



GAO

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Johnson Controls Security Systems

File: B-296490; B-296490.2

Date: August 29, 2005

David R. Johnson, Esq., Kathleen C. Little, Esq., Amy R. Napier, Esq., and Amanda J. Kastello, Esq., Vinson & Elkins, for the protester.

Kevin P. Connelly, Esq., Joseph J. Dyer, Esq., and Amanda B. Weiner, Esq., Seyfarth Shaw, for Quanta Systems Corporation, an intervenor.

Diane P. Mullaney, Esq., Department of the Treasury, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where awardee misrepresented in its proposal that it had made arrangements before award to obtain training and certification required under the solicitation for its personnel, and the misrepresentation was material in that the agency relied upon it and the record indicates that it had a significant impact upon the evaluation.

2. Protest is sustained where, rather than determining which proposal was most advantageous, as required under the "best value" evaluation scheme, agency essentially considered only whether the proposals were technically acceptable, and failed to reasonably account for the technical superiority of the protester's proposal.

DECISION

Johnson Controls Security Systems (JCSS) protests the award of a contract by the Department of the Treasury, Bureau of Engraving and Printing (BEP), to Quanta Systems Corporation, under request for proposals (RFP) No. BEP-04-0022, for the operation, monitoring and repair of the security systems at BEP's currency production facility in Washington, D.C. JCSS challenges the evaluation of proposals and award selection.

We sustain the protest.

BACKGROUND

The RFP contemplated the award of a fixed-price contract for a base period of 1 year, with 4 option years, for the operation, monitoring and repair of the security systems at BEP's high security, 2 million square foot Washington Currency Production Facility. The security systems include: (1) the obsolete Access Control and Alarm Monitoring System (ACAMS), a computerized card access control and intrusion detection system manufactured (but no longer supported) by Monitored Dynamics Incorporated (MDI); (2) a closed circuit television (CCTV) system, including a digital video recording system (DVRs) manufactured by Loronix (now owned by Verint Systems), which enables rapid access to archived video; and (3) a video badging system. The solicitation statement of work (SOW) required the contractor to provide sufficient staff to operate and monitor the BEP security systems 24 hours per day, 7 days per week, 365 days per year. All contractor personnel having access to BEP security systems or documentation were required to complete a background investigation and maintain a "High Risk" security clearance. In addition, the SOW imposed various certification requirements—including certifications of training with respect to the MDI ACAMS and Loronix CCTV and DVRs systems—for employees working with the security systems, and provided that the "Contractor has 90 days for proposed employees to be certified from the date of contract award." SOW §§ C.1, C.2, C.3; Hearing Transcript (Tr.), Day One (I) at 17-21, 32-33.¹

Award was to be made to the offeror whose proposal was determined to represent the "best value" to the government based on a two-phase evaluation process. In Phase I, each offeror was to submit a business management proposal containing its prices and required representations and certifications, and a technical proposal setting forth the offeror's demonstrated corporate experience, experience of proposed staff and past performance. Phase I proposals were to be evaluated on a pass/fail basis so as to determine which offerors were to be included in the competitive range. In Phase II, each offeror included in the competitive range was required to make an oral presentation and answer any questions posed by the agency, with "[t]he answers to the questions . . . considered for evaluation purposes" and "[t]he information provided during the oral presentation . . . considered [to be] part of the proposal." RFP § L.12. The purpose of the oral presentation was "to evaluate the offeror's management and technical approach, management plan, and phase in/phase out plan." RFP § L.12. Specifically in this regard, the RFP required offerors to "present their proposed technical approach describing how they intend to successfully accomplish the efforts described in the [SOW], including the offeror's utilization of available resources," and provided for evaluation of offerors' "proposed Preventative Maintenance, Normal Maintenance and Test/Safety Equipment

¹ Transcript citations refer to the transcript of the hearing that our Office conducted in this matter.

