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

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# Decision

**Matter of:** National Beef Packing Company

**File:** B-296534

**Date:** September 1, 2005

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Jonathan L. Kang, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

1. Challenge to technical and past performance evaluation scores is denied where the agency's evaluation of proposals was reasonable and is adequately supported by the record.
  2. Protest that agency waived mandatory delivery schedule for an awardee is denied where the solicitation allowed offerors to propose alternate delivery schedules.
  3. Agency's exchanges with an awardee after receipt of proposals were clarifications, which resolved a minor error, and did not constitute discussions.
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## **DECISION**

National Beef Packing Company (National) protests the award of contracts to Cargill Meat Solutions Corporation (Cargill) and Washington Beef, LLC (Washington) under request for proposals (RFP) No. HDEC02-05-R-0001, issued by the Defense Commissary Agency (DECA) for provision of beef products. The protester argues that the agency improperly evaluated offerors' technical proposals and past performance, failed to adequately document the evaluations, improperly waived a delivery schedule requirement for Washington, held improper discussions with Washington, and conducted an improper cost/technical trade-off in making the source selection.

We deny the protest.

The RFP sought proposals to provide beef products for DECA commissary stores located in the western region of the United States, including Alaska and Hawaii. The RFP anticipated award of fixed-price, indefinite-delivery, requirements-type contracts for each of the seven groups of commissaries that comprise the agency's western region. The RFP stated that separate awards would be made for each of the seven groups and that offerors were eligible to receive multiple awards. The base performance period for each contract is 1 year, with two 1-year option periods.

The RFP advised offerors that proposals would be evaluated on the basis of technical capability and past performance, which were equally important, and price, which was equal in importance to the two combined non-price factors. The technical capability evaluation factor had four subfactors: experience, production/distribution, quality control, and additional support/promotion; the first three subfactors were of equal importance, and the last subfactor was "slightly less important." The past performance evaluation factor had four subfactors: timeliness of deliveries, conformance with specifications, customer satisfaction, and business relations; the first three subfactors were of equal importance, and the last subfactor was "slightly less important." The RFP required offerors to propose prices for various types of beef products based on estimated quantities for each type. The contract schedule requires weekly deliveries to the commissaries in each group on specific days of the week during specific delivery times.

Seven offerors submitted proposals by the initial proposal closing date. Contracting Officer's Statement at 2. Of the seven groups within the western region, National's proposal addressed groups one through five. Of the five groups for which National submitted proposals, Cargill submitted proposals for groups one through four, and Washington submitted proposals for groups one and five. The agency conducted initial evaluation of proposals and concluded that all offerors' proposals were technically acceptable and within the competitive range. Source Selection Decision (SSD) at 5. The agency conducted discussions with all offerors and requested revised proposals responding to discussion issues. After discussions and the receipt of revised proposals, the agency's final revised evaluations of the parties to this protest for the five award groups protested by National were as follows:

	National	Cargill	Washington
<b>Technical Capability</b>			
Experience	27	25	28
Production / Distribution	27	25	27
Quality Control	26	26	25
Additional Support / Promotion	17	16	17
<b>Total Technical Capability Score</b>	<b>97</b>	<b>92</b>	<b>97</b>
<b>Past Performance</b>			
Timeliness of Deliveries	23	25	28
Conformance with Specifications	20	26	28
Customer Satisfaction	20	26	28
Business Relations	15	17	18
<b>Total Past Performance Score</b>	<b>78</b>	<b>94</b>	<b>102</b>
<b>OVERALL TOTAL SCORE</b>	<b>175</b>	<b>186</b>	<b>199</b>
Evaluated Price for Group 1	\$50,615,479	[deleted]	\$50,879,976
Evaluated Price for Group 2	\$41,183,523	\$41,027,481	-
Evaluated Price for Group 3	\$46,009,029	\$45,612,513	-
Evaluated Price for Group 4	\$54,335,643	\$53,382,412	-
Evaluated Price for Group 5	\$31,229,371	-	\$30,150,268

AR, Tab 15, SSD, at 20-21, 29, and 33.<sup>1</sup>

As reflected above, the National received the lowest combined technical/past performance score of the three offerors, and was higher priced for all but one of the five groups for which it submitted proposals. Based on the evaluation results and proposed prices, the agency conducted price-technical tradeoffs between the offerors' proposals. The agency awarded contracts for groups one and five to Washington and groups two, three and four to Cargill.<sup>2</sup> SSD at 43-45. National filed this protest against the award of contracts for groups one, two, three, four and five.

