Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Barents Group, L.L.C.

File: B-276082; B-276082.2

Date: May 9, 1997

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Rosemary T. Rakas, Esq., and William D. Jones, Agency for International Development, for the agency.
John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under solicitation that calls for proposals to provide resumes for various labor categories, including investment bankers, and to "provide adequate evidence of appropriate academic credentials and depth of experience and professional qualifications as specified in [the] RFP for the designated areas of technical specialty," the evaluation was flawed since the resumes submitted by one awardee for the investment banker category do not appear to meet a reasonable definition of investment banker.

2. Under solicitation that calls for fixed daily salaries and fixed multipliers for personnel, award is flawed because awardee's proposal included conditions on its multipliers. Since awardee's proposal included conditions on its multipliers, no award could be made based on that proposal without opening discussions in order to remove those conditions or amending the solicitation to allow other offerors to propose on the same terms.

DECISION

Barents Group, L.L.C. protests the award of contracts to Chemonics International, Inc., Booz-Allen & Hamilton, Inc., Abt Associates, Inc., Carana Corporation, and Deloitte Touche Tohmatsu under request for proposals (RFP) No. OP/B/PCE-96-001 issued by the Agency for International Development (AID) for technical assistance to support AID's Economic Growth Center.

We sustain the protest.

BACKGROUND

This procurement is part of AID's Support for Economic Growth and Institutional Reform Project, a primary purpose of which is to provide AID with technical expertise in economic and institutional analysis and private sector development issues. While the RFP provides for the award of contracts in two functional areas, only contract line item 0001, which concerns privatization issues, is at issue in this protest. Under contracts awarded pursuant to line item 0001, contractors are to work with AID staff to facilitate the transfer of assets from state ownership and management to private ownership and management. Work under those contracts is to be performed pursuant to task orders issued by the agency and negotiated with the contractors. The RFP contemplated award of four to six indefinite quantity contracts under line item 0001, each for a 3-year base period and 2 option years, with one contract set aside for award under the Small Business Administration's 8(a) program.

The RFP indicated that contracts would be awarded to responsible offerors submitting acceptable, reasonably priced proposals with technical and cost scores that offered the greatest value to the government and that awards would be made based on initial proposals. The RFP explained that proposals were to be assigned technical scores and cost scores, which were to be reduced to an overall proposal score, with technical weighted 60 percent and cost 40 percent. The technical evaluation was to include consideration of the following criteria, with each criterion assigned 25 points:

1. Personnel qualifications and experience
2. Quality and responsiveness
3. Demonstrated corporate experience
4. Past performance

The RFP also provided that after the evaluation of offers, every qualified offeror would make an oral presentation and participate in a question and answer session with the evaluation committee.

The RFP called for offerors to propose a separate "maximum fixed daily salary" for the base period and each of the option periods for each of seven labor categories. The RFP stated that actual salaries for individuals proposed under each task order are to be negotiated but cannot exceed the maximum salaries proposed in response to the RFP. The RFP also stated that the proposed maximum daily salaries are "fixed" for the period of the contract. Offerors also were to propose two fixed multipliers, one for U.S expatriate staff and another for non-U.S. personnel. The RFP stated that these multipliers

> "shall include payroll costs, indirect costs, all home/corporate office secretarial/administrative support (Domestic and International), all computer rental (Domestic and International), all report preparation cost, Contract Management . . . and profit or fee, if any."

In addition, the RFP stated that "[o]ther allowable direct costs necessary for the performance of the work, such as travel and transportation, lodging and subsistence expenses may be authorized in the task order." The cost of each individual task order is to be based on the labor rates negotiated for that particular task order (but not to exceed the maximum fixed daily salaries for each labor category) for the needed personnel, multiplied by the appropriate multiplier.

The RFP stated that for the evaluation the agency would calculate an average burdened daily rate using the multipliers and maximum fixed daily salaries proposed by each offeror. For purposes of the cost evaluation, the RFP included a matrix which provided that an offeror's average burdened daily rate for the base period of the contract would count for three-fifths, or 60 percent of its cost and the average burdened daily rate for each option period would count for 20 percent. The matrix also specified that the U.S. expatriate cost would be 90 percent of each offeror's average burdened daily rate for the evaluation and the cost of non-U.S. staff would be 10 percent.

