergeant, Sept. 17, 2001. At the conclusion of their review, the three evaluators met to discuss their assessments and develop a consensus rating, which was memorialized in a document entitled "Justification for Rating of Hotels."

The final consensus ratings assigned to Finlen's and Best Western's proposals (on a 100-point scale) were 77 (satisfactory) and 89 (good), respectively. Best Western's price (the award price) was $1.46 million, while Finlen's price was significantly lower. Agency Report, Tabs J-K. For the record, the remaining two proposals were evaluated as follows: one, submitted by Offeror A, was priced higher than Best Western's, but with a similar score; the other, while initially considered acceptable, was viewed by the evaluators as unacceptable, and was not considered for award. Id.

Based on the results above, the contracting officer's representative (who was also an evaluator) prepared a selection recommendation for the signature of the MEPS Commander in the format of a memorandum to the contracting officer. This document, dated April 13, recommends award to Best Western on the basis that "this facility best meets the criteria of the 'Best Value' selection process and, further, best meets the requirements and criteria of the Statement of Work in regards to this contract." AR, Tab J. The memorandum notes that Offeror A "also has exceptionally strong attributes in its ability to fulfill the obligations of the contract and is the source selection board's second choice for award." With respect to Finlen, the memorandum acknowledges that "[w]hile [Finlen] can meet the requirements, it is the opinion of the source selection board that it is in the best interests of the applicants and the Butte MEPS to award to either [Best Western] or [Offeror A]." The memorandum makes no mention of any offeror's price.

In a document dated May 7, the contracting officer accepted the recommendation of the MEPS Commander in his memorandum of April 13. The totality of her explanation for selecting the higher-rated, higher-priced proposal of Best Western, set forth in Tab K of the agency report, is as follows:

> The committee recommended award to either [Best Western] or [Offeror A]. Both locations have exceptionally strong attributes in its ability [sic] to fulfill the obligations of the contract. [Best Western] submitted a total price of $1,462,385.50 for base and 4 option years and [Offeror A] submitted a total price of $1,566,407.50 for base and 4 option years.
>
> DETERMINATION
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> Based on the above, it is determined to be in the best interest of the Government to award a contract to Best Western Butte Plaza Inn, best offer, technical and cost factors considered.

On May 15, the agency notified Finlen of the award to Best Western (AR, Tab L), and on May 21, Finlen filed an agency-level protest challenging the award decision. By letter dated June 20, the Army denied Finlen's agency-level protest, and this protest followed.

DISCUSSION

Overview

Finlen's initial protest to our Office challenged several facets of its evaluation that, given the development of this protest, are no longer relevant to the outcome of this decision, and need not be specifically addressed.[1] Instead, upon receipt of the agency report, Finlen first learned that the past performance evaluation factor was worth only 5 percent. In response, Finlen argued that the solicitation was misleading about the relative weight of past performance. In defending the weight assigned past performance, and urging that Finlen could not reasonably claim to have been misled by this solicitation, the Army pointed out that the solicitation, on its face, advised offerors that the agency was using simplified acquisition procedures. In addition, the Army argued that pursuant to Federal Acquisition Regulation (FAR) §§ 12.602(a) and 13.106-1(a)(2), agencies are not required to advise offerors of the relative weight of evaluation factors when using simplified acquisition procedures. As a result, the Army argued that Finlen's protest, in essence, was a challenge to the solicitation's use of simplified procedures and should be dismissed as untimely.

As set forth below, we address first our conclusion that Finlen's expectations regarding the relative weight of past performance in this solicitation were reasonable, although we deny Finlen's contention that the 5 percent weight assigned the past performance evaluation factor violated the terms of the FAR. We then turn to the issues raised by the Army's defense of Finlen's challenge, including our conclusion that even if Finlen's challenge, as alleged by the agency, is untimely, Finlen's complaint should be reviewed under the "significant issue" exception to our timeliness rules. Finally, we conclude that, in the circumstances of this procurement, by requiring offerors to prepare detailed proposals addressing several non-price evaluation factors, fairness dictated that the agency reveal to the offerors the relative weight of the evaluation factors that would be used to assess those proposals.

