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**Comptroller General
of the United States**

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

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Decision

Matter of: ITS Services, Inc.

File: B-298941; B-298941.2

Date: January 10, 2007

William L. Walsh, Jr. Esq., J Scott Hommer, Esq., Keir X. Bancroft, Esq., and Peter A. Riesen, Esq., Venable LLP, for the protester.
Paul B. Oman, Esq., Department of Homeland Security, for the agency.
Paula A. Williams, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the issuance of a task order to a higher technically rated, higher-priced vendor is denied where the solicitation provided that technical merit was more important than price and where the agency record provides a reasonable basis for the award decision.

DECISION

ITS Services, Inc., a subsidiary of Apogen Technologies, Inc. (hereinafter, referred to as "Apogen") protests the issuance of a task order to Bart and Associates, Inc. (Bart) under request for quotations (RFQ) No. HSBP10-06-Q-0724, issued by the Department of Homeland Security, Customs and Border Protection (CBP), for technical and engineering services to support CBP's Office of Information and Technology (OIT). Apogen, which submitted a lower-priced quotation, protests the evaluation of quotations and the resulting selection decision.

We deny the protest.

BACKGROUND

The OIT is responsible for the design, development, programming, testing, implementation and maintenance of CBP's automated information systems. OIT's Program Integration Division provides architecture and engineering guidance and services to CBP. The Architecture & Engineering Branch (AEB), one of four Program Integration Division branches, provides architecture, network and systems

engineering, and data management services, in collaboration with the program offices, to develop and implement OIT products.

The Integration Services Branch (ISB) is one of several teams in the AEB. The ISB is responsible for identifying and evaluating new infrastructure and information technology (IT) solutions for application to the CBP automated systems, and performs application testing with regard to leading-edge innovative technologies that reduce development time and maintenance cost of IT to facilitate the execution of the CBP mission. ISB manages and maintains the Integration Laboratory (ILab) and the Open Systems Laboratory (OSL), which are mock versions of the CBP network infrastructure. RFQ, Statement of Work (SOW), at 1 (July 18, 2006). The procurement here is to acquire technical and support services for ISB to assist in modernizing and/or improving the CBP enterprise architecture, and to operate and maintain an engineering environment, that is, laboratories and necessary equipment.¹ RFQ, SOW, at 2-3 (July 18, 2006).

With regard to contract performance, the SOW set forth specific tasks to be performed, including:

Task 1 – Operate and maintain OSL and ILab.

Under this task, the contractor shall provide a combination of highly skilled technical and administrative personnel that shall operate synergistically to operate and maintain the CBP's OSL and ILab.

Task 2 – Conduct IT technology research and studies.

Under this task, the contractor shall provide a combination of highly skilled technical and administrative personnel that shall operate synergistically to conduct required IT technology research and studies.

RFQ, SOW, at 3 (July 18, 2006).

In June 2006, the CBP issued the RFQ to vendors holding General Services Administration Federal Supply Schedule (FSS) contracts for IT services. The RFQ contemplated issuance of a labor-hour task order for a base-year period and two 1-year option periods, and provided that the task order would be issued on the basis of the quotation representing the best value to the government.

¹ The SOW included a separate listing of all existing operating systems, software products and hardware products to provide guidance as to which products and systems the successful vendor would be modernizing and maintaining. RFQ, SOW, app. A (July 18, 2006).

The solicitation established the following factors to be considered in determining best value:

I. Technical Factors

A. Technical Capabilities & Management Approach

1. Understanding of the work, including thoroughness shown in understanding the objectives of the SOW and specific tasks, and planned execution of the project.
2. Evidence of specific methods and techniques for completing each discrete task, to include such items as quality assurance, and customer service.

B. Organizational Experience

1. Evidence the organization has current capabilities for assuring performance of this requirement. Evidence of supporting subcontractors and business partners will be considered.²

II. Past Performance Factor

A. Past Performance

1. The organization's specific past performance on prior similar efforts specified within the SOW.³

III. Price⁴

RFQ, Letter from CBP to Prospective Vendors, at 3-4 (June 27, 2006).

² The RFQ specified that the vendor's quotation should describe the vendor's corporate capabilities and history, to demonstrate that both the vendor's organization and proposed key personnel can successfully meet the requirements of the SOW. In addition, quotations were required to include a staffing plan, resumes for key personnel, and a description of the vendor's current personnel resources for this requirement. RFQ, Letter from CBP to Prospective Vendors, at 3 (June 27, 2006).

³ In order to evaluate quotations under the past performance factor, the RFQ required vendors to identify three contracts/task orders under which the firm has provided relevant services within the past 3 years and which demonstrate the success of the vendor's technical approach with relevant past performance. RFQ, Letter from CBP to Prospective Vendors, at 4 (June 27, 2006).

