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Decision

Matter of: Keeton Corrections, Inc.

File: B-293348

Date: March 4, 2004

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Foley & Lardner, for the protester.

Alex D. Tomaszczuk, Esq., and Daniel S. Herzfeld, Esq., Shaw Pittman, for Dismas
Charities, Inc., the intervenor.

Tracey L. Printer, Esq., Department of Justice, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement, which provided for award on the basis of a cost/technical tradeoff and under which past performance was stated to be the most important evaluation factor, the selection of the awardee's significantly higher-priced offer based upon that firm's technical superiority and better past performance was unreasonable, where the information provided to the source selection authority to support the awardee's and protester's past performance evaluation did not accurately reflect the firms' evaluation but instead erroneously conveyed the impression that the awardee had no evaluated past performance weaknesses and that the protester's past performance had nearly only weaknesses.

DECISION

Keeton Corrections, Inc. protests the award of a contract to Dismas Charities, Inc. under request for proposals (RFP) No. 200-0734-MA, issued by the Federal Bureau of Prisons (BOP), Department of Justice, to provide a residential Comprehensive Sanction Center (CSC) in Nashville, Tennessee. Keeton challenges the agency's technical evaluation and source selection decision.

We sustain the protest.

The RFP provided for the award of a fixed-unit-price requirements contract to provide a residential CSC (commonly referred to as a "halfway house") for male and female federal offenders in Nashville, Tennessee for a base period of 2 years with 4 option years. Among the services the contractor will provide are "employment and

residence development and other self-improvement opportunities to assist federal offenders in becoming law-abiding citizens.” RFP, Statement of Work (SOW), at 1.

The RFP provided that award would be based upon a cost/technical tradeoff analysis considering the following evaluation factors: (1) past performance, (2) community relations, (3) technical, (4) management, and (5) price. Past performance was the most important evaluation factor, community relations was next in importance, and the remaining non-price factors were of equal importance. The RFP also stated that the non-price factors together were significantly more important than price. Offerors were informed that the agency would point score the proposals.

Detailed proposal preparation instructions were provided. With respect to the past performance evaluation factor, offerors were instructed to provide a list of all contracts and subcontracts completed within the last 3 years or currently in process, and to provide references for these contracts and a description of the contract/subcontract, including identifying problems encountered and corrective actions taken. Offerors were informed that “[e]ach offeror will be evaluated on performance under existing and prior contracts for similar services.” RFP § L.11.

The BOP received proposals from three offerors, including Dismas and Keeton. The proposals were evaluated by the agency’s source selection evaluation panel (SSEP) and contracting officer.¹ All three proposals were included in the competitive range, and the agency conducted two rounds of written discussions. The final proposal revisions of Dismas and Keeton were evaluated as follows:

	Dismas	Keeton
Past performance (400 maximum points)	340.00	324.00
Community relations (350 max. pts.)	247.38	228.62
Technical (250 max. pts.)	168.25	156.47
Management (250 max. pts.)	165.92	160.74
Price (250 max. pts)	\$4,585,533 222.15	\$4,074,630 250.00
Total Point Score (1,500 max. pts)	1,143.70	1,119.83

¹ The contracting officer evaluated proposals under the past performance and price factors, and the SSEP evaluated the firms’ proposals under the community relations, technical, and management evaluation factors.

In evaluating the firms' past performance, the contracting officer found that the offerors all had a "considerable number of completed and active contracts with the [BOP]," which provided the agency with "more than enough" information to evaluate the firms' past performance. Hearing Transcript (Tr.) at 241; Agency Report, Tab 17, Past Performance Evaluation Memorandum, at 2. Accordingly, in her past performance evaluation, the contracting officer did not consider performance of contracts that were not with the BOP. Rather, for each firm, the contracting officer states that she reviewed the most recent contractor evaluation form (CEF) on file for each reported contract with the BOP, and assessed the offeror's past performance in three areas: contract compliance, customer satisfaction, and business relations. Tr. at 242-43.

