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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:** Government Acquisitions, Inc.

**File:** B-401048; B-401048.2; B-401048.3

**Date:** May 4, 2009

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Jonathan S. Aronie, Esq., W. Bruce Shirk, Esq., Anne B. Perry, Esq., Jessica S. Mailman, Esq., and Daniel J. Marcinak, Esq., Sheppard, Mullin, Richter & Hampton LLP, for the protester.

Lars E. Anderson, Esq., Patrick R. Quigley, Esq., and Justin J. Wortman, Esq., Venable LLP, for Wildflower International, Ltd., an intervenor.

Barbara L. Walthers, Esq., Mark A. Allen, Esq., and Eric Crane, Esq., Department of Homeland Security, U.S. Citizenship and Immigration Services, for the agency.

Glenn G. Wolcott, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency reasonably evaluated protester's proposal as containing various weaknesses and deficiencies, including rating the proposal as "Unacceptable" with regard to protester's proposed management plan, where record shows that protester's proposal failed to comply with solicitation requirements and the protester's complaints constitute mere disagreement with the agency's judgments.
  2. Agency reasonably rated awardee's proposal as "Acceptable" with regard to past performance where record established that awardee has performed various prior contracts of similar size, scope and complexity.
  3. Where agency has not retained individual evaluator notes or worksheets, protest that evaluation record is inadequate is denied where the agency's consensus evaluation report contains sufficient detail to establish that the agency's judgments were reasonable.
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### DECISION

Government Acquisitions, Inc. (GAI), of Cincinnati, Ohio, protests the award of a contract by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), to Wildflower International, Ltd. of Santa Fe, New Mexico, under request for quotations (RFQ) No. HSSCCG-08-Q-00173 to provide information technology (IT) equipment and services for USCIS offices worldwide. GAI

challenges various aspects of the agency's evaluation of proposals and source selection process, and maintains that the agency's source selection decision is inadequately documented.

We deny the protest.

## BACKGROUND

The USCIS issued the solicitation as a small business set-aside on July 7, 2008,<sup>1</sup> seeking proposals to provide commercial-off-the-shelf (COTS) IT hardware, software, warehousing, and installation services.<sup>2</sup> AR, Tab 6, at 3-4. The solicitation divided the contract requirements into four groups of IT resources--end user equipment, Windows servers, UNIX servers, and networked peripherals--and advised offerors that "a key component in Groupings 1 - 3 above is the Control Environment (CE)."<sup>3</sup> Id.

The solicitation provided for award of a firm fixed-price contract for a 1-year base period and three 1-year option periods, stated that the source selection decision would be made on a "best value" basis, and established the following evaluation factors: technical approach,<sup>4</sup> management plan,<sup>5</sup> past performance<sup>6</sup> and

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<sup>1</sup> The solicitation contemplated award of a "Master Delivery Order," and was provided to potential offerors that held underlying indefinite-delivery, indefinite-quantity contracts known as "FirstSource" contracts.

<sup>2</sup> The agency is in the process of updating its IT infrastructure, which the solicitation describes as "a heterogeneous mix of multiple Microsoft Windows and NT operating systems, Novell 4.2, and outdated hardware." Agency Report (AR), Tab 6, RFQ Statement of Work, at 3.

<sup>3</sup> A CE is described as a turn-key system that provides workstation and server configuration management, monitoring, and distribution of standardized imaging across the enterprise network. Id. at 3-4.

<sup>4</sup> Under the technical approach evaluation factor, the solicitation established five subfactors: responses to general questions; responses to questions regarding the end user equipment CE; responses to questions regarding the Windows servers CE; responses to questions regarding the UNIX server CE; and manufacturer configuration data for all proposed equipment. AR, Tab 14, at 3-4.

<sup>5</sup> With regard to management plan, the solicitation established two subfactors: demonstrated understanding of the government's needs; and curriculum vitae (CV) for the offeror's proposed project manager and technical leads.

<sup>6</sup> With regard to past performance, the solicitation established two subfactors: prior experience and reference checks.

price.<sup>7</sup> Offerors were advised that technical approach was the most important factor, that management plan and past performance were less important factors and equal to each other, and that the non-price factors combined were significantly more important than price. AR, Tab 14, at 3.