⁴ With regard to price, vendors were directed to submit quotations on a labor hour basis, detailing the number of labor hours per labor category. RFQ, SOW, at 4 (July 18, 2006).

Vendors were informed that the technical and past performance factors, when combined, were “significantly more important” than price. Id.

Apogen and Bart were among 14 vendors that submitted quotations in response to the RFQ. A technical evaluation panel (TEP) evaluated quotations by identifying strengths and weaknesses under the technical and past performance factors.⁵ The consensus evaluation results for Bart’s and Apogen’s quotations were⁶:

		Apogen	Bart
Technical		[DELETED]	[DELETED]
Past Performance		[DELETED]	[DELETED]
Price	Base	[DELETED]	[DELETED]
	Opt 1	[DELETED]	[DELETED]
	Opt 2	[DELETED]	[DELETED]

AR exh. 19, TEP Memorandum, at 4; exh. 20, Business Negotiation Memorandum, at 6.

⁵ The agency’s evaluation plan provided that the TEP would assign adjectival ratings of either “outstanding,” “highly satisfactory,” “satisfactory,” “marginal” and “unsatisfactory” under the non-price factors. AR exh.4, Evaluation Plan, at 5. A rating of “outstanding” was assigned to a quotation that:

significantly exceeds objectives (or expectations) in ways that provide tangible benefits to the Government or meets objectives (or expectations) and contains one or more enhancing feature(s) that significantly benefit the Government. Weaknesses, if any, are extremely minor and are offset by the enhancing feature(s) and/or other strengths.

Similarly, a rating of “highly satisfactory” was assigned to a quotation that:

exceeds objectives (or expectations) in ways that benefit the Government or meets objectives (or expectations) and contains at least one enhancing feature that provides a benefit to the Government. Weaknesses are minor and may be offset by the enhancing feature or other strengths.

Id.

⁶ The agency reports that a competitive range was not established because the contracting officer (CO), who served as the source selection official, determined that discussions were unnecessary. Contracting Officer Statement (COS) at 3. The other vendors’ submissions, and the agency’s evaluation of those submissions, are not relevant to resolution of Apogen’s protest; accordingly they are not discussed.

As shown above, [DELETED] under the technical evaluation factor. In evaluating Apogen's quotation under this factor, the TEP identified [DELETED].⁷ Under the past performance factor, the TEP identified [DELETED]. As to price, [DELETED]. AR exh. 18, TEP Consensus Evaluation, at 1. The evaluators summarized their findings in its report to the CO, as follows:

[DELETED]

AR exh. 19, TEP Memorandum, at 2.

In evaluating Bart's quotation under the technical evaluation factor, the TEP identified [DELETED].⁸ With regard to past performance, the TEP identified [DELETED]. AR exh. 17, TEP Consensus Evaluation, at 1-2. Overall, the evaluated findings with regard to Bart's quotation were summarized as:

[DELETED]⁹

AR exh. 19, TEP Memorandum, at 1.

Based on these evaluation findings, the CO determined that Bart's [DELETED] quotation represented the best value to the government. In reaching this conclusion, the CO found that the benefits associated with Bart's solution, specifically including Bart's partnership with [DELETED] (which, as noted above, the SOW identified as the manufacturer of [DELETED] of CBP's equipment), justified [DELETED]. Subsequently, the task order was issued to Bart on the basis of its initial quotation. COS at 3-4. This protest followed.

DISCUSSION

Although Apogen raises various issues regarding the agency's evaluation of vendors' quotations, as well as the resulting source selection decision, its protest submissions focus on the assertion that Bart was improperly given positive evaluation credit for its partnership with [DELETED]—that is, what the agency refers to as “reach back” capability. Apogen maintains that the agency's consideration of, and reliance on, Bart's “reach back” capability constituted application of an unstated evaluation factor. We disagree.

⁷ [DELETED]. AR exh. 18, TEP Consensus Evaluation, at 1.

⁸ [DELETED]. AR exh. 17, TEP Consensus Evaluation, at 1-2.

⁹ As noted above, the solicitation listed all existing operating systems, software precuts and hardware that the successful vendor will be required to maintain. RFQ SOW, app. A (July 18, 2006).

When an agency evaluation is challenged, we will review the agency's actions to ensure that they are reasonable and consistent with the solicitation's stated evaluation factors, as well as with applicable procurement laws and regulations; a protester's mere disagreement with the agency's judgment does not establish that the agency acted unreasonably. Worldwide Language Res., Inc., B-297210 *et al.*, Nov. 28, 2005, 2005 CPD ¶ 211 at 3; Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. An agency properly may take into account matters that are encompassed by a stated evaluation factor. See STEM Int'l, Inc., B-295471, Jan. 24, 2005, 2005 CPD ¶ 19 at 3; North Am. Military Housing, LLC, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5.

