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Decision

Matter of: Cross Match Technologies, Inc.

File: B-293024.3; B-293024.4

Date: June 25, 2004

Richard P. Rector, Esq., Carl L. Vacketta, Esq., and David E. Fletcher, Esq., Piper Rudnick, for the protester.

Anne B. Perry, Esq., and Jonathan S. Aronie, Esq., Sheppard Mullin Richter & Hampton, for Identix Incorporated, an intervenor.

Mark A. Allen, Esq., Department of Homeland Security, for the agency.

David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Although it was improper for an agency to incorporate into awarded blanket purchase agreement additional, noncompeted items from vendor's General Services Administration schedule contract, where pricing for noncompeted items exceeded pricing limitation established in solicitation provision, and incorporation of noncompeted items was therefore inconsistent with agency obligation to evaluate vendors on an equal basis and in a manner such that the total cost to the government can be meaningfully assessed, nevertheless, protest in this regard is denied where protester was not prejudiced by the agency's improper action.

DECISION

Cross Match Technologies, Inc. protests the Department of Homeland Security's (DHS) issuance of a blanket purchase agreement (BPA) to Identix Incorporated, under request for quotations (RFQ) No. COW-3-Q-0047, for live-scan electronic fingerprint scanning systems. The BPA was issued to Identix under its General Services Administration (GSA) Federal Supply Schedule (FSS) contract. Cross Match challenges the technical and price evaluations.

We deny the protest.

BACKGROUND

The RFQ as issued contemplated the award of a BPA, to a single vendor holding a GSA Schedule 84 or Schedule 70 contract, for a period of 60 months (or the expiration of the vendor's GSA schedule contract, whichever is later), for the acquisition of live-scan fingerprint scanning systems and services, to be used primarily by the Bureau of Citizenship and Immigration Services (BCIS) to digitally capture and electronically submit to the Federal Bureau of Investigation (FBI) fingerprint images for applicants for immigration benefits. BCIS currently operates approximately 660 live scan machines at over 130 Application Support Centers (ASC) located at sites throughout the United States and its territories. The RFQ indicated that the live scan systems being acquired were "to be used predominantly at domestic ASCs and other domestic BCIS sites to replace existing Live-Scan technology as it becomes worn or outdated." Statement of Work (SOW) § 4.0. The RFQ further indicated, however, that "[i]n 2004, BCIS anticipates expanding the ASC Program to worldwide operations at sites on up to five continents," with the overseas ASC program "allow[ing] biometric capture for background checks prior to an applicant entering the U.S.A." Id.¹

Award was to be made to the vendor whose quotation was determined to represent the "best value" to the government based on two evaluation factors: (1) demonstrated technical capability, the evaluation of which would be based on the vendor's technical proposal and a live test demonstration of its equipment; and (2) price. The RFQ provided that "[t]he primary method of evaluating each technical factor in the SOW is specified in the Technical Evaluation Checklist," that is, a checklist of 93 requirements, each denoted as either "critical" or not. RFQ § 4.5.1. Any quotation receiving lower than a satisfactory rating for one or more critical factors was to be deemed overall unsatisfactory for demonstrated technical capability and ineligible for award. As for price, the RFQ required vendors to identify each category of quoted product/services to the applicable GSA schedule items, furnish the GSA price, show the quoted discount from the GSA price and the resulting BPA price, and furnish copies of the GSA schedule contracts. In this regard, vendors were warned that "DHS may choose not to enter into a [BPA] with Offerors whose prices are not competitive or which offer no pricing discounts on items or services available at an undiscounted price on the GSA Schedule. Pricing proposed must be at or below the GSA Schedule price." RFQ § 4.6. In addition, the

¹ Although the RFQ noted that DHS's Bureau of Immigration and Customs Enforcement and Bureau of Customs and Border Protection operate approximately 160 live scan devices at U.S. points of entry and other U.S. border and interior locations, the solicitation indicated that the requirements and configurations for enforcement and benefits functions are somewhat different, and stated that the primary requirements to be met and configurations to be furnished under the contemplated BPA would be for BCIS immigration benefits processing. SOW § 4.1.