With respect to Dismas, the contracting officer found that of the nine contracts, which Dismas had performed for the BOP in the past 3 years (including the prior contract for these services as the incumbent), the pertinent CEFs reflected excellent performance on four contracts, good performance on four contracts, and fair performance on one contract.² The contracting officer identified both strengths and weaknesses in Dismas's past performance, which she derived from the documentation supporting the CEF for each BOP contract. Tr. at 248. For example, under the contract compliance area, the contracting officer noted 25 strengths, including Dismas's food service program, grounds and facility maintenance, staffing and staff morale, and computerized system for tracking subsistence payments, and 38 weaknesses, including a deficiency in conducting alcohol testing (testing device was inoperable and the log did not reflect whether there was resident cooperation with the test), that files did not contain individual program plans within established time frames, and that quarterly file reviews were not being conducted as required. Agency Report, Tab 17, Contracting Officer's Past Performance Evaluation Memorandum, at 14-17. The contracting officer's evaluation did not assess or explain the significance of evaluated strengths and weaknesses. Tr. at 253. The contracting officer concluded that Dismas overall past performance was good.

With respect to Keeton, the contracting officer found that of, seven contracts which Keeton had performed for the BOP within the last 3 years, the pertinent CEFs reflected excellent performance on two contracts, good performance on four

² Excellent performance was described as performance without problems, within the terms of the contract, not needing improvement, and that the contractor had been extremely responsive to the BOP. Good performance was described as performance with few, if any problems, generally within the terms of the contract and only minor improvements were needed. Fair performance was described as performance with contract compliance problems, but that the contractor was responsive to the BOP, taking timely corrective action, and that several improvements were ongoing. Agency Report, Tab 17, Contracting Officer's Past Performance Evaluation Memorandum, at 3.

contracts, and fair performance on one contract. As she did with Dismas's performance, the contracting officer identified both strengths and weaknesses in Keeton's performance. For example, under contract compliance, the contracting officer noted 43 strengths, including that Keeton had solid staff with low turnover, staff morale was high, all terminal reports were timely received, and case files were neat and organized, and noted 29 weaknesses, including monthly billings with a few discrepancies, terminal reports not timely filed,³ and individual urine logs that did not comply with contract requirements. Agency Report, Tab 17, Contracting Officer's Past Performance Evaluation Memorandum, at 22-25. As with the evaluation of Dismas's proposal, the contracting officer did not assess the significance of the evaluated strengths and weaknesses in Keeton's proposal. The contracting officer concluded that Keeton's overall past performance was also good.

At the end of the past performance evaluation memorandum, the contracting officer prepared a three-page narrative summary of her evaluation findings. Although the contracting officer found that both Dismas's and Keeton's past performance warranted a good overall adjectival rating, the summary identified only the firms' respective average CEF point scores (4.24 for Dismas and 4.03 for Keeton (out of a possible 5 points)), as well as the adjectival ratings on the BOP contracts considered in the evaluation. Also in the summary, the contracting officer identified numerous strengths but no weaknesses for Dismas, whereas for Keeton the contracting officer identified a few strengths and many weaknesses. Agency Report, Tab 17, Contracting Officer's Past Performance Evaluation Memorandum, at 29-31. The contracting officer testified that although she relied upon the individual adjectival ratings for each contract derived from the firms' CEFs to determine that Dismas had better overall past performance, she prepared the narrative summary of the firms' strengths and weaknesses to justify the adjectival past performance ratings. Tr. at 253-54. In this regard, she testified that she only identified strengths for Dismas and few strengths and almost only weaknesses for Keeton because she believed that this would point out the areas in which Dismas was superior. Tr. at 255.

The SSEP evaluated the offerors' technical proposals under the remaining non-price evaluation factors. First, the evaluators independently assessed proposals against 166 questions. For each question, the evaluators awarded the proposal a point score ranging from 0 to 5 points and recorded a brief narrative comment where the proposal was seen as exceeding the solicitation requirements under a particular question. See, e.g., Agency Report, Tab 13, SSEP Chairperson's Scoring Sheets for Dismas, at 5. The SSEP then met to discuss the evaluators' assessments and agree to

³ The record reflects that Keeton received a strength under two contracts for timely filing terminal reports (for which it received ratings of excellent and good) and received a weakness under one contract (for which it received a fair rating) for not timely filing terminal reports.

evaluated strengths and weaknesses for each proposal; the SSEP's consensus judgment was not documented, however. Tr. at 117-18, 123, 172. The evaluators' raw point scores for the evaluation questions were provided to the SSEP chairperson, who weighted the scores in accordance with the relative ranking of the evaluation factors identified in the RFP and calculated a total point score for each offeror.

