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Comptroller General
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Matter of: Johnson Controls, Inc.

File: B-282326

Date: June 28, 1999

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DIGEST

1. Protest challenging technical evaluation of protester's proposal for energy savings services and the adequacy of the agency's discussions with the protester is denied, where the evaluation was reasonable and the discussions were adequate to lead the protester into those areas of its proposal that were considered deficient.

2. Protest challenging the agency's award decisions is denied where selections were based upon a technical evaluation and price analysis that were both reasonable and consistent with the request for proposals' stated evaluation scheme.

DECISION

Johnson Controls, Inc. protests the award of six energy savings performance contracts (ESPC) by the Department of Energy (DOE) pursuant to request for proposals (RFP) No. DE-RP01-98EE73584. Essentially, the protester contends that the evaluation of its proposal was unreasonable, that discussions with it were inadequate, and that the evaluation did not result in selection of the most advantageous offers. Protest at 2.

We deny the protest.

The DOE's Federal Energy Management Program (FEMP), under the Office of Energy Efficiency and Renewable Energy, is charged with reducing the cost of government by advancing energy efficiency and the use of solar and other renewable energy. To help federal agencies reduce energy use, Title VIII, § 801 of the National Energy Conservation Policy Act, 42 U.S.C. § 8287(a)(1) (1994), authorizes agencies to enter into ESPCs. FEMP has divided the country into six regions and awarded a set

of multiple-award ESPCs, one for each region. Any federal agency may order from those contracts.[1] Agency Report at 1-2.

Under an ESPC, the contractor typically provides for financing, design, construction, operation, and maintenance for energy saving devices and systems. The contractor recoups its costs out of the energy cost savings and reduced maintenance costs generated by the energy saving devices and systems the contractor has installed. Through private financing, contractors provide, at no capital cost to the government, all labor, materials, and equipment necessary to reduce energy consumption at specific sites covered by delivery orders placed against their indefinite-delivery/ indefinite-quantity ESPCs. The contractor must guarantee a certain level of energy savings. The total of contractor payments and post-installation energy costs cannot exceed the amount that the agency would have paid for utilities without an ESPC. Id.

Issued on November 25, 1997, the RFP requested offers for providing energy saving services to federal agencies in the Mid-Atlantic region on the basis of a fixed-price, indefinite-delivery/indefinite-quantity contract. RFP Cover Letter at 1; RFP § B.4. The RFP contemplated multiple contract awards (i.e., as many as six) and stated that services would be provided in response to delivery orders issued by the contracting officer on either a competitive or noncompetitive basis, depending upon the circumstances. RFP Cover Letter at 4; RFP §§ H.13, L.24.

Offers were to include plans for implementing energy conservation measures (ECM) at two specified sites--the National Gallery of Art and the National Agricultural Library. RFP §§ L.22, L.29.2. The RFP incorporated a site data package for each site, describing the conditions (such as energy use and existing equipment), upon which offers were to be based. The RFP specified that offers should include narratives addressing the technical approach for the required technology categories and specified facilities within the site data packages only, using technical data packages obtained from the technical library exclusively. RFP Cover Letter at 5; RFP § 29.2. The RFP stated that work at the two sites would be required under the first delivery orders placed against the indefinite-delivery/indefinite-quantity contracts. RFP Cover Letter at 4. The site data packages identified required technology categories that the offerors were to consider. For each ECM proposed, offers were to include a detailed description, identifying the proposed equipment and annual energy savings, an analysis of the expected energy savings, and the proposed price. Offers were also to include the rationale for proposing each ECM, as well as a description of any required technology categories for which the offeror concluded that an ECM would not be cost-effective. Agency Report at 2.

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[1]Johnson Controls was awarded contracts in five of the six regions (all except the Mid-Atlantic region). Agency Report at 3 n.2. Johnson Controls protests only the award of contracts for the Mid-Atlantic region.

The RFP stated that contracts would be awarded to firms whose offers were considered most advantageous to the government, after consideration of technical and price factors, and that technical factors were considered more important than price factors. RFP §§ M.1, M.3. The RFP stated that the technical aspects of proposals would be evaluated on the following factors: (1) past performance; (2) ECMs and related technical capability; (3) regional projects management approach; (4) ECM descriptions and projected energy savings; (5) energy baseline and ECM performance measurement; and (6) site management approach. RFP § M.2.