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<sup>1</sup> The agency's evaluation of proposals assigned total possible point values for each subfactor, consistent with their disclosed weights in the RFP: experience--30, production/distribution--30, quality control--30, additional support/promotional plan--20, timeliness of deliveries--30, conformance with specifications--30, customer satisfaction--30, and business relations--20. AR, Tab 15, SSD, at 4.

<sup>2</sup> The agency also awarded group six to Washington, and group seven to California Pacific Associates. SSD at 43-45.

## DISCUSSION

### Technical Evaluation

National argues that the agency improperly evaluated offerors' proposals under the technical evaluation factor by overstating Washington's experience. In reviewing a procuring agency's evaluation of an offeror's technical proposal, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. L-3 Communications Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 5.

National specifically contends that Washington is a "relative newcomer to DECA contracting," citing a trade publication article that describes the firm as lacking prior experience with "military contract[s]." National's Comments at 3. National argues that Washington's purported lack of experience should have resulted in a lower score under the experience subfactor. The record, however, shows that Washington demonstrated experience in the contract subject matter for both commercial and government contracts—including a contract for deliveries to commissaries in Guam and Korea for years 2000 to 2004—during the period of past performance reviewed by the agency, and that the agency recognized and reasonably credited Washington with this experience.<sup>3</sup> AR, Tab 11, Washington Past Performance Evaluations; Tab 15, SSD, at 24. We conclude that National's allegations regarding Washington's experience are unfounded and there is no basis to challenge the agency's evaluations.

### Past Performance Evaluation

National protests the reasonableness of the agency's evaluation of its past performance as well as Cargill's. The evaluation of past performance, including the agency's determination of the relevance and scope of an offeror's performance history to be considered, is a matter of agency discretion, which we will not find improper unless unreasonable or inconsistent with the solicitation criteria. Family Entm't Servs., Inc., d/b/a/ IMC, B-291997.4, June 10, 2004, 2004 CPD ¶ 128 at 5. We conclude that the agency's evaluation of offerors' past performance was reasonable.

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<sup>3</sup> Contrary to National's arguments, National Comments at 3, specific experience with DECA was not a prerequisite for a positive evaluation under the experience subfactor, nor, for that matter, was it a prerequisite for a positive evaluation under the separate past performance factor. See RFP--Addendum to FAR § 52.212-1 Instructions to Offerors--Commercial Items, ¶ 5, Vol. II, § 1; RFP, Addendum to FAR § 52.212-2 Evaluation--Commercial Items, ¶ 4.

The record shows that the agency informed National of several problems in its past performance record during discussions, and that National failed to fully address them in its revised proposal. For example the agency found that:

National had delivery issues with some stores in the Western Pacific Region and in the Midwest. Most issues had to [do] with late deliveries and substitution of products. Although all manufacturers have problems with deliveries on occasion, it is the persistent problems that drew the board's attention to the problems . . . .

National Beef continued to have [customer satisfaction] problems with locations such as Puerto Rico and Camp Pendelton. Although they have devised plans for corrective action of the issues, such as shortages and late deliveries, the problems continue to affect the customers. This showed the board that although National devised plans to improve their customer service their plans have failed to meet the goal and they lack making alternative corrective actions when prior ones have failed.

AR, Tab 12, National Initial Past Performance Consensus Comments, at 1.

Following discussions, the agency concluded that National's responses to discussions did not warrant revision to the initial scores under the four past performance subfactors. AR, Tab 12, National Chairperson's Re-Evaluation Comments, at 1. National does not dispute the agency's determination that the firm failed to adequately address the negative past performance information identified during discussions, and thus National provides no basis to challenge the reasonableness of the agency's evaluation. On this record, we have no basis to question the agency's determination that National failed to adequately address negative information identified during discussions.

