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Decision

Matter of: CW Government Travel, Inc.

File: B-416091; B-416091.2

Date: June 13, 2018

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William J. Erle, Esq., and Patricia Grady, Esq., Department of the Treasury; and Sharon Chen, Esq., General Services Administration, for the agencies.
Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's evaluation of awardee's quotation under the information security factor was reasonable and consistent with terms of the solicitation and applicable statutes and regulations.
 2. Source selection authority's disagreement with the conclusions of technical evaluation team is unobjectionable and does not show unequal treatment where the findings are documented and reasonable.
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DECISION

CW Government Travel, Inc. (CWT), of Arlington, Virginia, challenges the issuance of a task order to ADTRAV Corporation, of Birmingham, Alabama, by the Department of the Treasury, Office of the Comptroller of the Currency (OCC), under request for quotations (RFQ) No. CC17HQQ0051 for travel management services. CWT challenges the agency's evaluation of quotations and the source selection decision.

We deny the protest.

BACKGROUND

The RFQ was issued on March 8, 2017, to vendors holding contracts under the General Services Administration's (GSA), Federal Supply Schedule (FSS) 599 Travel Services

Solutions, SIN (special item number) 599-2, Travel Agent Services. Agency Report (AR), Tab 2, RFQ at 1, 143.¹ The solicitation contemplated the award of a fixed-price task order for a 3-month base period and five 1-year option periods on a best-value tradeoff basis considering the following evaluation factors, in descending order of importance: technical approach and methodology, website utility, corporate experience, information security, past performance, and price. Id. at 169, 175-177, and 180. The RFQ stated that the non-price factors, when combined, were more important than the price factor.² Id. at 180.

As relevant to this protest, under the information security factor, the RFP required that vendors, in volume I of their quotations, certify the following, which would be evaluated on a pass/fail basis:

To be considered eligible for award, offeror must certify that OCC information technology and information assigned to services providers shall remain in the United States. All contractor employees, agents, and subcontractors having unescorted access to OCC facilities or access to information systems, security items, or sensitive but unclassified information in OCC systems are United States citizens or have lawful permanent resident status, are adhered to during contract performance.

Id. at 141-142.³

The RFQ stated that, in volume II “[vendors] shall ensure that their quote clearly describes how their services meet the technical requirements of the PWS [performance work statement].” Id. at 175. The solicitation instructed vendors to address the following five topics in volume II: technical approach and methodology (not to exceed 20 pages); website utility (not to exceed 3 pages); corporate experience (each example shall not exceed 2 pages); information security (no page limit); and past performance. Id. at 175-177.

The RFQ required that volume II include the following under the information security factor:

¹ Citations to the RFQ are to the conformed copy provided by the agency. AR, Tab 2, RFQ, 146-188.

² The solicitation provided that the technical factors, excluding information security and past performance, would each receive an adjectival rating of excellent, good, acceptable, marginal or unacceptable. RFQ, Attachment 3; AR, Tab 3, Source Selection Guidance at 14. The RFQ provided that past performance would receive adjectival ratings of acceptable, neutral, or unacceptable. Id.

³ This language is the final solicitation language as amended by amendment 0004.

1. Current PCI (payment card industry) Report of Compliance or a description of the Offeror's current overall PCI compliance, the mitigating security controls in place to adequately protect OCC employee credit card data, and the Offeror's plan and timeline for meeting full PCI compliance.

2. OCC Service Provider Self-Assessment (Attachment 5)

RFQ at 177.

The solicitation provided that the agency would award a task order to the responsible vendor whose quotation, conforming to the RFQ, would be most advantageous to the agency, price and other factors considered. Id. at 180. Regarding the evaluation of quotations, the RFQ stated that the agency would assess the technical approach and methodology, website utility, corporate experience, information security, past performance, and the price of quotations in accordance with Federal Acquisition Regulation (FAR) subpart 8.4. Id. The solicitation also stated that the agency reserved the right to "obtain additional information and/or negotiate more favorable terms and conditions with one or more contractors." Id.

The agency received quotations from five vendors by the April 21 deadline, including from CWT (the incumbent), and ADTRAV. The agency initially evaluated the quotations as follows:

	ADTRAV	CWT
Technical Approach & Methodology	Unacceptable	Excellent
Website Utility	Acceptable	Unacceptable
Corporate Experience	Acceptable	Excellent
Past Performance	Acceptable	Acceptable
Overall Rating	Unacceptable	Unacceptable
Price	\$ 3,308,790	\$ 7,269,268

Contracting Officer's Statement (COS) at 4; AR, Tab 12, Technical Evaluation Team (TET) Report at 2. The agency stated that no vendors were able to meet the pass/fail information security requirements stipulated in the RFQ so the agency decided on September 22, 2017, to waive the provision that required that maintenance, operation and processing of technology and information must take place and originate from the United States. As a result, both ADTRAV and CWT received a "pass" on the minimum security requirements. COS at 4; RFQ, Amendment No. 4 at 141-142.

