United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: SAP Public Services, Inc.

File: B-297535.2; B-297535.3; B-297535.4

Date: February 10, 2006

David S. Cohen, Esq. and John J. O'Brien, Esq., Cohen Mohr LLP; Richard B. Oliver, Esq., Alison L. Doyle, Esq., and Kevin J. Slattum, Esq., McKenna, Long & Aldridge LLP, for the protester.
Rand L. Allen, Esq., Paul F. Khoury, Esq., William J. Colwell, Esq., Daniel P. Graham, Esq., and Kevin J. Plummer, Esq., Wiley Rein & Fielding LLP, for Oracle Corporation, an intervenor.
Maj. Derek S. Sherrill, Maj. Michael S. Martin, and Lt. Col. Michaelisa M. Tomasic-Lander, Department of the Air Force, for the agency.
Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee's quotation was "noncompliant" with solicitation requirements regarding commercial availability of software is denied where the procurement record indicates that awardee's quotation complied with the solicitation requirements and protester expressly acknowledges that it has "no proof" to support its allegation.

2. Protester's disagreement with the agency's subjective assessments of the protester's and awardee's quotations with regard to non-price evaluation factors do not provide a basis for sustaining the protest where agency evaluation is supported by the record.

3. Where solicitation stated that agency's evaluation of vendors' quotations would include risk assessments regarding, among other things, the potential for increased costs, agency's "best value" determination properly considered such risk assessments without quantifying the potential impact on vendors' costs.

4. In making a "best value" determination, agency properly performed a cost/technical tradeoff based on the evaluated prices that were calculated consistent with the solicitation's provisions.

DECISION

SAP Public Services, Inc. protests the Department of the Air Force's award of a contract to Oracle Corporation under request for quotations (RFQ) No. FA8770-04-Q-0061 to provide software, licenses, technical support, and training for the expeditionary combat support system (ECSS) program.

We deny the protest.

BACKGROUND

On March 3, 2005, the Air Force issued the RFQ to obtain competitive quotations pursuant to the General Services Administration (GSA) Federal Supply Schedule (FSS).[1] The solicitation sought quotations for a commercial off-the-shelf (COTS) software product (or suite of products), licenses, technical support and training for a new expeditionary combat support system (ECSS) which is intended to improve weapon systems availability by improving the effectiveness of U.S. Air Force logistics.[2] RFQ at 2. The solicitation stated that "to the greatest extent possible, [ECSS will] replace Air Force retail and wholesale logistics legacy systems with commercially available products," and that the products sought "will consist of a core COTS ERP product and any necessary COTS bolt-on products that provide specific capabilities that are not available or robust enough in the ERP software."[3] RFQ at 7.

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[1] The solicitation provided that vendors holding a Department of Defense enterprise software initiative blanket purchase agreement (BPA) were also permitted to submit a quotation.

[2] The solicitation elaborated as follows: "To meet the ever-changing needs of the warfighter, Air Force logistics processes must significantly change. The Air Force can no longer view logistics processes in terms of functional areas but as a single integrated logistics enterprise." RFQ at 3. The solicitation further provided that the product sought must include "core enterprise resource planning (ERP) capability and robust advance planning and scheduling (APS) capability," RFQ attach. 6, at 2, and stated that the ECSS program is intended to "encompass the full scope of U.S. Air Force Logistics operations," including: materials management and contracting; facilities management; configuration and bill of materials; document management; repair and maintenance; quality control; distribution and transportation; advanced planning and scheduling; customer relationship management and order management; decision support; and budgeting. RFQ at 4.

[3] The solicitation noted, "It is anticipated that some limited Air Force logistics functions will not be covered by the COTS products (i.e. 'go-to-war' functions) and this may require interfacing of a few associated legacy systems with the COTS products." RFQ at 7. Vendors were also advised that the Air Force intends to

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Vendors were advised that award would be made on the basis of a "best value" determination considering the following evaluation factors--mission capability,[4] quote risk,[5] and price[6]--and that the non-price factors, when combined, would be significantly more important than price. RFQ attach. 6, at 1. With regard to the agency's evaluation under the non-price evaluation factors, the solicitation stated: "Since COTS products are being procured for ECSS, the Government acknowledges that the COTS products may not meet all of the stated functional and technical requirements. Consequently, the vendor's [quotations and demonstrations] will be evaluated to determine how well the quoted products comply with the [functional and technical] requirements." Id.

With regard to price, vendors were instructed that "[p]rices shall be based upon the Projected Cumulative Concurrent ECSS Users set forth in Table 3-1 of the RFQ." RFQ attach 1, Instructions to Vendors, at 17. The referenced table identified the projected number of concurrent users, by contract period, for which software

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provide the selected software solution to a follow-on contractor for system integration activities to be performed pursuant to a separate solicitation and contract.

[4] The RFP established two subfactors under mission capability--functional capability and technical compatibility; under each of these subfactors, the solicitation identified multiple "areas" for consideration. RFQ attach. 6, at 4-5. Within each evaluation "area," the agency considered multiple "elements" of capability. Id; Contracting Officer's Statement, Nov. 30, 2005, at 27; RFQ attachs. 3, 4. The mission capability subfactors and evaluation "areas" were assessed under the following rating system: (✓+) "Exceeds specified minimum performance or capability requirements in a way beneficial to the Air Force"; (✓) "Meets specified minimum performance or capability requirements"; (✓-) "Does not clearly meet some specified minimum performance or capability requirements"; and (F) "Fails to meet specified minimum performance or capability requirements." RFQ attach. 6, at 3.

[5] The RFQ provided that quote risk would be assessed with regard to each of the two mission capability subfactors, applying ratings of "High," "Moderate," or "Low" risk. RFQ attach. 6, at 4, 6. "High" risk was defined as "Likely to cause significant disruption of schedule, significant increased cost or significant degradation of performance." "Moderate" risk was defined as "Can potentially cause some disruption of schedule, increased cost or degradation of performance." "Low" risk was defined as "Has little potential to cause disruption of schedule, increased cost or degradation of performance." RFQ attach. 6, at 4.

[6] With regard to price, the RFQ provided that the agency would assess the reasonableness, completeness and realism of each vendor's "total quoted price including all options." RFQ attach. 6, at 6.

licenses would be required, stating that a total of 250,000 users was anticipated over the 7-year life of the contract. RFQ at 9. Vendors were further advised, within the RFQ section titled "Selection Factors for Award," that "[t]he price evaluation will be conducted on the total quoted price including all options."[7] RFQ attach. 6, at 6. Finally, the RFQ provided a pricing template, titled "Total Price Summary," that sought vendors' fixed prices for user licenses, maintenance/upgrades, technical support/training, travel, and other direct costs for the base period and for each of the six option-year periods.[8] RFQ attach. 1, app. A.

On April 4, Oracle and SAP each submitted quotations responding to the solicitation. Oracle's quotation offered a software package comprised of software owned by three vendors--Oracle, Xelus, Inc., and Industrial Financial Systems (IFS); SAP's quotation offered a software package comprised of software owned by two vendors--SAP and Manugistics, Inc. Thereafter, SAP and Oracle conducted product demonstrations.[9] Agency Report, Tabs 5, 11. Following the demonstrations, the agency conducted discussions and sought quotation revisions. Upon receipt of final revisions, the agency evaluated the vendors' quotations with the following results:

	SAP	Oracle
Mission Capability		
Functional Capability	[deleted] [deleted]	(✓) Moderate risk
Technical Compatibility	[deleted] [deleted]	(✓) Low risk
Price	[deleted]million	$91.2 million

Agency Report, Tab 17b, at 107.

The non-price evaluation ratings were supported by a detailed narrative discussion of each vendor's submission with regard to the various evaluation factors,

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[7] The RFQ provided that the Air Force intends to issue a delivery order for a base period with six 1-year option periods. RFQ at 2.

[8] For travel and other direct costs, the vendors were to use estimated values specified in the RFQ. RFQ attach. 6, at 6; RFQ attach. 5.