In July 2008, initial proposals were submitted by GAI, Wildflower, and a third offeror, MultimaxArray First Source;<sup>8</sup> these proposals were subsequently evaluated. In September, the agency selected Multimax for contract award. Thereafter, Wildflower filed a size protest challenging Multimax's size status; that protest led to a determination by the Small Business Administration that Multimax was not a small business for purposes of this procurement. Accordingly, the agency terminated Multimax's contract in October, and reopened the solicitation to GAI and Wildflower, requesting submission of revised proposals based on the information provided to them in their respective debriefings.<sup>9</sup>

In November 2008, GAI and Wildflower submitted revised proposals. GAI's proposal, which was submitted as an "addendum" to its initial proposal, made significant changes to its proposed technical solution and to its teaming arrangements.<sup>10</sup> Additionally, GAI's revised proposal introduced [deleted] conditions, which it listed under the heading "Project Assumptions," on which its proposed price was based.<sup>11</sup> AR, Tab 28, at 43. As discussed below, some of GAI's "assumptions" were contrary to the solicitation's stated requirements, leading to the agency's assignment of "Unacceptable" ratings under various evaluation factors and subfactors.<sup>12</sup>

Wildflower also submitted a revised proposal with various modifications that responded to the feedback provided in the agency's prior post-award debriefing.

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<sup>7</sup> With regard to price, offerors were advised that total evaluated price would include the price for the base period and all option periods.

<sup>8</sup> A fourth offeror also submitted a proposal, but its proposal was subsequently eliminated from the competition.

<sup>9</sup> Following the award to Multimax, GAI and Wildflower received written debriefings providing information regarding the agency's evaluation of their initial proposals.

<sup>10</sup> Among other things, GAI's revised proposal eliminated Integrated Technologies Group, Inc. (ITG) as a teaming partner, and added Hewlett-Packard Company (HP), changing its proposed technical solution to one based on HP software.

<sup>11</sup> Just above the list of conditions, GAI's proposal stated: [deleted].

<sup>12</sup> In evaluating technical proposals, the agency employed an adjectival rating system, that applied ratings of "Outstanding," "Acceptable," or "Unacceptable" to each evaluation factor and subfactor.

In contrast to the evaluation of GAI's proposal, the agency's evaluation of Wildflower's revised proposal identified multiple strengths and assigned ratings of "Outstanding" under various evaluation factors and subfactors.

Overall, GAI's and Wildflower's proposals were rated as follows:

<b>Factors/Subfactors</b>	<b>GAI</b>	<b>Wildflower</b>
<b>Technical Approach</b>	<b>Acceptable</b>	<b>Outstanding</b>
--General Questions	--Outstanding	--Outstanding
--End User Equipment Questions	--Unacceptable	--Outstanding
--Windows Servers Questions	--Acceptable	--Outstanding
--UNIX Servers Questions	--Acceptable	--Outstanding
--Manufacturer Configuration Data	--Acceptable	--Outstanding
<b>Management Plan</b>	<b>Unacceptable</b>	<b>Outstanding</b>
--Government's Needs	--Unacceptable	--Outstanding
--Curriculum Vitae	--Unacceptable	--Acceptable
<b>Past Performance</b>	<b>Acceptable</b>	<b>Acceptable</b>
--Previous Experience	--Acceptable	--Acceptable
--Reference Checks	--Neutral	--Outstanding
<b>Evaluated Price</b>	<b>[deleted]</b>	<b>\$170,097,090</b>

AR, Tab 34, Source Selection Decision, at 3, 5.

Based on this evaluation, the agency concluded that Wildflower's proposal was "Outstanding with significant strengths," and offered a lower price than GAI's "inferior technical solution." *Id.* at 6. On January 15, 2009, a contract was awarded to Wildflower. This protest followed.

## DISCUSSION

First, GAI protests the agency's evaluation of GAI's technical proposal, including the ratings of "Unacceptable" under the management plan evaluation factor. GAI complains that, "[h]ad the Agency properly evaluated GAI's proposal, it clearly would have received a rating of Outstanding." GAI Comments and Supplemental Protest, Mar. 5, 2009, at 2. The record does not support GAI's assertions regarding the evaluation of its technical proposal.

With regard to the evaluation of an offeror's management plan, the solicitation established two subfactors: understanding the government's needs, and submission of CVs for the proposed project manager and technical leads. AR, Tab 14, at 4. The solicitation also established various contract requirements. For example, one of the basic contract requirements was the contractor's responsibility to refresh technology throughout the life of the contract. Specifically, section 4.1 of the solicitation's statement of work (SOW), under the heading "Specific Tasks," stated:

#### 4.1 Substitution, Improvement, and Refreshment of Technology

. . . . .

4.1.3 If at any time during the ordering period after the MDO award date, the original manufacturer of the equipment schedules the product for discontinuation, improvement and/or replacement, the Contractor shall provide the Contracting Officer (CO) with the new or revised product specifications. Technical refreshes will be reviewed by the CO and Contracting Officer's Technical Representative (COTR) and approved for compatibility with USCIS configurations before any orders for the refreshed products shall be filled by the Contractor.

AR, Tab 6, at 4.