Programs,” offerors’ management approach and quality control programs, offerors’ management plans (including “detailed organization chart,” “proposed staffing plan,” and “Human Resources Management” plan), and the adequacy of offerors’ proposed phase-in/phase-out plans. RFP § L.13. The RFP listed three Phase II evaluation factors: management/technical approach was equal to management plan, and more important than phase in/phase out approach. The solicitation further provided that “overall technical merit” was more important than price. RFP § M.8.

Four proposals were received, from JCSS (the incumbent contractor), Quanta, and two other offerors; JCSS’s proposal, Quanta’s and a third proposal were found to be acceptable (receiving a pass rating) in the Phase I evaluation and were included in the competitive range. All offerors in the competitive range then made oral presentations. Subsequent to the conclusion of the oral presentations, BEP evaluated the proposals as follows:

		JCSS	Quanta
Technical			
	Management/ Technical Approach (45 points)	43	37
	Management Plan (45 points)	45	40
	Phase-In/Phase-Out (10 points)	7	9
	Total Technical Score	95	86
Price		\$30,027,471	\$25,420,321

BEP determined that negotiations with the offerors were necessary. In reaching this conclusion, the agency noted that Quanta’s proposal contained several “[w]eaknesses” that needed to be discussed, including findings that Quanta’s “[t]echnical proposal did not specifically address how they plan to maintain the BEP’s obsolete MDI ACAMS,” and that Quanta and its staff did not have experience with the Loronix DVRS, which “is a critical security system.” Pre-Negotiation Memorandum and Price Analysis, Mar. 4, 2005, at 10-11. (However, BEP noted in regard to the Loronix DVRS that Quanta had indicated that “Loronix was working with Quanta Systems to obtain the certifications” required by the RFP for personnel working with this system. *Id.*) BEP found as an additional weakness that Quanta “[d]id not adequately justify its proposed staffing plan,” but instead simply “proposed to use the same staffing resources currently in use at the BEP.” *Id.*

After conducting oral discussions with the offerors, BEP requested final proposal revisions (FPR). In its evaluation of the FPRs, BEP increased JCSS’s overall technical score from 95 to 96 points, and Quanta’s score from 86 to 94 points. (The

third proposal received a final technical score of 93 points.) JCSS's and Quanta's evaluated prices were unchanged.

In apparent explanation of the 8-point increase in Quanta's score, the agency noted that, while Quanta's technical plan "did not specifically address how they planned to maintain the BEP's obsolete MDI ACAMS," Quanta clarified this issue during negotiations "by stating that their company has extensive experience in working with MDI and their various equipment/operating systems." Post-Negotiation Memorandum (Source Selection Decision (SSD)) at 4; Final Technical Proposal Evaluation at 2. According to the agency, the information in Quanta's FPR, which referenced prior contracts in which Quanta had installed and maintained MDI security products, and the agency's reference checks, resolved this issue. As for Quanta's previously noted lack of experience with the Loronix DVRS, the agency reiterated its prior observation that, while

Quanta Systems technical personnel are not currently certified in Loronix . . . they have coordinated certification training plans with vendor representatives that are scheduled to commence upon contract award. Quanta Systems has arranged for the certifications to be accomplished within the 90-day certification period as stated in the solicitation. The technical team has determined this response to be acceptable.

SSD at 4; Final Technical Proposal Evaluation at 2.

While the initial draft of the final technical evaluation report simply stated that the evaluation team had "determined that all three offerors are technically acceptable" and, indeed, the evaluation team at one point orally recommended award to JCSS "on a technical basis" based primarily on its "incumbent advantages," the final technical evaluation report was revised, in response to the intervention of the contracting officer, to add the following:

After completion of negotiations and review of their responses to the items discussed, all three offerors are essentially technically equal.

Final Technical Proposal Evaluation at 2; Tr. I at 89-91. Adopting the position that all proposals were "essentially technically equal," the contracting officer stated in the SSD that Quanta's lower price, representing a savings of approximately \$4.6 million, made its proposal the best value. SSD at 7, 10. Upon learning of the resulting award to Quanta, JCSS first filed a protest with the contracting agency and then filed this protest with our Office.