Twenty-two firms submitted initial offers, which were evaluated by the technical evaluation committee (TEC). Agency Report at 3-6. Johnson Controls, whose proposal ranked seventh on technical merit, was one of the 10 firms included in the competitive range. Agency Report, Tab 23, Final TEC Report, at 8, 9. Discussions were held and best and final offers (BAFO) received and evaluated. The TEC, which ranked Johnson Controls' BAFO seventh on technical merit, reported its findings to the source selection official (SSO). After reviewing the final TEC report, the competitive price post-negotiation memorandum, and BAFOs, the SSO determined that the BAFOs of the six firms rated highest on technical merit were the most advantageous to the government, and awarded contracts to those firms.[2] Agency Report, Tab 25, Source Selection Statement, at 14. After a debriefing, Johnson Controls filed this protest.[3]

Johnson Controls contends that the agency unreasonably downgraded its technical proposal in the evaluation of the ECM descriptions and projected energy savings factor. Specifically, the protester contends that the TEC incorrectly perceived weaknesses concerning: (1) the ultraviolet (UV) characteristics of proposed lighting; (2) the software proposed to simulate anticipated energy usage; (3) the information supporting its "[deleted]"software; and (4) proposed use of [deleted] at the National Gallery of Art. Protest at 7-10. Johnson Controls further asserts that DOE's

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[2]The six firms receiving awards were ERI Services, Inc.; EUA Cogenex Corp.; Honeywell, Inc.; Northeast Energy Services; HEC, Inc.; and Siebe Government Services.

[3]The parties raised a number of arguments in support of their positions. While we carefully considered every argument and examined the entire record in light of them, we will address only the most significant arguments here. Also, the protester initially alleged that DOE unreasonably downgraded its proposal in evaluating the "energy baseline and ECM performance measurement" factor. Protest at 11-13. DOE's protest report responded to the allegation, but Johnson Controls did not reply to the agency's response. We therefore consider the allegation abandoned. Trijicon, Inc., B-244546, Oct. 25, 1991, 91-2 CPD ¶ 375 at 4 n.3.

discussions of perceived weaknesses related to the UV characteristics of the lighting at the National Agricultural Library and use of [deleted] at the National Gallery of Art were inadequate.[4] Protest at 13-14.

Our Office will question an agency's evaluation of proposals only if it lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4. Agencies are not obligated to afford all-encompassing discussions, but are only required to lead offerors into the areas of their proposals that are considered deficient. Stone & Webster Eng'g Corp., B-255286.2, Apr. 12, 1994, 94-1 CPD ¶ 306 at 11. We conclude that DOE's discussions with Johnson Controls were meaningful and that its evaluation was reasonable.

The protester contends that the TEC incorrectly found that it did not document that the lighting proposed for the National Agricultural Library met the requirement for low UV emissions when, in fact, it did. Protest at 8. Johnson Controls argues that its proposal included (1) a spectral graph showing that its lights met the UV requirement; (2) the product numbers for the lights, thus allowing the agency evaluators to verify compliance; and (3) assurance throughout the proposal that Johnson Controls would comply with all requirements. Protester's Comments at 12. The protester also contends that discussions with it on this weakness did not adequately inform it that the agency needed additional documentation to show that the UV requirement would be met. Protest at 13-14.

The RFP required offers to identify the proposed equipment and include manufacturers' literature and specifications. RFP § L.29.2, at 165. The RFP stated that suitability of selected equipment would be one of the elements evaluated under the ECM descriptions and projected energy savings factor. RFP § M.2.A.4. The RFP stated that the only "unusual requirement" for National Agricultural Library lighting was that lamps in the book storage and reading areas must have low UV emissions to prevent exposure of books. Agency Report, Tab 11, National Agricultural Library Site Data Package ¶ 4.5 and app. 5.1, § L.4, at 20.

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[4]In its comments on DOE's protest report, the protester alleged for the first time that the agency's discussions regarding Johnson Controls' energy analyses for four specific ECMs were also inadequate. Protester's Comments at 22-24. However, the initial protest shows that Johnson Controls was aware that the TEC considered its analyses for these ECMs to be weaknesses, but Johnson Controls did not assert at that time that discussions on them were inadequate. Protest at 8-10. As Johnson Controls was aware of this protest basis when it filed its initial protest, but did not raise it until after the agency filed a report, the issue is untimely. 4 C.F.R. § 21.2(a)(2) (1999); see Management Sys. Applications, Inc., B-259628, B-259628.2, Apr. 13, 1995, 95-1 CPD ¶ 216 at 11.

