

October 27, 1995

P.S. Protest No. 95-17

KELLY SERVICES, INC.

Solicitation No. 102590-94-A-0106

DIGEST

Protest against award of contract for temporary services is denied. Award on the basis of price was appropriate where offers were judged technically equivalent; protester has not demonstrated that its offer was underevaluated or that successful offeror's proposal was overevaluated.

DECISION

Kelly Services, Inc., protests the award of a contract for temporary services to Manpower International, Inc., contending that offers were improperly evaluated or that award was not made in accordance with the terms of the solicitation.

Solicitation 102590-94-A-0106 was issued May 16, 1994, by Services Purchasing at Postal Service headquarters, seeking proposals for a time and materials/labor hours contract for temporary services for a 24-month period, with two one-year options.

Section M.2, Contract Award and Proposal Evaluation, provided in part as follows:

a. Award will be made to the responsible offeror whose proposal offers the best value to the Postal Service, (i.e., a combination of price, price-related factors, and/or other factors). The primary areas to be used in determining which proposal offers the best value are listed below in descending order of importance:

Managerial Organization
Program Management
Company Experience
Resources & Commitments^[1]

¹ Elsewhere in the solicitation and the protest file, this factor is referred to as "Resource and Commitment" or similar variants. We use the original plural throughout.

Personnel Qualifications

Note: The Technical Evaluation areas noted above **Shall** be considered **More Important** than Cost/Price considerations.

b. Cost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.^[2]

An attachment to the solicitation discussed the contents of the proposals, which were to address compliance with sections 3 through 5 of the statement of work, and the evaluation factors.³

² Provision M.1 c. required the successful offeror to have an acceptable "Small, Minority-owned, and Woman-owned Subcontracting Plan."

³ That discussion may be summarized as follows:

Management Organization focussed on "the organization of this program in the context of [the offeror's] overall organization," showing "how and by whom the major Management tasks will be performed." The Program Manager's responsibility, authority, organizational relationship to other management and his control levels were to be defined.

Program Management centered exclusively on the program manager, as to "authority, accountability[,] and assigned responsibilities"; "name, . . . [q]ualifications, background[,] and experience"; "relationship to officials [rendering] decisions . . . outside [his] authority"; and "the plan for management during the Program Manager's absence."

Company Experience involved previous performance of "programs of a similar nature and complexity," a financial statement, references, and "a detailed functional and administrative organization chart from the Program Manager up to the Chief Executive . . ."

Resources and Commitments sought information on the physical, organization, and personnel resources available and on their proposed use, the offeror's plan for managing requirements, "all facets of program planning and control, and procedures for management and technical reviews and for reporting." A Current Temporary Replacement Plan was to demonstrate the offeror's ability "to fill all existing temporary positions[] which have been filled previously by another temporary service firm within 60 days" from the contract start date, and the contractor was to address its expertise to develop an on-site transition plan as required by the statement of work.

Personnel Qualifications required the provision of resumes for on-site contractor representatives who were to administer the program, demonstrating their ability to orient temporaries to the Postal Service and their work areas, and to train them on new skills and to cross-train them.

Section J.4 of the solicitation also dealt with the contents of the proposals in a provision which described what the proposals were to address in seven subparagraphs headed Resumes, Efforts, Subcontracting, Ability to Perform, Organization, Related Experience, and Related Facilities.

Although services might be required at locations throughout the United States, the solicitation provided that price proposals would be evaluated only for the Washington, DC, area, where the majority of the work was expected to be performed, and that rates for other areas would be negotiated with the successful offeror.

Proposals were received in July, 1994. Following separate evaluations of the technical and price proposals, a competitive range determination was made, and, in January, 1995, written discussions were conducted with the firms in the competitive range. Best and final offers were received February 27, and award was made to Manpower on May 5. Kelly's timely protest was received May 22.

Kelly, the incumbent under the Postal Service's previous contract for temporary services, refers in its protest to its debriefing, in which it was advised that the proposals of Kelly and Manpower were determined to be "technically equivalent," and that award was made to Manpower on the basis of its lower price.⁴ Kelly also asserts that it was told that its proposal had had "no perceived technical deficiencies."