Here, the solicitation expressly advised vendors that, in evaluating quotations under the technical evaluation factors, the agency would consider a vendor's understanding of the work and further advised vendors that "[e]vidence of supporting subcontractors and business partners will be considered." RFQ, Letter from CBP to Prospective Vendors, at 3 (June 27, 2006). Accordingly, Bart's partnership with [DELETED], a firm listed in the SOW as a manufacturer of [DELETED] portion of the CBP equipment to be maintained, is clearly relevant to Bart's understanding of the work to be performed; as such, consideration of Bart's relationship with [DELETED] was clearly within the scope of the solicitation's stated evaluation criteria. Accordingly, we have no basis to question the agency's consideration of, and reliance on, the experience and availability of [DELETED] personnel in concluding that Bart's enhanced access to such personnel by virtue of its partnership with [DELETED] would provide added benefit to the agency, and we reject Apogen's assertion that consideration of that relationship was inappropriate.

Further, Apogen asserts that, even if consideration of Bart's relationship with [DELETED] was appropriate, it was unreasonable for the agency to conclude that it provided any meaningful benefit. We disagree. Here, the RFQ's requirements were primarily stated in terms of functional or performance requirements which permitted a vendor to propose its own unique approach. While the solicitation thus left it to the vendor to propose what it believed to be the best approach for satisfying the RFQ requirements, there was no guarantee that the agency would consider different approaches to be equally effective. Based on the tasks contemplated for performance under this task order, including maintenance of [DELETED] amount of equipment manufactured by [DELETED], the agency reasonably concluded that Bart's solution, including its relationship with [DELETED] was more advantageous to the government than that of Apogen, based on the agency's conclusion that Bart's personnel would be more knowledgeable regarding a significant portion of the work to be performed.¹⁰

¹⁰ Apogen complains it has [DELETED] which were not given comparable credit. AR exh. 16, Apogen's Quotation, at 5. However, Apogen does not persuasively explain
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Next, Apogen protests the agency's evaluation of quotations with regard to the past performance factor. In this regard, Apogen raises various arguments to support its view that its quotation should have received a more favorable past performance assessment, and that Bart's quotation should have received a less favorable assessment. We have reviewed Apogen's various contentions, along with the agency's evaluation record as discussed below, and find no basis to question the agency's evaluation.

The evaluation of past performance, including the agency's determination of the relevance and scope of the vendor's performance history to be considered, is a matter of agency discretion, which we will not question unless it is unreasonable or inconsistent with the solicitation criteria or with procurement statutes or regulations. National Beef Packing Co., B-296534, Sept. 1, 2005, 2005 CPD ¶ 168 at 4.

Here, in reaching its conclusion regarding the differences between the two quotations under the past performance factor, the TEP identified [DELETED]. Although the agency was able to obtain past performance information from only two of the three references provided by Bart,¹¹ each reference provided [DELETED]. For example, one reference noted that [DELETED]. The other reference provided [DELETED]. AR exh. 17, Technical & Past Performance Ratings for Bart, at 3-4. Thus, based on the information reported by references and the past performance summaries included in the vendor's quotation, the agency concluded that Bart's quotation merited [DELETED]. Id. at 1.

[DELETED]. AR exh. 18, Technical & Past Performance Ratings for Apogen, at 2. Another past performance reference stated that [DELETED]. Id. at 3. Accordingly, the agency rated Apogen's quotation as [DELETED] under the past performance evaluation factor. Based on our review of the entire record, including the information provided by both Bart's and Apogen's references, we find no basis to question the agency's past performance evaluation.

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how its [DELETED] would provide meaningful benefit to the government in a manner equal to or greater than the benefit provided by Bart's relationship with [DELETED].

¹¹ The contemporaneous record includes a past performance survey memorandum from a member of the agency's TEP and the contract specialist documenting their efforts to obtain information from the third reference. In this regard, there is no legal requirement that all past performance references be included in a valid past performance evaluation. See N. Am. Aerodynamics, Inc., B-285651, Sep. 15, 2000, 2000 CPD ¶ 160; Lynwood Mach. & Eng'g., Inc., B-285696, Sep. 18, 2000, 2001 CPD ¶ 113.

Finally, Apogen challenges the agency's best value determination, arguing that [DELETED]. Where, as here, the solicitation indicates that technical and past performance considerations factors were "significantly more important" than price in determining the best value to the government [DELETED]. See DDD Co., B-276708, July 16, 1997, 97-2 CPD ¶ 44 at 3. Consequently, although the CO recognized [DELETED], she determined that Bart's solution, including its partnership with [DELETED], was significantly more beneficial to the government. Our review of the record provides no basis to conclude that the agency's determination in this regard was unreasonable.

The protest is denied.¹²

Gary L. Kepplinger
General Counsel

¹² In pursuing this protest, Apogen has raised various collateral issues. We have considered all of Apogen's arguments and find no basis for sustaining its protest.