The record shows that Johnson Controls' initial proposal did not include manufacturers' literature for any equipment and it was downgraded for this deficiency by the TEC. Agency Report Tab 16, Initial TEC Report, at 110. While the proposal did contain some information about lighting, it did not include any information regarding the UV characteristics of the lights. Agency Report at 8. Therefore, TEC concluded it was impossible to evaluate the UV characteristics of the proposed lights. Agency Report, Tab 16, Initial TEC Report, at 110.

The agency reports that because the weakness was broad, concerning a lack of manufacturers' information for all equipment, a broad discussion question was asked, as follows: "Please provide further details for the proposed equipment identified for all ECMs." Agency Report, Tab 18, Discussions Letter from Contracting Officer to Protester attach. 1, at 2nd unnumbered page (Oct. 8, 1998). Johnson Controls responded by providing more than 100 pages of manufacturers' literature for the many pieces of equipment it was proposing. Agency Report, Tab 19, Protester's Response to Discussions Questions (Oct. 23, 1998). According to the protester, included in the manufacturers' literature it submitted were several pages of spectral distribution information that it believed would resolve the agency's concerns regarding the capabilities of its proposed lighting. Protester's Comments at 20. However, the agency reports (and has provided confirming copies of the protester's manufacturers' literature) that the spectral distribution graphs were completely unreadable (i.e., they were entirely black) because of the manner in which they were photocopied, and, therefore, the UV characteristics of the lights could not be determined from the proposal. Agency Report at 8. Since much of the required manufacturers' literature and specifications was received, the TEC's concern was reduced; but since the spectral distribution graphs were unreadable, the weakness relating to the UV emission requirement remained. Agency Report at 28. Accordingly, the TEC downgraded Johnson Controls' proposal. Agency Report, Tab 23, Final TEC Report, at 83.

Here, the TEC reasonably downgraded Johnson Controls' proposal for failing to include manufacturer's literature or otherwise to show that the proposed lights were of the low UV type. As noted above, the RFP emphasized that low UV lighting was required for the book storage and reading areas, that this was an unusual requirement, and that low UV emissions were necessary to prevent exposure of books. Moreover, the RFP specifically required manufacturers' literature and specifications for all equipment and stated that the suitability of equipment would be one of the elements evaluated under the ECM descriptions and projected energy savings factor. In spite of these RFP provisions, Johnson Controls failed to include literature regarding the lights' UV emissions, among other things, in its proposal. Even after the agency asked Johnson Controls to provide further details about all of the proposed equipment, the literature submitted regarding the spectral distribution of the proposed lamps was unreadable and could not be evaluated. An agency's evaluation is dependent upon information furnished in a proposal, and it is the offeror's burden to submit an adequately written proposal for the agency to evaluate. Chant Eng'g Co., Inc., B-279049, B-279049.2, Apr. 30, 1998, 98-2 CPD ¶ 65 at 7.

Furthermore, Johnson Controls' general statements of compliance with all requirements were insufficient, especially since the RFP required specific information describing the equipment that would be utilized and stated that equipment suitability would be evaluated. EAP Consultants, B-238103, Apr. 4, 1990, 90-1 CPD ¶ 358 at 4. Although the protester contends that the TEC could have verified, using product numbers, that the UV emissions were sufficiently low, it is the offeror's responsibility to provide, within the four corners of its proposal, the information for evaluation. Chant Eng'g Co., Inc., supra, at 7.

We do not agree that the discussions question, quoted above, was too broad. In view of the fact that no manufacturers' literature or specifications for any of the proposed equipment were included in the initial proposal, we think that the broad request for more details on all equipment was appropriate. Furthermore, in its comments on the agency's report, the protester stated that it responded to the discussion question by submitting spectral distribution information that it believed would satisfy concerns regarding lighting capabilities. Protester's Comments at 20. Thus, it is clear that Johnson Controls was aware of the agency's need for information regarding the lighting's characteristics. Since the question reasonably led the protester to the very area of its proposal that was considered deficient, the discussions were adequate.