According to the protest, the evaluation of the proposals was unreasonable because Manpower's proposal could not rationally have been found equivalent to Kelly's proposal, "given Kelly's superior prior performance and proven management organization capability, and Manpower's lack of experience and a management organization which is dependent upon a branch delivery system, 45 percent of which is franchised." Kelly notes its receipt of two previous Quality Supplier Awards from the Postal Service, the first in 1993 for service performed in 1992, and the second on May 15, 1995, for service performed under its most recent contract, and questions Manpower's ability to match Kelly's Postal Service experience and its "corporate delivery capability resulting from its management structure."

Kelly further contends that Manpower could have matched Kelly's evaluation only as a result of improper technical coaching in the course of negotiations, and that the lack of any discussions with Kelly concerning its technical evaluation demonstrates either that Kelly had a perfect technical score or the Postal Service failed to conduct meaningful discussions with it.

With respect to the specifics of Manpower's proposal, Kelly asserts that Manpower's franchised corporate structure means that it could not have scored as highly as Kelly with respect to the management organization factor, since "Manpower cannot guarantee that its franchisees even work for certain customers, adhere to agreed upon rates, or deliver a high

⁴ In the debriefing, the contracting officer declined to disclose either Manpower's or Kelly's evaluation scores, a decision justified in the course of this protest on the basis that Procurement administrative instruction OP-4-0004 precludes the release of that information without the approval of the Director, Office of Procurement, approval which was withheld in this case. The administrative instruction is inconsistent with Procurement Manual (PM) 4.2.5 j.3., which provides that in debriefings "[t]he identity and relative ranking of the offerors, the overall evaluation scores if proposals were scored, and the prices proposed may be disclosed if requested." The Procurement Manual "is applicable to all Postal Service purchasing activities," PM 1.1.1 b. The better practice, consistent with PM 4.2.5 j.1's admonition that "[p]rompt and forthright debriefings tend to reduce protests," is to provide such information routinely in the course of debriefings.

level of quality throughout the United States." Kelly also contends that Manpower's "extremely low price"⁵ impacts its ability to perform in accordance with its technical proposal.

Kelly also asserts that by awarding on the basis of price, the contracting officer improperly altered the announced solicitation criteria and failed to perform an adequate cost/technical tradeoff of Manpower's proposal, and that he failed to hold a meaningful debriefing of Kelly.

The contracting officer's statement describes the Kelly and Manpower Best and Final Offers (BAFOs) as "technically equivalent," and explains that award was made to Manpower because it had the lowest price in the competitive range. The source selection memorandum which accompanied the statement explains that the offers were given adjective ratings for each of the six evaluation factors,⁶ and that weights were assigned to each of the factors "based on the importance of that section of the proposal in the overall evaluation."⁷

According to the source selection memorandum, the two offers received the same adjective scores for each of the five evaluation factors, as follows:

Managerial Organization	Exceptional
Program Management	Acceptable
Company Experience	Exceptional
Resources and Commitments	Acceptable
Personnel Qualifications	Acceptable

Each offer was given the overall score of Exceptional.

The contracting officer asserts that Kelly's contention that "no other offeror can equal it

⁵ Manpower's evaluated price was less than six percent lower than Kelly's price.

⁶ These were Exceptional, Acceptable, Marginal, and Unacceptable.

⁷ The weights assigned to the factors were as follows:

Managerial Organization	30%
Program Management	20%
Company Experience	20%
Resources and Commitments	15%
Personnel Qualifications	15%

This weighting does not precisely conform to the evaluation scheme set out in the solicitation. The statement that evaluation factors are listed "in descending order of importance" does not contemplate that adjacent factors may share the same weight.