MATERIAL MISREPRESENTATION

JCSS asserts that Quanta misrepresented that it had made arrangements before award to obtain training and certification for its personnel with respect to Loronix

equipment and technology, to commence upon award. JCSS concludes that, because the evaluation was based in significant part on this misrepresentation, it was flawed and did not provide a reasonable basis for making award to Quanta.

A material misrepresentation in a proposal can provide a basis for disqualifying the proposal and canceling contract award based upon the proposal. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. Integration Tech. Group, Inc., B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 at 2-3; Sprint Communications Co. LP; Global Crossing Telecomms., Inc.–Protests and Recon., B-288413.11, B-288413.12, Oct. 8, 2002, 2002 CPD ¶ 171 at 4; AVIATE L.L.C., B-275058.6, B-275058.7, Apr. 14, 1997, 97-1 CPD ¶ 162 at 11.

We agree with JCSS that Quanta made a material misrepresentation concerning the status of its preaward arrangements to obtain training and certification with respect to Loronix equipment and technology.

As noted above, while the agency's pre-negotiation technical evaluation report, issued after oral presentations and before negotiations and receipt of FPRs, assigned Quanta's proposal a weakness on the basis that Quanta and its staff lacked experience with the Loronix DVRS, which "is a critical security system," the report noted that Quanta had indicated, apparently during its oral presentation, that "Loronix is working with Quanta Systems to obtain the certifications" required by the RFP for personnel working with this system. Pre-Negotiation Memorandum and Price Analysis, Mar. 4, 2005, at 10-11. Likewise, the final technical evaluation report and the SSD summarized the results of discussions in this regard by noting that, while Quanta's technical personnel are not currently certified in Loronix, "they have coordinated certification training plans with vendor representatives that are scheduled to commence upon contract award. Quanta Systems has arranged for the certifications to be accomplished within the 90-day certification period as stated in the solicitation." SSD at 4; Final Technical Proposal Evaluation at 2. The final technical evaluation report and the SSD indicated that "[t]he technical team has determined this response to be acceptable." SSD at 4; Final Technical Proposal Evaluation at 2.

However, neither Quanta nor BEP now disputes that, contrary to the evaluation comments, Quanta in fact had not arranged for and coordinated certification training plans with Loronix before award. On the contrary, a declaration by the proposed Quanta project manager indicates that, when he contacted Verint (the owner of Loronix) before award, he was advised that "Verint only deals with vendors or distributors with whom the company has a contractual relationship" and that, since Verint had a partnership agreement with the incumbent BEP contractor (JCSS), it "would be unable to discuss Loronix certification until Verint received notice from the BEP that Quanta had received award of the contract." Declaration of Quanta's Proposed Project Manager. Similarly, a Quanta vice-president who was the firm's

proposal manager for this procurement testified that, prior to award, Quanta contacted the manufacturers of four of the five major security systems at BEP (including Loronix) for which employee certifications were required, but that Quanta was unable to make arrangements for training and certification with any of the manufacturers at that time. According to the Quanta vice-president, “the reason is [that] they would not [make arrangements] until after contract award,” a position that the vice-president indicated was “typical of this sort of program because of the sensitive nature of the equipment involved.” Tr. II at 168-71.