AID received 17 proposals. Agency officials reviewed the technical proposals for compliance with the RFP and conducted oral presentations. Each member of the technical evaluation panel then completed an individual evaluation of each proposal and assigned technical scores to each proposal under each of the RFP evaluation criteria. Final technical scores were calculated by averaging the individual scores. Agency officials used the RFP cost matrix to calculate a total cost score for each offeror. After obtaining raw cost and technical scores, agency officials applied the 60/40 technical/cost weights set forth in the RFP to arrive at a weighted score for each offeror. The weighted scores and the total scores for the seven highest rated proposals were as follows:

	Weighted Technical Score	Weighted Cost Score	Total Score
Chemonics	[deleted]	[deleted]	[deleted]
Deloitte	[delted]	[deleted]	[deleted]
Carana	[deleted]	[deleted]	[deleted]
Booz-Allen	[deleted]	[deleted]	[deleted]
Abt	[deleted]	[deleted]	[deleted]
Barents	[deleted]	[deleted]	[deleted]
Other offeror	[deleted]	[deleted]	[deleted]

AID reports that the award decisions were not based simply on the scores assigned to the various proposals; rather, a best value analysis was conducted. For example, after deciding to make awards to Chemonics, Deloitte and Carana given that they offered the best values since they were rated in the top six technically and among the lowest four in price, the contracting officer ranked Booz-Allen's proposal fourth overall, ahead of Barents and the other remaining proposals. With respect to Barents, the agency notes that while Barents's technical score exceeded that of Booz-Allen by [deleted] percent, Booz-Allen's proposed costs were more than [deleted] percent lower than Barents's costs, a difference that was considered too significant to overcome. AID ranked Abt fifth overall since, although Barents's technical score exceeded that of Abt by [deleted] percent, Abt's proposed costs were over [deleted] percent lower than Barents's, again a difference too significant to overcome. AID awarded the five protested contracts, and an additional award to an 8(a) firm, based on initial proposals.

PROTEST OVERVIEW

Among numerous allegations, Barents argues that AID conducted discussions with other offerors during the oral presentations, but not with Barents, and relaxed material requirements of the RFP, and therefore should have conducted discussions with all offerors and requested best and final offers (BAFOs). Barents also argues that some of the awards were improper because the proposals submitted by some offerors failed to comply with minimum solicitation requirements for the submission of three resumes for investment bankers. Also, according to Barents, AID failed to perform a cost realism analysis as required by the RFP. In this respect, Barents maintains that the RFP required that AID evaluate whether the costs proposed by each offeror were consistent with that firm's technical plan and quality and experience. Barents also notes that the RFP stated that proposed costs could be adjusted for purposes of the evaluation based on the results of this cost realism analysis and that AID could determine a more realistic estimate of cost for a particular offeror. Finally, Barents challenges the past performance evaluation of a number of the awardees.

Barents requests that we recommend that AID award a contract to Barents, in addition to the previous awards, or alternatively, that we recommend that AID terminate the previous awards and reopen the competition by affording Barents the opportunity to submit a BAFO.

As we explain below, we sustain the protest based on our conclusion that AID failed to evaluate the resumes submitted by Carana and Chemonics as required by the RFP. We also conclude that the award to Booz-Allen was improper since that firm's proposal took exception to the RFP requirements for fixed multipliers. In addition, because Booz-Allen's proposal took exception to the fixed multipliers, we conclude that the cost realism analysis of that firm's proposal was flawed.

ANALYSIS

Evaluation of Resumes

Barents argues that the proposals submitted by Carana and Chemonics failed to comply with minimum solicitation requirements for the submission of three resumes for investment bankers. As explained above, the RFP called for offerors to submit a maximum fixed daily salary for the grouping of labor categories that included financial analyst, investment banker, corporate financial advisor, and others. Along with other information required to be included in proposals, the RFP stated that "[e]ach offeror is required to provide three (3) resumes for individuals proposed to fill each of the labor categories set forth in . . . this RFP." The RFP evaluation criteria stated that "[t]he offer must provide adequate evidence of appropriate academic credentials and depth of experience and professional qualifications as specified in . . . this RFP for the designated areas of technical specialty."