The protest file also contains a spreadsheet showing how numerical scores for the initial proposals were calculated. Factors rated Exceptional were scored as 4 and factors rated as Acceptable were scored as 3.

because it performed well as the incumbent" is irrational. He states that both Kelly and Manpower are large, experienced suppliers of technical services and that Kelly's proposal offered no technical superiority over Manpower's. With respect to Kelly's other concerns, he asserts that the record contains no evidence of improper coaching of Manpower, that the absence of deficiencies in a proposal does not necessarily imply a perfect technical score, and notes that discussion of portions of proposals which receive less than a perfect score is not required. The contracting officer does not view Manpower's franchise structure as a weakness, nor does he believe that Manpower's price is so low as to endanger its ability to perform. He denies that the evaluation criteria were altered, contending instead that the award was properly made on the basis of price when the technical proposals were found to be equal.

Manpower submitted comments supporting the contracting officer's position with respect to the protest.

The protester and the contracting officer made rebuttal and surrebuttal submissions in which each refined and reinforced the positions initially stated. In its protest conference and in its post-conference submission, the protester raised additional points based on a redacted copy of Kelly's portion of the narrative consensus evaluation memorandum (the "consensus memorandum") to demonstrate that its evaluation was "unjustified, inconsistent, and unreasonable" in various respects:

-- The consensus memorandum indicates that improper subfactors were taken into account with respect to the evaluation factors. Specifically, the narrative under the Management Organization heading made reference to Kelly's minority and small business subcontracting plan, its experience, and its compliance with the Service Contract Act,⁸ all matters unrelated to the Management Organization factor.

-- Kelly was given different scores on the same subfactors when those subfactors were applied to different primary factors,⁹ and the narrative description fails to justify the different evaluations given the same portions of Kelly's proposal with respect to different evaluation factors.

-- The evaluation criteria were ignored or misapplied, and the technical evaluation penalized Kelly for its incumbent status because the consensus memorandum stated that Kelly's temporary replacement plan was irrelevant since Kelly was the incumbent. Kelly received less than an Exceptional rating for the factor, Resources and

⁸ Clause G.1 of the solicitation provided that the contract would be subject to the Service Contract Act.

⁹ Kelly notes, for example, that Management Organization and Program Management factors each included inquiries into the program manager's authority and relationship to company management, that the Company Experience and Personnel Qualifications factors each included information about the offeror's or its personnel's prior experience in the same areas, and that Management Organization and Resources and Commitments each involved the evaluation of the offeror's management plan. As noted, Kelly received different scores for Management Organization and Program Management, Company Experience and Personnel Qualifications, and Management Organization and Resources and Commitments.

Commitments, to which the replacement plan related, because its plan was not considered.

-- Kelly was not given appropriate credit for changes in its proposal in the course of the written discussions, in which it made substitutions for individuals no longer available. It was inconsistent for the evaluators to afford Kelly only an Acceptable rating for the Personnel Qualifications factor when the consensus memorandum described the replacements as "well qualified."

-- While Kelly does not object to its overall score of Exceptional, the report fails to justify that score.¹⁰

-- The Postal Service failed to hold meaningful discussions with Kelly because it afforded Manpower the opportunity to improve its score while denying Kelly that opportunity; the Postal Service was obliged to discuss with Kelly the areas in which its proposal was scored less than Exceptional, so that Kelly could improve its scores.

Kelly's additional comments further address the franchised nature of Manpower's organization, citing a portion of a 1968 interoffice memorandum from Manpower to its franchisees, submitted by Manpower with its comments in the course of the protest, which notes the franchisees' obligations to "handle, in an efficient manner, all reasonable requests for temporary help services from customers referred by the Home Office or other Manpower Offices," but which recites the understanding that "such [a] referral order may be rejected if it is not reasonable as to possibility of reporting procedure, fulfillment, *pricing* and profitability." (Emphasis added.) Pricing is particularly relevant to Manpower's ability to perform given its lower-priced structure. Manpower's low pricing structure will cause its franchisees not to honor its orders, and its franchise structure "will add several layers of uncertainty and contingency" to its management of the contract. Accordingly, concludes Kelly, Manpower could not rationally be evaluated as highly as Kelly.

The contracting officer was invited to comment on various aspects of Kelly's comments. His rebuttal makes the following points:

-- Kelly's various contentions which depend on the contents of the consensus memorandum are untimely, since the contents of that memorandum (but for its adjective ratings) was read to Kelly at its debriefing.