RFQ cautioned that “[p]roposals which are . . . unrealistically low in . . . price will be deemed to show an inherent lack of technical competence or failure to comprehend the complexity and risk of the BPA requirements.” RFQ § 4.6. The RFQ provided that “the Government is more concerned with obtaining performance capability superiority rather than the lowest overall price.” RFQ § 4.2.

Initial quotations were received from five vendors by the September 11, 2003 closing time. Four of the vendors, including Cross Match, quoted only a desktop live scan system, that is, a system in which the fingerprint scanner unit is attached to a desktop computer. The fifth vendor, Identix, quoted both a desktop live scan system and a booking station system, that is, a system in which the fingerprint scanner unit and the desktop computer are enclosed in a cabinet and which is designed to be used in a fixed location. Since there could be no “apples-to-apples comparison” for evaluation purposes between a desktop system and a booking station system, and a booking station solution was most consistent with the domestic office environment in which the large majority of machines would be used, DHS amended the RFQ on September 16 to clarify that DHS was seeking to purchase “both stand-alone live scan booking stations and live scan desktop solutions to satisfy multiple DHS users and environments.” Amend. No. 0003 at 2. The amendment provided that “each Offeror shall provide a revised price proposal, using the two attached pricing tables, to offer both stand-alone live scan booking station and desktop solutions, if available on the Offeror’s GSA Schedule.” Id. Also, “[d]ue to the change in requirements,” the RFQ was amended to reserve to the government the right to issue more than one BPA where the agency determined that multiple BPAs would represent the best value. Revised quotations were due by September 16. Id.

In their revised quotations, Cross Match and three other vendors, as well as Identix, responded to the call for a booking station solution. Based on its evaluation of the revised quotations, the agency’s technical evaluation committee (TEC) rated Identix’s desktop and booking station solutions outstanding, and Cross Match’s only satisfactory, with respect to demonstrated technical capability. The TEC concluded, however, that both vendors’ technical quotations “stand out in terms of Demonstrated Technical Capability,” and “strongly recommend[ed]” awarding BPAs to both vendors. TEC Report, Sept. 26, 2003, at 24. According to the TEC report, “Identix Corporation’s proposed technical solution, with its Standalone Booking Station hardware and superior support, provides the best overall value for existing domestic ASC locations and processes,” while Cross Match’s desktop technical solution, “while not the best fit for domestic ASC use, provides superior mobile features and would provide the best overall value for mobile and overseas applications.” Id. The source selection authority (SSA), however, determined that the best value would be obtained by awarding a single BPA for both the desktop and booking station systems to Identix, whose prices were lower than Cross Match’s.

Upon learning of the resulting September 30 award of a BPA to Identix, Cross Match protested to our Office. DHS responded to Cross Match’s protest by deciding to

reevaluate quotations (but not to accept technical or price revisions); we therefore dismissed Cross Match's protest. (B-293024, B-293024.2, Oct. 28, 2003).

DHS reports that, during the course of the reevaluation, it learned that Cross Match's booking station (as well as those quoted by three of the other vendors) was not on Cross Match's GSA schedule contract at the time of the September 16 closing date for receipt of revised quotations. Rather, the booking station quoted in Cross Match's revised quotation was first added to its GSA contract as a result of a proposed modification that was submitted by Cross Match to GSA on September 12, the day after amendment No. 003 was issued, but was not incorporated into Cross Match's GSA schedule contract until September 25, that is, after the closing date but before the September 30 award to Identix. Cross Match Letter to DHS, Oct. 31, 2003. Although DHS ultimately concluded that Cross Match's quoted booking station was ineligible for award because it was not timely included on the firm's GSA schedule contract, the agency nevertheless included the booking station in the technical evaluation.