Barents argues that one of the three individuals whose resumes Carana and Chemonics each submitted for the investment banker category are not investment bankers. Barents states that, by definition, an investment banker underwrites and sells new securities. According to Barents, one of the individuals proposed by Carana and one of the individuals proposed by Chemonics as investment bankers are merely consultants and neither of these individuals has experience in investment banking.

Barents explains that it is not suggesting that each of the resumes had to be individually scored, but that each resume was required to be evaluated to determine whether the offeror met the minimum mandatory RFP requirements. According to Barents, where, as here, the RFP identifies distinct labor categories, offerors must propose individuals having some background in each area of expertise. To permit offerors to do otherwise, Barents argues would result in unfair treatment of those offerors who believed and relied upon what the RFP stated--that offerors would need to provide three resumes for investment bankers, in addition to each of the other labor categories.

AID responds that the RFP did not detail minimum qualifications for each labor category; rather, according to the agency, it was left to each offeror to determine what was required to best perform the types of tasks set forth in the statement of work. AID argues that the evaluation criteria advised offerors that the agency would evaluate the resumes presented as reflecting on the professional capability of the offeror and explains that agency evaluators assessed the three investment banker resumes submitted by each offeror as part of its overview of the 48 resumes required to be submitted by each offeror and that none of the resumes was individually scored. According to AID, it would be unreasonable to require the agency to accept only the resumes of individuals who had worked in an investment bank engaged personally in underwriting and selling new securities.

In reviewing a protest against the propriety of an evaluation, it is not our function to independently evaluate proposals and substitute our judgment for that of the contracting activity. North Florida Shipyard, Inc., B-260003 et al., Apr. 14, 1995, 95-1 CPD ¶ 201 at 3. Rather, we will review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria in the solicitation. Id.

Here, we agree with Barents that the evaluation was not consistent with the promise of the RFP that the agency would assess whether "[t]he offer [provided] adequate evidence of appropriate academic credentials and depth of experience and professional qualifications as specified in Section C of this RFP for the designated areas of technical specialty." While AID is correct that this provision did not indicate that the resumes would be individually scored, we think the RFP reasonably placed offerors on notice that they must include in their proposals three resumes of individuals who had worked as investment bankers.

As Barents argues, the record shows that the proposals submitted by Carana and Chemonics failed to comply with the RFP requirement for the submission of three resumes for investment bankers.[1] As Barents points out, one of the resumes

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[1]While AID and a number of the intervenors challenge Barents's definition of an investment banker as one who underwrites and sells new securities, we think that definition is reasonable. Barents refers to Jerry M. Rosenberg, Dictionary of Banking 186 (1983), which states that an investment bank is "a bank serving as an underwriter for new issues of bonds or stocks and as part of a syndicate redistributes the issues to investors," and an investment banker is "the middleman
(continued...)

submitted by Chemonics describes "a senior investment manager and export and business development specialist" who is "[e]xperienced in managing investment and export development projects and providing technical assistance and training to small businesses." The challenged Carana resume describes a "financial policy advisor, principal" who as the president of a "leading advisory firm on privatization and emerging markets . . . has managed the firm's relationships with international financial institutions, and has directed a wide range of international financial policy projects." Neither of these individuals, or the firms they work for, appears to be experienced in or engaged in underwriting new issues of bonds or stocks or to have any recent experience doing so. Thus, the individuals described in the two resumes do not appear to meet a reasonable definition of investment banker. In the absence of a persuasive explanation of how the resumes of these individuals show they are investment bankers, we conclude that the evaluation was flawed.

Evaluation of Booz-Allen's Proposal

Barents argues that the award to Booz-Allen on the basis of its initial proposal without discussions was improper because Booz-Allen's proposal took exception to or failed to comply with minimum mandatory requirements of the RFP. Barents notes that the RFP stated that awards would be made only to firms submitting "responsive" offers and that:

> "[t]he Government will determine the responsiveness of an offer on a pass/fail basis. An offer is responsive when it manifests assent to all the terms and conditions of this [RFP] (Sections A through K) and the prospective contract, which includes the solicitation provisions, contract clauses, statement of work, and documents, exhibits, and attachments. The Government will declare non-responsive offers to be unacceptable, that is, when the offer does not manifest the offeror's assent to all of the terms and conditions of the RFP and prospective contract."