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[1] We note for the record that Finlen's initial protest filing surmised that either its past performance was unreasonably assessed, or the past performance factor was improperly weighted; Finlen also questioned, among other things, how its close location to the MEPS facility was considered under the facility location evaluation factor.

Weight of Past Performance Factor

Finlen argues that it reasonably expected that past performance would play a greater role in the selection decision here, given the terms and conditions of the solicitation, and that the solicitation was therefore misleading. The Army argues that Finlen cannot claim to have been misled because the solicitation was silent about the relative weight of evaluation factors, and accordingly, there was nothing in the solicitation to support the expectation upon which Finlen now relies. For the reasons set forth below, we disagree with the Army's position.

Our review of this solicitation shows that while it contains nothing labeled as section M (as is found in the standard uniform contract format for negotiated procurements (see FAR § 15.204-1)), it nonetheless advises offerors of the bases for the agency's selection decision in a full page and a half of single-spaced narrative, under the heading "Award." RFP at 28-29. After two brief paragraphs identifying the evaluation factors and advising that the technical and quality factors would be more important than price, RFP at 28, the majority of this narrative is dedicated to six paragraphs and subparagraphs explaining how the agency will assess past performance, how it will use this assessment, and what it will consider. At no point does this award narrative offer any explanation, definition, or information of any kind, on any non-price evaluation factor but past performance. In short, we cannot square the attention devoted to past performance in this solicitation with the agency's decision to make past performance by far the least important factor, worth only 5 percent of its non-price assessment. Thus, we think it was reasonable for Finlen to expect that the agency would give past performance significant weight.

In addition, we think Finlen's expectations are buttressed by the language in the FAR encouraging agencies to make past performance an important element in the evaluation of commercial items, although we deny Finlen's contention that the agency violated the FAR by not doing so. In this regard, Finlen argues that the 5 percent weight assigned the past performance evaluation factor is inconsistent with FAR § 12.206, which provides that "[p]ast performance should be an important element of every evaluation and contract award for commercial items."

In response, the Army argues that there is nothing inherently improper in assigning a weight of 5 percent to a past performance factor. Specifically, the Army contends that FAR § 12.206 is not mandatory, but discretionary; that the requirements of the FAR are met by including past performance as an evaluation factor; and that past performance, in fact, was an important element here because it could have been the determining factor in award in a close competition. Agency Supplemental Response at 2-3.

Our review of FAR § 12.206 leads us to agree with the Army's contention that this provision is not mandatory. Section 12.206 is set forth within FAR subpart 12.2, entitled "Special Requirements for the Acquisition of Commercial Items." The introductory paragraph within this subpart explains that

> Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

FAR § 12.201. In several instances the sections within subpart 12.2 use mandatory language--i.e., contracting officers "shall" use a standard form 1449 in certain circumstances (§ 12.204); agencies "shall" use fixed-price contracts, or a variation thereof with economic price adjustment features, when acquiring commercial items (§ 12.207); and commercial software "shall" be acquired under licenses customarily provided to the public (§ 12.212). In contrast, section 12.206 uses the word "should" in urging that past performance be an important element of every evaluation and contract award for commercial items. Thus, while the Army's approach is perhaps inconsistent with the exhortation of the FAR, and with the general emphasis on past performance in all federal procurements, it does not violate FAR § 12.206.

Disclosure of Relative Weights of Evaluation Factors

As indicated above, the Army recasts Finlen's arguments about the weight of past performance as a challenge to its use of simplified acquisition procedures, and contends that, as such, Finlen's protest is untimely. On the merits, the Army points out that FAR §§ 12.602(a) and 13.106-1(a)(2) provide that agencies are not required to advise offerors of the relative weight of evaluation factors when using simplified procedures. In the Army's view, since this solicitation, on its face, was identified as a commercial item procurement using simplified acquisition procedures, the withholding of the relative weight of evaluation factors is authorized by the last sentence of FAR § 12.602(a), and no further analysis is needed. For the reasons set forth below, we disagree.

With respect to the issue of timeliness, we recognize that Finlen's arguments can be termed a challenge to the agency's use of simplified procedures, even though Finlen's underlying complaint is that the now-revealed weight of past performance is inconsistent with the weight it reasonably expected. Assuming, arguendo, this ground of protest is untimely, however, we view the issues raised here as appropriate for resolution pursuant to the exception to our timeliness rules for protests raising issues significant to the procurement system. 4 C.F.R. § 21.2(c) (2001). Specifically, this case presents important issues regarding the treatment of offerors participating in procurements that, although labeled as acquisitions using simplified procedures, are conducted in a manner virtually indistinguishable from any other negotiated procurement under FAR part 15.

With respect to the merits, in 1994, Congress passed the Federal Acquisition Streamlining Act (FASA) authorizing the use of simplified acquisition procedures for

purchases not exceeding $100,000. 10 U.S.C. §§ 2304(a)(1)(A), (g)(1), (g)(3) (1994 & Supp. IV 1998). In general terms, the simplified procedures authorized by FASA permit the use of expedited and streamlined evaluation and selection procedures for the award of smaller contracts.[2] In 1996, Congress authorized a test program that permits enhanced discretion and flexibility, as well as the use of the simplified procedures described in FASA, for purchases of commercial items exceeding the $100,000 threshold for simplified acquisition procedures, but not exceeding $5 million. 10 U.S.C. §§ 2304(g)(1)(B), 2305(a)(2) (Supp. IV 1998). The regulations implementing this authority are set forth at FAR Subpart 13.5, Test Program for Certain Commercial Items.

The implementing regulations for the test program for commercial item purchases valued up to $5 million permit agencies to use any simplified acquisition procedure in FAR part 13, subject to applicable dollar limitations, to test whether the additional flexibility "maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry." FAR § 13.500(a). In addition, the regulations authorizing the test program incorporate the requirements of FAR part 12, Acquisition of Commercial Items. FAR § 13.500(c). FAR part 12 addresses general and special requirements for the acquisition of commercial items (subparts 12.1 and 12.2); sets forth solicitation provisions, unique terms and conditions, and the applicability of other statutes to these procurements (subparts 12.3 through 12.5); and identifies "optional procedures" (§ 12.601) for the solicitation and evaluation of commercial items (subpart 12.6).

Of relevance here, one of the optional procedures for the streamlined evaluation of offers of commercial products provides, at FAR § 12.602(a):

> When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation--Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in Part 13, contracting officers are not required to describe the relative importance of evaluation factors.

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[2] Prior to FASA, the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. §§ 2304(a)(1), (g)(1) (1988), similarly excepted procurements conducted under small purchase procedures from the full and open competition requirements, and from the procedures needed to meet those requirements. Bosco Contracting, Inc., B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140 at 2 n.1.

The referenced clause at FAR § 52.212-2 advises that award will be made to the offeror whose proposal is considered most advantageous to the government, considering price and other factors, and includes several blank lines to permit tailoring of the clause as described above--i.e., by identifying evaluation factors and their relative weights. In contrast, the referenced procedures at FAR § 13.106 provide that:

> When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

FAR § 13.106-1(a)(2).

The contrasting approaches to soliciting and evaluating offers for commercial products permitted by FAR §12.602(a)--and echoed by § 13.106-1(a)(2)--must be viewed within the discretion allowed contracting officers conducting simplified acquisitions. In conducting a simplified acquisition under FAR part 13, contracting officers have discretion to choose among a continuum of procedures, from the most informal (such as oral solicitations), through evaluation procedures drawn from FAR part 14 (sealed bids), to the more formal and complex procedures available for negotiated acquisitions set forth in FAR part 15. FAR § 13.106-2(b); see also FAR § 12.203 (providing the same discretion for commercial item procurements). While the FAR provides some guidance as to when different procedures are appropriate (for example, FAR § 13.106-1(c) addresses the circumstances where oral solicitations may be appropriate), contracting officers are left with considerable discretion in selecting the procedures applicable to each procurement. Where an agency's decisions in this regard are challenged in a protest, our Office will review the agency's actions for reasonableness. See Intellectual Properties, Inc., B-280803.2, May 10, 1999, 99-1 CPD ¶ 83 at 5-6 (broad grants of agency discretion in numerous areas are nonetheless subject to the test of reasonableness).