The agency sent questions to ADTRAV and CWT permitting the vendors to "clarify certain aspects of their quote[s] and confirm that they could meet the new security requirements to waive part of the PASS/FAIL criteria." AR, Tab 13, Source Selection Decision (SSD) at 6; COS at 5. Following receipt of the responses from the vendors, the TET updated its consensus report. AR Tab 12, TET Report. However, after this date there was an additional question emailed to ADTRAV regarding a refund process

and consideration of this response which, according to the agency, “[d]ue to an oversight, the comments on the TET Report were never provided to the TET.” AR, Tab 13, SSD at 6; COS at 5-6.

After reviewing the evaluation of the TET, the contracting officer engaged in additional analysis regarding the quotations, including providing additional narrative and information to support the final evaluation and ratings. AR, Tab 13, SSD at 6-9, 12-15. This included revising the ratings assigned by the TET under several evaluation factors, including corporate experience. As part of this analysis, the contracting officer contacted ADTRAV’s past performance references to obtain additional information about ADTRAV’s performance regarding transition. Supp. COS at 5; AR, Tab 13, SSD at 10. Based on her analysis, the contracting officer revised the adjectival ratings as follows:

	ADTRAV	CWT
Technical Approach & Methodology	Good	Good
Website Utility	Acceptable	Acceptable
Corporate Experience	Good	Acceptable
Past Performance	Acceptable	Acceptable
Overall Rating	Good	Acceptable
Price	\$3,308,790	\$7,269,268

COS at 6. On February 22, 2018, the agency made award to ADTRAV. This protest to our Office followed.

DISCUSSION

CWT challenges the agency’s evaluation of quotations. The protester argues that ADTRAV’s quotation should have been eliminated from the competition because the quotation failed to demonstrate compliance with the solicitation requirements for volume II regarding information security. Protester’s Comments at 8. The protester further challenges the reasonableness of the differences in the findings between the TET and the contracting officer, including that the contracting officer’s actions with regard to the evaluation of the protester and awardee under the corporate experience factor were unequal. *Id.* at 20-24. CWT also contends that ADTRAV’s quotation was ineligible for award because its FSS contract did not include a fixed-fee management services pricing provision. Protest at 7. We have reviewed the record and conclude that the agency’s evaluation and award decision were reasonable and in accordance with the solicitation’s requirements. We therefore find no basis to sustain the protest.⁴

⁴ CWT’s protest and supplemental protest raised numerous additional allegations. While our decision here does not specifically discuss each and every argument, we
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Where, as here, an agency issues an RFQ under FAR subpart 8.4 and conducts a competition, see FAR § 8.405-2, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 5. In reviewing an agency's technical evaluation of vendor submissions under an RFQ, we will not reevaluate quotations; we will only consider whether the agency's evaluation was reasonable and in accord with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. American Recycling Sys., Inc., B-292500, Aug. 18, 2003, 2003 CPD ¶ 143 at 4.

Information Security

The protester argues that ADTRAV's quotation should have been eliminated from consideration because volume II of the quotation failed to demonstrate compliance with the solicitation's information security requirements. Protester's Comments at 8. The protester argues that the PWS included detailed security requirements, including compliance with OCC and Federal Information Security Standards, and that ADTRAV's quotation was unacceptable because it did not include a description of how it would satisfy all of the RFQ's information security requirements.

With regard to volume II of vendors' quotations, the RFQ provided that "in order to evaluate . . . quot[at]ions," vendors "shall ensure that their quote clearly describes how their services meet the technical requirements of the PWS." RFQ at 175. The RFQ further stated, in the instructions specific to what vendors were required to include in