Despite the negative past performance information, the protester contends that the ratings for National were unreasonable because they gave disproportionate weight to what National characterizes as a small minority of negative references amid the firm's record of a large volume of successful deliveries. National contends that our decision in Green Valley Transport., Inc., B-285283, Aug. 9, 2000, 2000 CPD ¶ 133 requires agencies to balance the volume of an offeror's negative past performance references against the offeror's volume of successful performances. National's reliance on Green Valley is misplaced, however, as that decision sustained a protest where the agency relied solely on the absolute number of negative past performance references without considering the total scope and context of the protester's past performance record, thereby potentially distorting that record. The agency's evaluation here, in contrast, focused on what it deemed "persistent problems" with National's performance that had not been adequately addressed. The agency did not, as was the case in Green Valley, use the absolute number of negative references as the determinative criterion for the evaluation rating, but rather focused on patterns

of negative performance that had not been addressed. Even if, as National contends, these negative patterns pertained to a small percentage of contracts overall, we believe that the agency reasonably determined that these data represented negative trends that warranted lower past performance evaluation scores.

With regard to Cargill's past performance, National argues that the agency gave unreasonably high past performance evaluation scores to this awardee. Offerors were instructed to provide commercial past performance references for the previous 3 years. RFP, Addendum to FAR § 52.212-1 Instructions to Offerors--Commercial Items, ¶ 5, Vol. I, § 2. The RFP advised offerors that the agency would also obtain references for contracts performed for DECA. *Id.* Although the agency did not specifically state the scope of time for evaluation of DECA contracts, the agency also followed a 3-year scope of review for these references. Supplemental Memorandum of Law, July 25, 2005, at 3-4.

Despite the 3-year limitation generally imposed by the agency during the evaluation, the agency's past performance evaluation of Cargill discussed that firm's performance of one DECA contract for delivery of beef products for the agency's eastern region in the United States during 2000, which Cargill identified in its proposal. AR, Tab 15, Cargill Initial Past Performance Consensus Comments, at 1. This contract was performed by Cargill for approximately nine months prior to its termination as the result of a decision by our Office sustaining a protest. See Farmland Nat'l Beef, B-286607, B-286604.2, Jan. 24, 2001, 2001 CPD ¶ 31.

Cargill's proposal specifically mentioned problems in performing the contract, and explained that the problems had been resolved prior to the contract's termination. Cargill's proposal stated: [deleted]. AR, Tab 7, Cargill Initial Proposal, Vol. II, at 2.

The agency claims that the eastern region contract reference did not affect the determination of Cargill's past performance score. As stated by the contracting officer: "[W]hen I was briefed by the TEB [Technical Evaluation Board], this past performance information was not considered in the final technical score for past performance for Cargill based on the information provided to me." Supplemental Contracting Officer's Statement, August 12, 2005, at 1. The contracting officer also states that this contract did not influence the source selection decision: "[T]he 2000 Cargill past performance was noted as I was aware of it but had no significance in my source selection decision." *Id.* at 2. The agency's statement that its consideration of Cargill's eastern region contract had no impact on its evaluation score is, however, at odds with the SSD:

Cargill (formerly known as Excel) received a lower past performance score than Washington Beef due to some start-up problems under a formal beef contract for the Eastern Region, the problems were addressed and performance became satisfactory before the contract was cancelled.

AR, Tab 15, SSD, at 26 (emphasis added).

Notwithstanding the agency's inconsistent statements, the SSD indicates that, if anything, there was a negative impact on Cargill's past performance score, *i.e.*, Cargill received a "lower score due to" its performance of the eastern region contract. *Id.* The consensus evaluation documents note that Cargill experienced "a few issues with ordering and delivery of beef products at the start-up" of the contract, but concludes that "through Cargill's agents they were able to resolve those issues and appeared to do quite well in providing product to our commissaries during the remaining performance period." AR, Tab 13, Cargill Initial Past Performance Consensus Comments, at 1.