However, both Quanta and BEP assert that Quanta never represented to BEP that it had made arrangements prior to award for Loronix training and certification. While the contemporaneous preaward agency evaluation documentation states with respect to the issue of Loronix certification that Quanta had “coordinated certification training plans with vendor representatives that are scheduled to commence upon contract award,” and had “arranged for the certifications to be accomplished within the 90-day certification period,” the agency maintains that the evaluation reports in this regard were erroneous due to an error on the part of one of the evaluators as to what was actually stated by Quanta during its oral presentation and negotiations. The referenced evaluator explains, in this regard, that “[m]y impression that Quanta was working with Loronix at that time to obtain certification is based upon general responses by Quanta to my questions regarding plans for obtaining certification for the various security systems rather than any statements specific to Loronix certification.” Declaration of Second Evaluator. According to the evaluator, “[w]hile I paraphrased my impressions of the conversation in my evaluation report, at no time did Quanta specifically state that they had already made arrangements with regard to obtaining Loronix certification.”² *Id.*; see Tr. I at 255-56.

² BEP and Quanta assert that, because JCSS first raised the issue of Quanta’s alleged misrepresentation more than 10 days after JCSS received a redacted version of the SSD on April 7, and a copy of an April 6 letter from Verint to BEP indicating that Verint had not cooperated with Quanta before award, this aspect of JCSS’s protest is untimely. In this regard, our Bid Protest Regulations generally require that protests be filed within 10 days of when the protester knew or should have known of a basis for protest. 4 C.F.R. § 21.2(a)(2) (2005). The allegation is timely. As noted by the protester, while the redacted SSD indicated that Quanta had made arrangements for Loronix training and certification, it did not clearly indicate that the agency’s knowledge in this regard was the result of a representation by Quanta. This is significant since, as further noted by the protester, the SSD indicated that the agency’s evaluation had taken into account information independently obtained by the agency. Since it therefore was not clear that the agency’s conclusion regarding preaward training and certification had been based on representations by Quanta, we find the allegation timely. See *LBM, Inc.*, B-290682, Sept. 18, 2002, 2002 CPD ¶ 157 at 7 (GAO will resolve doubts over issues of timeliness in favor of protesters).

We find that the agency's position is not supported by the record. Whether or not Quanta specifically referred during the oral presentation and negotiations to having already made arrangements for Loronix training and certification,³ the record is clear that Quanta indisputably made a more sweeping misrepresentation that encompassed not only preaward arrangements for Loronix training and certification, but also preaward arrangements for training and certification in the other major BEP security systems. Specifically, Quanta stated in its FPR as follows:

To meet all certification requirements, Quanta has coordinated certification training plans with vendor representatives that are scheduled to commence upon contract award. Quanta has arranged for certifications to be accomplished within the 90-day certification period stated in the solicitation.

Quanta FPR, encl. 1, at 2. As the testimony and statements of Quanta's vice-president and proposed project manager indicate, the above statement was false regarding preaward arrangements for training and certification for Loronix and the other major BEP security systems. Tr. II at 168-71; Declaration of Quanta Proposed Project Manager.

BEP nevertheless asserts that, to the extent that Quanta made a misrepresentation, it was immaterial to the source selection decision. BEP maintains that, "[s]ince completion of certification training was not required until after contract award, during Phase II evaluation of proposals completion of certifications was not accorded great weight." Agency Hearing Comments at 8. According to the agency, given the available evaluation points, and in view of the fact that there were five security systems requiring factory certified training, "certification for one of the systems was probably worth less than one point." *Id.*; see Tr. I at 35-36.

We find the agency's position unpersuasive. Quanta's arrangements for obtaining the Loronix certifications after award were set forth in the pre-negotiation technical evaluation as an amelioration of or offset to Quanta's lack of experience with Loronix, which was listed as one of the weaknesses (along with concerns regarding MDI and lack of a staffing plan) with respect to Quanta's management/technical

³ The content of the discussions between the agency and Quanta at its oral presentation and during oral negotiations is uncertain because the agency did not record the sessions, and the evaluators subsequently discarded any notes they had made during the sessions. Tr. I at 39-41. Although the Federal Acquisition Regulation does not require a particular method of establishing a record of what was said during oral presentations, the fundamental principle of government accountability dictates that an agency maintain a record adequate to permit meaningful review. Checchi and Co. Consulting, Inc., B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 at 6.