[9] SAP conducted its demonstrations from April 18 through April 22; Oracle conducted its demonstrations from April 25 through April 29. Contracting Officer's Statement, Nov. 30, 2005, at 2. Each vendor was required to conduct its demonstrations responding to various scenarios established in the solicitation.

subfactors, areas and elements. Agency Report, Tab 16. Overall, the agency viewed SAP's quotation as superior to Oracle's with regard to the non-price evaluation factors. Specifically, the primary evaluated difference between the two quotations was that SAP's quotation was rated [deleted] with regard to the functional capability subfactor; that is, SAP's quotation was evaluated as "exceeding specified minimum performance or capabilities in a way beneficial to the Air Force" with "little potential to cause disruption of schedule, increased cost or degradation of performance." Agency Report, Tab 16, at 10. In contrast, Oracle's quotation was rated "✓" with "Moderate" risk under the functional capability subfactor; that is, Oracle's quotation was evaluated as "[m]eet[ing] specified minimum performance or capability requirements" with "potential[] [to] cause some disruption of schedule, increased cost or degradation of performance." Agency Report, Tab 16, at 34.

The agency's evaluation of the vendors' total prices was based on each vendor's quotation for the costs associated with a total of 250,000 licensed users, as projected by RFQ table 3-1. Both quotations were evaluated as being reasonable, complete and realistic. The substantial difference between the two total prices was caused, in large part, by [deleted]. SAP's quotation reflected a price of [deleted] per licensed user; Oracle's quotation reflected a price of $135 per licensed user. Agency Report, Tab 17b, at 67, 100; SAP Comments on Supplemental Agency Report, Jan. 23, 2006, at 2.[10]

On October 17, the agency's "best value decision authority" (BVDA) selected Oracle's quotation for award. In his source selection document supporting Oracle's selection, the BVDA summarized and compared the evaluated ratings of each vendor's quotation with regard to the various non-price evaluation factors and subfactors, noted the significant price differential between the two quotations, and concluded that Oracle's quotation offered the best value to the government, stating:

> CONCLUSION: In arriving at my conclusion, I remained mindful that the Mission Capability (inclusive of Functional and Technical subfactors, in descending order) and Quote Risk factors (in descending order), when combined, are significantly more important than Price. However, based upon the stated evaluation criteria, it was apparent that the SAP offer did not provide sufficient additional benefits to justify paying an approximate additional [deleted] over an otherwise acceptable, though slightly higher risk solution offered by Oracle. After examining the details of SAP's higher ratings in the Functional Capability areas and factoring in the assessed Quote Risks, SAP's combined advantages were not sufficient to overcome this significant price differential. Even when considering the evaluated benefits associated with the requirements evaluated as "Check Plus" in SAP's

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[10] The per-user license prices have been rounded to the nearest whole dollar.

Product Suite, Oracle's proposed price represents a significant advantage to the government over the contract period. I also note that two risk elements in the Technical Compatibility areas favored Oracle. SAP did have a lower risk rating in the more important evaluation sub-factor of Functional Capability, but as indicated above, the significant differential in price caused me to conclude that assuming the Moderate Risk rating for Oracle in the Functional Capability sub-factor was an appropriate risk that could be overcome, Oracle's solution, costing less than [deleted] of SAP's solution meets the Government's needs and provides the best value to the Government.

Agency Report, Tab 18, at 2-3.

A contract was awarded to Oracle on October 20. SAP's various protest submissions followed.

DISCUSSION

SAP submitted its initial protest on October 28, 2005; thereafter, it submitted supplemental protests on November 4, November 14, and December 19. In these submissions, SAP challenges virtually every aspect of the agency's source selection process. We have reviewed all of the issues raised by SAP in its various protest submissions, as well as SAP's arguments in comments addressing the agency's responses to each of SAP's protest submissions. As discussed in more detail below, we find no basis for sustaining any portion of SAP's protest.