In its reevaluation report, dated February 19, 2004, the TEC assigned Cross Match's desktop and booking station solutions overall outstanding ratings for demonstrated technical capability, based on outstanding ratings for nine technical subfactors (including three critical subfactors). The TEC likewise assigned Identix's solutions overall outstanding ratings for demonstrated technical capability, based on outstanding ratings for 15 technical subfactors (including 7 critical subfactors). Notwithstanding the increase in Cross Match's overall rating for demonstrated technical capability (from satisfactory in September 2003 to outstanding in February 2004), the TEC recommended award only to Identix. TEC Reevaluation Report, Feb. 19, 2004, at 21-31. In addition, as previously noted, Identix's evaluated prices for both the desktop and booking station (\$[DELETED] for the desktop and \$[DELETED] for the booking station) were lower than Cross Match's (\$[DELETED] and \$[DELETED]). The SSA concluded that Identix's quotation represented the best value for both the booking station and desktop requirements. In this regard, having first adopted the TEC's findings with respect to technical strengths and weaknesses, subfactor ratings and overall evaluation ratings (including the overall outstanding ratings for demonstrated technical capability for both Identix and Cross Match), the SSA concluded that neither Cross Match's desktop solution nor its booking station solution provided additional value relative to Identix's systems so as to warrant payment of Cross Match's higher prices. Furthermore, the SSA specifically discounted the possibility of making multiple awards, noting, among other considerations, that having multiple systems in the field would increase the cost and effort for training and maintenance. Source Selection Decision at 7-8. Upon learning of the determination that Identix's quotation represented the best value to the government, Cross Match filed this protest with our Office.

INCORPORATED ITEMS

Cross Match challenges the agency's actions with respect to the inclusion in Identix's BPA of items from Identix's GSA schedule contract. In this regard, section 2.1 of the RFQ provided as follows:

Upon award of the BPA, DHS intends to incorporate the winning vendor's GSA Schedule contract into the DHS BPA, to include all the vendor's Schedule Live Scan products and services. DHS will negotiate with the winning vendor to obtain DHS BPA pricing for Live Scan models, equipment, and services that were not part of the Offeror's proposal. BPA pricing for additional models shall be equal to, or below, the pricing on the proposal model, including discounts.

In its quotation, Identix not only completed the pricing tables furnished with amendment No. 003, quoting specific pricing for the competed and evaluated desktop and booking station systems and associated services as set forth in the various contract line item numbers (CLIN) in the pricing tables, but also quoted discount rates and resulting pricing for the remainder of the live scan items from its GSA schedule contract that were not included in the RFQ's pricing tables. Specifically, Identix quoted an aggregate [DELETED] percent discount from its GSA schedule pricing for the booking station CLINs and an aggregate [DELETED] percent discount for the desktop system CLINs. In addition, Identix quoted a [DELETED] percent discount for additional, specified [DELETED] from its GSA schedule that were [DELETED] and were not included in its pricing tables; a [DELETED] of [DELETED] percent for additional, specified items from its GSA schedule contract that were [DELETED] and were not included in its BPA pricing tables; and [DELETED] not included in Identix's BPA pricing tables. (The RFQ did not specifically require that a vendor's quotation include discounts and pricing for the vendor's GSA schedule live scan products and services that were to be incorporated into the DHS BPA pursuant to section 2.1, and Cross Match did not furnish such discounts and pricing with its quotation.)

Testimony at the hearing conducted in this protest indicated that the agency's contract specialist, acting as the price analyst, had concluded at the time of initial issuance of the BPA in September 2003 that Identix's pricing for the additional items to be incorporated into the BPA from Identix's GSA schedule contract pursuant to section 2.1 did not meet the requirement that the pricing for the incorporated items be equal to or lower than the pricing for the quoted evaluated items. However, according to the price analyst, there was insufficient time to negotiate with Identix over the pricing for the "noncompeted items." Hearing Transcript (Tr.) at 714-17. Specifically, DHS was attempting to issue the BPA to Identix on September 30, the last day of the fiscal year, before the agency appropriation to be used here had expired, and a delay had been encountered in obtaining the approval of the contracting officer (who also was the SSA) of the contemplated BPA (he had initially refused to sign any BPA that incorporated the winning vendor's GSA schedule). Id.;

E-mail from Chairperson of TEC to Members of TEC, Sept. 30, 2003, 3:44 p.m. Notwithstanding any concerns in this regard, however, once the reluctance of the contracting officer to sign the BPA was overcome, a BPA was issued to Identix on September 30 that included Identix's discounts and pricing for the additional, noncompeted items to be incorporated into the DHS BPA from Identix's GSA schedule contract pursuant to section 2.1. The record indicates that DHS did not subsequently renegotiate the pricing for these noncompeted items (nor did it order any of the items under Identix's new BPA). Instead, the day before the hearing conducted by our Office, DHS modified Identix's BPA to delete all of the incorporated noncompeted items.