approach and management plan. Pre-Negotiation Memorandum and Price Analysis, Mar. 4, 2005, at 10-11. Likewise, Quanta's arrangements for obtaining the Loronix certifications after award were set forth in the final technical evaluation as part of the explanation for the 8-point increase in Quanta's technical score and in the final technical evaluation and SSD as resolving the Loronix issue. SSD at 4; Final Technical Proposal Evaluation, at 2. Finally, the agency's position does not account for the fact that the misrepresentation extended to all five of the major security systems at BEP, not just to the Loronix DVRS. These considerations support the view that the misrepresentation was material in that it had more than a negligible effect on the evaluation.

DETERMINATION OF TECHNICAL EQUALITY

According to the SSD, since Quanta had submitted the low-priced offer, and "all the proposals were found to be essentially technically equal after negotiations and submittal of [FPRs], Quanta Systems Corporation is deemed the best value to the Government." SSD at 7. JCSS challenges the agency's determination that the proposals were essentially technically equal. According to the protester, rather than determining which proposal was most advantageous, as required under the "best-value" evaluation scheme, the agency essentially considered only whether the proposals were technically acceptable, failing to account for the technical superiority of JCSS's proposal. We agree.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accord with the RFP criteria and applicable procurement statutes and regulations. See Rolf Jensen & Assocs., Inc., B-289475.2, B-289475.3, July 1, 2002, 2002 CPD ¶ 110 at 5. Based on the record here, including testimony at the hearing we conducted in this matter, we find that the evaluation was unreasonable.

The record indicates that the evaluators determined that JCSS's proposal offered three "very compelling advantages" not shared by any of the other offerors, which "allowed JCSS to provide a very detailed, name and number specific proposal which could not be provided by any potential offeror other than the incumbent." Declaration of Technical Team Lead at 5; Tr. I at 68. In contrast, the record does not clearly indicate the advantages in the other proposals that elevated them to the level of JCSS's proposal.

The three significant, "very compelling" advantages in JCSS's proposal included:

- (1) incumbent personnel with the required current security clearances;
- (2) incumbent personnel with the required training and certifications; and
- (3) knowledge of the "intimate details," including "vulnerabilities," of BEP's security systems. Tr. I at 57, 68; Tr. II at 75. It appears from the record that having cleared incumbent personnel on the job was an especially compelling advantage because, by

the agency's own account, BEP's standard of scrutiny for granting access is "extremely high," resulting in "high risk" security clearances being granted to only approximately 35 percent of applicants, notwithstanding that many of the individuals not approved have previously received secret and top secret clearances for other installations. Agency Legal Memorandum, June 21, 2005, at 17; Declaration of BEP Manager of Personnel Security Division.

One example of JCSS's more detailed proposal was the staffing area. The RFP required offerors to furnish a "proposed staffing plan," and provided for evaluation of these plans under the management plan evaluation factor. RFP §§ L.13, M.6. JCSS proposed specific, largely incumbent, trained, certified and cleared employees, and also described in detail the proposed staffing for each shift for each day for each functional area. JCSS Technical Proposal at 15-32; JCSS Oral Presentation Slides at 3-9; Tr. I at 62. In contrast, as conceded by the agency evaluators, Quanta failed to furnish a detailed staffing plan. Tr. I at 65-67, 287-89. Instead, the agency evaluated Quanta as proposing (at least initially) to use the same level of staffing resources as under the current contract. Pre-Negotiation Memorandum and Price Analysis, Mar. 4, 2005, at 11. (Quanta, however, reserved the right subsequently to reevaluate the required staffing. Tr. I at 122; see Tr. II at 104-05.) In addition, Quanta proposed to give "as many favorable, evaluated incumbent personnel as practical the opportunity to remain on the job," filling any remaining positions with personnel from Quanta or its team member (Wackenhut Corporation). See Quanta FPR, encl. 1, at 1; Quanta Oral Presentation Slides at 5, 8-9, 17; Quanta Response to Competitive Range Notification, Jan. 19, 2005, at 1-2, 5; Tr. I at 63, 84-85.