The protester next asserts that the TEC incorrectly determined that Johnson Controls did not adequately document the software (i.e., [deleted]) used to calculate anticipated energy savings for ECM 3.1, a [deleted]. Johnson Controls argues that [deleted] is a widely used commercial product [deleted] and, under the terms of the RFP, it was sufficient for Johnson Controls to include only the engineering assumptions and inputs it used in performing the energy savings calculations with that program. Therefore, the protester contends that its proposal should not have been downgraded for failing to provide any additional information. Protest at 8-9.

The RFP required offers to include a detailed energy analysis documenting the proposed annual energy savings performance of each proposed ECM. RFP § 29.2, at 165-166. Among other things, the energy analysis was to include (1) energy savings calculations, using formulas and procedures based on accepted engineering principles and (2) cite references used for data, assumptions or empirical formulas. Id. at 166. In evaluating the ECM descriptions and projected energy savings factor, the RFP stated that offerors would be evaluated on their demonstrated ability to accurately project energy savings and that one of the elements of the evaluation would be verification that the energy analysis was based on sound assumptions and engineering principles. RFP § M.2.A.4, at 181. The RFP, which was amended to include offerors' questions and DOE's responses, specifically addressed the requirement for formulas to back up the energy analysis, stating:

> **Outputs from computer programs are not sufficient in themselves to demonstrate the reasonableness of the proposed energy savings.** First the proposed computer program must be identified. If the computer program is a widely-used national standard

> such as DOE 2, then the engineering assumptions and inputs **should be provided and explained** in such a way as to allow evaluators to conclude that the analysis is based on sound assumptions and engineering principles. Using the information provided by the offeror, the DOE should be able to duplicate the offerors results. **Users of proprietary software need to explain the algorithms used and demonstrate to evaluators that the programs can produce consistently sound results.**

RFP amend. 003, attach. 1, at 2nd unnumbered page (emphasis added).

In its initial proposal, Johnson Controls proposed to install [deleted] at National Agricultural Library (ECM 3.1). Agency Report, Tab 14, Johnson Controls' Initial Technical Proposal, vol. IIB, at MA-II-2-19. The proposal's energy savings calculations section stated only that "[deleted] software was utilized to determine the savings from [deleted]." Id. at MA-II-2-22. Johnson Controls' proposal also stated, "Supporting input and output from [deleted] software not included." Agency Report, Tab 14, Johnson Controls Initial Technical Proposal, vol. IIB, app. C, at 2nd unnumbered page.

The TEC concluded that Johnson Controls' proposal did not include sufficient detailed information regarding the energy savings analysis for ECM 3.1 for evaluation purposes. Agency Report Tab 16, Initial TEC Report, at 110. During discussions, DOE asked Johnson Controls to provide further details of the energy analysis documenting the annual energy savings for its proposed [deleted]. Agency Report, Tab 18, Discussions Letter from Contracting Officer to Protester attach. 1, at 2nd unnumbered page (Oct. 8, 1998). In response to this question, Johnson Controls provided many pages of tables, without any explanation, showing a host of numbers apparently related to the [deleted] associated with all of its proposed [deleted]. Agency Report, Tab 19, Protester's Response to Discussions Questions vol. IIB, criterion 4, at 2-28 (Oct. 23, 1998); Agency Report, Tab 21, Johnson Controls' BAFO, vol. IIB, criterion 4, at 3-28. The TEC again downgraded the proposal because it contained no details for evaluation of the energy savings analysis of ECM 3.1 and the computer output was poorly documented. Agency Report, Tab 23, Final TEC Report, at 83.

We think that the TEC reasonably downgraded Johnson Controls' proposal for failing to show how the energy savings for ECM 3.1 were calculated using [deleted] software. As noted above, the RFP required offerors to provide a detailed analysis--including calculations, formulas, and procedures used. Amendment 0003 to the RFP emphasized that output information from computer programs was not sufficient to demonstrate the reasonableness of proposed energy savings and that engineering assumptions and inputs should be explained so as to allow evaluators to conclude that the analysis was based on sound assumptions and principles. Most significantly, amendment 0003 specifically required users of proprietary software to explain