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have considered all of the protester's assertions and find none furnish a basis for sustaining the protest. For example, we agree with the protester that the agency's communications with both vendors constituted discussions. Supp. Comments at 22. While the agency classifies its communications with the vendors as clarifications, the agency's characterization of a communication as clarifications or discussions is not controlling; it is the actions of the parties that determine whether discussions have been held. Aurotech, Inc., B-413861.4, June 23, 2017, 2017 CPD ¶ 205 at 10. The "acid test" for deciding whether discussions have been held is whether it can be said that an offeror was provided an opportunity to revise or modify its proposal or quotation. See Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6. We find that the exchanges with the vendors constituted discussions as the vendors were permitted to revise their quotations. The materiality of the revisions is underscored by the fact that the revisions are cited in the source selection decision. AR, Tab 13, SSD at 10. However, we disagree with the protester that these discussions were unequal. Rather, the record shows that discussions were tailored to each vendor's quotation and were equal.

volume II of their quotations under the information security factor, that quotations shall include a “[c]urrent PCI (payment card industry) Report of Compliance or a description of the [vendor’s] current overall PCI compliance, the mitigating security controls in place to adequately protect OCC employee credit card data, and the [vendor’s] plan and timeline for meeting full PCI compliance.” The RFQ also required vendors to include the OCC service provider self-assessment found at attachment 5 of the solicitation. Id. at 177.

The RFQ provided that in evaluating quotations, “OCC [would] assess the technical approach and methodology, website utility, corporate experience, information security, past performance, and the price of quotes in accordance with FAR Subpart 8.4.” Id. at 180.

The agency argues that ADTRAV was not required to provide information relating to all of the security requirements in the PWS, as all of these requirements were not included in the instructions for preparing volume II quotations in response to the information security factor. Supp. COS at 2. Rather, the agency argues, the information required to be provided in volume II of a vendor’s quotation with regard to the information security evaluation factor, and which it evaluated, was that information found in the instructions specific to the information security factor. The agency argues that the awardee’s quotation included all of the required information under this factor and that the awardee was appropriately evaluated as acceptable.

The record shows that ADTRAV certified that it would meet the agency’s information security requirements and confirmed its certification when the contracting officer clarified with all offerors that the agency’s OCC security requirements would be met. Memorandum of Law (MOL) at 7; AR, Tab 5, ADTRAV’s Quotation at 74; Tab 11, Clarification Email with ADTRAV at 10; Tab 13, SSD at 7. ADTRAV’s certification was reviewed by the agency Cybersecurity Office which determined that ADTRAV provided an acceptable certification. AR, Tab 13, SSD at 7. The agency states that it also reviewed ADTRAV’s remaining information security documentation required by the RFQ to be included in volume II, which included ADTRAV’s current PCI Report of Compliance, and the OCC’s service provider self-assessment. COS at 2 n.1. This information was evaluated by the OCC Cybersecurity Office and found to be acceptable. Supp. COS at 3; AR, Tab 13, SSD at 7.

Here, we find that the agency’s evaluation was reasonable and consistent with the terms of the solicitation. First, the solicitation did not state that the evaluation of quotations would include an evaluation of each vendor’s plan and approach for meeting the PWS requirements related to information security. Rather, the solicitation simply stated that the agency would evaluate quotations by assessing technical approach and methodology, website utility, corporate experience, information security, past performance, and price in accordance with FAR subpart 8.4. The agency’s approach of evaluating the information specifically described as being required under the information security factor was reasonable and in accordance with the evaluation criteria established by the solicitation.

Further, to the extent the protester argues that the solicitation language in the instructions for preparing volume II required vendors to provide, and the agency to evaluate, information beyond what the RFQ required under the information security factor, we find that any conflict between these sections of the solicitation is a patent ambiguity. As such, to be timely this conflicting language had to have been challenged prior to the submission of quotations.

Here, the solicitation clearly identifies what is required to be included in volume II of a vendor's quotation under the information security factor. In addition, this instruction does not include many of the security requirements listed in the PWS. RFQ at 150-165, 175, 177. The protester may have viewed that the RFQ's statement that the quotation shall clearly describe how a vendor's services meet the technical requirements of the PWS required a vendor to provide this information under the information security factor. However, this was not included in the instructions describing the information required to be provided in volume II under the information security factor and the conflict between the two sections of the instructions was clear on the face of the solicitation. Further, the evaluation language in the solicitation was silent as to what the agency would evaluate and did not list any of the requirements of the PWS. Where a patent ambiguity is not challenged prior to the submission of quotations, we will dismiss as untimely any subsequent challenge to the meaning of the term. 4 C.F.R. § 21.2(a)(1); Telos Corp., B-412058 et al., Dec. 14, 2015, 2016 CPD ¶ 196 at 4 n.2.

