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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: InnovaTech, Inc.

File: B-402415

Date: April 8, 2010

Keith R. Malley, Esq., Keith R. Malley, PC, for the protester.
Peter A. Deliso, Esq., and Nelson Blitz, Esq., Executive Counsel, PLC, for Guident Technologies, Inc., an intervenor.
Lisa J. Obayashi, Esq., United States Patent and Trademark Office, for the agency.
Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's technical quotation is denied where record establishes that evaluation was reasonable, consistent with the stated evaluation criteria, and adequately documented.
 2. Price/technical tradeoff was proper where source selection official reasonably identified relevant technical distinctions between vendors' competing quotations and adequately documented her conclusion that higher technically-rated quotation represented the best value to the government despite higher price.
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DECISION

InnovaTech, Inc., of Alexandria, Virginia, protests the award of a blanket purchase agreement (BPA) by the United States Patent and Trademark Office (USPTO) to Guident Technologies, Inc., of Herndon, Virginia, under Guident's General Services Administration (GSA) Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. 10302009 for enterprise data warehouse (EDW) support services.¹ InnovaTech argues that the agency's evaluation of its quotation and subsequent source selection decision were improper.

¹ While our decision refers to the "award" of a BPA, which is the terminology used by the parties, the Federal Acquisition Regulation (FAR) in fact refers to the "establishment" of a BPA against an FSS contract. FAR §§ 8.403(a)(2), 8.404(b).

We deny the protest.

BACKGROUND

The USPTO is the federal government agency responsible for the granting and issuing of patents, the registration of trademarks, and the dissemination of information related to patents and trademarks. In support of its mission, the USPTO employs an EDW, which provides access to data from a number of agency financial and non-financial systems, both those currently in use and retired, in a central location. The EDW provides USPTO users with access to, among other things, general ledger, revenue, payroll, cost accounting, human resources, budget, compensation-cost projections, patent case, patent examiner production, trademark budget data, and federal procurement data to support decision-making throughout the agency. RFQ § C.2; Agency Report (AR), Feb. 8, 2010, at 2.

The RFQ, issued pursuant to FAR Subpart 8.4 to three small business holders of GSA FSS contracts for information technology services, contemplated the establishment of a BPA with labor hour task orders (“calls”) for a base year together with four 1-year options. The solicitation included a statement of work (SOW), instructions to vendors regarding the preparation of quotations, and the evaluation factors for award. In general terms the SOW required the successful offeror to provide the professional support services necessary for USPTO’s EDW in the areas of operations and maintenance, development and enhancement, and project management.² RFQ § C.3. The RFQ established five evaluation factors in addition to price, in descending order of importance: (1) technical and functional approach; (2) technical and functional qualifications and experience; (3) labor mix; (4) management approach; and (5) past performance/key personnel.³ The nonprice factors, when combined,

² The RFQ established, within each performance period, separate contract line item numbers (CLIN) for the operations and maintenance, development and enhancement, and project management work categories, and informed vendors of the total annual estimated labor hours for the operations and maintenance and project management CLINs. RFQ § B.1, B.2. While the SOW expressly contemplated the performance of various development and enhancement activities (e.g., new EDW releases, third party software upgrades, upgrades to EDW sources, and new and replacement EDW hardware), *id.*, § C.3, and vendors were to submit labor categories and labor rates for the development and enhancement CLIN, the agency’s price evaluation was to be based on only the operations and maintenance and project management CLINs. *Id.*, §§ B.1, M.3.

³ Nonprice factors (1) and (2) were of equal importance, as were factors (3) and (4); additionally, factors (3) and (4) were each half as important as factors (1) and (2). The RFQ also established a total of 22 subfactors under the various nonprice prime factors, and described their relative importance. RFP § M.2.

were significantly more important than price. The agency would select the vendor whose quotation represented the best value to the government, all factors considered. Id., § M.

Both Guident and InnovaTech submitted quotations by the RFQ's closing date. An agency technical evaluation team (TET) evaluated vendors' quotations using a point scoring system.⁴ The evaluation ratings and prices of the Guident and InnovaTech quotations were as follows:

Factor	Guident	InnovaTech
Technical and Functional Approach (60)	49	51
Technical and Functional Qualifications and Experience (60)	50	45 ⁵
Labor Mix (30)	27	24
Management Approach (30)	27	23
Past Performance/Key Personnel (20)	18	17
Total (200)	171	160
Price	\$17,202,723	\$17,003,642

Id. at 19.

Importantly, the agency evaluators also detailed the various strengths, weaknesses, and deficiencies that they found in support of the point scores assigned to vendors' quotations. The contracting officer as source selection authority subsequently determined that Guident's higher technically-rated, higher-priced quotation represented the best value to the government. While finding both vendors technically qualified to perform the work, the contracting officer concluded that Guident's various technical advantages outweighed the \$199,065 (1.171%) price difference between the vendors' quotations, and selected Guident. Id., Tab 9, Source Selection Decision, at 8-9. This protest followed.