algorithms used and to demonstrate that the program produces consistently sound results. Johnson Controls' proposal stated that a proprietary software program (i.e., [deleted]) was used but, even after the agency asked the firm to provide additional details of the energy analysis, Johnson Controls failed to explain how it had performed the calculations or to provide formulas and/or algorithms used in the analysis. Instead, Johnson Controls' BAFO included pages of tables of what the agency characterizes as "software outputs" listing [deleted]. Agency Report at 13. The BAFO includes no explanation whatsoever of how the multitude of numbers included in the tables were calculated or how they can be used to calculate the proposed energy savings for ECM 3.1. While Johnson Controls' states that it assumed it was not necessary to provide its calculations since it assumed that DOE was familiar with [deleted] software, Protester's Comments at 23, in light of the RFP's express statements that outputs from computer programs were not sufficient to demonstrate the reasonableness of proposed energy savings and that users of proprietary software needed to explain algorithms used, we think that the TEC reasonably concluded that the proposal contained insufficient detail and that the computer output was poorly documented.

The protester also contends that the TEC unreasonably concluded that its proposal contained insufficient information to evaluate a Johnson Controls software product, known as "[deleted]" that the firm used to calculate energy savings for ECM 8.2, [deleted], and ECM 8.3, [deleted]. Johnson Controls contends that its proposal included the assumptions and algorithms, as well as a detailed calculation spreadsheet printout, needed to evaluate its proprietary software. Protest at 9-10.

In its initial proposal, Johnson Controls proposed to [deleted] at the National Gallery of Art with [deleted] (ECM 8.2). Agency Report, Tab 14, Johnson Controls' Initial Technical Proposal, vol. IIB, at MA-II-2-75. Johnson Controls also proposed to [deleted] of the National Gallery of Art's [deleted] as well as most [deleted] (ECM 8.3). Id. at MA-II-2-79. For each of these ECMs, the proposal included a different energy savings equation that it stated was found in the [deleted] software package. Id. at MA-II-2-78, MA-II-2-82. For ECM 8.2, the proposal contained a chart listing the [deleted] and including several different categories of information for each ([deleted]). Agency Report, Tab 14, Johnson Controls Initial Technical Proposal, vol. IIB, app. F, at 8th unnumbered page. The proposal did not explain how the figures included in each information category were calculated for ECM 8.2. Other than the formula, the proposal did not include any information at all for ECM 8.3.

The TEC considered the failure to include information that would allow it to evaluate the [deleted] software a weakness and, during discussions, DOE asked the firm to provide further details documenting the savings for both ECMs. Agency Report, Tab 16, Initial TEC Report, at 111; Agency Report, Tab 18, Discussions Letter from Contracting Officer to Protester attach. 1, at 2nd unnumbered page (Oct. 8, 1998). In response, Johnson Controls provided additional tables that included figures for the same information categories that were originally included for ECM 8.2 and two new tables of information for ECM 8.3. Agency Report, Tab 19, Protester's

Response to Discussions Questions vol. IIB, criterion 4, at 35-40 (Oct. 23, 1998). The TEC was not satisfied with Johnson Controls' response since it did not include the assumptions upon which the figures in the tables were based or any other information that would enable DOE to verify that the [deleted] output figures included in the tables were reliable. Agency Report at 16. The TEC concluded that the weakness still existed and downgraded the proposal because there was no information provided for evaluation of software. Agency Report, Tab 23, Final TEC Report, at 83.

We conclude that the TEC reasonably downgraded Johnson Controls' proposal for failing to provide adequate supporting information on how it calculated energy savings for ECMs 8.2 and 8.3. The RFP, quoted above, specifically stated that outputs from computer programs were not sufficient to demonstrate the reasonableness of proposed energy savings. RFP amend. 003, attach. 1, at 2nd unnumbered page. The RFP also specifically required offerors not only to identify the computer programs used, but also to provide engineering assumptions and inputs used in their calculations, and stated that users of proprietary programs, such as [deleted], needed to explain the algorithms used and to demonstrate to evaluators that the programs could produce consistently sound results. Thus, the RFP placed a heavy burden on offerors to demonstrate how they calculated their proposed energy savings. Johnson Controls' proposal simply did not meet this burden. For example, the agency points out that in several instances, Johnson Controls' proposed energy savings were premised upon the [deleted]; Johnson Controls' proposal did not explain why its input data were different from the site data package information nor how it computed the new, revised [deleted]. Agency Report at 14-15. In other instances, the agency states that the [deleted] used by Johnson Controls did not match [deleted] of the site data package for the same [deleted]. Id. at 15. Johnson Controls proposal did not explain these discrepancies or state how it calculated the figures used in its proposal.[5] Moreover, while Johnson Controls included two different energy savings equations (one for each ECM) in its proposal, the proposal did not explain how the two equations were related. Id. at 16. Despite being asked for additional details documenting the proposed savings for both ECMs, Johnson Controls left these and other questions about its energy savings computations unanswered, and therefore DOE reasonably did not accept the use of [deleted].

