



**G A O**

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:** USGC Inc.

**File:** B-400184.2; B-400184.3; B-400184.4

**Date:** December 24, 2008

---

Kevin P. Connelly, Esq., Joshua C. Drewitz, Esq., and Michael B. Hubbard, Esq., Seyfarth Shaw LLP, for the protester.

Claude P. Goddard, Jr., Esq., Daniel J. Donohue, Esq., and Sarah M. Graves, Esq., Akerman Senterfitt Wickwire Gavin, for FedConsulting, Inc., an intervenor.

Timothy A. Chenault, Esq., Department of Homeland Security, for the agency.

Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Agency's exchanges with the vendors in a procurement conducted under the Federal Supply Schedule, and the evaluation of the vendor responses to those exchanges, were fair and equitable.

2. Agency's selection of lower-priced, highest technically rated quotation in a procurement conducted under the Federal Supply Schedule was reasonable, consistent with the stated evaluation criteria, and adequately documented.

---

### DECISION

USGC Inc., of Annapolis, Maryland, protests the award under request for quotations (RFQ) No. HSCG23-08-Q-MMZ079, issued by the United States Coast Guard of a blanket purchase agreement (BPA), as well as the initial task order under the BPA, to FedConsulting, Inc., of Leesburg, Virginia, for records management services at the National Maritime Center in Martinsburg, West Virginia.<sup>1</sup> USGC argues, among other things, that the agency failed to conduct meaningful discussions, failed to evaluate quotations in accordance with the RFQ's evaluation factors, failed to reasonably

---

<sup>1</sup> We recognize that this protest involves an RFQ; however, the agency, in a number of places in its procurement record, makes reference to the "award" of a "contract." We have retained the language used by the agency for consistency with the underlying record.

evaluate price, and failed to make or document a reasonable best value determination.<sup>2</sup>

We deny the protest.

The RFQ contemplated the establishment of a BPA--with five consecutive 1-year ordering periods--with a single vendor, and the issuance of the initial fixed-price task order under the successful vendor's Federal Supply Schedule (FSS) contract. The RFQ stated that the agency estimated, but did not guarantee, that 103,680 labor hours would be required in each 1-year ordering period and that 39,168 labor hours would be required for the initial task order. RFQ at 2. The RFQ further contemplated that each task order issued under the BPA would include a performance requirements summary that set forth the expected outcomes or objectives of the task order, the services required of the contractor to attain the objectives, a performance standard per outcome, and a plan for a reduction in payment in the event the contractor did not meet the performance standard. RFQ, Performance Work Statement, at 6.

The RFQ stated that the "acquisition is pursuant to [FAR] Part 8.4 'Federal Supply Schedules,'" and that the agency "intends to evaluate quotes and establish this BPA without discussions." RFQ at 1. Award was to be made on a best-value basis considering four evaluation factors, listed in descending order of importance: technical approach, technical capability, past performance, and price. RFQ at 1-2.

Five vendors submitted quotations in response to the RFQ, including USGC (the incumbent contractor) and FedConsulting. All vendors' quotations were rated at least acceptable under the technical approach and technical capability evaluation factors, and all vendors were rated superior with respect to past performance.<sup>3</sup> The initial ratings for USGC's and FedConsulting's quotations were as follows:

	USGC	FedConsulting
Technical Approach	Above Acceptable	Acceptable
Technical Capability	Acceptable	Above Acceptable
Past Performance	Superior	Superior

---

<sup>2</sup> The protester raises numerous arguments in its initial and two supplemental protests. We have considered all of the arguments and find them to be without merit. We address the most significant contentions in this decision.

<sup>3</sup> "Above acceptable" was the highest rating available for the technical approach and technical capability evaluation factors. "Superior" was the highest rating available for the past performance evaluation factor.

Agency Report (AR), Tab 42, Technical Evaluation Team (TET) Memorandum (Aug. 5, 2008), at 1. USGC's overall price was [REDACTED] and its initial task order price was \$1,130,823. FedConsulting's overall price was [REDACTED] and its initial task order price was \$864,801. AR, Tab 43, Contract Specialist Memorandum (Sept. 12, 2008), at 5.