Barents argues that AID failed to follow these principles and awarded a contract to Booz-Allen even though its proposal took exception to the RFP and was contingent upon the occurrence of events that were not provided for in the RFP. Specifically, Barents notes that Booz-Allen's proposal stated:

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[1](...continued)
between the corporation issuing new securities and the public." While the RFP did not include definitions of any of the various labor categories, since it called for a separate set of resumes for each of the various labor categories--including corporate financial advisor, commercial banker and investment banker--we think the only reasonable reading of the solicitation is that resumes for the various labor categories should reflect differences among those various categories.

> "Some of the labor hours included in this cost estimate are bid at offsite (field) rates, substantially lower than rates normally applicable to services performed at our facility. These rates are based upon the provision of the following property/facility by the client or one of our subcontractors.
>
> a. Office facilities
> b. Communications, i.e., local and long distance telephone service
> c. Copying facilities
> d. Computer facilities, as required
> e. General office supplies
> f. Parking facilities
>
> The costs proposed are specifically conditioned upon the availability of the items set forth above."

Barents argues that this provision conditioned Booz-Allen's fixed daily salaries and multipliers on the availability of the listed items and that Booz-Allen therefore failed to comply with the RFP requirement that offerors propose fixed daily salaries and fixed multipliers because the listed costs were required to be factored into the fixed multipliers or the daily rates.

In a second example, Barents notes that each of Booz-Allen's proposed multipliers for personnel included the notation: "Assumes bilateral agreements between [AID] and participating government cover any cost incurred in respect to tax, duties, bonding, and any social welfare costs." Barents notes that the RFP does not mention such agreements, and argues that to the extent Booz-Allen's daily salaries were based on the assumption that such costs would be covered by AID or the participating government, Booz-Allen's proposal was unacceptable.[2]

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[2]Barents raises two other examples of alleged contingencies in Booz-Allen's proposal which it argues should have resulted in rejection of the proposal as unacceptable. We do not agree. First, Booz-Allen's proposal stated that "[t]he definitized contract should include a force-majeure clause." Although Barents argues that Booz-Allen's "demand" for the inclusion of such a clause was contrary to the RFP, in our view, the notation that the contract "should" include the clause was precatory in nature and did not render the proposal unacceptable since circumstances did not indicate that the request was anything more than a wish or desire. See GMI, Inc., B-239064, July 3, 1990, 90-2 CPD ¶ 8 at 3. Booz-Allen's proposal also stated: "All other terms and conditions shall be as mutually agreed upon at the time of negotiations." This clause simply reserved the right of Booz-Allen to agree to additional terms and conditions if negotiations were held. Since no negotiations were held, we do not see how this provision qualified Booz-Allen's proposal.

We agree with Barents. It is clear that Booz-Allen's proposal did not comply with the RFP requirement for fixed multipliers. In addition, as we explain below, AID's cost realism analysis of Booz-Allen's proposal was inadequate.

In response to the protest allegations, AID first argues that the questioned provisions in Booz-Allen's proposal were in conformity with the RFP and simply responded to the request for information in the RFP. The only reasonable reading of the first of the two questioned provisions in Booz-Allen's proposal--stating that proposed costs were "specifically conditioned upon the availability of" the listed facilities, telephone service, and office supplies--is that it is inconsistent with the RFP requirement that the multipliers "shall include payroll costs, indirect costs, all home/corporate office secretarial/administrative support (Domestic and International), all computer rental (Domestic and International), all report preparation cost, Contract Management . . . and profit or fee, if any."[3] AID offers no explanation for the reading that it posits.