The protester further objects to DOE's downgrading of its proposal for using the National Gallery of Art's non-functioning [deleted] as part of its technical solution for ECM 5.2.[6] The protester states that, while touring the National Gallery of Art site, a DOE guide pointed out the existence of the [deleted] to it. The protester argues that using the [deleted] will save the government more money than installing one and

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[5]Johnson Controls has not refuted the agency's assertions of discrepancies.

[6]A [deleted]. Agency Report at 17.

there was nothing in the site data package prohibiting use of the [deleted]. Protest at 10. The protester also contends that it was misled by DOE's discussion question, which asked it to "verify" the interface with government equipment for this ECM. Id. at 14.

The agency responds that, under the terms of the RFP, offers were to be based solely upon the information contained in the National Gallery of Art site data package, which indicated that there were no [deleted]. Agency Report at 17-18. The agency asserts that Johnson Controls, however, unreasonably assumed that it could base its proposal upon information it had gleaned from a site tour instead of the information contained in the site data package. Id. at 17. The agency states that, even after DOE asked Johnson Controls about this issue, Johnson Controls simply reiterated its view that there was a [deleted] available for recommissioning, when, in fact, there was none; therefore, Johnson Controls' proposal contained a weakness and was downgraded in the evaluation. Id. at 18-20. Even though the agency asserts that the express terms of the RFP and the site data package are dispositive, the agency reports that, upon inquiry, it found no DOE or National Gallery of Art employee who remembers pointing out or stating to Johnson Controls during the site visit that there were [deleted]. The agency also argues that none of the DOE employees who attended the site visit would have had any knowledge about the existence of [deleted] and that, even if a National Gallery of Art employee did point out or state that such [deleted] were available, no National Gallery of Art employee was authorized to amend the terms of the RFP or the site data package. Id. at 20.

The RFP cautioned offerors that, even though they would be afforded site tours, proposals were to be based on the information contained in the site data packages. The RFP stated:

> "[A]ll site specific . . . proposals must be based on the technical data library information (explained below) only. . . . Specifically, the RFP is based on real sites, but **in order to properly evaluate the proposals we have limited the scope and site conditions to those defined in the RFP.** This has the effect of detaching the proposals from site conditions which may differ, or have changed, from those described in the RFP; but is necessary to ensure bids that can be evaluated with optimum objectivity.

RFP Cover Letter at 5 (emphasis added). The RFP also stated: "Since all site specific proposals are based solely on the technical data package information any discrepancies between the site and the data package will be settled by the information in the data package." RFP § L.20.

In its initial proposal, Johnson Controls proposed to [deleted] at the National Gallery of Art. Johnson Controls assumed that the [deleted] to complete this ECM. Agency Report, Tab 14, Johnson Controls' Initial Technical Proposal, vol. IIB, at MA-II-2-59. The TEC considered the proposed use of existing [deleted] a weakness, stating:

> Offeror's assumption that [deleted] are available for tie-in is not correct because there is no information in the [site data package] that [deleted] exist in the areas under consideration for lighting retrofits. In reality, there are no [deleted] in those areas.

Agency Report Tab 16, Initial TEC Report, at 111.

During discussions, DOE asked Johnson Controls to "Please verify the ECM interface with Government equipment for ECM 5.2 ([deleted])." Agency Report, Tab 18, Discussions Letter from Contracting Officer to Protester attach. 1, at 2nd unnumbered page (Oct. 8, 1998). In its BAFO, Johnson Controls continued to propose on the basis of using the [deleted] and emphasized the savings that would result. Agency Report, Tab 21, Johnson Controls' BAFO, vol. IIB, criterion 4, at MA-II-2-61. Since the weakness still remained, the TEC downgraded the proposal in the evaluation of the ECM descriptions and projected energy savings factor. Agency Report, Tab 23, Final TEC Report, at 83.