Oracle's Compliance with the Solicitation's "Generally Available" Requirement

In its October 28 and November 4 protest submissions, SAP challenged the basic acceptability of Oracle's quotation, arguing that Oracle's integrated software package was not COTS software and, thus, was "noncompliant with mandatory RFQ requirements." Protest, Oct. 28, 2005, at 12; Protest, Nov. 4, 2005, at 12. In this regard, SAP refers to a portion of the RFQ's "Instructions to Vendors" which provided that each vendor's product demonstrations must reflect the functionality contained in the "generally available release" of the software being demonstrated. RFQ attach. 1, at 7.[11]

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[11] The RFQ defined "generally available" software as:

    a) Code that is in production-level use (already in a deployed state, not development, testing, or initial implementation) at 2 or more clients; [and]

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Although SAP does not dispute that each of the software modules incorporated into Oracle's solution complies with the solicitation's "generally available" requirement, SAP maintains that this requirement also applied to the interface code between the software modules, and that Oracle's quotation failed to comply with the requirement. SAP asserts that "to the best of SAP's knowledge the combination of Oracle-Xelus-IFS, with its attendant 'bolt-on' software has never been installed at any customer site, nor implemented by any integrators," concluding that, "for this reason alone, the award to Oracle must be terminated." Protest, Oct. 28, 2005, at 14; Protest, Nov. 4, 2005, at 14.

The agency responds that SAP is erroneously interpreting the solicitation requirements, and provides a detailed discussion of the solicitation provisions that relate to the "generally available" requirement, explaining that this requirement applies to the "releases" of individual COTS software products that are incorporated in both vendors' integrated solutions[12]--not to the interfaces between modules. Contracting Officer's Statement at 8-14. Moreover, the agency (and Oracle) categorically maintain that, <u>even</u> <u>if</u> the "generally available" requirement were considered applicable to interfaces, Oracle's integrated solution, including interfaces, has, in fact, been implemented by more than two commercial users and, thus, would comply with that requirement. Contracting Officer's Statement at 13; Agency Report, Tab 11, Oracle Quotation, ¶ 4.3.1; Oracle Comments on Agency Report, exh. 2, Declaration of Oracle Program Manager, ¶¶ 7-8.

In its comments responding to the agency report, SAP offers no rebuttal to the agency's discussion regarding the proper interpretation of the solicitation requirements. Further, SAP offers no support for its initial allegation that Oracle's integrated solution has not been previously installed or implemented. To the contrary, SAP expressly acknowledges that it "has no proof" to support this allegation. SAP Comments on Agency Report, Dec. 22, 2005, at 37. Nevertheless, SAP states that it "is not withdrawing this protest count because the case is still developing, and additional evidence may be produced." <u>Id.</u>

In general, a protester bears the burden of proof with regard to allegations that an agency's procurement actions are improper. <u>See,</u> <u>e.g.,</u> <u>Piezo Crystal Co.</u>, B-236160,

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       d) Code that has been implemented by at least 2 commercial (not vendor) systems integrators;

RFQ attach 1, at 7.

[12] As noted above, SAP's own solution was similarly comprised of various software modules, owned by SAP and [deleted], which similarly required "bolt-on" interface code.

Nov. 20, 1989, 89-2 CPD ¶ 477 at 9. In its various protest submissions following its initial allegation on this matter, SAP has presented no evidence of any kind indicating that Oracle's quotation fails to comply with the solicitation's "generally available" requirement. On this record, there is no basis to sustain SAP's protest that the agency unreasonably concluded that Oracle's quotation met the "generally available" requirement.

Non-Price Evaluation Factors

Next, SAP protests various aspects of the agency's evaluation of SAP's and/or Oracle's quotations under the non-price evaluation factors. Among other things, SAP complains, generally, that "the Air Force rated SAP as a '✓' in a number of areas where it should have received a '✓+'."[13] Protest, Nov. 4, 2005, at 30. For example, SAP complains that, with regard to the "in-service support" (ISS) area, although the agency's evaluation recognized 2 "elements" within this evaluation area in which SAP's quotation exceeded the solicitation requirements, SAP's quotation was only rated "✓" for the ISS area. Similarly, with regard to the "supply chain management" (SCM) evaluation area, SAP complains that, although the agency's evaluation recognized 6 "elements" within this area in which SAP's quotation exceeded requirements; SAP's quotation was only rated as "✓" for the SCM area. Id. at 31. In short, SAP apparently believes that whenever at least some elements within an evaluation area were recognized as exceeding solicitation requirements, the agency was required to rate SAP's quotation as "✓+" for the entire evaluation area.