The agency ultimately determined that Quanta's approach was "adequate." Tr. I at 63, 120. However, this determination was inconsistent with the agency's prior determination that Quanta's staffing plan was inadequate. Specifically, in its Pre-Negotiation Memorandum and Price Analysis, issued after oral presentations and offerors' responses to clarification questions, but before negotiations and FPRs, BEP recognized that Wackenhut, Quanta's teaming partner, "plans to offer employment to existing incumbent personnel, if agreed to by the BEP, along with supplying existing Wackenhut personnel for the various operational positions"; that Quanta had proposed the use of security communications specialist positions (an approach previously used elsewhere); and that Quanta had "proposed to use the same staffing resources currently in use at the BEP." Pre-Negotiation Memorandum and Price Analysis, Mar. 4, 2005, at 9-11. BEP nevertheless assigned Quanta a weakness on the basis that Quanta "[d]id not adequately justify its proposed staffing plan." Id. at 11. In this regard, according to the evaluators, there was no evidence that Quanta/Wackenhut had discussed employment with the incumbent personnel or that the incumbent personnel would work for Wackenhut, and Quanta had not offered an alternative plan in the event that the incumbent personnel did not accept an offer of employment. Consensus Technical Evaluation Worksheet, Feb. 4, 2005, at 3; Third Evaluator Technical Evaluation Worksheet; Tr. I at 143-46, 288-97.

The record does not show why the agency subsequently discounted this weakness in Quanta's proposal. When asked during the hearing why Quanta's staffing approach ultimately was found to be adequate, the lead technical evaluator indicated her reliance on Quanta's agreement to conform to the existing staffing plan. Tr. I at 141. However, as discussed above, this aspect of Quanta's approach already was evident when the agency evaluated its staffing approach as inadequate. When asked the same questions by our Office, the evaluator who took the lead with respect to staffing issues answered that she ultimately came to accept Quanta's approach, even though it left her "still a little queasy," as one she "could live with," when Quanta during negotiations "double assured" that "they would make the offers to the incumbent[s] to get the experienced people." Tr. I at 274-75, 291-97. (The third evaluator, after some confusion as to the basis for the evaluation of Quanta's proposal in this area, ultimately referred to the fact that the staffing area was the "bailiwick" of the second evaluator. In any case, according to the third evaluator, Quanta had "stat[ed] that they could meet the requirements. That's what I based my final decision on." Tr. II at 38, 101-05.)

Evaluators are not precluded from changing their views as to the merits of a particular proposed approach to contract performance. However, even if it was reasonable for the agency ultimately to find Quanta's staffing approach acceptable, there is no basis in the record for the agency to determine that Quanta's staffing approach was as advantageous as JCSS's. BEP has not shown, nor is it otherwise evident from the record, how JCSS's detailed staffing approach, based on the continued employment of trained and certified incumbent personnel who have met the agency's rigorous security requirements, deserved no more evaluation credit than that accorded Quanta's less detailed staffing approach, which relied in significant measure on the hope that the incumbent personnel could be recruited, a hope not derived from discussions with the incumbent personnel or (in the view of the evaluators) other evidence that the incumbent personnel in fact could be recruited.

The manner in which the agency considered offerors' staffing approaches supports the protester's assertion that the agency's evaluation focused on acceptability rather than best value, as required under the RFP, and that this resulted in a failure to accord due evaluation credit to the advantages offered by JCSS's proposal. This conclusion is further bolstered by the testimony of the contracting officials. For example, in addressing the fact that Quanta's proposal was significantly less detailed than JCSS's, the lead technical evaluator testified that

we made a determination that [Quanta] understood our needs and that they would likely be able to perform successfully if they were given the award. It's kind of like a bar. You know, everybody gets over the bar but some people get over it a little bit higher but the fact was that everybody went over the bar.