The SSEP chairperson briefed the SSA on the contracting officer's and SSEP's evaluation conclusions. With respect to the contracting officer's past performance evaluation, the SSEP chairperson relied upon the contracting officer's past performance evaluation memorandum and did not independently assess the firms' past performance. Tr. at 135. The briefing was provided orally and was not documented. In this respect, the SSA testified that he was not provided with any evaluation or other documentation at the briefing.⁴ See Tr. at 18, 23. At the hearing conducted by our Office in this matter, both the SSA and the SSEP chairperson had little recall of the specifics of the briefing. See, e.g., Tr. at 19, 32, 46. The SSEP chairperson recommended that award be made to Dismas, Tr. at 129, and was directed by the SSA to draft the source selection decision.

In his source selection decision, the SSA noted that Keeton had submitted the lowest priced proposal, which was approximately \$500,000 lower than that of Dismas. The SSA noted, however, that Dismas's proposal had received a higher overall evaluation score and received higher point scores under each of the non-price evaluation factors. The SSA stated that "[w]hile adjectival ratings and point scores are useful guides to decision making, they are not controlling." Agency Report, Tab 7, Source Selection Decision, at 3. In this regard, the SSA testified that in making his selection decision he considered the offerors' respective point scores, underlying strengths and weaknesses, and proposed prices. Tr. at 29.

With respect to past performance, which the SSA recognized to be the most important evaluation factor, the SSA testified that he accepted the contracting officer's evaluation and found that Dismas's evaluated strengths justified its good past performance rating; the SSA was not aware, however, of Dismas's evaluated weaknesses. Tr. at 32. While the SSA found that Keeton also had good past performance, the source selection decision essentially repeated the contracting officer's past performance summary, which basically mentions only Dismas's strengths and only Keeton's weaknesses. With respect to the remaining non-price factors, the SSA found that under each factor Dismas's proposal had higher point

⁴ The SSEP chairperson testified that typically she would provide the SSA with the past performance summary prepared by the contracting officer. Tr. at 127. With respect to this procurement, the chairperson testified that, although she had the document available at the briefing, she could not recall whether the SSA took or kept the past performance summary. Tr. at 128.

scores than Keeton's, primarily because whereas Keeton's proposals met the minimum requirements, Dismas's proposal exceeded them in various respects. The SSA concluded that Dismas's proposal presented less technical risk of successful performance than did Keeton's proposal. Although Keeton proposed a significantly lower price than Dismas, the SSA found that Dismas's higher technical quality justified award to Dismas. In the SSA's judgment,

[w]hen providing services for the re-entry of convicted felons to their home communities, it is vital that the best possible services be provided. This not only helps to ensure the best opportunity for success to the offenders, but helps to ensure the safest environment is provided to the community. From a business point of view, providing better services to felons at re[-]entry may help reduce the possibility of recidivism which would cost the taxpayers more monies in the future. Therefore, the payment of the premium to Dismas is warranted.

Agency Report, Tab 7, Source Selection Decision, at 8. Award was made to Dismas, and this protest followed.

Keeton challenges numerous aspects of the agency's technical and past performance evaluation and source selection decision, which Keeton argues is inadequately documented and unreasonable.

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. Further, where an agency has made a source selection decision in favor of a higher-priced proposal that has been ranked technically superior to a lower-priced proposal, the award decision must be supported by a rational explanation demonstrating that the higher-rated proposal is in fact superior, and explaining why the technical superiority of the higher-priced proposal warrants the additional cost. Federal Acquisition Regulation (FAR) § 15.308. A source selection decision based on inconsistent or inaccurate information concerning the technical or past performance evaluation or the relative merits of the offerors' technical proposals or past performance is not reasonable. See Ashland Sales and Serv. Co., B-291206, Dec. 5, 2002, 2003 CPD ¶ 36 at 7.

In order for us to review an agency's evaluation judgment, the agency must have adequate documentation to support its judgment. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a

reasonable basis for the source selection decision. Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10.