In responding to this protest allegation, the agency notes that, although the agency's evaluation did, indeed, recognize 2 elements within the ISS evaluation area in which SAP's quotation exceeded the minimum solicitation requirements, the solicitation established a total of 314 elements that would be considered under the ISS area. Similarly, although the agency's evaluation did, indeed, recognize 6 elements within the SCM evaluation area in which SAP's quotation exceeded the minimum solicitation requirements, the RFQ established a total of 1,021 elements for consideration in assessing the SCM area. Contracting Officer's Statement, Nov. 30, 2005, at 26; RFQ attachs. 3, 4. The agency further notes that the final ratings with regard to the various evaluation areas reflected the evaluators' consensus judgment regarding whether a vendor's quotation exceeded the solicitation requirements in a

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[13] As noted above, the solicitation advised vendors that, in evaluating the mission capability subfactors, the agency would make assessments with regard to various "areas" within those subfactors (including, for example, supply chain management, maintenance repair and overhaul management, force support planning, infrastructure management, in-service support, personnel and organization management, and financial/cost accounting). RFQ attach. 6, at 4. The solicitation further provided that assessments would be made with regard to "element[s]" within the evaluation areas. Id.

meaningful way in the context of <u>all</u> the requirements relevant to a particular area, and that, in the evaluators' collective judgment, SAP's quotation did not exceed the solicitation requirements in a meaningful way when taking into consideration all of the elements under the ISS and SCM evaluation areas.

In reviewing protests of agency evaluations, we will not reevaluate proposals; rather, we will review the record to ensure that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation and with procurement statutes and regulations. <u>Matrix Gen., Inc.</u>, B-282192, June 10, 1999, 99-1 CPD ¶ 108 at 3. A protester's mere disagreement with the agency's judgment does not make the evaluation unreasonable. <u>United HealthServ Inc.</u>, B-232640 <u>et al.</u>, Jan. 18, 1989, 89-1 CPD ¶ 43.

On the record here, we find nothing unreasonable in the agency's judgment that, in the context of all the elements considered under the ISS and SCM areas, the comparatively few elements in which SAP's quotation exceeded the minimum requirements did not warrant a "✓+" rating applicable to an entire evaluation area. SAP's protest in this regard merely reflects disagreement with the agency evaluators' collective judgment in this regard.[14]

Price Evaluation and Best-Value Determination

Next, SAP's protest submissions challenge various aspects of the agency's price evaluation and/or the best-value determination. For example, SAP references various positive comments made by the agency in evaluating SAP's quotation under the non-price evaluation factors, maintaining that such positive comments reflect "cost savings" associated with SAP's quotation,[15] and asserting that the agency

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[14] SAP's multiple protest submissions also challenge various other aspects of the agency's evaluation under the non-price factors, subfactors, areas, and elements. For example, SAP complains that Oracle's quotation should have been rated as "High" risk, rather than "Moderate" risk under the functional capability subfactor; that, in areas where both quotations were rated as "Did Not Clearly Meet [requirements]," the agency's source selection process failed to properly recognize the different extent to which the quotations "did not clearly meet" the requirements; and that, overall, the agency failed to properly recognize the extent to which SAP's quotation was superior to Oracle's quotation. We have reviewed all of SAP's allegations, along with the agency's responses and the contemporaneous procurement record, and find no basis to sustain SAP's protest.

[15] For example, an agency briefing slide that summarizes the evaluation of SAP's quotation under the non-price mission capability factor states, among other things, "Improved Transportation Processes – Full integration across the functional areas," "Ability to analyze spend patterns to facilitate cost effective purchasing decisions along with spend analysis capability by multiple characteristics," and "Superior

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"violated regulatory and statutory requirements by ignoring the substantial cost savings [associated with the agency's assessments under the non-price evaluation factors]." Protest, Nov. 4, 2005, at 17-22. In short, SAP complains that the agency's cost/technical tradeoff failed to reflect a downward adjustment of SAP's evaluated price to reflect "cost savings" identified during the agency's evaluation of non-price factors. Id.