We have no basis to object to the evaluation. The site data package for the National Gallery of Art building included a "lighting profile" that stated: "This building has incandescent and T-12 magnetic lighting <u>without controls</u> other than wall switches and time clocks." Agency Report, Tab 12, National Gallery of Art Site Data Package, at 9 (emphasis added). In view of the RFP's express warnings, quoted above, that offerors should propose and the evaluations would be based exclusively upon the site conditions set forth in the site data package, it should have been clear to all offerors that their offers were to be based upon there being no [deleted] in the National Gallery of Art building. Regardless of what Johnson Controls observed during its site visit, Johnson Controls should have been aware that for an offer to use the building's [deleted] was in direct conflict with the site data package's statement that the building was without [deleted]. We note that, even though the RFP allowed offerors to ask questions of DOE in writing, and DOE responded to questions from offerors in the form of several RFP amendments, Johnson Controls never asked DOE whether the [deleted] it says it observed during the site visit were available and in working condition or whether it could properly propose on the basis of using them. RFP § L.43; Agency Report at 18. Furthermore, in view of the RFP's clear directions to rely only upon the site conditions described in the RFP's site data package when proposing, we think that the agency's request that Johnson Controls verify the interface with government equipment for this particular ECM reasonably should have led Johnson Controls to reexamine the site data package's very brief lighting profile, which described the [deleted] at the National Gallery of Art site--the exact area of its proposal that was considered deficient. Accordingly, we conclude that the evaluation was reasonable and consistent with the RFP and that the discussion question was meaningful.

The protester next contends that the agency's evaluation methodology was irrational because, after the TEC arrived at a consensus adjectival rating for each offer in each of the six evaluation factors, the TEC then converted the adjectival ratings into pre-

determined percentages of the total available points for each factor. For example, every proposal that received a very good rating on an evaluation factor received 80 percent of the points available for that factor. Using a purely hypothetical example, the protester contends it would be possible for an inferior offer to receive a higher overall technical point total, since the TEC did not give slightly higher (or lower) point totals for proposals that were slightly superior (or inferior). Protest at 15-18.

This protest ground is based on hypothetical facts that bear no resemblance to the actual evaluation record and therefore had no effect on the outcome of the competition. We do not consider hypothetical questions. See Republic Steel Corp.; Centex Constr. Co., Inc., B-203379, B-203379.2, Sept. 20, 1982, 82-2 CPD ¶ 235 at 1; J & A Inc., B-210056, May 16, 1983, 83-1 CPD ¶ 513 at 5. Furthermore, we think it is disingenuous of Johnson Controls, a firm which received five ESPC awards from DOE under this evaluation methodology, now to complain that the methodology was fatally flawed only in the competition under which it was not awarded a contract.

In any event, our review of the evaluation record finds that the TEC reports upon which the SSO based his selection decisions included adjectival ratings and narrative discussions of the strengths and weaknesses of each offer, as well as point scores, for each evaluation factor. The record shows that the point scores given by the TEC are consistent with the TEC's discussions of strengths and weaknesses. That is, proposals that were recognizably superior based on the narrative evaluation that identified strengths and weaknesses received greater point scores. For example, in evaluating the "ECMs and related technical capability" factor, the TEC determined that the sixth ranked BAFO (i.e., Siebe's) had [deleted], while Johnson Controls' BAFO had just [deleted] consistent with those adjectival ratings and narratives, the TEC gave Siebe's BAFO an "outstanding" rating of [deleted] out of a possible 250 points and Johnson Controls' BAFO a "very good" rating of [deleted] points for this factor. Agency Report, Tab 23, Final TEC Report, at 68, 79. Thus, the protest allegation provides no basis for finding the evaluation methodology irrational.

Finally, the protester contends that the agency's selection decisions were inconsistent with the RFP's statement that awards would be made to firms whose offers were most advantageous to the government. Specifically, the protester asserts that DOE failed to consider the proposed energy savings to the government or the total prices of the offers--factors that the protester believes were critical to determining which offers were most advantageous. Protest at 18-19. After examining the complete evaluation record, we find that the price analysis and award decisions were reasonable and consistent with the RFP's evaluation scheme, and we therefore deny this protest ground.