Source Selection Decision

In its challenge to the selection decision, CWT argues that the contracting officer improperly "made substantial and unjustified changes to the [TET] evaluation." Protester's Comments at 15. CWT states that the contracting officer changed the technical evaluation "by substantially downgrading CWT in critical criteria . . . in an attempt to insulate the best value trade off." Id. at 16. The contracting officer drafted the source selection decision, which was approved by the source selection authority (SSA).

The record, however, shows a well-documented, reasoned evaluation and award decision. Despite CWT's insistence that the source selection authority should have adopted the TET's adjectival ratings, source selection officials are not bound by the evaluation judgments of lower level evaluators; they may come to their own reasonable evaluation conclusions. TruLogic, Inc., B-297252.3, Jan. 30, 2006, 2006 CPD ¶ 29 at 8. Here, we find that the source selection decision documented reasonable evaluation findings, including documenting in detail any disagreement with certain of the TET's findings and adjectival ratings. We address a few representative examples below.

Technical Approach and Methodology

The TET assigned CWT a rating of excellent under this factor, finding several strengths in its quotation and no weaknesses. Regarding the TET's evaluation of CWT's

technical approach and methodology, the contracting officer concluded that the TET put “a lot of emphasis” on CWT being the incumbent contractor. AR, Tab 13, SSD at 13. The contracting officer stated that she did not consider “incumbent status in itself to be a strength” and further maintained that while she found that CWT had addressed all of the elements of the PWS in its approach she did not find that CWT “offer[ed] an approach that [was] innovative or better than that which OCC currently has.” Id. The contracting officer explains that CWT’s quotation identified strengths, but not enough strengths to warrant an excellent rating. Therefore, the contracting officer lowered CWT’s rating to good. Supp. COS at 4.

ADTRAV was initially rated unacceptable under this factor by the TET, which revised its rating to marginal after exchanges with offerors. The TET did not list any strengths for ADTRAV. The contracting officer, however, identified a number of strengths for ADTRAV. AR, Tab 13, SSD at 8. For example, the contracting officer considered it a strength that each agent would go through OCC-specific training and would be tested at the end of training. Id. The contracting officer also found that ADTRAV’s use of the RezTracker system merited assessment of a strength because it allows the vendor to monitor the status of airline reservations and would automatically generate a refund if a reservation remains unused 10 days after the scheduled departure date. Id. On the basis of these strengths, the contracting officer raised ADTRAV’s rating to good. Id.

The protester disagrees with the contracting officer’s findings and the adjustments in the ratings of both its and ADTRAV’s quotations arguing that the contracting officer’s determinations failed to comply with the solicitation requirements and were unreasonable. However, based on our review of the record, we find no basis to question the reasonableness of the contracting officer’s evaluation and findings regarding the quotations of CWT and ADTRAV under this factor.

Corporate Experience

CWT argues that the contracting officer unreasonably lowered its corporate experience rating and raised the corporate experience rating of the awardee. CWT argues that the contracting officer’s “extraordinary action” of contacting ADTRAV’s corporate experiences references resulted in an increased rating for that firm’s corporate experience from acceptable to good, yet the contracting officer “made no attempt” to contact CWT’s corporate experience references. Protester’s Comments at 21-22. CWT argues that it was “substantially prejudiced” by the failure of the agency to treat the vendors equally in the evaluation. Id. at 22.

CWT received an excellent rating for corporate experience from the TET. However, because of the “limited information” described in the corporate experience narrative, the contracting officer took exception to the adjectival rating assigned by the TET for this factor. AR, Tab 13, SSD at 15. The contracting officer noted that CWT’s quotation contained little more than a listing of tasks, and provided only a scant description of the work performed, and why the work should be viewed as similar to the OCC requirements. Id. The contracting officer further stated that the agency was not

required to consider CWT's experience under its incumbent contract because CWT had not provided it as a reference. Supp. COS at 5. Accordingly, the contracting officer lowered CWT's corporate experience rating to acceptable.

ADTRAV ultimately received an acceptable rating for corporate experience from the TET, even though the evaluators initially assigned a deficiency under this factor because none of ADTRAV's corporate experience examples demonstrated experience with transition. AR, Tab 8, TET Evaluation Report at 7. The contracting officer states that any deficiency regarding ADTRAV's experience with regard to transition was "resolved by ADTRAV's response to the clarification questions." AR, Tab 13, SSD at 10. The contracting officer further concluded that ADTRAV's response "more than adequately addresse[d] the transition requirements in the [PWS] and elevate[d] their rating from a deficiency to a strength based on their experience transitioning from the OCC incumbent." *Id.* During communications, ADTRAV also explained that it had experience providing VIP travel services. *Id.* at 9. Based on this information, the contracting officer raised ADTRAV's rating for corporate experience to good.

