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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: G4S Government Services

File: B-401694; B-401694.2

Date: November 4, 2009

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Richard J. Vacura, Esq., Keric B. Chin, Esq., and K. Alyse Latour, Esq., Morrison & Foerster LLP, and James J. McCullough, Esq., Steven A. Alerding, Esq., and William S. Speros, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for BI Incorporated, an intervenor.

Song U. Kim, Esq., Bureau of Immigration and Customs Enforcement, Department of Homeland Security, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of the realism of awardee's proposed price is denied where record shows agency conducted well-documented price evaluation that was consistent with solicitation requirements.

2. Protest challenging evaluation of offerors' technical proposals and past performance is denied where the record shows that agency's evaluation was reasonable and supported by the record, or that there was no prejudice to the protester as a result of the alleged errors since, even if the offerors' ratings were adjusted as protester argues they should be, protester's proposal still would be rated no higher than the awardee's lower-priced proposal.

DECISION

G4S Government Services, of Atlanta, Georgia, protests the award of a contract to BI Incorporated, of Boulder, Colorado, under request for proposals (RFP) No. HSCECR-09-R-00004, issued by the Bureau of Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS), for the intensive supervision appearance program (ISAP II). G4S argues that the agency's evaluation of offerors' technical proposals and BI's price proposal was unreasonable.

We deny the protest.

BACKGROUND

The ICE Office of Detention and Removal Operations (DRO) is responsible for the identification, apprehension and removal of illegal aliens from the United States. Limited detention capacity, an increasing detainee population, and the need to lower alien absconder rates have resulted in DRO's use of various alternatives to detention for aliens who do not require mandatory detention. Statement of Work (SOW) at 41. The agency's current alternatives-to-detention program is called ISAP II.

ISAP II is a core community-based supervision and in-person reporting program. The activities of aliens released from ICE custody into the ISAP II program are monitored by case specialists. Aliens participating in the release program must participate in or comply with a variety of activities and reporting requirements designed to successfully reintegrate the alien into his/her community while awaiting removal (*i.e.*, travel to the country of origin). Requirements include home and local office visits, employment verification, and curfews. To ensure successful completion of the program, ISAP II relies on electronic GPS monitoring devices, telephonic reporting, and unannounced home visits. Participants also report to assigned ISAP offices regularly for face-to-face interviews. *Id.* at 41-42.

The RFP, issued on March 31, 2009, contemplated the award of a requirements contract with fixed unit prices for a base year (including a 2-month transition period) together with four 1-year options. In general terms, the solicitation required the successful offeror to provide all personnel, materials, and facilities necessary to perform the community-based supervision, in-person reporting, and electronic monitoring service requirements set forth in the SOW. The RFP established four evaluation factors: technical, past performance, E-Verify,¹ and price. The technical and past performance factors were of equal importance, and each was significantly more important than the E-Verify factor. The technical factor was comprised of two subfactors--staffing plan/qualification of key personnel and other staff members (staffing plan), and contract management and operations plan (operations plan)--with the staffing plan subfactor being slightly more important than operations plan subfactor. The operations plan subfactor in turn was comprised of ten "sub-subfactors."² The RFP also established that all nonprice factors, when combined, were significantly more important than price. Award was to be made to

¹ E-Verify is an internet-based system operated by DHS in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of employees. As of September 8, 2009, federal contractors and subcontractors are required to use the E-Verify system to verify their employees' eligibility to work in the United States. Federal Acquisition Regulation (FAR) § 22.1803.

² The ten operations plan sub-subfactors were: 1) transition plan; 2) case management plan; 3) records management and reporting plan; 4) communications
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the responsible offeror whose proposal represented the “best value” to the government, all factors considered. Id.

Three offerors, including G4S and BI, submitted proposals by the May 18 closing date. An agency technical evaluation panel (TEP) evaluated offerors’ proposals as to the nonprice factors using an adjectival rating scheme that was set forth in the RFP: outstanding; good; satisfactory; marginal; unsatisfactory; and with regard to past performance factor, neutral.³ Id. at 152-53. The agency’s evaluation ratings of the G4S and BI proposals were as follows:

Factor	G4S	BI
Technical	Satisfactory	Good
Staffing Plan	Good	Good
Operations Plan	Marginal	Good
Past Performance	Satisfactory	Outstanding
E-Verify	Acceptable	Acceptable
Overall	Satisfactory	Good
Price	\$489,652,360	\$372,814,177 ⁴

Agency Report (AR), Tab 13, Source Selection Decision, at 5-7, 25.

The TEP also detailed the various strengths, weaknesses, and associated risks that it found in support of the ratings assigned to the offerors’ proposals. The TEP identified a total of 25 strengths and no weaknesses in BI’s proposal, and a total of 12 strengths, 10 weaknesses, and 10 risks in G4S’s proposal. Id., TEP Evaluation Report of BI; TEP Evaluation Report of G4S.

On July 15, after having reviewed the technical and price evaluation team findings and recommendations, the ICE source selection authority (SSA) determined that BI’s

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plan; 5) emergency readiness and continuity of operations (COOP) plan; 6) facilities plan; 7) quality assurance plan; 8) security plan; 9) training management plan; and 10) transportation plan. The RFP established that the first four sub-subfactors were in descending order of importance and, when combined, were significantly more important than all other operations plan sub-subfactors. Id. at 147-51.

³ The RFP established a separate adjectival rating system for the E-Verify evaluation factor: outstanding, acceptable, and unacceptable. Id. at 153-54.

⁴ Offeror C received an overall technical rating of “satisfactory,” and had a total evaluated price of \$419,493,786. Agency Report, Tab 13, Source Selection Decision, at 7, 25.

proposal was both technically superior to and lower-priced than the proposals of the other offerors, and represented the best value to the government. *Id.*, Source Selection Decision, at 28. Relevant to the protest here, having determined that BI's proposal was both higher technically-rated and lower-priced than G4S's, the agency's best value determination did not involve a price/technical tradeoff between the BI and G4S proposals. On August 3, G4S filed its protest with our Office.

DISCUSSION

G4S's protest raises numerous challenges to ICE's evaluation of offerors' proposals. G4S alleges that the agency's price realism analysis of BI's proposal was flawed. The protester also alleges that ICE's evaluation of offerors' proposals as to the staffing plan and operations plan subfactors was improper. Lastly, G4S argues that the agency's evaluation of offerors' past performance was unreasonable.⁵ We have fully considered all of G4S's allegations regarding the award of the ISAP II contract to BI and find they provide no basis on which to sustain the protest. We conclude that the agency's evaluation was proper or that the protester has not demonstrated it was prejudiced because the errors which G4S alleges occurred in the evaluation would, at best, result in technical parity between the G4S and BI proposals, and BI's remains lower-priced. We discuss G4S's most significant arguments below.

Price Realism Evaluation

G4S alleges that ICE failed to perform a proper price realism evaluation of BI's price proposal, insofar as the awardee's price was significantly below both the independent government estimate (IGE) and the prices of the other offerors. As a result, G4S contends, the agency was unaware that BI's proposed price was so low

⁵ G4S also protested that: 1) the agency's evaluation of G4S's proposal under the E-Verify factor was unreasonable; 2) ICE improperly held discussions with only BI; 3) the agency applied unstated evaluation criteria and/or rendered the competition a sole-source procurement by finding unacceptable any case management system other than the proprietary one employed by BI under the ISAP I contract; and 4) the record was inadequately documented to support the agency's evaluation and award determinations. G4S expressly abandoned its challenge to the agency's evaluation regarding the E-Verify factor. Comments, Sept. 14, 2009, at 13. The agency specifically addressed the protest issues here in its report to our Office, AR, Sept. 2, 2009, at 21; AR, Sept. 22, 2009, at 17-19, and G4S's comments offered no rebuttal of the agency's positions. Comments, Sept. 14, 2009, at 2-28; Comments, Sept. 28, 2009, at 1-19. Where, as here, an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's positions, we deem the issues to have been abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Commc'ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.

as to reflect an inadequate understanding of the work requirements and/or high performance risk. Protest, Aug. 3, 2009, at 24-26; Comments, Sept. 14, 2009, at 22-25.

The RFP established that the agency would evaluate the reasonableness and realism of offerors' prices. RFP § M at 154. As relevant to the protest here, the solicitation stated that "[a] realism analysis will be performed," and "[t]he results of the price evaluation shall also be used as an aid in determining each offeror's understanding of the requirements of the solicitation." Id. Importantly, while the RFP required offerors to submit unit and overall prices for the various contract line items (CLIN), offerors were not required to submit any other cost or pricing information in their proposals (e.g., employee wage rates, indirect rates, overhead rates, profit rates, etc.). Id. at 2-37.

The agency first evaluated offerors' prices for reasonableness. The record reflects that ICE compared offerors' unit, CLIN, and total prices as part of its determination that BI's prices were reasonable. AR, Tab 13, Source Selection Decision, at 17-26. Additionally, after its evaluation of technical proposals, the TEP was provided offerors' prices for the purpose of assisting in the agency's price realism analysis. Specifically, the technical evaluators were "to determine whether the offerors' proposed unit pricing raised any legitimate concerns (or risks) for the TEP (including how those concerns might impact the operational effectiveness and overall success of the ISAP II program) given their evaluation of each technical proposal (including staffing ratios), their historical knowledge, and current involvement with the ISAP and [enhanced supervision/reporting] programs." Id. at 26-27.

The TEP's evaluation of BI's price focused on consideration of the offeror's unit prices and staffing ratios. The agency technical evaluators found that:

The BI staffing plan excluding upper management positions calls for each field office to have a program manager and senior case specialists. Case specialists will be at ratios based on the type of supervision required and can range anywhere from [DELETED] post-order to [DELETED] pre-order cases. This method of in-depth case analysis that was taken from their current ISAP models appears to bring a savings to the government by employing staff based on not only actual numbers but by the type of case services required. The current ISAP I ratio is approximately [DELETED].

Id. at 27. Based on the TEP's assessment of the offerors' unit prices and staffing ratios, the agency concluded that BI's price was realistic. Id.

Where, as here, an RFP contemplates the award of a fixed-price contract, the agency generally is not required to analyze the "realism" of offerors' proposed prices; this is because a fixed-price (as opposed to a cost-type) contract places the risk and

responsibility for contract costs and ensuing profit or loss on the contractor. Pemco Aeroplex, Inc.–Recon., B-310372.2, Feb. 1, 2008, 2008 CPD ¶ 24 at 3. However, an agency may, as the agency did here, provide for the use of a price realism analysis for the limited purpose of assessing offerors’ understanding of the solicitation’s requirements or the risk inherent in offerors’ proposals.⁶ Id.; Consolidated Eng’g Servs., Inc., B-279565.5, Mar. 19, 1999, 99-1 CPD ¶ 76 at 10; see FAR § 15.404-1(d)(3). The nature and extent of a price realism analysis, as well as an assessment of potential risk associated with a proposed price, are generally within the sound exercise of the agency’s discretion. Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶ 126 at 7; Team BOS/Naples–Gemmo S.p.A./DelJen, B-298865.3, Dec. 28, 2007, 2008 CPD ¶ 11 at 13. Our review of such an evaluation is limited to determining whether it was reasonable and consistent with the solicitation’s evaluation criteria. American Techs., Inc., B-401445, Aug. 28, 2009, 2009 CPD ¶ 178 at 2; Pemco Aeroplex, Inc.–Recon., supra.

We find the agency’s price realism analysis of BI’s proposal to be unobjectionable. As discussed above, the record establishes that the agency performed various analyses regarding BI’s price realism and proposal risk. Specifically, the agency’s actions included an analysis of BI’s field office staffing ratios, BI’s use of different staffing ratios for different types of cases, and the comparison of BI’s staffing ratios to the current ISAP program staffing ratios, as well as the comparison of BI’s unit, CLIN, and overall prices to those of the other offerors. The agency reasonably concluded that BI’s staffing ratios, while higher than those of the other offerors and the current ISAP program, were reasonable, and thus the corresponding prices were realistic.

Although G4S raises a full range of arguments—that ICE failed to compare BI’s unit and overall prices to the IGE, that the agency’s price realism evaluation failed to include consideration of BI’s wages (which arguably were far below both the rates G4S paid under its incumbent enhanced supervision/reporting contract with ICE and comparable Service Contract Act wage rates),⁷ and that G4S had proposed differing

⁶ Although a price realism analysis, if conducted, may be used in technical performance risk assessments, it cannot properly lead to adjustment of the firms’ fixed prices. FAR § 15.404-1(d)(3); Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 27; World Wide Tech., Inc., B-298888, Dec. 1, 2006, 2006 CPD ¶ 189 at 6.

⁷ As noted above, however, offerors were not required to submit wage rate information as part of their proposals, and G4S fails to explain how ICE could review the realism of information which offerors were not required to provide. To the extent that G4S believed that the solicitation was defective insofar as it failed to require the submission of sufficient cost and pricing information for ICE to perform a valid price realism analysis, it should have raised this matter prior to the RFP’s closing time. See 4 C.F.R. § 21.2(a)(1) (2009).

staff ratios depending on the stage of ISAP participant supervision--its protest fails to demonstrate that any of the agency's actions were inadequate or inconsistent with the terms of the solicitation or applicable statute or regulation. G4S essentially disagrees with the level of scrutiny applied by the agency to BI's proposal. As discussed above, however, an agency has considerable discretion in determining the nature and extent of required price realism and proposal risk assessments in the context of fixed-price contracts. Team BOS/Naples--Gemmo S.p.A./DelJen, *supra*; Olympus Bldg. Servs., Inc., B-296741.14, B-296741.15, Apr. 20, 2007, 2007 CPD ¶ 156 at 3. Based on our review of the record, we conclude that G4S's various arguments challenging the agency's analysis and judgments reflect G4S's mere disagreement or dissatisfaction with the agency's determinations, and provide no basis to sustain the protest.

Evaluation of Staffing Plan Proposals

G4S challenges the agency's evaluation of its proposal under the staffing plan subfactor. The agency rated G4S's staffing plan as "good" based on three strengths and no weaknesses,⁸ and BI's staffing plan as "good" based on four strengths and no weaknesses. *Id.*, Tab 13, AR, Tab 13, TEP Evaluation Report of G4S, at 7-8; TEP Evaluation Report of BI, at 7-8. The protester alleges that the agency's evaluation was unreasonable and disparate, and that it was prejudiced by the improper evaluation insofar as it should have received an "outstanding" rating. Protest, Sept. 11, 2009, at 9-10; Comments, Sept. 14, 2009, at 10-13.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; instead, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. Here, although we do not specifically address all of G4S's arguments regarding ICE's evaluation of the offerors' staffing plan, we have fully considered all of them and find they provide no basis on which to sustain the protest.

For example, G4S argues that the TEP should have recognized its robust staffing plan as an additional strength. In support of its argument, G4S points to the pertinent language of the RFP and to its proposed staffing plan generally, without indicating if the staffing exceeded any qualitative or quantitative SOW requirements. Protest, Aug. 3, 2009, at 21-22; Comments, Sept. 14, 2009, at 11. We find the

⁸ The TEP identified one weakness in G4S's staffing plan--that its project director and deputy project director currently did not work for G4S--which the SSA did not accept. AR, Tab 13, Source Selection Decision, at 14.

protester's argument amounts to mere disagreement with the agency's evaluation, which does not render it unreasonable. See Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

G4S also contends that ICE improperly assigned its staffing plan proposal a single strength for exceeding both the project director education and experience requirements when these should have been separate strengths (and the agency assigned BI two separate strengths for such qualifications). Comments, Sept. 14, 2009, at 10. The record shows that the TEP in fact found that G4S's staffing plan exceeded both the project director experience and education requirements, and assigned the proposal two separate strengths. AR, Tab 13, TEP Evaluation of G4S, at 7. Subsequently, as part of the source selection decision, the SSA combined G4S's two project director strengths into one sentence or "bullet" (i.e., "Program director exceeds minimum experience and education requirements"). Id., Tab 13, Source Selection Decision, at 13. Additionally, the SSA did not consider BI's staffing plan to be a discriminator between the offerors' proposals. Id. at 8-16.

We think the agency's evaluation process was unobjectionable, and G4S's focus on a mathematical counting of the number of strengths entirely misplaced. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 7. The record reflects that the SSA was clearly aware that G4S's proposal exceeded both the project director experience and education requirements, and the mere fact that the SSA combined these two strengths into a single sentence within the source selection decision provides no basis on which to sustain the protest.⁹ Moreover, the protester has identified no prejudice as a result of the agency's action here, as the SSA did not consider staffing plans to be a discriminator between the BI and G4S proposals, irrespective of the number of separately-listed strengths. Joint Mgmt. & Tech. Servs., B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996) (prejudice is an essential element of a viable protest).

G4S also alleges that ICE should have recognized as an additional strength the fact that its deputy project director exceeded the minimum education requirements. Protest, Sept. 11, 2009, at 9-10; Comments, Sept. 14, 2009, at 10-11. As with its challenge to the evaluation of its project director's experience and education, we conclude that G4S has not established that it was prejudiced by the alleged impropriety. The record shows that, even if G4S had received a fourth strength

⁹ Similarly, the SSA's decision to combine two G4S strengths under the emergency readiness and COOP plan sub-subfactor (within the operations plan subfactor) into a single sentence also caused no prejudice to the protester: it did not affect the offeror's evaluation ratings or the agency's determination that BI's proposal was technically superior to that of G4S for other unrelated reasons.

under the staffing plan subfactor here, its “good” rating would not have changed: the TEP found four strengths in BI’s staffing plan and rated it as “good.”

Evaluation of Operations Plan Proposals

G4S protests the agency’s evaluation of offerors’ proposals under the operations plan subfactor. Again, while we do not specifically address all of G4S’s arguments, we have fully considered them and find there is no basis in the record to conclude that G4S was prejudiced by any of the alleged errors.

The TEP’s evaluation ratings of the G4S and BI proposals with regard to the operations plan subfactor and sub-subfactors were as follows:

Operations Plan Subfactor	G4S	BI
Transition Plan	Unsatisfactory	Good
Case Management Plan	Satisfactory	Good
Records Management and Reporting Plan	Marginal	Satisfactory
Communications Plan	Satisfactory	Satisfactory
Emergency Readiness and COOP Plan	Good	Good
Facilities Plan	Satisfactory	Satisfactory
Quality Assurance Plan	Satisfactory	Satisfactory
Security Plan	Satisfactory	Satisfactory
Training Management Plan	Satisfactory	Satisfactory
Transportation Plan	Satisfactory	Satisfactory
Overall	Marginal	Good

AR, Tab 13, Source Selection Decision, at 6-7.

In challenging the evaluation of its proposal, G4S argues, for example, that the TEP’s concerns regarding its proposed use of the new [DELETED] case management program were unreasonable;¹⁰ that the agency improperly double-counted identified weaknesses under multiple operations plan sub-subfactors; and that the agency improperly counted weaknesses as also risks. Protest, Sept. 14, 2009, at 2-10; Comments, Sept. 11, 2009, at 2-4. Based on the record here, even if G4S had not received any weaknesses and risks under the transition plan, case management plan,

¹⁰ The TEP found that G4S’s proposed use of the [DELETED] case management program—which G4S had yet to fully implement and test—resulted in numerous weaknesses and risks under the transition plan, case management plan, and records management and reporting plan subfactors. *Id.*, Tab 13, TEP Evaluation Report of G4S, at 9-14.

and records management and reporting plan sub-subfactors, it would have received an overall operations plan subfactor rating of “satisfactory” rather than “marginal.” By contrast, BI received an overall operations plan subfactor rating of “good.” Accordingly, there is no basis to conclude that G4S was prejudiced by the alleged errors.

Similarly, with respect to the evaluation of BI’s proposal, the protester argues that the TEP improperly assigned BI a strength under the case management plan sub-subfactor for merely meeting the SOW requirement that offerors not refuse to accept any program participant assigned by DRO (regardless of distance from a contractor’s field office).¹¹ Protest, Sept. 11, 2009, at 4-5. The record shows that the evaluators identified five strengths and no weaknesses in BI’s proposal under the case management plan sub-subfactor and assigned a “good” rating. AR, Tab 13, TEP Evaluation Report of BI, at 11-12. Even without the strength which G4S challenges, however, the record shows that BI still would have received a rating of “good” for the case management plan sub-subfactor and an overall operations plan rating of “good.”¹² Accordingly, G4S has not demonstrated that it was prejudiced by the alleged error.

The record supports the same conclusion—a lack of prejudice—with regard to the other operations plan evaluation findings that G4S challenges. In all instances, even assuming the findings at issue were changed as G4S argues they should be, the record shows that BI’s overall operations plan subfactor rating of “good” would remain the same, and G4S’s overall rating would be no higher than “satisfactory.”

Past Performance

G4S challenges the agency’s evaluation of offerors’ past performance.¹³ The TEP evaluated BI’s past performance as “outstanding” based on five identified strengths

¹¹ G4S alternatively argues that it also should have received a strength for agreeing not to refuse to accept any program participant assigned by DRO. Protest, Sept. 11, 2009, at 5. If, as the protester argues, an offeror’s agreement not to refuse any referral made by ICE was a SOW requirement, the remedy would be to not recognize it as a strength for either offeror (not add a strength to G4S’s proposal).

¹² The record reflects that when an offeror had four strengths and no weaknesses under an evaluator factor, it received a rating of “good.” See AR, Tab 13, TEP Evaluation Report of G4S, at 5, 16-17; TEP Evaluation Report of BI, at 5, 16-17.

¹³ G4S argues that: 1) the agency improperly considered the majority of its references to be only “minimally relevant”; 2) the agency evaluation report and source selection decision failed to expressly acknowledge the size and complexity of G4S’s references; 3) the agency improperly downplayed G4S’s positive past performance; 4) the contracting officer’s statement supporting the past performance
(continued...)

and no weaknesses, and G4S's past performance as "satisfactory" based on two identified strengths and three weaknesses and associated risks. The protester contends that had ICE evaluated offerors' past performance properly, both G4S and BI would have received equal, "good" ratings. G4S Comments, Oct. 15, 2009, at 2.

As with many of its other challenges to the evaluation, the record shows that there was no prejudice to G4S arising from any alleged error in this area, that is, even if the protester prevailed on this protest ground as argued, the offerors both would receive past performance ratings of "good."

In sum, from the record we see no reasonable possibility that the SSA would have selected G4S's higher-priced proposal instead of BI's (at least) equally-rated, lower-priced proposal. See Computer Cite, B-400830, Feb. 3, 2009, 2009 CPD ¶ 40 at 3; American Cybernetic Corp., B-310551.2, Feb. 1, 2008, 2008 CPD ¶ 40 at 3.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

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rating of G4S was a post-hoc rationalization not supported by the contemporaneous record; 5) the agency placed undue weight on the adverse information regarding G4S's incumbent enhanced supervision/reporting contract with ICE; 6) the agency's evaluation of BI's past performance was based on references that were not of sufficient size to be considered "relevant"; and 7) the agency treated offerors in a disparate manner. Protest, Sept. 11, 2009, at 10-17; Comments, Sept. 14, 2009, at 14-21.