Notwithstanding this explicit requirement that the contractor would be responsible for technology refreshment throughout the life of the contract, one of GAI's "assumptions" stated: "USCIS shall manage the technology refresh for year 2 and beyond." AR, Tab 28, GAI Proposal Addendum, at 44.

In evaluating GAI's management plan as "Unacceptable," the agency evaluators referred to GAI's assumption that the agency, rather than GAI, would manage technology refreshment after the base year, stating:

The requirement of the Government, as described in Government SOW Section 4.1.1 Page 4, is for the vendor to manage the refresh throughout the life of the contract, not just for the base year. This assumption demonstrates a lack of understanding of the Government's needs.

AR, Tab 32, Technical Evaluation Report, at 21.

Another example of GAI's failure to comply with the solicitation requirements involves the solicitation's direction to "provide Curriculum Vitae (CV), including education, experience and appropriate certifications of the offeror's proposed project manager and technical leads for Control Environment(s)." AR, Tab 14, at 2. GAI's proposal contained CVs for its Lead Program Manager and Deputy Program Manager, but failed to include CVs for either of the two CE technical leads that it proposed.<sup>13</sup>

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<sup>13</sup> Specifically, GAI failed to submit CVs for its proposed CE Project Manager and its CE Team Solution Architect. AR, Tab 28, at 76-80.

In light of the solicitation's explicit requirements regarding submission of CVs, and GAI's failure to comply with those requirements, the agency assessed GAI's proposal as "Unacceptable" under the management plan subfactor requiring submission of CVs.<sup>14</sup>

Yet another example of a GAI condition that the agency found unacceptable, was the fact that GAI's price was conditioned on the agency providing certain subject matter experts who would "be responsible for providing input to design and development of [GAI's proposed solution]." AR, Tab 28, at 39-40. Moreover, GAI advised that the agency must respond "within three business days" to any request from GAI regarding various matters "including but not limited to" [deleted]. *Id.* Finally, GAI's proposal provided that the agency's failure to respond to GAI's requests with timely and complete information would be treated as a "change to the scope of the work and subject to the change order procedure." *Id.*

In evaluating this aspect of GAI's revised proposal, the agency's technical evaluation report noted that GAI's proposal "demonstrate[s] a lack of understanding of the scope and management of the project" because "USCIS may not be able to meet these time constraints, which could trigger requests for equitable adjustment[s]." AR, Tab 32, at 21.

Finally, the agency assessed various weaknesses and/or deficiencies in GAI's proposal based on GAI's: failure to submit detailed manufacturer configuration data for all proposed equipment; limitations on both the [deleted]; reliance on [deleted]. GAI's protest challenges each of these assessments.

It is well settled that a proposal that fails to conform to a solicitation's requirements cannot form the basis for an award. Farmland Nat'l Beef, B-286607, B-286607.2, Jan 24, 2001, 2001 CPD ¶ 31 at 8-10; Marine Pollution Control Corp., B-270172, Feb. 13, 1996, 96-1 CPD ¶ 73 at 2-3. Where a protest challenges an agency's technical evaluation, this Office will review the evaluation record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Rome Research Corp.,

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<sup>14</sup> The agency evaluators also noted that the Lead Program Manager proposed by GAI was an employee of ITG--the teaming partner GAI had dropped in its final proposal submission; the agency evaluators expressed concern regarding this aspect of GAI's proposal, noting that his status as an employee of the abandoned teaming partner created risk. As this Office has stated, evaluating the risk associated with an offeror's proposed approach is generally appropriate, whether or not risk is specifically stated as an evaluation factor, because consideration of risk is inherent in the evaluation of technical proposals. See, e.g., Communications Int'l, Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194 at 6.

B-291162, Nov. 20, 2002, 2002 CPD ¶ 209 at 4. A protester's disagreement with an agency's judgments does not render the evaluation unreasonable. Id.

Here, as discussed above, GAI's final revised proposal clearly introduced conditions and limitations that were contrary to the solicitation requirements. Accordingly, award to GAI on the basis of its revised proposal would have been improper. Farmland Nat'l Beef, supra; Marine Pollution Control Corp., supra; Marine Pollution Control Corp., supra. In any event, we have reviewed the entire record, including GAI's initial proposal, its final revised proposal, and the agency's contemporaneous evaluation documentation and, based on our review, we find no basis to question the ratings assigned to GAI's technical proposal under the various evaluation factors and subfactors, specifically including the ratings of "Unacceptable" with regard to GAI's proposed management plan. GAI's arguments that various aspects of its proposal should have been rated higher reflect mere disagreement with the agency's judgments and do not provide a basis for sustaining the protest.