⁴ Although the TET also assigned adjectival ratings to vendors' quotations for each evaluation subfactor, ratings at the factor level and overall were based only on point scores. AR, Tab 8, TET Report, at 19.

⁵ While the TET's evaluation scoring summary states that InnovaTech's quotation received a score of 3 points for subfactor 2.8 (the degree to which the offeror's response demonstrates their experience in system development life cycle methods, documentation, and practices), a review of the underlying documentation indicates that InnovaTech actually received a score of 4 points here. Id. at 11. When corrected, this raises InnovaTech's technical and functional qualifications and experience factor score to 46 points, and its overall technical score to 161 points.

DISCUSSION

InnovaTech's protest raises two challenges to the USPTO's award determination. The protester first alleges that the agency's evaluation of its technical quotation was improper. InnovaTech also contends that the agency's best value tradeoff decision was flawed. Although we do not specifically address all of InnovaTech's arguments, we have fully considered all of them and find they provide no basis on which to sustain the protest.

Evaluation of InnovaTech's Technical Quotation

InnovaTech protests the agency's evaluation of its technical quotation. Specifically, with regard to various subfactors, InnovaTech alleges that the USPTO's evaluation conclusions were not reasonable and were inconsistent with the evaluation criteria.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's mere disagreement with the agency's judgment or its belief that its quotation deserved a higher technical rating is not sufficient to establish that the agency acted unreasonably. Encompass Group LLC, B-310940.3, Mar. 17, 2009, 2009 CPD ¶ 60 at 3; Advanced Tech. Sys., Inc., B-298854, B-298854.2, Dec. 29, 2006, 2007 CPD ¶ 22 at 8-9.

In our view, the record here shows that the agency's evaluation of InnovaTech's quotation was proper. For example, evaluation subfactor 3.2 required vendors to demonstrate the adequacy of their proposed labor resources to perform the required work. RFQ § M.2. InnovaTech's quotation with respect to this subfactor consisted of two pages in which the vendor described its proposed team members, including the name and position of each individual. In some instances, InnovaTech's quotation contained a detailed description of the proposed individual's experience; however, in many instances, the description of the person's experience was limited to a single sentence. AR, Tab 5, InnovaTech Technical Quotation, at 3.6. The TET assigned InnovaTech's quotation a score of 12 of 15 points, and identified as a weakness that the quotation did not provide extensive details describing the experience of its personnel. Id., Tab 8, TET Report, at 13. We conclude that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. The fact that InnovaTech provided greater detail regarding the experience of certain individuals, as the protester points out, does not alter the fact that in other instances the protester's quotation was extremely scant; in light of the lack of detail, the agency's evaluation was reasonable.

InnovaTech also challenges the evaluation under subfactor 4.1, which concerned the degree to which vendors' quotations demonstrated the ability to provide and manage

the full range of technical and functional activities necessary for successful performance of the required work. RFQ § M.2. InnovaTech's quotation addressed this subfactor in little more than one page, which consisted largely of bullet points and conclusory statements such as, "InnovaTech's management approach is proven successful on this project and at the USPTO," and "You are familiar with our management approach. There will be no surprises." AR, Tab 5, InnovaTech Technical Quotation, at 4.1. The TET assigned InnovaTech's quotation a score of 7 of 10 points, and identified as a weakness that the quotation failed to provide sufficient details to demonstrate how the vendor's managerial approach would meet all requirements. *Id.*, Tab 8, TET Report, at 14.

InnovaTech argues that the agency's evaluation here was unreasonable. The protester contends that its quotation incorporated by reference many management process documents (e.g., quality assurance plan, security plan) that had been written with and approved by the USPTO. InnovaTech also asserts that its successful past performance as the incumbent attests to its outstanding management approach. We find the USPTO's evaluation here was reasonable and consistent with the stated evaluation criteria given that InnovaTech's quotation provided few specifics as to how its managerial approach would meet all stated EDW requirements. InnovaTech's assertion that its successful past performance is an adequate substitute for demonstrating its ability to manage the required EDW work, as required by the RFQ, amounts to mere disagreement with the agency's judgment.⁶

InnovaTech also protests that the agency evaluators improperly penalized it by making multiple references to the same identified weaknesses under several evaluation subfactors. For example, the record shows that the TET found InnovaTech's certification and accreditation (C&A) processes related to information technology security to be a weakness under subfactor 1.1 (demonstrated understanding of the overall requirements) and subfactor 1.3 (demonstrated understanding of the operations and maintenance requirements, the development and enhancement requirements, and the technical and functional activities required for both types of requirements), as well as subfactor 2.9 (demonstrated experience in C&A methods, documentation, and remediation activities). AR, Tab 8, TET Report, at 1-2, 12. InnovaTech argues that the repeated application of the same weaknesses

⁶ InnovaTech also challenged the agency's evaluation of its technical quotation with regard to nonprice subfactors 1.4, 2.2, 2.5, 4.3, and 5.1. Protest, Jan. 7, 2010, at 6-10. The USPTO specifically addressed these aspects of the protest in its report to our Office, AR, Feb. 8, 2010, at 10-18, and InnovaTech's comments offered no rebuttal of the agency's position. Comments, Feb. 22, 2010, at 2-5. Where, as here, an agency provides a detailed response to a protester's assertions and the protester does not respond to the agency's positions, we deem the issues abandoned. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 4 n.4; L-3 Commc'ns Westwood Corp., B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 4.

across multiple evaluation subfactors was arbitrary and not in accordance with the RFQ. We do not agree.