-- The technical evaluation properly identified the major strengths of Kelly's proposal, which had contained no major weaknesses, and the absence of deficiencies

¹⁰ Kelly analogizes to a grading system in which a student receives two A's and three C's, yet overall receives an A. Kelly acknowledges the weighted order of the scores, but contends, in the absence of an adequate explanation of the scoring, that it is as likely as not that its exceptional scores failed to outweigh its acceptable scores.

does not entitle an offeror to a perfect score. The subfactors¹¹ which Kelly contends were identical instead measured different aspects of the proposal, and the differing evaluations were appropriate.¹²

-- The various matters considered with respect to Kelly's management organization were appropriate for consideration there. With one possible exception,¹³ the topics which were evaluated were items for which offerors were told to submit information, and which constituted "management issues" appropriate for consideration there.

-- Kelly was not downgraded for its incumbency with respect to its temporary replacement plan; the fact that it need not implement such a plan was viewed as a strength by the evaluators.

-- The substitution of personnel in the course of discussions did not affect Kelly's score. That the personnel were considered well qualified did not require an exceptional rating for the factor, which included matters in addition to personnel ratings.

-- Kelly's contention that its overall ranking is unsupported is based on an irrational premise;¹⁴ in any event, the equality of its and Manpower's ratings show that the two offerors "were clearly treated equally."

-- In the conduct of discussions, the Postal Service was obliged only to discuss deficiencies in Kelly's proposal; it was not required to discuss every area in which the offeror received less than a perfect score. As discussed above, Kelly was asked to address the need to substitute personnel, and Kelly's response, while satisfactory, did not warrant revision of its score.

With respect to the issue of Manpower's franchise structure, the contracting officer notes that the solicitation expressed no preference for either a franchise or a non-franchise

¹¹ The contracting officer contends that Kelly has inappropriately characterized as subfactors elements which are in actuality portions of the list attached to the solicitation describing matters to be addressed with respect to the solicitation's five evaluation factors. (See footnote 3, *supra*.)

¹² Thus, while there was some overlap between Management Organization and Program Management with respect to consideration of the program manager, the former involved consideration of additional management matters beyond that involving program management. Company Experience and Personnel Qualifications differed in considering company experience on the one hand and the individual experience of personnel proposed for this contract on the other. Similar distinctions were made between Management Organization and Resources and Commitments.

¹³ While offerors may not have been on notice that their Service Contract Act compliance would be evaluated, the evaluation did not prejudice Kelly since it received the highest possible score for the factor for which the evaluation occurred.

¹⁴ He faults Kelly's assumption that an Acceptable score was equivalent to a "C," noting that it could as readily have been a "B."

organizational structure. Manpower's proposal detailed operating procedures which were the same for its franchisees as for its owned branches, and included evidence of its ability to serve large national accounts with numerous sites by the use of its franchisees. The contracting officer relates a Manpower vice-president's account that only once in sixteen years had a franchisee declined to serve a customer at Manpower's request, and in that situation the customer's needs were met by an alternative Manpower procedure intended to deal with that situation. He also recites Manpower's assurance that its prices will not affect its franchisees' willingness to perform since the franchisees are consulted in the course of the development of its price proposal.

Kelly submitted further comments on the contracting officer's response. With respect to the contracting officer's contention that some of its assertions were untimely raised, Kelly asserts that they were timely because they were encompassed by the original grounds of its protest and timely presented at Kelly's conference with the General Counsel. Further, it attributes its delay to the contracting officer's tardiness in furnishing the consensus memorandum, noting that it could not discern the irrationality of the narrative comments prior to the disclosure of the scores for the individual evaluation factors.

Kelly contends that the technical evaluation remains unjustified because its supporting rationale was inadequate, making the following points:

- The contracting officer's distinctions between the scoring of the identical subfactors is a *post hoc* rationalization not evident from the evaluation scheme set forth in the solicitation or supported by the consensus memorandum.
- The contracting officer misses the point of Kelly's objection to the inconsistent scoring of the identical aspects of its proposal. Kelly is not arguing about its scores, but rather about the lack of evidence of a substantive evaluation justifying the scores.
- The contracting officer's explanation that the solicitation required offerors to provide information on various topics does not justify the consideration of that information with respect to evaluation factors to which it was unrelated.
- The consensus memorandum clearly indicates, contrary to the contracting officer's unsupported conclusory statements, that Kelly was denied credit for its incumbency.
- The contracting officer's response to the consideration of Kelly's discussion response fails to document that the award decision was not arbitrary.