Cross Match asserts that incorporating the noncompeted items at the quoted prices into Identix's BPA was inconsistent with the RFQ requirement that the prices for these items be equal to or lower than the prices for the evaluated items. We agree. DHS concedes that Identix's quoted pricing for some of the noncompeted items from Identix's GSA schedule exceeded the pricing for the evaluated items, but asserts that this was not a violation because the noncompeted item pricing did not need to meet the "equal or less" requirement until after the negotiation of pricing, which had not yet occurred, and because no orders had been issued. DHS Comments, June 8, 2004, at 18-19; DHS Comments, June 15, 2004, at 2. However, Identix's quotation was noncompliant with that pricing restriction when the BPA was awarded to Identix on September 30. While DHS may have intended subsequently to modify the BPA to remove the improper pricing, this does not alter the fact that the BPA as awarded included noncompliant pricing. As a result, the issuance of the BPA was inconsistent with the basis upon which quotations were issued and thus improper. It is generally improper for an agency to solicit quotations on one basis and then make award on a materially different basis. See Cellular One, B-250854, Feb. 23, 1993, 93-1 CPD ¶ 169 at 4; Ann Riley & Assocs., Ltd., B-241309.2, Feb. 8, 1991, 91-1 CPD ¶ 142 at 4.²

² Cross Match also argues that incorporating noncompeted items is inconsistent with the statutory requirement for competition. We note that an agency is required to evaluate offerors or vendors on an equal basis and in a manner such that the total cost to the government for the required goods or services can be meaningfully assessed. See Symlicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 5; Lockheed Aeronautical Sys. Co., B-252235.2, Aug. 4, 1993, 93-2 CPD ¶ 80 at 7 ("apples to oranges" cost evaluation is inherently improper). A solicitation provision that provides for incorporating into a BPA or contract additional, unevaluated items, in quantities for which no estimates are provided in the solicitation, and at prices that are subsequently to be negotiated, appears neither to ensure that competitors are evaluated on an equal basis nor to comply with the requirement that the total cost to the government for the required goods or services be taken into account in the evaluation. As discussed below, however, there is no basis for concluding that any flaws with respect to section 2.1 resulted in competitive prejudice to Cross Match.

This is the general rule, and it is a fundamental one in our federal procurement system, but it may be waived if competitors are not prejudiced thereby. See Cellular One, *supra*; Ann Riley & Assocs., Ltd., *supra*. Similarly, our Office will not sustain a protest unless there is a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996). Cross Match argues that it was prejudiced because, by quoting pricing for the noncompeted items from Identix's GSA schedule that was higher than permitted by section 2.1, Identix was in a position to gain an improper advantage by shifting its costs to the unevaluated pricing and reducing its evaluated pricing.

We find no reasonable possibility of prejudice to Cross Match. To the extent that Identix could shift a disproportionate share of its costs to the unevaluated items (there is no persuasive evidence that it did so), the record shows that the amount involved could have accounted for no more than a small portion of Identix's overall price advantage.

In response to the protest, DHS calculated the potential competitive advantage obtained by Identix. In this calculation, the agency assumed that the section 2.1 pricing limitation applied to all noncompeted goods and services that the agency reasonably anticipated ordering through Identix's BPA. We note that this approach is consistent with the protester's June 8 statement of prejudice:

Cross Match does not argue in connection with this allegation that Identix gained an advantage equal to all money that would have been spent by the agency on non-competed items under the BPA. Rather, Cross Match argues more narrowly that Identix's advantage in this area can best be measured by the difference between (i) Identix's actual proposed prices for non-competed items that the agency reasonably expects to sell through the BPA, and (ii) Identix's 'should-have-been' prices for the same items, assuming that no waiver [of RFQ paragraph 2.1] had occurred and that discounts on non-competed items were as good or better than those on similar, competed items.

Cross Match Comments, June 8, 2004, at 14.

DHS reports that it anticipated ordering through Identix's BPA a quantity of 10 mobile fingerprint scanning systems (model [DELETED]), a noncompeted item incorporated into the BPA from Identix's GSA schedule contract and priced at a [DELETED] percent discount from the GSA schedule price. These mobile systems appear to be a variant of the desktop fingerprint scanning systems (model [DELETED]) quoted by Identix to meet the RFQ desktop requirement, in which the desktop personal computer is replaced by a laptop computer, and the agency

considers the mobile systems to be subject to the section 2.1 pricing limitation. The price for the noncompeted mobile systems DHS anticipated ordering was \$[DELETED] at a [DELETED] percent discount, while the price (according to DHS) for the comparable element of the quoted desktop was \$[DELETED] at a [DELETED] percent discount. DHS Comments, June 15, 2004. Cross Match generally asserts that the difference in the quoted discount rates is the proper comparison, based on which methodology it calculates prejudice related to these items as only \$[DELETED]. Cross Match also claims that the agency is likely to order additional mobile systems through Identix's BPA, but it concedes that the potential prejudice (calculated by Identix as up to \$[DELETED]) "does not appear to be substantial." Cross Match Comments, June 18, 2004, at 4.

DHS reports that it also intends to order an additional \$1,704,160 in other live scan equipment. However, some of this equipment was not available on Identix's BPA (including \$670,800 in cameras) as issued, and for the remainder of the equipment, there were no comparable items in the RFQ's pricing tables; thus, the section 2.1 pricing limitation did not apply to this equipment. DHS Comments, June 15, 2004. Cross Match has not shown the agency's position in this regard to be unreasonable.

DHS also anticipated ordering from Identix continuing maintenance for its installed base of 417 legacy Identix Tenprinters fingerprint scanning systems (similar to a booking station) and 254 legacy Identix CMS systems fingerprint scanning systems (a type of desktop system). The noncompeted items incorporated into Identix's BPA from its GSA schedule contract included an item for Tenprinter maintenance (\$[DELETED] per month at [DELETED] percent discount), but there was no item for CMS maintenance. (Identix's consolidated price for out-of-warranty maintenance of the booking station as included in the RFQ pricing tables was \$[DELETED] per year at a [DELETED] percent discount.) DHS reports that, based on the agency's plan first to replace the older, more heavily used Tenprinters with new systems, and then the CMS systems, the likely cost of the maintenance for Identix Tenprinters ordered under Identix's BPA would have been \$[DELETED]. The agency calculates that, assuming that the section 2.1 "equal or less than" pricing limitation applied to services (and the agency does not believe it does), and using the discount rate measure of comparison suggested by the protester, the difference between the quoted discount rate ([DELETED] percent) for Tenprinter maintenance and the minimum discount rate (a consolidated [DELETED] percent) based on the discount rate for the evaluated booking station maintenance, yields a potential prejudice in the amount of \$[DELETED]. DHS Comments, June 15, 2004; DHS Comments, June 17, 2004.

As shown above, the magnitude of any potential competitive advantage obtained by Identix from its noncompliant pricing for noncompeted items is relatively small, and certainly is not sufficient to eliminate Identix's \$[DELETED] price advantage.

Accordingly, we find no prejudice to Cross Match from the waiver of the pricing requirement.³

DEMONSTRATED TECHNICAL CAPABILITY EVALUATION

As noted above, the RFQ included a technical evaluation checklist of 93 requirements or subfactors, each denoted as either “critical” or not. RFQ § 4.5.1. Although the TEC in its reevaluation of proposals assigned both Cross Match’s desktop and booking station solutions overall outstanding ratings for demonstrated technical capability, Identix’s desktop and booking station solutions received outstanding ratings under significantly more subfactors than Cross Match’s. Specifically, Identix’s solutions were evaluated as outstanding under 15 of the 93 technical subfactors, including 7 critical subfactors, while Cross Match’s were evaluated as outstanding under only 9 technical subfactors, including only 3 critical subfactors. Cross Match challenges the technical evaluation, asserting that DHS improperly failed to take into account a number of advantages offered by Cross Match’s quoted approach, and unreasonably attributed technical superiority to Identix’s quotation under a number of subfactors.

Under the FSS program, an agency is not required to conduct a competition before using its business judgment in determining whether ordering supplies or services from a particular FSS vendor represents the best value and meets the agency’s needs at the lowest overall cost. Federal Acquisition Regulation § 8.404(a); Information Spectrum, Inc., B-285811, B-285811.2, Oct. 17, 2000, 2001 CPD ¶ 133 at 4. However, where, as here, an agency conducts a 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. Aerotek Scientific LLC, B-293089, Jan. 23, 2004, 2004 CPD ¶ 21 at 3. Based on our review of the record here, we find no basis to question the overall technical evaluation. We discuss a number of Cross Match’s more significant arguments below.