National first argues that the agency should not have included any discussion of the eastern region contract in Cargill's past performance evaluation because the contract was performed more than 3 years ago. As explained above, however, the 3-year scope for government contract references was determined as part of the agency's internal evaluation process. The RFP stated that offerors should provide only commercial references for the prior 3 years; it did not explicitly inform offerors that the agency would limit consideration of government contract past performance references, such as Cargill's eastern region contract, to 3 years. RFP, Addendum to FAR § 52.212-1 Instructions to Offerors--Commercial Items, ¶ 5, Vol. I, § 2. Under these circumstances, the agency's consideration of Cargill's eastern region contract was not contrary to the stated RFP evaluation criteria.

In any case, there is no indication that Cargill benefited from the agency's evaluation of the eastern region contract. To the extent the eastern region contract past performance information had an effect on the agency's evaluation of Cargill, the protester does not demonstrate that it had a positive effect on Cargill's rating and, thus, National has not shown that it was prejudiced by the agency's actions.<sup>4</sup> See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

Finally, National argues that the agency unreasonably determined that Cargill had adequately addressed initial difficulties experienced under the eastern region

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<sup>4</sup> National additionally argues that the agency relied solely on the eastern region contract in determining Cargill's past performance score. The record and the agency's evaluations, however, clearly document other past performance references for Cargill within the 3-year scope of performance. Cargill's past performance references include four references for commissaries and four references for commercial contracts. AR, Tab 10, Cargill Past Performance References. Furthermore, the agency's evaluation of Cargill's past performance reflects evaluation and consideration of these contracts. AR, Tab 13, Cargill Initial Past Performance Consensus Comments, at 1.

contract, and thus, to the extent Cargill's performance under the contract was considered, it should have resulted in a lower past performance score. As discussed above, the agency concluded that Cargill's initial problems with contract performance were remedied by the time the contract was terminated. AR, Tab 13, Cargill Initial Past Performance Consensus Comments, at 1. Furthermore, the record indicates that the agency reduced Cargill's past performance score based on its performance of the eastern region contract. We think that the agency's evaluation was reasonable in this regard.

#### Waiver of Delivery Schedule

National argues that the agency improperly waived the required delivery schedule for two areas of Washington's proposal regarding delivery for group 5, in Hawaii. National contends that Washington's proposal exceeded the maximum delivery time, and that the agency was required to either reject Washington's proposal or allow offerors an opportunity to submit revised proposals based on Washington's alternative delivery proposal. We conclude that Washington's proposal was acceptable under the RFP and that the agency did not waive any requirements.

The agency instructed offerors that deliveries must comply with the schedule set forth in Attachment B to the RFP. As relevant to this protest issue, deliveries for commissaries in Hawaii were required within 14 days after an order was placed:

**DELIVERY SCHEDULE:** The contractor shall deliver in accordance with and not deviate from the delivery schedule at Attachment B, without written consent from the Contracting Officer. Delivery is required within 7 calendar days after an order is placed for CONUS stores. Delivery is required within 14 calendar days after an order is placed for Alaska and Hawaii stores. Changes to the delivery schedule must be initiated by the commissary management, through the Region and forwarded to the Contracting Officer for approval. Deliveries other than on the days and time specified in the schedule, without a valid change, are considered late and will be considered in past performance history.

RFP, Addendum to FAR § 52.212-4 Contract Terms and Conditions, ¶ 7.

Offerors were instructed that they must certify in their proposals that deliveries would comply with the Attachment B delivery schedule:

Review the DeCA West Region Delivery Schedule at Attachment B. This is the preferred delivery schedule and at a minimum, compliance with this schedule is mandatory for consideration for contract award. Complete the Delivery Schedule Compliance Certification at Attachment C and return with your proposal in this section of Volume I. Additionally, an offeror may propose an alternative delivery



schedule for consideration. The alternate delivery schedule, and an explanation of the differences between the schedule at Attachment B and the proposed schedule, and its benefits must be clearly stated and submitted with your proposal in this section of Volume I. The government is not obligated to accept an alternate delivery schedule. The Contracting Officer will provide notification if a proposed alternate delivery schedule is determined to be acceptable.