With respect to the evaluation of Manpower, Kelly makes the following points:

- The contracting officer fails to understand the detrimental effect of Manpower's "highly franchised" structure given its "extremely low price."
- Manpower's minority subcontractor, Staffing Trends, was "a wholly owned subsidiary" of Manpower, and Manpower's proposal may improperly have been

given greater weight because of its ownership of the subcontractor.¹⁵

The contracting officer responded by adopting comments submitted by Manpower's counsel making the following points:

-- While award decisions must be adequately documented, the documentation need not necessarily be disclosed to a protester; it is sufficient for the documentation to be available to the General Counsel for review.

-- The requirement that protest issues be timely raised is jurisdictional and is not affected by the General Counsel's discretion to accept late-submitted comments.

-- Kelly's contention that Manpower's minority subcontractor was wholly owned by Manpower is incorrect (Manpower held a minority stake in it). The subcontractor did not cease operation as of July 21; the correct date is August 1. The decision to wind up the subcontractor was that of its majority owners, and Manpower was unaware of the decision prior to the contract award.

DISCUSSION

We restate our well-settled standard for the review of proposal evaluations:

It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal *de novo*, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. We will not overturn the determinations of a contracting officer unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. Similarly, we will not substitute our views for the considered judgment of technical personnel upon which such a determination is premised in the absence of fraud, prejudice, or arbitrary and capricious action.

The protester bears the burden of proving its case affirmatively. This burden must take into account the "presumption of correctness" which accompanies the statements of the contracting officer, and if such allegations do not overcome the presumption of correctness, we will not overturn the contracting officer's position.

Timeplex Federal Systems, Inc., Sprint Communications Company, P.S. Protest Nos. 93-22; 93-24, February 2, 1994. (Citations omitted.)

While we find various inconsistencies and *non sequiturs* in the manner in which the offers were evaluated and in the contracting officer's explanation of that evaluation, we are unable to conclude that the evaluation, as a whole, was so flawed as to require that the protest be

¹⁵ Kelly notes its understanding that the subcontractor was no longer in operation as of July 21, a month after performance commenced.

sustained. Our review of the protest file, including the proposals of Manpower and Kelly, supports the conclusion that the proposals were appropriately viewed as technically equivalent. Accordingly, given the similar ranking of the proposals, award on the basis of Manpower's lower price was consistent with the solicitation's stated evaluation scheme.¹⁶

As discussed above, both proposals were rated Exceptional, and each received identical scores on the individual factors.¹⁷ We find no inconsistency in the assignment of Exceptional ratings to both proposals even though each received more Acceptable than Exceptional scores on individual factors. As noted at footnote 7, *supra*, individual factors were weighted and numerical points were assigned to the adjective scores. The resulting score, 3.5, falls halfway between Acceptable and Exceptional, and could reasonably be rounded upward to the higher adjective score.¹⁸ To expand the contracting officer's analogy of grades, the offers were rounded up to an A, rather than down to a B.

The fact that Kelly received the highest possible overall technical score diminishes the significance of its concerns that it was not afforded full credit for certain factors, or that the discussions were insufficient to allow it to improve individual factor scores, since its overall technical score would not have increased.¹⁹

Nonetheless, we have considered Kelly's various contentions.²⁰ With respect to the

¹⁶ Where selection officials reasonably regard technical proposals as being essentially equal, cost may become the determinative factor in making an award, even where the RFP evaluation scheme assigns cost less importance than technical factors.

Timeplex Federal Systems, Inc., supra., citing Transportation Research Corporation, Comp. Gen. Dec. B-231914, September 27, 1988, 88-2 CPD 290.