We conducted a hearing in this case because the evaluation documentation prepared by BOP did not adequately explain the agency's evaluation and selection of Dismas's proposal for award. For example, the record did not contain any documentation of the briefing provided to the SSA or otherwise identify specifically what the SSA considered in making his decision. Moreover, it was unclear from the SSA's selection decision whether the SSA was presented with an accurate report of the firms' respective evaluated strengths and weaknesses underlying the contracting officer's past performance evaluation. Based on the hearing testimony and the documentation in the record, we find that the SSA was not presented with an accurate summary of the offerors' evaluated past performance to support his cost/technical tradeoff judgment.

In making his cost/technical tradeoff assessment, the SSA testified, and the source selection decision document showed, that the SSA believed he was considering the totality of the record. See, e.g., Tr. at 29, Agency Report, Tab 7, Source Selection Decision, at 3. That is, the SSA stated that he considered not only the firms' respective point scores, but also the adjectival ratings and underlying evaluated strengths and weaknesses. In this regard, with respect to past performance, which was the most important evaluation factor, the source selection decision identified point scores for Dismas (340 of 400 maximum available points) and Keeton (324 points), identified the overall past performance adjectival ratings as well as those for the firms' BOP contracts, and provided a narrative description of what the SSA considered to be the firms' strengths and weaknesses under three elements of past performance (contract compliance, customer satisfaction, and business relations).

However, as indicated above, the past performance narrative in the source selection decision essentially repeated the contracting officer's past performance summary, which identified only strengths and no weaknesses for Dismas and nearly only weaknesses (and only three strengths) for Keeton. See Agency Report, Tab 7, Source Selection Decision, at 3-6. This was not consistent with the contracting officer's overall evaluation supporting her good past performance ratings for Dismas and Keeton, which identified multiple strengths and weaknesses for each firm. Specifically, with respect to Dismas, the contracting officer identified approximately 70 strengths and 50 weaknesses in that firm's past performance, and approximately 80 strengths and 40 weaknesses in Keeton's past performance. See Agency Report, Tab 17, Contracting Officer's Past Performance Evaluation Memorandum, at 14-20, 22-28. That is, the past performance evaluation summary, which was repeated in the source selection document, conveyed the erroneous impression that Dismas's past performance had no weaknesses while Keeton's past performance had many weaknesses and few strengths.

The SSA testified that he relied upon this summary of the firms' past performance and did not independently assess the firms' past performance in making his source selection decision. Tr. at 35-36. In this regard, the SSA further testified that he did not know whether this summary accurately reflected the contracting officer's past performance evaluation. Tr. at 54. While the contracting officer testified that the past performance evaluation summary she prepared was drafted to highlight Dismas's superiority in past performance, this explanation was not provided to the SSA or SSEP chairperson; instead, the summary was presented and appeared as a significant part of the basis for the source selection without the SSA being apprised of, and considering, that there were actually numerous weaknesses in Dismas's past performance and numerous strengths in Keeton's past performance.⁵ Thus, we conclude that the source selection decision was based upon a misapprehension of the offerors' past performance evaluation and therefore the decision lacks a reasonable basis. See Ashland Sales and Serv. Co., supra, at 8-10.

Given that past performance was the most important evaluation factor and that Keeton had a more than \$500,000 price advantage, we cannot say that Keeton's proposal would not have been selected for award if the SSA had been accurately apprised of the firms' evaluated past performance. In this regard, the SSA stressed in his hearing testimony the importance of Dismas's superior past performance rating in the SSA's selection of that firm's proposal for award. See, e.g., Tr. at 25, 30-31, 33, 91. Accordingly, we find a reasonable possibility that the failure to accurately inform the SSA of the firms' evaluated past performance strengths and weaknesses prejudiced Keeton, and we sustain Keeton's protest on this basis.⁶

⁵ The SSEP chairperson testified that she did not specifically discuss strengths and weaknesses in past performance with the SSA. When questioned as to the discrepancy in the contracting officer's past performance evaluation memorandum, which identified numerous weaknesses in Dismas's performance, and the lack of any weaknesses identified for that firm's performance in the past performance summary, the SSEP chairperson testified that could not remember whether she was aware of this discrepancy at the time of the SSA's briefing. Tr. at 131-32.