After the initial technical evaluation, the agency sent clarification questions to each of the five vendors, stating that the "clarification request does not seek proposal changes and none are solicited." AR, Tab 44, Agency Request for Clarifications from USGC (Sept. 16, 2008); AR, Tab 45, Agency Request for Clarifications from FedConsulting (Sept. 16, 2008). Upon receipt of the responses to the clarification questions, the agency reevaluated the quotations and upgraded the technical approach rating for FedConsulting's quotation to above acceptable; no other quotation's ratings were changed. Award was made on September 25 to FedConsulting because its quotation was the highest technically rated and lowest-priced. This protest followed.

USGC contends that this procurement should be governed by Federal Acquisition Regulation (FAR) Part 15 and virtually all of its arguments are predicated upon this contention. As noted, vendors were informed that this procurement was being conducted as a competition under FAR Subpart 8.4 among selected FSS contractors. The procedures of FAR Part 15 governing contracting by negotiation do not govern competitive procurements under the FSS program. FAR § 8.404(a). Where an agency handles the selection of a vendor for an FSS order like a competition, and a protest is filed challenging the outcome of the competition, we will review the agency's actions to ensure that the evaluation and source selection were reasonable and consistent with the terms of the solicitation. Computer Prods., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4-5.

USGC argues that the agency failed to conduct meaningful discussions in accordance with FAR Part 15 because the exchanges the agency had with the vendors were assertedly discussions and the "clarification question" USGC received had insufficient specificity to allow USGC to address the agency's concerns.

There is no requirement in FAR Subpart 8.4 that an agency soliciting vendor responses prior to issuing an order under an FSS contract conduct discussions with vendors in accordance with FAR § 15.306 regarding the content of those responses. Avalon Integrated Servs. Corp., B-290185, July 1, 2002, 2002 CPD ¶ 118 at 4. However, exchanges that do occur with vendors in a FAR Subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable. See COMARK Fed. Sys., B- 278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 5. Our Office has looked to the standards in FAR Part 15, and the decisions interpreting that part, for guidance in determining whether exchanges with vendors under a FAR Subpart 8.4 procurement were fair and equitable, for example, in situations where the agency's approach in conducting exchanges with the vendors was like

FAR Part 15 discussions (in which case the discussions should be meaningful). See TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6.

Here, however, the RFQ did not indicate that the agency would conduct discussions like those described in FAR Part 15 and, in fact, the exchanges conducted with the vendors were not like FAR Part 15 discussions. As noted above, the RFQ invoked FAR Subpart 8.4 procedures, did not suggest that FAR Part 15 procedures would apply, and announced that discussions were not contemplated. See RFQ at 1. In addition, the exchanges involved the agency's request for certain limited "clarifications" from all of the vendors that submitted quotations regarding certain weaknesses and uncertainties that the TET found in the initial evaluation of those quotations. Although the responses to the clarification questions were considered in the technical evaluation and led to one vendor's quotation receiving a higher technical rating, the agency did not allow any vendor an opportunity to modify its quotation, specifying in its clarification requests that quotation revisions would not be accepted. Thus, because the approach to exchanges here were not like FAR Part 15 discussions, we do not believe that FAR Part 15, and the decisions interpreting that part, should be the applicable standard in deciding whether the exchanges in this FSS procurement were fair and equitable.

As described below, we find that the agency's exchanges with USGC and FedConsulting, and the agency's evaluation based upon the results of these exchanges, were fair and equitable under this FSS procurement.

With regard to USGC, the agency's initial technical evaluation rated USGC's quotation acceptable under the technical capability evaluation factor, with one notable weakness: USGC's unexplained changes in its proposed labor mix between the base year and the various option years. AR, Tab 43, Competitive Pre-Award Memorandum (Sept. 15, 2008), at 7. Because of this weakness, USGC was asked the following clarification question by the agency:

With respect to Section 4, Price Proposal/Quotation on pages 4-2 and 4-3, the only labor category that has the same number of labor hours allocated in each of the five years of the BPA is Project Manager. For other labor categories, explain why the labor mix changes from Ordering Period 1 (year 1) to Ordering Period 2 (year 2), from Ordering Period 2 (year 2) to Ordering Period 3 (year 3), and from Ordering Period 4 (year 4) to Ordering Period 5 (year 5).

AR, Tab 44, Agency Request for Clarifications from USGC (Sept. 16, 2008).

Upon review of USGC's clarification response, the agency found that while the response explained USGC's intent to promote quality personnel in order to retain qualified staff and USGC's plan to reduce labor hours for other staff in order to

accomplish promotions in the lower-level staff categories, USCG's response did not explain the impact of reducing the labor hours in the upper-level categories as it related to successful performance of the work and USCG's response introduced other uncertainties regarding the rationale for its labor mix. Accordingly, the agency did not change its acceptable rating for USCG's quotation for the technical capability evaluation factor. AR, Tab 54, TET Memorandum Concerning USGC's Clarification (Sept. 22, 2008), at 1-2; AR, Tab 59, Competitive Award Memorandum (Sept. 25, 2008), at 5-6. Based on our review, and contrary to USCG's assertion, we find the agency's evaluation was reasonable, as well as fair and equitable. While the clarification question did not specifically reference the technical capability evaluation factor, USCG was reasonably advised of, and provided an opportunity to respond to, the agency's concerns related to its proposed labor mix.<sup>4</sup>

The clarification questions sent to FedConsulting related to: (1) its "overall labor mix," considered to be a weakness because fewer hours were proposed than were estimated in the RFQ, and (2) a "disincentive schedule" included in FedConsulting's quotation, under which FedConsulting would forego profit from monthly invoices for tasks not meeting performance work statement requirements; FedConsulting proposed that its disincentive plan would begin after the first 90 days after the start date of the BPA to allow proper transition and start-up activities. AR, Tab 31, FedConsulting's Quotation, at 24-25; AR, Tab 43, Competitive Pre-Award Memorandum (Sept. 15, 2008), at 6.<sup>5</sup> The TET viewed the disincentive schedule as unique and beneficial, but felt that disincentives should be applied after 30 days from the BPA start date and, therefore, rated FedConsulting's quotation as acceptable under the technical approach evaluation factor. The agency also found that FedConsulting's proposal of fewer hours than indicated in the RFQ increased the risk of unsuccessful performance. AR, Tab 42, TET Memorandum (Aug. 5, 2008), at 2; AR, Tab 43, Competitive Pre-Award Memorandum (Sept. 15, 2008), at 6. Thus, the following clarification questions were sent to FedConsulting:

With respect to Section 1.2.9.1 on page 25, explain the difference between the 90 days referenced here for transition and start-up and the 30 days in the following section (1.3) on transition period.

---

<sup>4</sup> While USGC argues that the agency should have given more deference to USGC's clarification of its labor mix because USGC was the successful incumbent contractor, there is no legal basis for favoring a firm with presumptions on the basis of its incumbent status. See HealthStar VA, PLLC, B-299737, June 22, 2007, 2007 CPD ¶ 114 at 2.

<sup>5</sup> The RFQ did not request or require a disincentive plan to be proposed as part of the quotation.

With respect to pricing, the RFQ provided estimates of labor hours for each ordering period of the BPA (103,680 hours per year) and the initial task order (39,576). Your price quote is based on [REDACTED] labor hours per ordering period and [REDACTED] hours for the initial task order. It is not clear which factors or assumptions formed the basis of your decision to reduce your labor hours from the RFQ estimates to these particular quantities.

AR, Tab 45, Agency Request for Clarifications from FedConsulting (Sept. 16, 2008).

Upon review of FedConsulting's clarification response, the agency determined that while it had originally questioned FedConsulting's disincentive plan's start date of 90 days, instead of 30 days, from the BPA start date, FedConsulting's explanation alleviated the agency's concerns. In this regard, the agency found that FedConsulting's response clarified that its intent was "to meet all performance goals from the contract start" and that the 90 days was only an "opportunity to focus on documenting and improving operating procedures before imposing the penalty schedule on the contract." Supplemental AR at 2-3; AR, Tab 55, TET Revised Memorandum on FedConsulting's Clarifications (Sept. 22, 2008) at 2; see AR, Tab 50, FedConsulting's Quotation Clarification (Sept. 17, 2008), at 1. The agency also determined that FedConsulting's response fully addressed the agency's concerns regarding this vendor's proposed labor hours, thereby mitigating the evaluated performance risk because the clarification response explained FedConsulting's enhanced productivity in credentialing and documentation services and how its proposed approach combined tasks for multiple performance work statement task areas to achieve a reduction of time used, which allowed this vendor to propose fewer hours and cost efficiencies. AR, Tab 55, TET Revised Memorandum on FedConsulting's Clarifications (Sept. 22, 2008), at 2; see AR, Tab 50, FedConsulting's Quotation Clarification (Sept. 17, 2008), at 1-2. Based on the foregoing, the agency raised FedConsulting's technical approach evaluation factor rating from acceptable to above acceptable. AR, Tab 55, TET Revised Memorandum Concerning FedConsulting's Clarifications (Sept. 22, 2008), at 2.

USGC nevertheless argues that the agency's evaluation of FedConsulting's disincentive plan was based upon an unstated evaluation factor that was not part of the RFQ's evaluation scheme. In this regard, an agency may not consider unstated evaluation criteria that are not reasonably related to the stated evaluation factors. KPMG Consulting LLP, B-290716, B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 14. Here, the agency evaluated FedConsulting's disincentive plan as a "unique and beneficial" enhancement to its technical approach, which would reduce the risk of the agency's performance goals not being achieved. AR, Tab 55, TET Revised Memorandum on FedConsulting's Clarifications (Sept. 22, 2008), at 1. As noted above, the BPA contemplated the issuance of performance-based task orders with performance requirements summaries that establish objectives and performance measures. In evaluating quotations in accordance with the stated evaluation factors,

agencies are entitled to consider the degree to which quotations exceed the solicitation requirements or the extent to which vendors used innovative measures to respond to these requirements. See IAP World Servs., Inc., B-297084, Nov. 1, 2005, 2005 CPD ¶ 199 at 2-3.

On this record, we find no basis to question the agency's evaluation that FedConsulting's innovative disincentive plan enhanced the vendor's technical approach by reducing the risk to the agency that performance of the work would not satisfy the agency's requirements. Indeed, it appears that FedConsulting's plan complemented the agency's use of performance requirements summaries in the task orders to accomplish the work. Based on our review, we find the agency's evaluation of FedConsulting's disincentive plan was reasonable and in accordance with the stated evaluation factors. While USGC argues that FedConsulting's response to the clarification request should not have alleviated the agency's questions regarding the 90-day after start date aspect of the disincentive plan and that the agency attached too much emphasis to the alleged benefits of the plan, we find that USGC's arguments constitute mere disagreement with the evaluation and fails to show that the evaluation was unreasonable. See C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.<sup>6</sup> Similarly, USGC's disagreement with the agency's evaluation of FedConsulting's response to the clarification request regarding the staffing levels is insufficient to show that the agency's evaluation was unreasonable.

In sum, we find the agency's exchanges with the vendors and the evaluation of the vendors' responses were reasonable, fair, and equitable. In this respect, each vendor received pertinent questions concerning their quotations and revisions to their quotations were not invited. The agency then evaluated the vendors' responses to determine if the initial evaluated weaknesses were overcome by the vendors' explanations. The agency documented why it found that FedConsulting's clarification responses alleviated its concerns regarding evaluated weaknesses and uncertainties, and why it found that USGC's clarification response did not do the same. While USGC disagrees with this evaluation, it simply has not shown why the agency's evaluation and exchanges with the vendors were not reasonable. Id.

USGC further argues that the agency failed to properly evaluate FedConsulting's price, contending that FedConsulting's proposed price for the fixed-price task order was unreasonably low. Where an RFQ contemplates the issuance of a fixed-price task order under an FSS contract, an agency is not required to conduct a price realism analysis. See FAR §§ 8.404(d), 8.405-2(d). FAR § 8.405-2(d) requires only that the ordering activity consider the level of effort and the mix of labor proposed to perform a specific task being ordered and determine that the total price of the

---

<sup>6</sup> Moreover, contrary to USGC's assertion, the record demonstrates that the agency understood FedConsulting's proposed disincentive plan.

order is reasonable; such evaluation was done here. While an agency may provide for a price realism analysis when conducting a competition for fixed-price orders under an FSS contract, the requirement to perform such an analysis springs from the solicitation, not from the regulations governing the issuance of task orders under the FSS contract. See Millennium Data Sys., Inc., B-292357.2, Mar. 12, 2004, 2004 CPD ¶ 48 at 10. Here, the RFQ, by its terms, did not contemplate the evaluation of price realism, so no such analysis was required.

USGC also contends that the agency failed to conduct a proper best value determination because it did not conduct a price/technical trade-off. We disagree. Under the RFQ's evaluation scheme, where one vendor's quotation was evaluated as superior and also offered the lowest price, as was the case with FedConsulting's quotation, the agency need not perform a price/technical tradeoff to determine which vendor offers the government the best value. See DIT-MCO Int'l Corp., B-311403, June 18, 2008, 2008 CPD ¶ 127 at 3.

Nonetheless, USGC argues that the agency's evaluation should have resulted in its quotation, not FedConsulting's quotation, having the superior ratings under the non-price evaluation factors. USGC contends that its incumbency status should have elevated its technical capability ranking to above acceptable and that the awardee's lack of experience should not have resulted in an above acceptable rating under either the technical approach or technical capability evaluation factors.

As discussed above, the agency reasonably evaluated FedConsulting's quotation under the technical approach evaluation factor as above acceptable, the same rating as was received by USGC's quotation under this factor. Moreover, in contrast to USGC's quotation, which, as we concluded above, was reasonably rated acceptable under the technical capability evaluation factor, FedConsulting's quotation was rated above acceptable under the technical capability evaluation factor because not only did FedConsulting use ISO 15489, the first international standard devoted to records management, but it also proposed the use of the same incumbent personnel as USGC and had teamed with [REDACTED] to add additional capacity. AR, Tab 43, Competitive Pre-Award Memorandum (Sept. 13, 2008), at 6; AR, Tab 59, Competitive Award Memorandum (Sept. 25, 2008), at 8.<sup>7</sup> USGC's arguments, based on its incumbent status and FedConsulting's non-incumbent status, do not provide a basis to find unreasonable the agency's determination that FedConsulting's lower-priced quotation was technically superior to USGC's and represented the best value to the government.

Finally, USGC argues that the agency did not provide adequate documentation of its source selection decision in accordance with FAR Part 15. However, for FAR

---

<sup>7</sup> The evaluation panel noted that [REDACTED]. AR, Tab 43, Competitive Pre-Award Memorandum (Sept. 13, 2008), at 6.



Subpart 8.4 procurements, FAR § 8.405-2(e), not FAR Part 15, designates the minimum documentation which is required as part of the FSS ordering procedures. Our Office has found that agency judgments for any source selection are required to be documented in sufficient detail to show that they are reasonable. Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 8. In this case, we conclude that the agency reasonably documented its evaluation and source selection decision.<sup>8</sup>

The protest is denied.

Gary L. Kepplinger  
General Counsel

---

<sup>8</sup> USGC also contends that it did not receive a debriefing in accordance with FAR Part 15. As indicated above, this procurement was conducted under FAR Subpart 8.4, which provides that “[i]f an unsuccessful offeror requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.” FAR § 8.405-2(d). In any case, the adequacy and conduct of a debriefing is a procedural matter that does not involve the validity of an award and, for this reason, this argument will not be considered by our Office. Healthcare Tech. Solutions Int’l, B-299781, July 19, 2007, 2007 CPD ¶ 132 at 5.