¹⁷ Of course, contrary to the contracting officer's suggestion, the identity of the scores cannot be evidence that the offers were equally treated, since unequal treatment of unequal proposals might occasion a similar result.

¹⁸ The failure to assign properly descending weights to the second and third and the fourth and fifth evaluation factors does not necessarily affect this result. The offers receive the same score of 3.5 if the weights of the five factors are revised in the sequence 30%, 25%, 20%, 15% and 10% to conform to the solicitation requirement.

¹⁹ The use of adjective ratings was consistent with the solicitation even though their use, rather than the use of numerical scores, increased the likelihood that proposals would be found technically equivalent. Both adjective and numerical scores are useful "only as guides to intelligent decision making, and are not generally controlling for award." *Ferguson-Williams, Inc., Comp. Gen. Dec. B-231827, 88-2 CPD 344, October 12, 1988* (denying protest that an adjective rating scheme produced an artificial equality in the rating of technical proposals where review failed to support the inference that it prevented the contracting officer from gaining a clear understanding of the merits of the proposals).

²⁰ The contracting officer's concerns about the timeliness with which some of Kelly's issues were raised may be quickly addressed. We agree with Kelly that the specific concerns raised about the evaluation of its proposal in its subsequent comments were consistent with its initial protest. We note, however, that Kelly's contention, first raised in its final submission, that Manpower may have received undeserved credit by reason of its relationship to its minority subcontractor, is clearly untimely as unrelated to Kelly's

improper consideration of elements which the solicitation did not identify under the Management Organization factor, the contracting officer's suggestion that offerors were not harmed by their consideration because they involved subjects on which the solicitation required submissions is not satisfactory. "While procurement officials have broad latitude in determining the applicable evaluation factors, the evaluation and award factors listed in the solicitation must fairly advise prospective offerors of the basis on which their offers will be considered for award." *Dawson Construction Co., Inc.*, P.S. Protest No. 91-47, September 25, 1991, citing *International Technology Corporation*, P.S. Protest No. 89-21, May 8, 1989.²¹

The contracting officer appears to concede as much, since he agrees that one element, the offerors' Service Contract Act compliance, was not properly for consideration because it was not disclosed. That concession was correct,²² but it should have extended to the consideration of subcontracting plans, a matter similarly not identified as relevant to the technical scoring. Even where an element, such as past performance, is identified as relevant to the evaluation, it is important to consider it under the factor to which it is related in the solicitation, since where the element is included in the evaluation can affect the overall evaluation.²³

However, it does not appear that Kelly was harmed by the inclusion of these items in the consideration of this factor, since it received an Exceptional score for it and Kelly is not contending that it should have been given additional credit elsewhere for those items.²⁴

original objections to the evaluation of Manpower's proposal.

²¹ Cf. PM 4.2.4 a., which provides, in part, that "[p]roposals [in competitive negotiated procurements] must be evaluated in accordance with . . . the evaluation factors specified in the solicitation," PM 4.2.5 b.1., which provides that a "contract will be awarded to the offeror whose proposal offers the best value to the Postal Service, considering the price, price-related and other evaluation factors identified in the solicitation," and PM 2.1.7 c.7, which provides that, "[a]ll evaluation factors must be clearly stated . . . in enough detail to provide offerors with a reasonable opportunity to understand the evaluation method."

²² Cf. *Rickenbacker Port Authority; The Turner Corporation*, P.S. Protest No. 91-78, February 10, 1992 (deduction of point for buildings' lack of "high profile" unreasonable where solicitation failed to identify such a requirement or alert offerors to its presence).

That concession obviates discussion of Kelly's contention that Manpower's discussions were improperly conducted. The only point raised in the course of those discussions involved Manpower's implementation of the Service Contract Act. Without consideration of that item, Manpower's initial score for Management Organization would have been the same as its eventual score.

²³ Where, as here, evaluation factors are ranked in declining order, it is relevant for offerors to know under which factor a specific element is to be scored, since the element's criticality may depend on the weight of the factor with which it is associated. Even with respect to factors of equal weight, where an element is considered may affect an offeror's overall scoring. (For example, an element on which an offeror is scored Exceptional would be of more value to it with respect to a factor on which its score was otherwise low, and of less value with respect to a factor on which it already had been highly ranked.)