Tr. I at 58. Likewise, the second evaluator in her testimony agreed that “the bottom line for [her] was that both offerors could do the work.” Tr. I at 304.

In addition, it is significant given the circumstances that, as discussed above, the initial draft of the final technical evaluation report simply concluded that the evaluation team had “determined that all three offerors are technically acceptable”; only after the contracting officer intervened was the final technical evaluation report revised to add that “all three offerors are essentially technically equal.” Final Technical Proposal Evaluation at 2; Tr. I at 89-91. Although the contracting officer testified that she made an independent determination that the offerors were essentially technically equal, she testified that this determination was based on “[p]rimarily the raw score and bearing in mind [that] there were still no technical issues remaining with any of the offerors.” Tr. II at 62, 66-67. As discussed, however, due to the evaluators’ approach to the evaluation, and in view of the fact that the record indicates that Quanta’s score was increased as a result of its material misrepresentation, it does not appear that the scores relied upon by the contracting officer accurately reflected the advantages offered by JCSS’s proposal over Quanta’s.

The contracting officer subsequently testified that she also considered “technical trade-offs,” that is, the three advantages associated with JCSS’s proposal—incumbent personnel with the required current security clearances, incumbent personnel with the required training and certifications, and knowledge of BEP’s security systems—in her source selection decision. However, her testimony in this regard focused on the monetary value of these advantages, using an estimate in JCSS’s proposal (\$200,000 to \$400,000) of certain costs that would be avoided by award to JCSS, including the costs of training and certification for new personnel, new security clearances, and learning curve inefficiencies. Tr. II at 11-17, 75-76. Her testimony did not show that she reasonably took into account JCSS’s non-monetary, “very compelling” advantages—associated with JCSS having an incumbent workforce of trained and certified incumbent personnel who have met the agency’s rigorous security requirements and are knowledgeable as to the “intimate details,” including vulnerabilities, of BEP’s security systems—which would appear to increase the likelihood of successful contract performance, especially at the beginning of the contract. In any case, since the SSD by its terms was based on the determination that the proposals were essentially technically equal, and we find that this determination is not reasonably supported by the record, we conclude that the resulting source selection was unreasonable and sustain the protest on this basis as well.

RECOMMENDATION

We recognize that in appropriate circumstances, we have stated that an offeror’s submission of a proposal containing material misrepresentations should disqualify the proposal from consideration for award. Patriot Contract Servs.—Advisory Opinion, B-294777.3, May 11, 2005, 2005 at 10; ACS Gov’t Servs., Inc., B 293014,

Jan. 20, 2004, 2004 CPD ¶ 18 at 11; see also Informatics, Inc., B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53 at 13. In determining what remedy to recommend, we consider such factors as the degree of negligence or intentionality associated with the offeror's misrepresentations, as well as the significance of the misrepresentation to the evaluation. Patriot Contract Servs.--Advisory Opinion, *supra*, at 9-10; ACS Gov't Servs., Inc., *supra*, at 10-11.

Here, we recommend that the agency reopen negotiations with offerors and request revised proposals. In this regard, we note that the content of offerors' oral discussions and oral presentations (which the solicitation indicated were part of the offerors' proposals) is uncertain because the agency did not record the sessions, and the evaluators subsequently discarded any notes they had made during the sessions. In view of the uncertainty here as to the information furnished by the offerors and relied upon in the source selection, we recommend that BEP require offerors to make new oral presentations or obtain further written submissions, so as to ensure that the basis for the source selection is adequately documented and available for review. eLYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 8-10 (recommendation that agency either conduct new oral presentations given that the evaluators were unable to recall the oral presentations with specificity, or obtain written submissions). If the evaluation of revised proposals results in a determination that an offer other than Quanta's represents the best value to the government, the agency should terminate Quanta's contract for convenience. We also recommend that JCSS be reimbursed its cost of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with 4 C.F.R. § 21.8(f)(1), the protester's certified claim for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel