



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: OPTIMUS Corporation

File: B-400777

Date: January 26, 2009

John E. Jensen, Esq., Daniel S. Herzfeld, Esq., and Evan D. Wesser, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester.

Melissa McWilliams, Esq., General Services Administration, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest asserting that General Services Administration (GSA) contracting officials improperly rescored quotations after technical evaluation was performed by requiring activity (Indian Health Service) evaluators is denied where record shows that GSA officials were adjusting numeric scores to more accurately reflect evaluation criteria and source selection plan evaluation standards, and made adjustments only after reviewing quotations and initial evaluation results.
2. Protest that agency misevaluated quotations is denied where record shows that evaluation was reasonable and consistent with terms of solicitation and standards generally applicable to negotiated procurements.
3. Agency's request for vendor price reductions in Federal Supply Schedule acquisition conducted under Federal Acquisition Regulation (FAR) part 8.4 did not constitute discussions, and therefore did not trigger agency obligation to engage in meaningful discussions, as would be required in a negotiated acquisition conducted pursuant to FAR part 15; FAR part 8.4 expressly requires agencies to seek price reductions in specified circumstances.

DECISION

OPTIMUS Corporation, of McLean, Virginia, protests the issuance of a Federal Supply Schedule (FSS) task order to CNI Information Technology, LLC, of Norman Oklahoma, under request for quotations (RFQ) No. FY758001T6, issued by the General Services Administration (GSA) to obtain information technology (IT) enterprise infrastructure support services, including systems administration, web services and help desk services, on behalf of the Indian Health Service (IHS).

OPTIMUS asserts that the agency miscalculated quotations and improperly failed to engage in meaningful discussions.

We deny the protest.

The RFQ, issued pursuant to Federal Acquisition Regulation (FAR) part 8.4 to acquire services under the FSS, contemplated the issuance of a time-and-materials task order to perform various IT support services for the IHS at its headquarters and various field office locations for a base year, with four 1-year options. Eligible firms were advised that the agency intended to issue the order to the vendor submitting the quotation deemed to offer the “best value” to the government, considering price and several non-price evaluation factors. RFQ at 28. The non-price factors (weighted equally) were past experience/past performance, technical/management approach, and staffing plan.¹ Id. Price and small business size status also were listed as evaluation considerations, but were described as non-rated factors. Id. at 28-29. The RFQ provided that the non-price factors, combined, were significantly more important than price and small business size status and that, as quotations were determined to be more equal in technical merit, total price and small business size status would become more important. Id. at 28.

For evaluation and source selection purposes, GSA and IHS established a technical evaluation team of five technical evaluators from IHS, along with a GSA program manager and a GSA contracting officer who also functioned as the source selection authority (SSA). The agencies used a numeric scoring system and assigned quotations scores between 0 and 3, with a score of 3 being assigned where the quotation was determined to exceed the evaluation standards stated in the RFQ; a score of 2 being assigned where the quotation was determined to meet the RFQ standards; a score of 1 being assigned where the quotation was determined to fall somewhat short of the RFQ standards; and a score of 0 where the quotation was determined to be unacceptable. Agency Report (AR), exh. 13.

Seven quotations were received; these were forwarded to the IHS technical evaluation team. Shortly thereafter, GSA’s program manager sent an e-mail to all of the competitors requesting that they consider any additional discounts and submit them by March 10. AR, exh. 7. Some vendors submitted additional price reductions, while others relied on the prices they originally had submitted. The IHS evaluators reviewed the quotations and prepared evaluation materials memorializing their evaluation conclusions. GSA’s program manager reviewed these materials, as well as the quotations themselves, and prepared a consensus evaluation package. AR, exh. 15. While the program manager was doing so, the IHS technical evaluators forwarded him a second package of evaluation materials. AR, exh. 16. After

¹ Each of these factors also included several subfactors that were not listed in the RFQ but were used in evaluating the quotations.

discussing these new scores within the agency, the program manager determined that the consensus evaluation should be based on the original evaluation materials. Contracting Officer's Statement, Nov. 20, 2008, at 3. The program manager revised the scoring for each quotation; in each instance, these revised scores were higher to varying degrees than the scores assigned by the IHS evaluators.²

After preparing the consensus evaluation document, the program manager forwarded it to the contracting officer/SSA. After reviewing the package, the contracting officer decided that the scores were flawed because the scoring scheme did not contemplate assigning factor scores that were not whole numbers.³ He therefore revised the scores; these revised scores were used to make the source selection decision. AR, exh. 18. The record shows that, ultimately, the awardee's quotation was assigned a cumulative score of 9 points, while the protester's quotation was assigned a score of 5 points. AR, exh. 18 at 7. The record further shows that, although OPTIMUS's quoted price was approximately 33 percent lower than the awardee's (\$24,412,724 versus \$36,585,300), the protester's quotation was not included in the SSA's price/technical tradeoff because its technical approach had been rated as falling somewhat short of the standard required in the RFQ, and the agency had three other quotations that met or exceeded the RFQ standards at prices that the agency viewed as reasonable based on a price analysis. *Id.* at 18. The agency ultimately concluded that CNI's quotation represented the best value, and thus issued a purchase order to CNI.

POINT SCORES

The protester asserts that it was improper for GSA to rescore the quotations after receiving the evaluation materials prepared by IHS's technical evaluators. According to the protester, this rescoring resulted in the technical superiority of CSN's quotation being exaggerated, and also ultimately led to the SSA's not considering OPTIMUS's quotation in the price/technical tradeoff decision, notwithstanding OPTIMUS's substantial price advantage over CNI.

² For example, the cumulative arithmetic mean score assigned the protester's quotation by the IHS evaluators was 5.3 points, while the cumulative score assigned by the program manager was 5.75. Agency Supplemental Submission, Dec. 17, 2008, attach. The cumulative arithmetic mean assigned the awardee's quotation by the IHS evaluators was 6.93 points, while the score assigned by the program manager was 8.75 points. *Id.*

³ Both the IHS evaluators and the GSA program manager assigned whole numeric scores to each quotation under each of the subfactors. When calculating factor and cumulative scores, the subfactor scores were averaged, thereby producing factor and cumulative scores that were not whole numbers.

We will not reevaluate quotations in reviewing a protest challenging an agency's technical evaluation; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. Engineered Elec. Co. d/b/a/ DRS Fermont, B-295126.5, B-295126.6, Dec. 7, 2008, 2007 CPD ¶ 4 at 3-4.

GSA's scoring changes here are unobjectionable. The record shows that both the GSA program manager and SSA did not change the scores in a vacuum; rather, the changes were made with reference to the contents of the quotations and the evaluation materials prepared by the IHS evaluators (and, in the case of the SSA, the evaluation materials prepared by the program manager). In this regard, the program manager states as follows:

I can testify that I created a consensus evaluation document utilizing the comments from the first set of IHS' evaluations. As is common practice of the Project Manager, I reviewed all [quotations] to verify the comments from the first set of evaluations. I evaluated each [quotation's] Past Experience/Past Performance, Technical/Management Approach and Staffing Plan. Each of these factors included multiple criteria that received scores in the evaluation. The IHS evaluators, however, did not correlate their scores to the Evaluation Plan Criteria accurately thus resulting in inaccurate scores. In the consensus document, I applied the comments from the first set of evaluations, correlated such comments to the Evaluation Plan Criteria, and applied the correct score. (All [of the IHS evaluators'] evaluation comments were preserved on the consensus evaluation document.) I added comments on the consensus document when the score I applied differed from the technical panel average score for that factor.

Agency Submission, Dec. 8, 2008, Program Manager Affidavit, at 2. Similarly, the SSA states his rationale for changing the scores a second time:

I can testify that the resulting scores from the initial evaluations and consensus document resulted in fractional scores. . . . The scoring criteria in the solicitation was based on . . . whole number scores. . . . To determine whether a score of 2.5 equaled a '2' or a '3', I re-read all 7 [quotations]. As the Source Selection Authority, based on my reading of (1) the [quotations], (2) the solicitation criteria, and (3) the comments of the evaluation panel and the GSA [program manager], I determined the most appropriate whole number score.

Agency Submission, Dec. 8, 2008, SSA Affidavit, at 2.

In the final analysis, ratings, be they numerical, color, or adjectival, are merely guides for intelligent decision making in the procurement process. Citywide

Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11. The germane consideration is whether the record shows that the agency fully considered the actual qualitative differences in the technical quotations or quotations. See, e.g., Bernard Cap Co., Inc., B-297168, Nov. 8, 2005, 2005 CPD ¶ 204 at 6.

Both GSA officials, after a detailed review of the evaluation materials and the quotations themselves, assigned point scores that they determined more accurately portrayed the relative merits of the quotations, and were consistent with the terms of the solicitation's evaluation scheme. These actions were in no way inconsistent with the RFQ, and the protester has not shown that the revised scores inaccurately reflected the relative merits of the quotations. We thus have no basis to object to the rescore.

TECHNICAL/MANAGEMENT APPROACH

Optimus challenges the agency's evaluation conclusions relating to its quotation under the technical/management approach factor. The agency assigned its quotation a rating of falls somewhat short of the standard (a numeric score of 1) under the technical/management factor based on several evaluated deficiencies. OPTIMUS essentially maintains that none of the deficiencies, in fact, exist.

We have examined the record and conclude that the identified deficiencies in the OPTIMUS technical/management approach are reasonable and support the agency's finding that the protester's quotation fell somewhat short of the standards called for in the RFQ. We discuss two of the identified deficiencies for illustrative purposes.

Describe Methodology

The RFQ required firms to clearly describe the methodology and analytical techniques to be used in fulfilling all of the solicitation's technical requirements, to identify the logical sequence of tasks that would be performed, and to describe the specific techniques and steps that would be applied during the accomplishment of all RFQ tasks. RFQ at 29. The record shows that, throughout all iterations of the agency's evaluation (that is, during the IHS evaluators' review, the program manager's consensus review, and the SSA's source selection decision) a persistent criticism was that OPTIMUS either did not adequately explain how it would accomplish the RFQ requirements, or otherwise specifically failed to address one or another requirement. The IHS evaluation materials provide numerous such examples. AR, exh. 14, at 8 ("does not address all requirements of the SOW"); id. at 24 ("would have liked more [assurance] of understanding of the challenges"); id. at 32, 40 ("no telecom included"). The program manager's consensus evaluation materials identifies these same findings, AR, exh. 15, at 8, as does the agency's source selection decision. AR, exh. 18, at 15.

Our review of the OPTIMUS quotation confirms these observations; in effect, the quotation relies on an outline of industry best practices and broad statements of generic methodologies that would be brought to bear to meet the solicitation's requirements, but does not address the specifics of the statement of work. As an example, in describing the logical sequencing of events, as required by the RFQ, the OPTIMUS proposal provides, without significant elaboration:

[deleted]

AR, exh. 12A, at 14. During the protest, OPTIMUS did not demonstrate that these criticisms were incorrect, but instead simply expressed disagreement with the agency's evaluation conclusions; such disagreement, without more, does not demonstrate that the agency's evaluation was unreasonable. Commercial Window Shield, B-400154, July 2, 2008, 2008 CPD ¶ 134 at 2.

Service Desk Operation

Another criticism identified by the SSA in his source selection decision was that OPTIMUS did not propose a tier 1, 2 and 3 service desk operation in its quotation, as required by the RFQ. AR, exh. 18, at 15. OPTIMUS disagrees with this conclusion, and identifies several pages from its quotation that allegedly show its quotation met the requirement. Our review of the referenced pages, however, shows that the SSA's observation was reasonable. One of OPTIMUS's referenced pages (AR, exh. 12A, at 5) is in the past performance section of its quotation and does not purport to address how OPTIMUS will meet the current requirement. The second reference (AR, exh. 12A, at 11) describes another past performance reference, in part, and sets forth the introductory portion of its technical /management approach; there is no mention of the requirement for tier 1, 2, and 3 service desk operations in this portion of its quotation. Finally, OPTIMUS references quotation pages (AR, exh. 12A, at 14-15) that discuss the service desk operation, but these pages only describe a generic sequence of tasks, with no mention of the tier 1, 2 and 3 service desk operation required by the RFQ.

We conclude that the deficiencies identified by the agency in OPTIMUS's technical/management approach were reasonable, and properly formed the basis for downgrading the firm's quotation.

PAST EXPERIENCE/PAST PERFORMANCE

The protester generally maintains that the agency misevaluated its past performance, and, more specifically, also asserts that the agency improperly failed to correlate the relevance of the competing firms' past performance with the quality of the firm's past performance. OPTIMUS points, in this regard, to the agency's giving CNI credit for superior performance on one of its prior contracts, notwithstanding that the

reference for that contract did not return a past performance questionnaire; at the same time, OPTIMUS was not given credit for one of its prior contracts on which it had been evaluated as having provided superior performance because the agency determined that that contract was not relevant.

This argument is without merit. The agency essentially conducted a two-part evaluation in this area. First, it evaluated the relevance of the firm's experience by considering whether it had submitted at least two prior contracts that were similar to the requirement being solicited, as required by the RFQ. OPTIMUS provided four prior contracts. AR, exh. 12A, at 4-8. The agency determined that two were not relevant because they were for relatively small dollar values and did not involve web services. The agency found that the other two were relevant because they were for relatively large dollar values (\$18 million and \$22.5 million), and involved some work related to all three of the broad categories of work contemplated under the RFQ-- systems administration, web services, and help desk services; OPTIMUS received a rating of 2 based on its having tendered at least two similar, but relevant, prior contracts. AR, exh. 18, at 15. CNI submitted two contracts to demonstrate experience--its incumbent contract for the requirement under the RFQ (valued at \$57 million), and a second contract performed for the U.S. Army Corps of Engineers (\$42 million). The agency assigned CNI a rating of 3 for relevance on the basis that the first contract was identical, and the second similar, to the instant requirement. Id. at 10.

The second aspect of the past experience/past performance evaluation was based on the evaluation of past performance questionnaires sent to all references provided by each firm. The record shows that one of OPTIMUS's references--the United States Department of Agriculture, Office of the Chief Information Officer, National Telecommunications Services and Operations (USDA)-- returned the questionnaire, and that this questionnaire rated OPTIMUS's performance as exceeding contract requirements. AR, exh. 12E. However, the questionnaire was for performance of one of the contracts that the agency had determined was not relevant. Accordingly, the agency assigned OPTIMUS a past performance rating of 2, meets the standard, and an overall past experience/past performance rating of 2. AR, exh. 18, at 15. The agency also received only one questionnaire for CNI, for its incumbent contract for this requirement. AR., exh. 9E. The questionnaire rated CNI's performance as having exceeded the contract requirements. Id. Based on this rating, and because the contract was deemed by the agency to be identical to the current requirement (and therefore relevant), the agency assigned CNI a past performance rating of 3, exceeds the standard, and an overall past experience/past performance rating of 3. AR, exh. 18, at 10.

The evaluation in this area was reasonable. With respect to the protester, while its performance questionnaire reference rated it highly, the agency essentially discounted this rating because the contract was valued at only \$7.9 million and did not include performance of web-related services. There was nothing unreasonable

in the agency's assigning OPTIMUS an overall rating of 2 for its other similar, but relevant contracts. CNI was differently situated. While the agency did not receive a questionnaire for CNI's Corps of Engineers contract, CNI had at least two prior contracts that were similar to the instant requirement (one of which was identical), and its performance had been evaluated on the identical contract as exceeding the contract requirements. This provided the agency with a reasonable basis for assigning CNI an overall rating of 3 under the standards set forth in the RFQ.⁴

In the final analysis, therefore, the agency did, in fact, correlate quality of performance with relevance. In the case of OPTIMUS, the agency declined to raise the firm's rating based on its high quality performance of the USDA contract for which it had received a response questionnaire, precisely because the contract had been deemed not relevant. In the case of CNI, on the other hand, the agency retained its 3 rating for the firm's past experience/past performance, precisely because it had been given a high quality performance rating in a questionnaire for a contract that had been deemed the most relevant contract possible, the incumbent contract for this requirement.

DISCUSSIONS

The protester maintains that the agency failed to provide it with meaningful discussions. According to the protester, the agency's request for price reductions

⁴ The protester maintains that the agency applied an unstated evaluation criterion when it evaluated the awardee's past experience/past performance because the source selection plan provided for assigning a rating of 3, exceeds the standard, where a firm provided the requisite number of past performance examples, one of which was for the identical requirement, and its performance on the identical requirement was rated a 3 on the past performance questionnaire. The protester also points out that, for a non-incumbent contractor, the only way to receive an overall rating of 3 was to submit more than the requisite number of examples, and receive scores of 3 on its questionnaires. According to OPTIMUS, the RFQ does not provide for such considerations in connection with the agency's evaluation of past experience/past performance. We find OPTIMUS's focus on the assigned points misplaced, since, as noted above, point scores are merely guides to intelligent decision making. Citywide Managing Servs. of Port Washington, Inc., supra. In any case, the RFQ expressly provided that the agency would assess the relevance of the firms' past experience/past performance. The agency chose to do this by according greater weight to performance of the identical requirement, as compared to performance of contracts that were merely similar, but not identical to, the current requirement. This was a reasonable implementation of the RFQ's relevancy evaluation standard, and while not expressly mentioned in the RFQ, is nonetheless logically encompassed by the evaluation standard included in the solicitation. PMC Solutions, Inc. B-310732, Jan. 22, 2008, 2008 CPD ¶ 20 at 3.

after the submission of initial quotations constituted the opening of discussions, which obligated the agency to bring to OPTIMUS's attention the weaknesses the agency identified in the technical portion of its quotation.

This assertion is without merit. As noted, this requirement is being met through the FSS, and was conducted pursuant to FAR part 8.4. There is no requirement in FAR part 8.4 that an agency soliciting vendor responses prior to issuing a task order under an FSS contract conduct discussions with vendors regarding the contents of those responses, even where the solicitation does not specifically advise firms of the agency's intent to issue a task order without discussions. Avalon Integrated Servs., Corp., B-290185, July 1, 2002, 2002 CPD ¶ 118 at 4.⁵ Under FAR § 8.405-2(c)(3)(ii), where, as here, an agency is placing an order under the FSS that exceeds the maximum order threshold, it is required to seek price reductions below the prices included in the vendors' FSS price lists. The agency's request for price reductions was pursuant to this requirement, and therefore did not constitute the opening of discussions, such that the agency was obligated to engage in meaningful discussions.

The protest is denied.

Gary L. Kepplinger
General Counsel

⁵ OPTIMUS asserts that our Office will evaluate FAR part 8.4 acquisitions using the standards applicable to FAR part 15 negotiated procurements where the solicitation has all of the indicia of a negotiated procurement. It cites our decision CourtSmart Digital Sys., Inc., B-292995.2, B-292995.3, Feb. 13, 2004, 2004 CPD ¶ 79 at 7, in support of its position. The protester is correct that, in cases where an agency has issued an RFQ and intends to use vendor responses as the basis for a detailed technical evaluation, we will review the agency's evaluation to ensure that it is consistent with the terms of the solicitation and standards generally applicable to negotiated procurements. In doing so, however, we are only applying the standards generally applicable to negotiated procurement by analogy; as specifically noted in the decision cited by the protester, the procedures governing FAR part 15 acquisitions do not govern FSS program acquisitions. Id.; FAR § 8.404 (a).