RFP, Addendum to FAR § 52.212-1 Instructions to Offerors--Commercial Items, ¶ 5, Vol. I, § 2 (emphasis added). Reading these provisions in conjunction, the RFP required offerors to certify that they would make deliveries to Hawaii within 14 days of an order, but, provided that they could otherwise meet this requirement, the RFP also allowed offerors to propose alternatives or deviations from this schedule, subject to the approval of the agency.

National points to two passages in Washington's proposal that it contends required a waiver of RFP requirements by the agency. First, National argues that Washington requested a waiver of the 14-day delivery requirement for deliveries to Hawaii:

For Group 5, Washington Beef would request 14 to 17 days from ordering date to the store delivery. This is to assure the freshest product available is delivered to our patrons while increasing shelf life once at the store. If 14 days were strictly adhered to, products on occasion would possibly need to be pulled and shipped from existing inventories. This would mean that Washington Beef could not "produce to order" properly utilizing our Military production and distribution procedures.

AR, Tab 8, Washington Proposal, § 2, at 114.

The agency accepted Washington's proposal, concluding that the 14-17 day delivery was acceptable provided that the age/shelf life of the products delivered complied with RFP requirements. AR, Tab 8, Agency Letter to Washington, Feb. 11, 2005, at 2.

We conclude that Washington's alternative proposal request was permitted by the terms of the RFP. Washington submitted the required certification at Attachment C, stating that it would meet the delivery schedule at Attachment B, but also requested an alternative delivery schedule, explaining that this schedule would allow it to provide better products to the agency. Because the RFP anticipated alternative proposals, the agency's acceptance of Washington's request for a delivery schedule of 14-17 days was not a waiver of an RFP requirement and the agency was thus not required to allow other offerors the opportunity to adopt Washington's proposed

approach.<sup>5</sup> The fact that National chose not to submit its own alternative schedule provides no basis to challenge the agency's acceptance of Washington's alternative schedule.

National next argues that the following portion of Washington's proposal requested a deviation from the RFP requirements for deliveries to Hawaii in response to out-of-cycle or emergency orders. The RFP instructed offerors to "[d]escribe, in detail, how your firm handles interruptions to the distribution channel, such as changes to orders placed, out-of-cycle orders and/or emergency orders." RFP, Addendum to FAR § 52.212-1 Instructions to Offerors--Commercial Items, ¶ 5, Vol. II, § 2(5). Washington's proposal stated as follows:

All out-of-cycle or emergency orders from any DeCA commissary can be placed simply by calling our home office, sending e-mail or speaking with one of our in store representatives . . . . Concerning the commissary stores of Hawaii, over the past 10 years we have proven our ability to deliver all DeCA requests for emergency, quick ship and off-line orders to date. Given this solicitation requires shipping and store delivery, for Hawaii we would require a minimum of 14 days to a maximum of 17 days as ocean container arrangements are needed.

AR, Tab 8, Washington Proposal, § 2 at, 106.

National argues that the Washington proposal indicates that the firm cannot meet a 14-day requirement for out-of-cycle deliveries to Hawaii, and thus the agency's acceptance of Washington's proposal constituted an improper waiver of the RFP delivery requirements. The agency states that it did not consider out-of-cycle or emergency orders to require compliance with the Attachment B delivery schedule because those orders are "dependent on circumstances surrounding any interruption in the normal order cycle." Agency Supplemental Responses, Aug. 22, 2005, at 1. The agency thus contends that out-of-cycle or emergency orders do not need to meet the Attachment B delivery schedule requirement of 14 days from order to delivery to Hawaii. Id.

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<sup>5</sup> National additionally argues that the RFP language stating that "[t]he Contracting Officer will provide notification if a proposed alternate delivery schedule is determined to be acceptable," means that the agency was obligated to tell all offerors in the event that any offeror's alternative schedule is approved. National Supplemental Comments, July 11, 2005, at 13. We do not believe that National's interpretation of this provision is reasonable: the language simply indicates that the agency would inform the offeror who proposed an alternate schedule whether the schedule was acceptable.