The second of the questioned provisions stated that each of Booz-Allen's proposed multipliers "[a]ssumes bilateral agreements between [AID] and participating government cover any cost incurred in respect to tax, duties, bonding, and any social welfare costs." This provision also is inconsistent with the RFP requirement that the multipliers in the proposals "shall include payroll costs, indirect costs, all home/corporate office secretarial/administrative support (Domestic and International), all computer rental (Domestic and International), all report preparation cost, Contract Management . . . and profit or fee, if any." Specifically, we think the requirement that "payroll costs, indirect costs," be incorporated into the fixed multipliers reasonably indicates that "tax, duties, bonding, and any social welfare costs" were to be included in the multipliers.[4]

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[3]Booz-Allen argues that costs for these facilities, telephone services, and office supplies are reimbursable under the provision of the RFP which stated that "[o]ther allowable direct costs necessary for the performance of the work, such as travel and transportation, lodging and subsistence expenses may be authorized in the task order." We think this contention is simply inconsistent with the above-quoted specific language of the RFP.

[4]Booz-Allen's proposal essentially repeated the RFP provision stating that the firm's multipliers include payroll costs, indirect costs, all home/corporate office secretarial/administrative support (Domestic and International), all computer rental (Domestic and International), all report preparation cost, Contract Management . . . and profit or fee, if any. Nonetheless, since the proposal also conditioned Booz-Allen's costs on the assumption that bilateral agreements will cover taxes, duties, bonding and social welfare costs, we think the proposal is ambiguous as to whether all required costs are included in the multipliers.

AID also argues that the first of the two provisions in Booz-Allen's proposal concerned "labor hours" "bid" and argues that "the specific reference to certain facilities is meaningless in that it has no applicability to anything actually proposed by Booz-Allen." We do not agree; Booz-Allen's proposal states that its "costs proposed are specifically conditioned upon the availability of the items set forth above." Clearly, the only reasonable reading of this statement is that the proposed costs--daily salaries/multipliers--were made subject to the conditions specified. While AID argues for a different interpretation--that the Booz-Allen statement had no effect on its maximum fixed daily salaries, the statement still would be inconsistent with the RFP requirement that most--if not all--of these costs be included in the fixed multipliers.

AID also argues that Booz-Allen signed a contract document, which was the exclusive written agreement memorializing all of the terms and conditions, and which stated:

> "The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications as are attached or incorporated by reference herein."

Apparently, based on this provision, it is AID's position that since Booz-Allen's proposal did not become a part of the contract, the objectionable language in that proposal is not part of the contract and therefore had no impact on the award. According to AID, because the contract includes Booz-Allen's maximum fixed daily labor rates and multipliers, Booz-Allen cannot charge the government more than those fixed rates and multipliers under the contract.

We do not agree. Even though an awarded contract may not incorporate all aspects of a proposal, the contract may not materially vary the terms of the offer. The Orkand Corp., B-224541, Dec. 31, 1986, 86-2 CPD ¶ 723 at 8; Computer Network Corp. et al.--Request for Recon., B-186858, June 13, 1977, 77-1 CPD ¶ 422 at 6. Moreover, in negotiated procurements, any proposal that fails to conform to material terms and conditions of a solicitation should be considered unacceptable and may not form the basis for an award. Martin Marietta Corp., 69 Comp. Gen. 214, 219 (1990), 90-1 CPD ¶ 132 at 7; L & E Assocs., Inc., B-258808.4, June 22, 1995, 95-1 CPD ¶ 288 at 4. Any other rule would be inconsistent with the government's obligation to treat all offerors fairly and to provide a common basis for the competition. Since Booz-Allen's proposal included conditions on its multipliers, no award could be made based on that proposal.

AID also argues that the departure of Booz-Allen' proposal from the terms of the RFP was minor and did not prejudice Barents. The short answer is that AID could not legally accept a proposal which took exception to a material RFP requirement.

Martin Marietta Corp., supra. In any event, we do not agree with AID's view that Barents was not prejudiced. AID notes that Barents's local hire multiplier included a [deleted] percent add-on to cover national social insurance costs, and other locally mandated employee withholdings--costs which Booz-Allen's proposal explicitly does not assume. According to AID, if it removes the social welfare costs from Barents's multipliers, Barents overall score would exceed that of Abt. AID argues that, consistent with the original selection decision, and considering that Barents's costs would still exceed that of Abt by [deleted] percent, Abt would still be considered the best value.