⁶ In its post-hearing comments, the agency argues that any "inadequacy in the narrative section of the Past Performance Evaluation Summary Memorandum did not ultimately affect the Source Selection Decision" because the SSA, based upon prior procurements in which he served as an SSA, had a good understanding of Dismas's and Keeton's past performance. See Agency's Post-Hearing Comments at 4; see also Intervenor's Post-Hearing Comments at 3-4. Although an SSA may make an independent assessment of offerors' past performance, based upon the SSA's own personal knowledge, see TRESP Assocs., Inc.; Advanced Data Concepts, Inc., B-258322.5, B-258322.6, Mar. 9, 1995, 96-1 CPD ¶ 8 at 7, the record does not show that the SSA relied upon his personal knowledge or made an independent assessment of the firms' past performance. Rather, the SSA repeatedly testified that he relied upon the past performance information provided to him by the SSEP Chairperson,

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Keeton also objects to the agency's failure to consider non-BOP work in its past performance evaluation and argues that the decision to exclude non-BOP work from the past performance evaluation was not made by the SSA, as Keeton asserts would be required by FAR § 15.305(a)(2)(ii) ("source selection authority shall determine the relevance of similar past performance information").⁷

Where a solicitation contemplates the evaluation of offerors' past performance, the agency has the discretion to determine the scope of the performance history to be considered, provided all proposals are evaluated on the same basis and the evaluation is consistent with the terms of the RFP. USATREX Int'l, Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 3. There is generally no requirement that an agency obtain or consider all of an offeror's references in the past performance evaluation. See Systems Mgmt., Inc.; Qualimetrics, Inc., B-287032.5, B-287032.6, Nov. 19, 2001, 2002 CPD ¶ 29 at 5; Advanced Data Concepts, Inc., B-277801.4, June 1, 1998, 98-1 CPD ¶ 145 at 10.

Contrary to Keeton's arguments, we do not find that the RFP required the agency to evaluate every one of Keeton's or Dismas's listed contracts. Although the RFP stated that the past performance evaluation would be a "subjective judgment based on consideration of all relevant facts and circumstances," see RFP § M.5 (emphasis added), this provision did not limit the agency's discretion in determining which contracts to evaluate, given that the provision expressly allows the agency to determine which facts and circumstances are relevant. The protester here has not

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see Tr. at 33-34, 36, 92, and did not at any point state that he relied upon his own knowledge of the firms' performance. See also Agency Reply to Protester's Comments at 13 ("[i]t was not improper for the [SSA] to rely upon the Contracting Officer's past performance evaluation.") The agency also argues that the SSA was aware that Dismas may have past performance weaknesses that were not identified for him because the SSA testified that Dismas did not receive a perfect score under the past performance factor. Although this may be true, the SSA did not demonstrate any knowledge of specific weaknesses and could not say whether any of these unidentified weaknesses were significant or not. See Tr. at 93.

⁷ Keeton contends that the contracting officer performed two past performance evaluations, preparing an evaluation document in November 2002 and another document, her past performance evaluation memorandum dated October 5, 2003. Keeton asserts that the November 2002 evaluation considered non-BOP work and alleges that Keeton received a higher past performance rating than Dismas at this time. The contracting officer testified that the November 2002 evaluation document was a draft document and that, contrary to Keeton's arguments, Dismas had a higher past performance rating than Keeton at that time. Tr. at 276, 279.

shown the agency's determination that each of the firms had sufficient BOP work to allow the agency to adequately evaluate the firms' past performance was unreasonable. With respect to Keeton's concern that the SSA was not aware that non-BOP work was excluded from the agency's past performance evaluation,⁸ given our recommendation below, this issue can be presented to the SSA for his consideration.⁹

Keeton also complains that the point scores assigned by the SSEP chairperson for Keeton under the community relations, technical, and management factors are out-of-line with the scores provided by the other evaluators and challenges a number of point scores that its proposal received under 12 questions (of the 166 questions that were scored to arrive at point scores for these three evaluation factors).