With respect to the Army's contention that since this solicitation, on its face, is identified as a commercial item procurement using simplified acquisition procedures, no further analysis is needed, we disagree. We look to the substance of an agency's actions, rather than the form. In our view, the labeling of a procurement as "simplified" does not absolve the agency from its obligation to treat vendors fairly. See COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5 (agency's use of a negotiated procurement approach, rather than a simple Federal Supply Schedule purchase, triggered requirement to provide for a fair and equitable competition).

While there is no dispute here that the procurement of meals and locally-available hotel rooms for MEPS applicants appears to fall squarely within the reach of a "commercial item," as that term is defined at FAR § 2.101, there is little about the procedures used in this procurement that can reasonably be called simplified. For example, the agency elected to use a request for proposal format that requires the commercial offerors here--hotels, specifically--to prepare proposals addressing five non-price evaluation factors, including one factor, quality control, for which offerors had to develop and submit a unique quality control plan requiring contracting officer approval of plan changes throughout the life of the contract.[3] Upon receipt of offers, agency personnel conducted a full-scale evaluation, inspected offerors' premises, developed consensus scores, and made a written selection recommendation to the MEPS commander, who, in turn, recommended a selection decision to the contracting officer, who, in turn, made and documented the selection.[4]

Despite the "simplified" label, this procurement is very similar to any other negotiated acquisition conducted under the rules set forth in FAR part 15. Those rules require that when offerors are asked to prepare detailed proposals, those offerors must be advised of the weight of all factors and significant subfactors that will affect the contract award. FAR § 15.304(d). When our Office asked the Army to address why it would want to withhold this basic information from offerors preparing proposals, the agency answered "that revealing the relative importance of factors may result in offerors skewing their proposals to the more important factors." Agency Supp. Report at 7. In addition, the Army argued that revealing the relative weight of factors in the solicitation would hinder the agency's ability to change the weight of those factors during the course of its evaluation. Id. In our view, neither of these considerations is appropriate under the circumstances of this, or any other, procurement, nor are they advisable for the integrity of the public procurement process.

We recognize that CICA exempts solicitations in procurements using simplified procedures from the requirement that the relative importance of evaluation factors be disclosed. 10 U.S.C. § 2305(a)(2). Moreover, we are sensitive to the fact that the

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[3] RFP at 11-12.

[4] Although it is not the role of our bid protest function to recommend that the agency use, or not use, a particular approach to procuring lodging and meals for MEPS applicants, our Office has expressed concerns that the test program to date is not including an assessment of the extent to which, among other things, the time required to award contracts is being reduced, or administrative costs are being reduced. Contract Management: Benefits of Simplified Acquisition Test Procedures Not Clearly Demonstrated, GAO-01-517 (Apr. 2001), at 6. The approach that the Army adopted here would not appear to have furthered either of those goals of the test program.

thrust of FAR parts 12 and 13 is to avoid the use of procedures that constrict and complicate the acquisition process, and that FAR §§ 12.602(a) and 13.106-1(a)(2) do not, on their face, limit a contracting officer's discretion to disclose, or not disclose, the relative weight of evaluation criteria in a commercial item procurement conducted using simplified procedures. Nonetheless, basic principles of fair play are a touchstone of the federal procurement system, and those principles bound even broad grants of agency discretion. See Intellectual Properties, Inc., supra. In addition, even when using simplified procedures--and before them, when using small purchase procedures--federal procurements must be conducted with the concern for a fair and equitable contest that is inherent in any competition. Discount Mach. and Equip., Inc., B-220949, Feb. 25, 1986, 86-1 CPD ¶ 193 at 3.