²⁴ As discussed, two of the three items were not appropriate elements of the evaluation. Kelly received a full score for the third item, past performance, under the factor where its consideration was appropriate.

Kelly has not demonstrated persuasively that its proposal was scored inconsistently with respect to differing factors. While there was significant overlap between the elements of the different evaluation factors, there was no obvious inconsistency in the scoring of the individual factors. As to each factor of which Kelly complains, there were sufficient additional elements addressed to account for the different scores received.

Nor has Kelly established that it was denied credit for its temporary replacement plan because of its incumbency. Since it was the incumbent, the situation which the plan was to address--the need to fill the positions which the previous contractor had been supplying--did not apply to Kelly. That the consensus memorandum acknowledged that fact does not suggest that its score with respect to the Resources and Commitments factor was reduced as a result.

Kelly's contention that it should have been afforded more credit on the Personnel Qualifications factor appears to involve two different issues. On the one hand, it can be understood as complaining that if it was originally scored as Acceptable with respect to that factor despite the unavailability of the individuals whose resumes it supplied, it should have been scored higher once it furnished the resumes of individuals who were available. On the other hand, it also complains that the identification of personnel whom the evaluators view as "well qualified" by itself warrants a higher score.

The first contention has merit, but it leads to the conclusion not that Kelly's revised proposal was scored too low, but that its initial proposal was scored too high. A proposal containing the resumes of individuals no longer available to the offeror obviously has a weakness or deficiency, a conclusion consistent with the fact that the matter was raised in discussions, and could hardly be seen as Acceptable in that regard. Once the weakness was corrected, however, it was not inconsistent with the evaluation scheme to review the qualifications of the individuals offered, and to consider them Acceptable. That they were said to be well qualified did not require a higher score.

Kelly's contention that Manpower's proposal was evaluated too highly warrants attention because any reduction in its evaluation would have denied it an overall score of Exceptional, apparently precluding award on the basis of price. (*But c.f. Renaissance Development Corporation*, Comp. Gen. Dec. B-260947, August 7, 1995, 95-2 CPD 58. Although different adjectival ratings "could superficially suggest a significant difference between proposals," source selection officials could reasonably determine that the difference was slight. Award to slightly lower-rated, significantly lower-cost proposal was sustained under a solicitation providing that quality was more important than cost when the advantages of the higher-rated proposal were determined not to outweigh the awardee's highly regarded lower-cost proposal.)

Noting its past satisfactory performance (which the contracting officer has acknowledged), Kelly asserts that Manpower could not properly have been scored as highly given the nature of its franchised organization, which Kelly views as necessarily less satisfactory than its wholly-owned organization. Its conclusions in that regard, however, are in the nature of assumptions and speculation which are insufficient to overcome the contrary conclusions of the contracting officer and the technical evaluators. The record reflects that Manpower is a

large, successful international supplier of temporary services. That it has achieved this status through the use of a franchised structure belies its competitor's suggestions that such a structure necessarily is inferior to the alternatives. The contracting officer's evaluation of Manpower was neither arbitrary nor capricious.

Kelly's assertion that Manpower's excessively low price necessarily impacts its ability to perform is also unavailing. "Our standard for review of determinations of price reasonableness is similar to that of responsibility determinations. They will not be overturned unless clearly unreasonable or there is a showing of bad faith or fraud." *Monarch Marking Systems*, P.S. Protest No. 91-49, January 14, 1992.²⁵ No such showing has been made.

The protest is denied.

William J. Jones
Senior Counsel
Contract Protests and Policies

²⁵ *Accord, SAIC Computer Systems*, Comp. Gen. Dec. B-258431.2, March 13, 1995, 95-1 CPD 156 (where a fixed-price contract is contemplated, and there are no stated criteria for cost/price realism or evaluation of an offeror's understanding, a claim of an offeror's unreasonably low price is not a basis for protest, since price reasonableness is an element of an offeror's responsibility, not reviewable absent a showing of fraud or bad faith).