The RFP stated that price proposals would be evaluated for: (1) completeness and realism, (2) reasonableness, and (3) verification that for each year the proposed guaranteed cost savings would exceed the proposed price. RFP § M.2.C. The record shows that the agency performed a price analysis of all BAFOs. DOE analyzed each

offer to determine: (1) whether savings would exceed price for both sites; (2) the consistency of mark-ups and interest rates; (3) whether the offeror proposed on all required technology categories or justified its decision not to propose on economic feasibility grounds; (4) completeness of the proposed price; and (5) reasonableness and competitiveness of price. Agency Report, Tab 24, Competitive Price Post-Negotiation Memorandum, at 3-16. As part of the price analysis, DOE compared each offer's estimated annual savings and overall price to those of the other offerors, and DOE compared each offeror's estimated total annual cost savings to a government estimate. Id. Thus, the agency's price analysis considered both the amount of energy savings to the government and the total proposed prices and was consistent with the stated scheme.

The SSO reviewed the price analysis, the final TEC report, and all BAFOs. The SSO noted, among other things, that the price analysis verified that the level of cost savings exceeded the proposed price for each site specific proposal and that the overall prices proposed by all offerors were reasonable and realistic. Agency Report, Tab 25, Source Selection Statement, at 10. The SSO also discussed at some length the fact that his review of BAFOs revealed wide variations in proposed prices and that this had been anticipated when the RFP was drafted and the government estimate developed.[7] In essence, the SSO stated that the RFP allowed great flexibility in developing creative technical approaches. The SSO noted that some offerors had proposed several ECMs within a particular technology category while others had elected not to propose any ECMs at all in that category, and that this was allowed by the RFP. The SSO also stated that he understood that the number of ECMs proposed was not necessarily the determining factor as to the acceptability of a proposal, but that the quantity and the nature of the proposed ECMs--offerors were encouraged to take innovative approaches and, in fact, significantly different technical approaches were received--had a significant impact on price, resulting in a broad range of prices. For example, the SSO pointed out that one offeror elected to replace all boilers and chillers while another only elected to make improvements to existing boilers and chillers. Id. at 9-10.

The record shows that the SSO examined the various strengths and weaknesses of all of the BAFOs in making his determination that six offers were most advantageous to the government. Id. at 10-14. The record also shows Johnson Controls' BAFO ranked seventh with an overall technical score of [deleted] out of a possible 1000 points and its total price for both sites was approximately $[deleted] million, while Siebe's overall technical score was [deleted] points and its total price was approximately $[deleted] million. Agency Report, Tab 24, Competitive Price Post-

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[7]Among the awardees, total prices ranged from approximately $1.2 million to $5.8 million. Agency Report, Tab 24, Competitive Price Post-Negotiation Memorandum, at 3.

Negotiation Memorandum, at 1, 3. In making his technical/price tradeoff analysis, the SSO stated:

> Overall, Johnson Controls proposal fell short of the other more technically superior proposals and did not offer the myriad of significant strengths found in the higher rated proposals. This was particularly true within the two most significant criteria (2 and 4) ["ECMs and related technical capability" and "ECM descriptions and projected energy savings"], which accounted for half of all possible points. Johnson rated [deleted] in Criterion 2 and [deleted] within Criterion 4. Additionally, there is no price benefit to the Government which would outweigh its lower technical standing. Siebe Government Services is the firm immediately in front of Johnson Controls. In addition to a total score which is [deleted] points (approximately [deleted]%) higher than Johnson's, Siebe's overall price is lower than Johnson's total price.

Agency Report, Tab 25, Source Selection Statement, at 13.

The RFP stated that technical factors were more important than price, and Siebe's proposal received a higher technical rating and its total price was lower than Johnson Controls'. Since, as discussed above, both the technical evaluation of Johnson Controls' proposal and the price analysis of all BAFOs were reasonable and consistent with the stated evaluation scheme, we conclude that the award decisions were reasonable.[8]

The protest is denied.

Comptroller General
of the United States

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[8]While the protester asserts that the large energy savings that it proposed should have been taken into account in the source selection, as explained above, the RFP provided that energy savings were to be evaluated under the ECM descriptions and projected energy savings technical factor, and we found that the evaluation of the protester's proposal under that factor was reasonable. To the extent that the protester believes that proposed energy savings should have been taken into account as a cost savings in a cost/technical tradeoff, we note that the RFP provided that, if a tradeoff were undertaken, technical merit would be weighed against the proposed price to the government (not projected energy cost savings). RFP § M.3. Johnson Controls did not protest the RFP's evaluation scheme before the due date for submission of proposals and any challenge to it now would be untimely.