AID's analysis only considers the social welfare costs; it does not consider Booz-Allen's first condition regarding the availability of the listed facilities, services and supplies. For AID's attempted reanalysis to be meaningful, it would have to include consideration of the effect this condition had on Booz-Allen's proposal and the effect the absence of this condition had on Barents's proposal. When the cost of the first condition is considered, it is not clear that the outcome of the competition would have remained the same had Barents been provided an opportunity to revise its proposal, including its price. See Integrated Sys. Group, B-272336; B-272336.2, Sept. 27, 1996 96-2 CPD ¶ 144 at 6. In other words, but for the agency's actions, Barents would have had a substantial chance of receiving an award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc., v. Christopher, No. 96-1148, slip op. __ (Fed. Cir. Dec. 19, 1996).

Cost Realism

An additional effect of the conditions in Booz-Allen's proposal is that its costs were not fixed or capped, as contemplated by the RFP. Although generally when proposals include caps on proposed costs--so that each offeror assumes the risk that its actual costs will be higher than proposed--it is improper for the agency to upwardly adjust proposed costs in the evaluation to establish realistic costs, Halifax Technical Servs., Inc., B-246236.6 et al., Jan. 24, 1994, 94-1 CPD ¶ 30 at 9, and it is sufficient for a cost realism analysis to simply determine the offerors' understanding of the requirements and measure the risk that an offeror will not be able to perform. ASI Personnel Serv., Inc., B-258537.7, June 14, 1995, 95-2 CPD ¶ 44 at 5.

In other words, the maxim that the government bears the risk of cost overruns in the administration of a cost reimbursement contract is reversed when a contractor agrees to a cap or ceiling on its reimbursement of allowable costs. BNF Technologies, Inc., B-254953.3, Mar. 14, 1994, 94-1 CPD ¶ 274 at 5. Nonetheless, where cost caps are ineffective or can be circumvented, they will not effectively shield the government from cost growth and a proper cost realism analysis--including an assessment of the extent to which proposed costs represent what the contract should cost, assuming reasonable economy and efficiency--is required. See Advanced Technology Sys, Inc., 64 Comp. Gen. 344, 346-348 (1985), 85-1 CPD ¶ 315 at 5-6. Since Booz-Allen's costs effectively were not capped, the cost realism analysis performed here--which did not include an assessment of the extent to which Booz-Allen's proposed costs represent what the contract should cost--was inadequate.

CONCLUSION

We recommend that AID amend the RFP to clarify the requirement for resumes and to clarify what the fixed multipliers should include. AID should then give Barents and the awardees an opportunity to submit BAFOs. Based on those BAFOs, AID should terminate contracts, if necessary, and make awards to those firms whose proposals offer the best value to the government, consistent with the RFP.[5] We also recommend that Barents be reimbursed its cost of pursuing this protest,

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[5]Although Chemonics argues that Barents is not eligible for award because Barents and its subcontractors failed to submit properly executed certificates of procurement integrity, properly executed certificates can be obtained from Barents prior to award. Worldwide Servs. Inc./Perry Management Corp., a Joint Venture, B-261113, Aug. 18, 1995, 95-2 CPD ¶ 73 at 3-4.

including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1) (1997). Barents's certified claim for such costs, detailing the time expended and costs incurred, should be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.[6]

Comptroller General
of the United States

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[6]Barents also alleges various other errors in the evaluation of proposals and the selection decisions. We have reviewed these allegations and we conclude either that the allegations are without merit or, in view of our conclusions and recommendation, there is no reason to consider these allegations. For example, although Barents argues that it should have been given an opportunity to submit a BAFO because discussions were held with other offerors during oral presentations, in view of our recommendation that BAFOs be requested, there is no reason to consider this allegation. In addition, although Barents challenges the evaluation of the past performance of some of the awardees, based on our review of the record, we conclude that the evaluation was reasonable and consistent with the evaluation criteria in the RFP. Although that evaluation could have been more thoroughly documented, we think the scores assigned to the various proposal in the past performance evaluation reasonably reflected the differences between the performance histories of the various offerors. In a final example, although Barents argues that Booz-Allen effectively modified its proposal during its oral presentation to remove its investment banker resumes from its proposal, since Booz-Allen's written proposal did not change, we do not agree.