The record shows that the agency considered InnovaTech's C&A processes and methods as part of the vendor's understanding of overall EDW requirements, its understanding of specific EDW requirements, and its experience in C&A methods. However, an agency is not precluded from considering an element of a proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered. Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 4 n.2; RAMCOR Servs. Group, Inc., B- 276633.2 et al., Mar. 23, 1998, 98-1 CPD ¶ 121 at 9. Accordingly, the agency here properly considered elements of InnovaTech's quotation which were relevant and reasonably related to the various evaluation subfactors under which they were considered.⁷

Best Value Tradeoff Decision

InnovaTech also protests the agency's best value tradeoff decision. The protester argues that the USPTO's selection of Guident was based on criteria not stated in the RFQ, specifically, the vendor's potential to provide technological enhancement and modernization of the EDW. InnovaTech contends that had the contracting officer performed a best value tradeoff consistent with the RFQ's evaluation criteria, she would have concluded that Innovatech's quotation represented the best value to the government.⁸

Where a solicitation provides for award of a BPA on a "best value" basis, it is the function of the source selection authority to perform price/technical tradeoffs, that is, to determine whether one quotation's technical superiority is worth its higher price, and the extent to which one is traded for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. See Buckley & Kaldenbach, Inc., B-298572, Oct. 4, 2006, 2006 CPD ¶ 138 at 3; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. Where a price/technical

⁷ InnovaTech does not dispute that C&A was relevant and reasonably related to subfactors 1.1 and 1.3; it merely points to the fact that the agency deducted points for this quotation weakness under multiple subfactors, which, as noted, is not by itself improper.

⁸ InnovaTech also argues that Guident's price for project management was not reasonable because it was 60% less than InnovaTech's price. This argument is without merit. Price reasonableness concerns whether a price is unreasonably high, as opposed to unreasonably low, as InnovaTech argues here. Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 3. Moreover, there is no prohibition against an agency accepting a below-cost quotation for a fixed-price BPA. Id. at 4.

tradeoff is made, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made, including the benefits associated with additional costs. The MIL Corp., supra.

In conducting the best value tradeoff here, the contracting officer premised her determination on review of the relative importance of the RFQ's evaluation criteria, and the size of the price difference between vendors' quotations. The contracting officer then considered not only the point scores assigned to the vendors' technical quotations, but also what the difference in point scores represented. Specifically, the contracting officer noted the various technical advantages present in Guident's quotation, e.g., the vendor has a breadth and depth of knowledge that comes from dozens of engagements similar to or more complex than that of USPTO; the vendor relies firmly on formal processes and procedures in maintaining and developing a data warehouse; its management approach is well-documented and sound; and the skills and experience of Guident's proposed lead personnel are extremely strong. AR, Tab 9, Source Selection Decision, at 8-9. Relevant to the protest here, another technical advantage found by the contracting officer was Guident's potential to provide technological enhancement and modernization of the USPTO's EDW, as follows:

Guident has already successfully implemented data warehousing using more current releases of Oracle and Business Objects than the USPTO utilizes, which will help decrease risk when the USPTO modernizes our EDW. Furthermore, Guident's current use of ETL tools will lead to fewer risks and quicker implementation of those same tools when the USPTO is prepared to fund them, which has been a strategic goal.

Id. at 8.

The contracting officer concluded that Guident's quotation represented the best value to the government because the vendor's many noted technical advantages outweighed the small price premium. Id. at 9.

Contrary to the protester's assertions, we conclude that the contracting officer did not employ unstated criteria as part of her best value tradeoff determination when she considered vendors' potential to provide technological enhancement and modernization to the USPTO's EDW. As set forth above, the SOW expressly informed vendors that one of the EDW work categories was development and enhancement. Further, the RFQ expressly stated that the agency's evaluation would include consideration of vendors' demonstrated understanding of overall SOW requirements (subfactor 1.1), understanding of the development and enhancement requirements (subfactor 1.3), and qualifications and experiences with various EDW products and tools such as Oracle and Business Objects (subfactors 2.1 and 2.2). RFP § M.2. Quite simply, the agency's consideration of Guident's experience with more complex EDW products and tools, and ability to perform EDW enhancement

and modernization work, was reasonable and consistent with the stated evaluation criteria.

In sum, as the technical advantages identified by the contracting officer in Guident's quotation were consistent with the stated evaluation criteria, the contracting officer's subsequent determination that such technical advantages outweighed the small price premium was also reasonable, consistent with the stated evaluation criteria, and adequately documented.

The protest is denied.

Lynn H. Gibson
Acting General Counsel