Next, GAI protests that the agency's evaluation of Wildflower's proposal as "Acceptable" under the past performance evaluation factor failed to properly consider the size, scope and complexity of Wildflower's prior contracts. In this regard, GAI asserts that Wildflower has not held contracts as large or complex as this contract and, in fact, "has not been awarded any contracts over \$35 million."<sup>15</sup> Protest at 9. Again, the record fails to support GAI's assertions.

As stated above with regard to an agency's technical evaluation, the evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. Rather, we examine the record to determine whether the judgments were reasonable, adequately documented, and in accord with the stated evaluation criteria. See, e.g., Abt Assocs., Inc., B-237060.2, Feb. 6, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with agency judgments is insufficient to establish that a past performance evaluation was improper. Clean Harbors Env'tl. Servs., Inc., B-296176.2, Dec. 9, 2005, 2005 CPD ¶ 222 at 3.

Here, the solicitation provided that evaluation of an offeror's past performance would be based on its experience in performing prior contracts of similar size, scope and complexity to the requirements at issue in this procurement. AR, Tab 14, at 4.

The contemporaneous evaluation record shows that, in evaluating Wildflower's past performance, the agency contacted three of the six references Wildflower provided,

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<sup>15</sup> In a related argument, GAI asserts that Wildflower "has neither the personnel nor the infrastructure . . . to substantially perform the work." Protest at 10. This portion of GAI's protest is a challenge to the agency's affirmative responsibility, which this Office will not review absent conditions not present here. 4 C.F.R. § 21.5(c) (2008).

and discussed Wildflower's past performance on these contracts, which were valued at \$92 million, \$85 million, and \$80 million,<sup>16</sup> respectively.<sup>17</sup> AR, Tab 32, at 9. Further, the agency considered the type of tasks involved in Wildflower's prior contracts, concluding that they were sufficiently similar in scope and complexity to the requirements here. Finally, two of the three references the agency contacted rated Wildflower's past performance as "Outstanding," while the third rated it as "Acceptable." As noted above, the agency assigned a rating of "Acceptable" to Wildflower's past performance.

Although GAI disagrees with the agency's evaluation, it has not demonstrated that the agency's considerations and assessments were unreasonable. Based on the record here, we do not question the agency's conclusion that Wildflower was properly rated as "Acceptable" with regard to past performance.

Finally, GAI protests that the agency's evaluation and source selection decision was inadequately documented, complaining that "[n]o evaluation worksheets, individual evaluator notes or scales were produced." GAI Comments and Supplemental Protest, Mar. 5, 2009, at 3. GAI's protest in this regard is without merit.

Although an agency must document its evaluation judgments in sufficient detail to show that they are not arbitrary, the necessary amount and level of detail will vary from procurement to procurement. U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89 at 3; Champion-Alliance, Inc., B-249504, Dec. 1, 1992, 92-2 CPD ¶ 386 at 6-7. For example, there is no requirement that the evaluation record must include narrative explanations for every rating assigned. Apex Marine Ship Mgmt. Co., LLC; American V-Ships Marine, Ltd., B-278276.25, B-278276.28, Sept. 25, 2000, 2000 CPD ¶ 164 at 8-9. Similarly, there is no requirement that an agency retain individual evaluator's notes or worksheets, provided the agency's final evaluation documentation reasonably explains the basis for the agency's judgments. Global Eng'g and Constr. LLC, B-290288.3, B-290288.4, Apr. 3, 2003, 2003 CPD ¶ 180 at 3 n.3.

Here, the contemporaneous record included a detailed technical evaluation report that included the agency's narrative explanation regarding the basis for each evaluation rating of either "Unacceptable" or "Outstanding." AR, Tab 32. Further, the narrative explanations supporting the ratings consistently include specific references to the particular portions of the offerors' proposals that formed the basis

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<sup>16</sup> The contract valued at \$80 million reflected a performance period of less than 8 months, indicating that the magnitude of Wildflower's efforts associated with this contract corresponded to a higher overall value.

<sup>17</sup> As noted above, the agency ultimately valued this contract at approximately \$170 million, the price on which award was based, even though the agency's initial estimate exceeded that amount.



for the agency's assessments. Id. Finally, the agency's source selection documentation contained a detailed comparative discussion of the two offerors' proposals, identifying particular distinguishing features of each proposal. AR, Tab 34. On this record there is no merit in GAI's assertion that the agency's evaluation and source selection decision were inadequately documented.

The protest is denied.<sup>18</sup>

Daniel I. Gordon  
Acting General Counsel

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<sup>18</sup> In its various protest submissions, GAI also argued that the ratings assigned to various other aspects of Wildflower's proposal were unreasonable and/or that the agency did not evaluate the proposals on an equal basis. We have considered all of GAI's allegations and find no basis for sustaining the protest.