It is true, as the protester notes, that RFP stated that “[t]he contractor shall delivery in accordance with and not deviate from the delivery schedule at Attachment B, without written consent from the Contracting Officer.” RFP, Addendum to FAR § 52.212-4 Contract Terms and Conditions, ¶ 7. Nonetheless, we think that the agency’s view that offerors were not required to comply with the Attachment B delivery schedule in responding to out-of-cycle or emergency orders was reasonable, because, as the agency explains, an out-of-cycle or emergency order is one that does not accord to the Attachment B delivery schedule. Under these circumstances, Washington’s proposal is properly viewed as responding to the requirement to explain how offerors would address out-of-cycle orders; its statement that it would require 14-17 days to meet such orders did not fail to meet any RFP requirement and thus the agency did not waive any such requirement.

## Discussions

National contends that exchanges between the agency and Washington regarding ground beef requirements constituted improper discussions. After receiving offerors’ final proposals, the agency contacted Washington, noting that Washington had labeled a proposal item that appeared to meet the requirements for “coarse ground beef” as “case ready ground beef.” Supplemental Memorandum of Law, July 25, 2005, at 7. In its response to the agency, Washington confirmed that it intended for the proposal item to be labeled “coarse ground beef.” AR, Tab 8, Letter from Washington to Agency; Supplemental Memorandum of Law, July 25, 2005, at 7-8. We do not view this exchange between the agency and Washington as constituting discussions.

FAR § 15.306 describes a spectrum of exchanges that may take place between an agency and an offeror during negotiated procurements. Clarifications are “limited exchanges” between the agency and offerors that may allow offerors to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR § 15.306(a)(2). Discussions, on the other hand, occur when an agency indicates to an offeror significant weaknesses, deficiencies, and other aspects of its proposal that could be altered or explained to enhance materially the proposal’s potential for award. FAR § 15.306(d)(3). When an agency conducts discussions with one offeror, it must conduct discussions with all other offerors in the competitive range. FAR § 15.305(d)(1). The “acid test” for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. Park Tower Mgmt. Ltd., B-295589, B-295589.2, Mar. 22, 2005, 2005 CPD ¶ 77 at 7; Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CDP ¶ 79 at 5.

The substance of Washington’s proposal regarding the coarse ground beef requirement, *i.e.* shelf life from pack, price, and delivery, remained unchanged. Instead, the agency suspected, and Washington confirmed, that the term “case ready” had been misapplied to the proposal item describing Washington’s commitment to meet the requirements for “coarse” ground beef. These exchanges were

clarifications and not discussions, as they were “limited exchanges” that resolved a minor or clerical error. Washington was not given an opportunity to materially change its proposal because it was clear that the terms and details of the proposal for coarse ground beef did not change, but rather the label applied to those terms and details was corrected. Because all of the evidence in the proposal as submitted indicated that this was a mistaken label, we conclude that the agency reasonably inquired and received clarification from Washington.

#### Best Value

National argues that the alleged evaluation errors discussed above and the agency’s destruction of the underlying evaluator documents renders the source selection decisions unreasonable.<sup>6</sup> Because we find no basis to challenge the agency’s evaluation of offerors and conclude that the documentation of the evaluations was adequate, there is no basis to challenge the source selection decisions. Furthermore, the SSD reasonably identifies the basis for the cost-technical tradeoffs, including discriminators between offerors’ proposals that formed the basis for the source selections.<sup>7</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>6</sup> National argues that the agency’s evaluation documents were inadequate because the agency destroyed the documents prepared by individual evaluators, and provided in its agency report only the consensus evaluation documents. The destruction of individual evaluator documents does not render an agency’s evaluation unreasonable per se; rather, we will consider the record adequate if the consensus documents and source selection decision sufficiently document the agency’s rationale for the evaluations. Joint Mgmt. and Tech. Servs., B-294229; B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 3-4; Global Eng’g and Constr., LLC, B-290288.3, B-290288.4, Apr. 3, 2003, 2003 CPD ¶ 180 at 3 n.3. We conclude that the agency’s documentation here is reasonable because the consensus documents and source selection decision document adequately detail the strengths and weaknesses that formed the basis for the agency’s evaluation ratings for each offeror and the selection decisions.

<sup>7</sup> National has raised other challenges to the agency’s evaluation of proposals in relation to the various issues discussed above. We have reviewed all of National’s protest allegations and find all of them to be either untimely or without merit.