It is not unusual for individual evaluators to have disparate judgments regarding a proposal's relative strengths and weaknesses, and disparities in evaluator ratings alone do not establish that an evaluation process was flawed. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 5. Here, the evaluators' individual point scores for the questions were averaged to arrive at a panel point score for each question; these point scores were then weighted to arrive at panel point scores for the three factors. Also, the SSEP chair testified that the panel reached consensus judgment with respect to the evaluated strengths and weaknesses identified for the proposals under each factor. Tr. at 117-18, 172. We have reviewed each of the 12 examples cited by the protester, each of which was responded to in detail by the

⁸ The SSA testified that he was not aware that non-BOP work had been excluded from the past performance evaluation, Tr. at 60, but that he believed that non-BOP used to be considered in the agency's past performance evaluations, but was now routinely not considered. Tr. at 62.

⁹ Keeton also complains that Dismas's numerical score on the CEF for one of the firm's BOP contracts was improperly increased by the contracting officer. The agency explained that the score was not increased by the contracting officer but increased by the BOP South Central Regional Office in response to an appeal by Dismas, which has responsible for monitoring Dismas's performance under that contract. Although Keeton continues to assert that the increase in Dismas's score for this particular contract was improper, it has not shown that the increase, as a result of Dismas's appeal, was unreasonable. Keeton also complains that the contracting officer did not increase the score on one of Keeton's CEFs, where Keeton also had appealed the score. The agency has not directly addressed this argument. We think that, given our recommendation to review the past performance evaluation, the agency should review this matter in evaluating Keeton's past performance.

agency, and based on our review of the record, we find no basis to find the agency's evaluation under these three technical factors to be unreasonable.¹⁰

Keeton also complains that the SSA's selection decision relied upon "risk factors," one of which was assertedly an unstated evaluation criterion. Specifically, Keeton complains that the SSA identified in his hearing testimony three risk factors that were important to his selection decision: (1) ownership, rather than lease, of the building in which CSC services would be provided; (2) good community relations; and (3) good past performance. Keeton objects that building ownership was not identified in the RFP as an evaluation factor. However, "facility" was identified as a subfactor to the technical evaluation factor, see RFP § M.5, and the RFP specifically instructed offerors to provide evidence supporting the offeror's right to use its proposed facility, such as deeds, leases, bills of sale, options to lease, options to buy, contingency leases, or contingency deeds. Thus, the agency could reasonably credit Dismas with ownership of its facility in the evaluation.

The protest is sustained.

We recommend that the agency reevaluate Keeton's and Dismas's past performance and then make a new source selection decision.¹¹ If an offeror other than Dismas is

¹⁰ For many of the examples, the agency rated Dismas's proposal higher because it provided more detailed information. For example, proposals were evaluated with respect to the question "Does the approach demonstrate that staff will review the [operations] manual at least annually?" (Annual review of the operations manual by the contractor's staff is a contract requirement. See RFP, SOW, at 6.) Dismas's proposal received 4 points (which reflected a satisfactory approach), while Keeton's proposal received 3 points (which reflected an approach that met the minimum requirements). Keeton's proposal merely stated in one sentence that its staff would read this manual during orientation and would annually review it. See Keeton's Technical Proposal, ch. 1, at 1. In comparison, Dismas's proposal provided more than a page of information to demonstrate how it would satisfy this requirement, such as: [DELETED]. See Dismas's Technical Proposal, ch. 1, at 1-2.

¹¹ Keeton requests that, unless we recommend award to Keeton (which we do not find appropriate here), we should recommend that the agency request revised proposals from the offerors based upon "BOP's new procedures," because of the passage of time (nearly 2 years since the solicitation was originally issued) and because the agency in more recent halfway house procurements has been using a more streamlined method to evaluate proposals. Generally, we would recommend that an agency revise the solicitation and obtain revised proposals where some defect in the solicitation impaired the competition or where it has been shown that the proposals originally received have been seriously affected by the passage of time. Neither of these situations has been shown to exist here. Nonetheless, in

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selected for award, we recommend that the agency terminate Dismas's contract and make award to that other firm, if otherwise appropriate. We also recommend that the protester be reimbursed its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2003). The protester should submit its certified claim for such costs, detailing the time expended and costs incurred, directly with the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

Anthony H. Gamboa
General Counsel

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implementing our recommendation, the agency retains the discretion to request revised proposals if it believes this is appropriate to ensure a fair competition.