³ Cross Match also suggests an alternative calculation of prejudice based on the total cost of maintenance (\$[DELETED]) the agency expected to order from Identix, both for the Identix Tenprinters (for which an item was incorporated into Identix’s BPA) and for the Identix CMS systems (for which no item was incorporated into Identix’s BPA). However, this calculation appears inconsistent with the above differential calculation suggested by Cross Match, and the protester has not otherwise shown that the total dollar value of the incorporated work is the proper measure of prejudice.

Overseas and Mobile Requirements

Cross Match asserts that DHS did not meaningfully consider the advantages afforded by its solutions with respect to overseas and mobile use, advantages the TEC had acknowledged in the initial evaluation. In this regard, as noted above, the TEC concluded in its initial evaluation that while Cross Match's desktop technical solution "was not the best fit for domestic ASC use," its desktop technical solution "provides superior mobile features and would provide the best overall value for mobile and overseas applications." TEC Report, Sept. 26, 2003, at 24. The TEC specifically noted in a separate section of its initial (September 2003) evaluation report certain "Additional Strengths" of Cross Match's system which, unlike the other evaluated strengths, were not attributed to any particular technical subfactor, but which nevertheless were viewed as beneficial for overseas and mobile uses. These "Additional Strengths" included: (1) the ability to capture stained fingerprints, considered good for overseas applications; (2) the ability to capture the signature of the fingerprint technician, considered useful in both ASC and overseas applications; (3) the ability to send fingerprints directly from the fingerprint scanning system without going through a server, considered good for overseas or other mobile applications; (4) rugged scanner construction, considered an outstanding feature for overseas or other mobile applications; (5) a scanner weight of just 11.5 pounds, considered good for overseas or other mobile applications; and (6) a universal power supply that adapts to most power conversions for foreign use. Id. at 9-10.

We find that the evaluation in this area was consistent with the evaluation approach set forth in the RFQ and reasonable in application. The RFQ § 4.5.1, "Demonstrated Technical Capability Factor Evaluation," specifically provided, in relevant part, as follows:

The Government will evaluate the Offeror's demonstrated technical capability factor based on the Technical proposal and test demonstration. The primary method of evaluating each technical factor in the SOW is specified in the Technical Evaluation Checklist.

The record indicates that, while in the initial evaluation the TEC identified features not falling within the technical evaluation checklist subfactors as "Additional Strengths," in its reevaluation the TEC eliminated the "Additional Strengths" section of its report and instead focused on evaluating in accordance with the 93 technical subfactors set forth in the technical evaluation checklist. Tr. at 263-65, 274-76, 279, 295-96, 307, 346-48. Given the statement in RFQ § 4.5.1 that vendors were to look to the technical evaluation checklist of 93 subfactors for the "primary" evaluation method, we think it was reasonable for the agency to use the 93 subfactors as the focal point for its evaluation. (Indeed, the record indicates that Cross Match itself expected that its quotation would be evaluated against the 93 stated subfactors. Tr. at 812.)

Further, as Cross Match itself has acknowledged, none of the 93 evaluation subfactors specifically related to overseas use. Cross Match Comments, May 10, 2004, at 12; Tr. at 276 (SSA). While the RFQ indicated that “[i]n 2004, BCIS anticipates expanding the ASC program to worldwide operations at sites on up to five continents,” SOW § 4.0, the anticipated overseas environment in which the fingerprint scanner systems would be deployed is predominantly an office environment. Tr. at 130, 133-34, 197-98, 213. DHS did not view the RFQ as providing for meeting a mobile requirement, Tr. at 130, 212, 301, 370, 534, and the record suggests that neither did Cross Match.⁴ Specifically, neither Cross Match nor Identix quoted a mobile system, that is, a system in which the fingerprint scanner is integrated with a laptop computer. Tr. at 370-71, 427-28, 532-34. According to Cross Match’s chief operating officer: “We were not asked to bid a mobile solution. We were asked to bid a desktop solution. We bid a desktop solution that included a desktop computer.” Tr. at 775. Indeed, this focus on use in an office environment, rather than in a mobile environment, is consistent with the requirement in the SOW and under subfactor 49 that the live scan system provided by the contractor “[b]e designed to function in an office environment of 60 to 90 degrees Fahrenheit and 20 to 80 percent relative humidity” SOW § 6.2.3.