Here, where the agency required the commercial offerors to prepare detailed proposals addressing unique government requirements, withholding the relative weight of evaluation factors denied the offerors one of the basic tools used to develop the written, detailed proposals called for in the solicitation. The failure to disclose was particularly unfair here because of the contrast between the indications in the RFP that past performance would be a significant evaluation factor, and the agency's actual intent to make it, by far, the least important one (worth only one quarter of the second-least important factor). While there are certainly circumstances in which agencies need not disclose the relative weight of evaluation factors when conducting a simplified acquisition, this procurement, in our view, is not one of them. Given these circumstances, we believe that fairness dictated that the Army disclose the relative weight of its evaluation criteria to offerors. See Krygoski Constr. Co., Inc. v. United States, 94 F.3d 1537, 1543 (Fed. Cir. 1996), cert. denied, 520 U.S. 1210 (1997) (the overarching principle codified in the Competition in Contracting Act is that agencies provide impartial, fair, and equitable treatment for each contractor); Dubinsky v. United States, 43 Fed. Cl. 243, 259 (1999) (making offerors aware of the rules of the game in which they seek to participate is fundamental to fairness and open competition).

Best Value

Finlen lastly argues that the selection decision here was improper. Based on our review, we agree. As set forth above, neither the selection recommendation of the MEPS commander to the contracting officer, nor the contracting officer's determination, includes any explanation or rationale for the benefits associated with choosing the higher-priced proposal of Best Western over the lower-priced proposal of Finlen. In our view, such an assessment was required here to determine whether an offeror's technical superiority justifies the cost premium. See FAR §§ 12.602(c), 13.501(b)(3); Universal Bldg. Maint., Inc., B-282456, July 15, 1999, 99-2 CPD ¶ 32 at 4.

In addition, the problems in the source selection decision here are not limited to those raised by Finlen. Even in the statement that purports to represent a selection between the higher-priced proposal of offeror A and the proposal of Best Western, there is no qualitative assessment whatsoever of the technical differences between

those offers, or alternatively, a conclusion that the proposals are technically equivalent, and a corresponding decision that there are no benefits in Offeror A's proposal that justify paying its higher price. Without such assessments, the selection decision here is not reasonable.

As a final matter--and related to our view that the best value decision here was improper--the agency argues that this protest should be denied as Finlen cannot claim to be prejudiced by the agency's withholding of the relative weight of evaluation factors because none of the other offerors were aware of the weights, and because, even if the scores are recalculated as if each of the factors were weighted equally, Finlen would not be in line for award. We disagree.

The agency is correct in noting that our Office will not sustain a protest unless there is a reasonable possibility of prejudice, that is, but for the agency's actions, the protester would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). On the other hand, we accord lesser weight to "reevaluations and redeterminations prepared in the heat of the adversarial process" since "they may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process." Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Here, under the agency's rescoring approach, the difference in the point scores between these offerors closes from 12 points between the proposals of Finlen and Best Western, to less than 3 points. Under these circumstances, the contracting officer would need to form a judgment about whether to select Best Western's (or Offeror A's) higher-priced proposal, rather than Finlen's slightly lower-rated, lower-priced proposal. It is precisely this new judgment that should not be made in the heat of litigation. Moreover, as noted above, this judgment requires a reasoned consideration of any benefits the contracting officer might view as justifying the higher-priced proposal of Best Western (or Offeror A) over the lower-priced proposal of Finlen, not a cursory comparison of point scores.

RECOMMENDATION

As indicated above, we conclude that it was unreasonable, under the circumstances of this procurement, to withhold from offerors the relative weight of evaluation factors. Since the record here indicates that the agency concluded that a relative weight of 5 percent for past performance would meet its needs, we recommend that the agency amend the solicitation to advise offerors of the evaluation factors and their relative weights, and resolicit proposals. Upon conclusion of its new evaluation, we recommend that the agency make a new selection decision, taking care to explain any benefits associated with any tradeoff decision. If Best Western is not the successful offeror after the revised selection decision, the Army should terminate its contract. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for such

costs, detailing the time expended and the cost incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel