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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

# Decision

**Matter of:** CWIS, LLC

**File:** B-287521

**Date:** July 2, 2001

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David G. Ramagos for the protester.

Daryle A. Jordan, Esq., Patrick Henry Cappell & Lewis, for Innovative Strategies and Solutions, Inc., the intervenor.

Virginia K. Stephens Ackerman, Esq., Department of Housing & Urban Development, for the agency.

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## DIGEST

1. Agency's evaluation of protester's past performance was reasonable where protester does not dispute that certain aspects of its performance on a previous contract were deficient and the agency reasonably considered the corrective measures taken by the protester to rectify the deficient performance.

2. Agency's cost realism evaluation of protester's proposal that resulted in an upwards adjustment of proposed costs for airfare was reasonable where agency accounted for considerations relevant to performance of contract, such as travel being required on short notice and to cities that are not served by the airline on which protester's proposed fares were based.

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## DECISION

CWIS, LLC protests the award of a contract to Innovative Strategies and Solutions, Inc. (ISSI) under request for proposals (RFP) No. R-OPC-21598, issued by the Department of Housing and Urban Development (HUD) to obtain assistance in the monitoring and enforcement of the manufactured housing program, and in conducting workshops, training, and programs for program participants. CWIS argues that the agency's evaluation of its past performance and cost, and the selection of ISSI's proposal for award, were unreasonable.

We deny the protest.

The RFP, restricted to firms certified under the Small Business Administration's section 8(a) program, provided for an award of a cost-plus-fixed-fee contract for the required services for a base period of 2 years with two 1-year options. The contractor will be required, for example, to travel to numerous state administrative agencies and provide training to the participants. The RFP stated that award would be made to the offeror whose proposal is determined most advantageous to the government, and listed the following evaluation factors and their relative values:

1. Technical Approach (40 points)
2. Organizational Qualifications, Experience (30 points)
3. Past Performance (20 points)
4. Personnel Qualifications and Experience (10 points)

The RFP stated that the combined relative merit of these evaluation factors would be considered more significant than cost/price, and advised offerors that each offeror's proposal would be analyzed for cost realism. The solicitation included detailed instructions for the preparation of proposals, and advised offerors that the agency intended to establish a competitive range, conduct discussions with those offerors whose proposals were included in the competitive range, and seek revised proposals.

The agency received proposals from three offerors, and all were included in the competitive range. Agency Report, Tab E, Initial Technical Evaluation Report, at 9. Discussions were conducted, and final proposal revisions requested. ISSI's proposal received a technical score of 88 out of 100 points, at a proposed and evaluated cost of \$5,601,086, and CWIS's proposal received a score of 81 points at a proposed cost of \$4,592,073 and an evaluated cost of \$5,544,711. Agency Report, Tab K, Technical Evaluation Panel Memorandum to the Source Selection Official, at 14. The agency determined that ISSI's proposal represented the best value to the agency, as compared to the other proposals received, because ISSI's proposal's higher technical point score reflected strengths, particularly with regard to past performance, that provided added value to the government, justifying award based on its slightly higher evaluated probable cost, and made award to that firm. *Id.* at 19-21.

The protester argues that the agency's evaluation of CWIS's proposal under the past performance evaluation factor was unreasonable. Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the contracting agency's discretion. *TRW, Inc.*, B-282162, B-282162.2, June 9, 1999, 99-2 CPD ¶ 12 at 3.

In evaluating CWIS's proposal and checking its references, the technical evaluation panel (TEP) was informed that although CWIS had performed adequately or better on a number of contracts, its performance on one contract was poor. Agency Report, Tab E, Initial Technical Evaluation Report, at 8. The TEP thus downgraded

CWIS's proposal under the past performance factor, and decided that "since references were mixed, the TEP [would] seek clarification from the offeror" regarding its past performance. Id. Specifically, CWIS was asked to provide additional information regarding the contract under which its performance was rated poor, as well as another contract that had been performed by CWIS's proposed subcontractor and for which CWIS had described certain "[p]roblems [e]ncountered" during that contract's performance. Agency Report, Tab D, CWIS Proposal, at 4-4; Tab F, CWIS's Response to the Technical and Cost Discussion Questions, ¶¶ 7, 8.

The protester responded to the agency's inquiries regarding the contract under which its performance had been characterized as poor by detailing certain problems that surfaced "[d]uring a routine quality check." Agency Report, Tab F, CWIS's Response to the Technical and Cost Discussion Questions ¶ 7. CWIS conceded that certain problems had occurred on that contract, and explained in detail the problems as well as the corrective actions taken by CWIS in response to the problems. Id. With regard to the question posed by the agency regarding CWIS's proposed subcontractor's performance, the protester responded only that the agency should contact the subcontractor with any questions. Id. ¶ 8.

In considering CWIS's responses, the TEP raised CWIS's score under the past performance evaluation factor from the initial score of 9 points to 11 points out of a possible 20 points because of CWIS's description of the corrective measures it had taken to rectify its poor performance, and noted that CWIS's failure to provide a substantive response regarding its subcontractor's performance kept the score from being raised any higher. Agency Report, Tab K, Technical Evaluation Panel Memorandum to the Source Selection Official, at 11.

CWIS does not dispute the facts regarding its past performance that led to the agency's scoring of CWIS's proposal, nor does CWIS respond to the agency's explanation of the evaluation in its comments on the agency report. Given the agency's reasonable explanation as to its evaluation and scoring of CWIS's proposal under the past performance factor, and CWIS's lack of any specific response, we have no basis on which to find this aspect of the agency's evaluation unreasonable.

The protester next contends that the agency's evaluation of its cost as significantly higher than proposed was unreasonable. When an agency evaluates a proposal for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive, because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation (FAR) §§ 15.305(a)(1); 15.404-1(d). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FAR § 15.404-1(d)(2); TRW, Inc., supra, at 5. Because the contracting agency is in the best position to make this determination, we review an agency's judgment in this area only to see that the agency's costs realism evaluation was reasonably based and not arbitrary. TRW, Inc., supra, at 5-6.

The record reflects that the agency performed a detailed cost realism analysis of the offerors' proposals. The agency found CWIS's proposed labor and indirect rates, and level-of-effort and labor mix, realistic and consistent with CWIS's proposed approach. The agency found, however, that CWIS's cost proposal did not include any escalation factor for the second year of the base period or either of the two option years. The agency also found that CWIS's proposed airfare of \$231.86 per ticket was unrealistic. The agency's determination here was based upon its estimated average rate of \$414 for advance notice fares between major cities, and the fact that many of the required trips would be between small cities and nearly a fourth of the trips would be on such short notice that discounted airfares would be unavailable. Based on this analysis, the agency estimated an average airfare of \$500 per trip. Agency Report, Tab J, Cost Realism Analysis of CWIS's Proposal.

These issues were raised with CWIS during discussions, with the agency inquiring, among other things, whether the lack of any escalation rate for the second year of the base period was an oversight. Agency Report at 6-7. In performing the cost realism analysis, the agency accepted that "it may be within the control of the offeror to keep direct labor rates constant" and thus did not apply an escalation rate to these costs. However, the agency did apply an escalation rate of 4 percent to the protester's proposed other direct costs (such as airfares and hotel accommodations) based upon its view that CWIS would have no control over the escalation of these costs, and its conclusion that these proposed costs were unrealistic absent the application of an escalation rate. Id. Finally, CWIS's proposed costs were adjusted upwards through the agency's application to CWIS's proposal of an average airfare rate of \$500 per trip. Id. at 7. These upward adjustments added \$952,638 to CWIS's proposed costs of \$4,592,073, for a total probable cost of performance of \$5,544,711. Id.

The protester does not dispute the probable cost adjustments with regard to escalation, but disputes the agency's upwards adjustment to CWIS's proposed airfare rate of \$231.86 per trip to the agency's average rate of \$500 per trip. In this regard, CWIS contends that its estimate of \$231.86 per trip was calculated "using actual, historical cost data from many prior trips arranged for HUD and other government customers," and asserts that its "computations, although performed almost one year ago, are still largely valid." In support of its calculations, the protester included with its comments a spreadsheet it prepared using the published rates of a particular airline, and concludes that "[f]rom this information, it should become evident that we will be able to support the majority of the proposed trips from cities and airports served" by that particular airline. Protester's Comments at 1-2.

The record reflects that the agency, in calculating an average airfare rate of \$500 per trip, "investigated historical information, and information on the internet." As set forth above, the agency also took into consideration the fact that many of the required trips would be between small cities and nearly a fourth of the trips would be on such short notice that discounted airfares would be unavailable. In response

to the protester's specific contentions, the agency points out that the particular airline upon whose rates the protester based its calculations does not serve certain of the cities to which travel is required by the RFP. The agency adds that even for those cities that the airline does serve, there could readily be situations where the required flights are not available at all or at the right time, and that the protester's reliance on this airline's lowest published fares in calculating its average airfare was thus flawed. Agency's Response to the Protester's Comments (June 7, 2001) at 1.

Here, the agency's calculation of an average airfare rate was based upon relevant considerations, such as the examination of actual airfares in addition to scheduling considerations and destinations. In contrast, the protester's calculations in support of its \$231.86 per trip estimate do not account for the costs associated with the late scheduling of air travel, and ignore the fact that the airline on whose fares the protester based its estimate does not serve some of the cities to which travel under the contract will be required. Given the agency's explanation, we fail to see why under the circumstances here the agency's upwards adjustment of the protester's proposed costs here were unreasonable.

The protest is denied.

Anthony H. Gamboa  
General Counsel