The agency responds that, although it did not quantify the "cost savings" that SAP maintains are reflected in the agency's evaluation of non-price evaluation factors, the agency did, in fact, consider all of the various positive elements of SAP's quotation when the best-value determination was made. Specifically, in the agency's source selection decision document, the BVDA acknowledged that SAP's quotation was superior to Oracle's quotation with regard to various non-price factors, stating with regard to the functional capability subfactor: "The evaluation team's overall assessment of each quoted solution indicated that SAP's quoted solution exceeds specified minimum performance or capability requirements in a way beneficial to the Air Force and the Oracle quoted solution meets specified minium performance or capability requirements," and further noting that "SAP's quoted solution had more 'Exceeds' and fewer 'Does not Clearly Meet' evaluations than Oracle." Agency Report, Tab 18, at 1. With regard to quote risk under this subfactor, the decision document further acknowledged, "The overall quote risk evaluation for SAP was determined to be Low" and that "the overall quote risk rating for [the] Oracle quoted solution . . . was determined to be Moderate." Id. at 1-2.

To the extent SAP is asserting that the agency was required to quantify these assessments, and adjust the vendors' evaluated prices for purposes of the cost/technical tradeoff, we disagree. The solicitation did not provide that vendors' quoted prices would be adjusted for cost benefits identified in the evaluation of the firm's technical approach and, in fact, it is not clear that there would be any reasonable way to quantify such costs.[16] As noted above, the solicitation provided that the agency would make risk assessments with regard to the non-price evaluation factors, expressly advising the vendors that such risk ratings would address the extent to which a quotation presented the risk of increased cost. As also noted above, in assessing SAP's quotation, the agency concluded that there was "low" risk of increased cost, whereas, in assessing Oracle's quotation as presenting "moderate" risk, the agency concluded that the quotation had some potential for increased cost.

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transportation optimization and 'what if' capability to ensure carrier efficiency resulting in reduced costs." Agency Report, Tab 17a, at 31.

[16] We note that neither SAP's quotation nor its post-award protest submissions identify any particular amount of cost savings that should have been associated with SAP's technical approach.

Accordingly, it is clear that the agency did, in fact, consider--but did not quantify or assign a particular dollar value to--the "cost savings" associated with SAP's higher-rated quotation, along with the potential cost increases associated with Oracle's lover-rated quotation. Accordingly, we find no merit in SAP's assertion that the agency's price evaluation and best-value determination "ignore[ed]" the "cost savings" reflected in the agency's positive assessments of SAP's quotation under the non-price evaluation factors.[17]

In a similar vein, SAP asserts that the agency's price evaluation and/or best-value determination were flawed because the agency's cost/technical tradeoff failed to incorporate consideration of alternative licensing "buy out" options that SAP included with its quotation.

As discussed above, the solicitation advised vendors, under the heading "Total Price Summary," that "prices shall be based on the Projected Cumulative Concurrent ECSS Users set forth in Table 3-1 of the RFQ." RFQ attach. 1, Instructions to Vendors, at 17. The referenced Table 3-1 identified the total number of concurrent users, by contract period, for which software licenses would be required. RFQ at 9.[18] The solicitation also stated, within the section titled "Selection Factors for Award," that "[t]he price evaluation will be conducted on the total quoted price including all options." RFQ attach. 6, at 6. Finally, the solicitation provided a pricing template, titled "Total Price Summary," that sought the vendor's fixed prices for user licenses, maintenance/upgrades, technical support and training, travel, and other direct costs for the base period and for each of the six option-year periods. RFQ attach. 1, app. A. Both vendors submitted their quotations with the "Total Price Summary" template completed, Agency Report, Tabs 5, 11, and it was these total price quotations that the agency evaluated with regard to reasonableness, completeness, and realism, and on which the agency relied in performing its cost/technical tradeoff.