We find that, given the focus in the evaluation provisions of the RFQ on use in an office environment, the agency reasonably determined in the reevaluation not to credit Cross Match’s quoted solution with any significant advantage in this area. For example, testimony at the hearing indicated that while the capability of Cross Match’s systems to send fingerprints directly from the fingerprint scanning system without going through a server may have some value in an overseas or mobile application, it would not work in an ASC office environment, that is, the environment that was the focus of the evaluation and the procurement. Tr. at 309. Likewise, while the rugged construction and the 11.5 pound weight of Cross Match’s scanner was an advantage in mobile applications, the agency viewed these features as of limited value in an office environment. Tr. at 13-17, 195-98, 201-02, 304.⁵ In any case, it appears that Identix’s scanner also possessed some, more limited ruggedization—including being totally sealed, with no cooling fans or vents, and with no moving parts for fingerprint capture—which would be useful in a mobile use. Tr. at 257; TEC Evaluation Report, Aug. 11, 2003, at 19; TEC Evaluation Report, Sept. 26, 2003, at 20.

⁴ Agency contracting officials, however, did expect that if Identix’s GSA live scan schedule contract was incorporated into the BPA, any requirement for mobile systems that might arise could be met under the augmented BPA. Tr. at 369-71.

⁵ Identix’s scanner weighed only 14 pounds, which also was viewed as an advantage (strength) for mobile applications. TEC Evaluation Report, Sept. 26, 2003, at 20.

In addition, the record indicates that Identix's systems otherwise offered some of the advantages attributed to Cross Match's in the initial evaluation. For example, while the TEC's reevaluation report acknowledged that Cross Match's stated capability of capturing stained fingerprints "might be useful," TEC Reevaluation Report, Feb. 19, 2004, at 9, the record indicates that Identix's systems likewise possessed the capability to capture stained fingerprints, with Identix actually having demonstrated that capability to the TEC during the overall demonstration of its system. Tr. at 428-29; TEC Evaluation Report, Aug. 11, 2003, at 19; TEC Evaluation Report, Sept. 26, 2003, at 19. Thus, this capability furnished no basis for distinguishing between the quotations. Nor does Cross Match's statement that its systems had the ability to capture the signature of the fingerprint technician furnish a basis for distinguishing between the quotations. The record indicates that Cross Match was unable to demonstrate the capability to permanently record the technician's signature and, in any event, Identix's systems also identified the fingerprint technician, albeit not by the technician's signature. Tr. at 190, 310-11, 430-31. As for Cross Match's system possessing a universal power supply that adapts to most power conversions for foreign use, the record indicates that Identix's systems have been used by DHS for overseas refugee use and have satisfactorily complied with any power conversion requirements. Tr. at 305-06, 312-13. In these circumstances, we conclude that DHS's evaluation of the overseas and mobile features cited by Cross Match was not unreasonable.

Creation of an Electronic Fingerprint Transmission Specification File

The SOW contemplated that, in addition to scanning an applicant's fingerprints, the live scan system operator would collect biographic and demographic data, either by scanning the scheduling notice for the fingerprint session to populate data fields, using pull-down menus, or manually entering the data using the keyboard. The operator would then create an Electronic Fingerprint Transmission Specification (EFTS) file containing the 14 fingerprint images and biographic data. SOW § 6.2.1. Critical evaluation subfactor No. 4 provided for evaluating a vendor's approach to meeting the requirement to create an EFTS file. Identix's quoted systems were evaluated as outstanding under this subfactor based on several considerations, including: (1) the agency's determination that its software and data entry screens have the same look/feel/touch as the existing Identix software, which was viewed as significantly reducing the learning curve of, and the need for retraining, the 900 technicians doing fingerprint capture; and (2) Identix's quotation indicated a superior knowledge and understanding of the requirement to create an EFTS file in the format used by DHS, by listing all of the required and optional EFTS transaction fields currently used by DHS to transmit data to the FBI for processing, and including screen shots of the data entry screens (which the agency intends to continue using). TEC Reevaluation Report, Feb. 19, 2004, at 15-16; Tr. at 459-63; DHS Comments, June 8, 2004, at 12; DHS Comments, June 4, 2004, at 20-22.