Here, the record shows that the contracting officer was aware of and considered the findings of the TET and that, based on her evaluation, she disagreed with some of those findings and reasonably documented her conclusions. In addition, the source selection decision referenced information contained in each vendor's quotation. While CWT disagrees with these findings, the protester has not provided any basis for our Office to find that the contracting officer's findings, and the SSA's adoption of them, were unreasonable.⁵

The protester further argues that vendors were treated unequally as a result of the agency's decision to contact the corporate experience references of the awardee, but not CWT's corporate experience references. The protester argues that the contracting officer used information it received from these references to increase the corporate experience rating of the awardee without similarly contacting CWT's references to gain additional information about its corporate experience.

The contracting officer acknowledges that she contacted ADTRAV's corporate experience references, however, she states that contact with these references related to her past performance evaluation. Supp. COS at 5. The solicitation stated that the agency would use the contracts listed under corporate experience to evaluate past performance. RFQ at 177. The contracting officer states that she did not contact these references "to justify" raising ADTRAV's corporate experience rating. Supp. COS at 5.

⁵ To the extent the protester appears to challenge the SSA's reliance on the contracting officer's findings for the first time in its supplemental comments, this argument constitutes a piecemeal presentation of issues. The timeliness requirements of our Bid Protest Regulations do not contemplate the piecemeal presentation or development of protest issues. See Battelle Memorial Institute, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 24 n.32; 4 C.F.R. § 21.2(a)(2).

In addition, the contracting officer elected not to contact CWT's references, because she already "knew OCC was satisfied with the support provided by CWT, and the information provided by the past performance references was considered sufficient." Id.

While the protester argues that the information the contracting officer received from ADTRAV's past performance references affected ADTRAV's corporate experience rating (ADTRAV's Supp. Comments at 16), the record does not demonstrate that the contracting officer utilized this information under the corporate experience factor. As such, we find no basis to sustain the protester's argument that the contracting officer's actions treated offerors unequally.

Fixed-Fee Management Services Provision

Next, the protester argues that while all of the travel services being sought by the agency were available on the awardee's GSA schedule, the awardee was ineligible for award because it did not include a "fixed fee management services" pricing provision on its GSA schedule.⁶ Protest at 7.

The agency responds that because all of the services being sought were available on the awardee's schedule and because a firm-fixed-price (FFP) order is the preferred type of order for agencies to use when acquiring commercial items under the FSS, it was proper for the agency to consider the awardee's quotation. MOL at 5.

Because GSA administers the FSS program, we requested GSA's views on whether the awardee was ineligible for award because it did not include a "fixed fee management services" pricing provision on its GSA schedule, even though the awardee's GSA schedule contained all of the travel services being sought by the agency. GSA responds that FSS 599 does not specifically require an alternative pricing management fee. GSA Response (May 22, 2018) at 2. GSA further states that because such a fee is not required under the schedule, the fact that the awardee did not include one does not necessarily mean that the awardee could not participate in the acquisition. Id. at 4.

Our Office finds no basis to disagree with the response provided by GSA. Where the protester challenges the award of an FSS task order on the grounds that the awardee is offering services outside the scope of its FSS contract, the relevant inquiry is whether the services offered are actually included on the awardee's FSS contract. American Sec. Programs, Inc., B-402069, B-402069.2, Jan. 15, 2010, 2010 CPD ¶ 2 at 3. Here, because all of the services being sought were available on the awardee's GSA schedule and because a "fixed fee management services" pricing provision is not required under the schedule, it was reasonable for the OCC to consider the awardee's quotation. AINS, Inc., B-405902.3, May 31, 2012, 2012 CPD ¶ 180 at 8. As a result, we deny this protest ground.

⁶ CWT also offers all of the travel services being sought by the agency and has "fixed fee management services" listed on its GSA schedule.

Best-Value Tradeoff

Finally, CWT challenges the agency's best-value tradeoff rationale, arguing that the tradeoff rationale is incorrect because it is based on unreasonable evaluations regarding information security and corporate experience discussed above. CWT's challenge to the agency's best-value determination is predicated on the various alleged improprieties in the agency's evaluation discussed above. Because we have found these allegations to be without merit, we find no basis to question the reasonableness of the agency's determination that ADTRAV's lower-priced, higher-rated quotation represented the best value to the government.

The protest is denied.

Thomas H. Armstrong
General Counsel