SAP maintains that, because, in addition to the above, the agency requested information regarding the terms and conditions under which the agency could implement an enterprise license agreement authorizing an unlimited number of

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[17] SAP makes a similar argument regarding the agency's evaluation of Oracle's quotation, maintaining that with regard to agency assessments of relative weaknesses under the non-price evaluation factors, such assessments should have resulted in a high evaluated cost for purposes of the cost/technical tradeoff. We reject this argument on the basis, as discussed above, that the solicitation's evaluation criteria did not provide for the type of adjustments that SAP now asserts the agency was required to make.

[18] This table provided that, by the end of the 7-year contract period, a total of 250,000 users was contemplated. Id.

licensed users, the agency was obligated to incorporate that information into the evaluated price on which its cost/technical tradeoff was based. We disagree.

As noted above, it is not the function of our Office to evaluate proposals. Rather, we will examine an agency's evaluation only to ensure that it was reasonably consistent with the stated evaluation criteria and applicable statutes and regulations. Pacific Ship Repair and Fabrications, Inc., B-279793, July 23, 1998, 98-2 CPD ¶ 29 at 3-4. Agency acquisition officials have broad discretion in establishing the evaluation factors that will be applied to a particular acquisition. RMS Indus., B-247233, B-247234, May 1, 1992, 92-1 CPD ¶ 412.

Here, as discussed above, it is clear that the vendors were advised that the agency's price evaluation, on which the best-value determination would be based, would reflect the vendors' total price for 250,000 licensed users, along with associated maintenance, technical support, training and travel, for a base period and six option-year periods. SAP's post-award protest assertions that, in performing the cost/technical tradeoff, the agency was obligated to rely on an evaluated price that differed from the definition of evaluated price established under the terms of the solicitation is without merit.[19] Protest, Dec. 19, 2005, at 3-9.

Solicitation Provision Regarding Agency's Total User Requirements

Finally, following receipt of the agency report responding to its initial protests, SAP filed a supplemental protest that essentially challenges the validity of the solicitation's projection of 250,000 licensed users. As discussed above, the solicitation stated that prices were to be based on the agency's projection of 250,000 users, as broken down by contract period in RFQ Table 3-1. The solicitation further indicated that a "user" could be either "man or machine." RFQ at 3. Consistent with the solicitation provisions, Oracle's quotation [deleted].[20]

In its December 19 protest submission, SAP makes various arguments related to Oracle's [deleted]. SAP maintains that, due to this provision in Oracle's quotation, the number of licenses the agency will be required to acquire pursuant to Oracle's

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[19] SAP also presents other arguments challenging the price evaluation and/or the best value determination, intertwining assertions that the amount of the price differential (approximately [deleted]) referenced in the BVDA's source selection document was erroneously calculated, with arguments that the weight the BVDA afforded the price differential was inconsistent with the solicitation provisions that made non-price factors more important than price, and arguments that the best value decision was inadequately documented. We have considered all of SAP's arguments and find no basis for sustaining its protest.

[20] SAP acknowledges that Oracle's quotation does not [deleted].

contract will exceed 250,000.[21] In this regard, SAP is effectively protesting either the solicitation provision that placed vendors on notice that a "user" could be "man or machine" or, alternatively, the reasonableness of the solicitation's projection of 250,000 licensed users on the basis that it understates the government's actual requirements. See Protest, December 19, 2005, at 3-14.

Our Bid Protest Regulations require that protests based on alleged solicitation defects or improprieties which are apparent prior to the closing time for receipt of initial proposals must be filed prior to that time. 4 C.F.R. § 21,1(a)(1) (2006). Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. As discussed above, the solicitation advised vendors that either a "man or machine" accessing the software would be considered a "user,"[22] and that the agency's price evaluation would be based on a projected 250,000 licensed users. SAP did not challenge either solicitation provision prior to submitting its quotation. Accordingly, its protest regarding this matter is not timely filed.

The protest is denied.

Anthony H. Gamboa
General Counsel

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[21] SAP maintains that, under its own quotation, the agency will not incur licensing costs for [deleted].

[22] Our review of publicly available information on the Internet is consistent with Oracle's and the agency's position that requiring licenses for independently operated machines is not a novel concept.