Cross Match argues that the agency's consideration of the fact that Identix's quoted system has software and data entry screens with the same look/feel/touch as the existing Identix software at DHS amounted to consideration of an unstated evaluation criterion and, in any case, failed to account for required post-award software modifications.

We find no basis to object to the evaluation in this area. While an agency may not consider evaluation criteria that are not reasonably related to the evaluation factors set forth in the RFQ, KPMG Consulting LLP, B-290716; B-290716.2, Sept. 23, 2002, 2002 CPD ¶ 196 at 14, the similarity in the look/feel/touch of the software and data entry screens would facilitate meeting the EFTS file-creation requirement evaluated under subfactor No. 4; therefore, this consideration was reasonably related to an evaluation factor set forth in the RFQ. Further, while SOW § 6.2.4 contemplated that the successful vendor would "perform all Live-Scan software modifications required to interface with BCIS systems," and "modify data entry (screens) to meet Government requirements," SOW § 6.2.4, DHS reports that there would be no need for modification of Identix's quoted software and data entry screens because of the similarity to the current software and data entry screens. DHS Comments, June 8, 2004, at 12. We conclude that the agency reasonably credited Identix's quoted solution with having software and data entry screens that did not need modification and which, as a result, guaranteed that the agency's needs could be met without delay and without necessity for staff retraining.

Nor do we find merit in Cross Match's challenge to Identix's outstanding rating under critical subfactor No. 12, which required that the live scan system be capable of performing data entry of demographic information using pull-down menus/tables. DHS accorded Identix's quotation an outstanding rating on the basis that it demonstrated a superior understanding of DHS data entry requirements and an increased likelihood of meeting those requirements by citing the 11 pull down tables used by DHS and indicating that Identix's software currently includes these tables. Tr. at 467; DHS Comments, June 4, 2004, at 23-24. Although Cross Match, citing SOW § 6.2.4 above, suggests that the agency would provide this information to the successful vendor, DHS maintains that the agency will furnish no more than a list of entries that must be in each table, and that it would be the responsibility of the vendor to modify its software. Cross Match has not shown the agency's position in this regard to be unreasonable.

Having reviewed Cross Match's challenges to the technical evaluation, we find no basis for concluding that DHS unreasonably determined that Cross Match's

quotation was not technically superior to Identix's.⁶ Given Identix's lower price, there is no basis for objecting to award of the BPA to Identix.

The protest is denied.

Anthony H. Gamboa
General Counsel

⁶ Cross Match challenges the agency's price realism determination, asserting that Identix's quoted prices, representing an aggregate [DELETED] percent discount from its GSA schedule pricing for the booking station CLINs and an aggregate [DELETED] percent discount for the desktop system CLINs, were unrealistic. While an agency is not required to conduct a realism analysis where a solicitation contemplates award on a fixed-price basis, an agency may, as the agency did here, provide for the use of a price realism analysis for the limited purpose of measuring a vendor's understanding of the requirements or to assess the risk inherent in a vendor's quotation. See, Cortez, Inc., B-292178, et al., July 17, 2003, 2003 CPD ¶ 184 at 2. Here, DHS compared Identix's prices to those of the other vendors, finding that Identix's aggregate price for the booking station was only [DELETED] percent lower than the average price for all vendors, and that Identix's aggregate price for the desktop system was only [DELETED] percent lower than the average price for all vendors. In addition, the record indicates that Identix has been furnishing live scan equipment under its current BPA with DHS, under which, the agency reports, Identix has furnished Tenprinter fingerprint scanners at a discount of approximately [DELETED] percent (originally [DELETED] percent) from its GSA schedule price and CMS fingerprint scanners at a discount in excess of [DELETED] percent. DHS Comments, June 23, 2004. In these circumstances, and given that the outstanding technical rating accorded Identix's quotation demonstrates Identix's understanding of the RFQ's requirements, we find that Cross Match's challenge to DHS's evaluation of price realism furnishes no basis for questioning the award.