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Decision

Matter of: Diamond Information Systems, LLC

File: B-410372.2; B-410372.3

Date: March 27, 2015

Bryan R. King, Esq., Todd R. Overmann, Esq., and Richard W. Arnholt, Esq., Bass Berry & Sims PLC, for the protester.
Nicole J. Owren-Wiest, Esq., Tracye Winfrey Howard, Esq., and Gary S. Ward, Esq., Wiley Rein LLP, for Trusted Mission Solutions, Inc., an intervenor.
Meagan K. Guerzon, Esq., Small Business Administration, for the agency
Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of a protester's quotation and the agency's award decision is denied where the record reflects that the agency reasonably evaluated the protester's quotation, and concluded that the awardee's higher-priced, higher technically-rated quotation offered the best value.

DECISION

Diamond Information Systems, LLC (Diamond), of Sterling, Virginia, protests the issuance of a task order to Trusted Mission Solutions, Inc. (TMS), of McLean, Virginia, by the Small Business Administration (SBA) under RFQ No. SBAHQ-14-Q-0A39 for development, maintenance and general support services for the IT systems that support SBA's loan and bond programs.¹ Diamond challenges the agency's evaluation of Diamond's technical approach and past performance, as well as the agency's price realism analysis and best value determination.

We deny the protest.

¹ Although the solicitation is characterized as an RFQ, it uses the terms offeror and proposal throughout; although the distinction between an RFP and an RFQ does not affect our decision, our analysis does not adopt these terms.

BACKGROUND

The SBA implements programs to assist small businesses in obtaining loans and bonds and performs oversight of the lender community providing loans. RFQ at 8. SBA sought a contractor to provide development, maintenance and general support services for the IT systems that support SBA's loan and bond programs. Id.

The agency issued the RFQ via the General Services Administration (GSA) eBuy system on July 23, 2014, under Federal Acquisition Regulation (FAR) Subpart 8.4, to current holders of the GSA's 8(a) Streamlined Technology Acquisition Resources for Services II (STARS II) government-wide acquisition contract.² Id. at 9; Legal Memorandum at 1. The RFQ provided for the issuance of a task order for a base year and four 1-year option periods, and contemplated a best-value tradeoff considering technical approach, past performance, and cost/price factors. RFQ at 3. All evaluation factors were stated to be of equal weight. Id.

The technical approach factor included three elements: (1) understanding of the statement of work (SOW); (2) contractor's personnel plan; and (3) understanding of the client organization.³ Id. at 3-4.

With regard to element 1, understanding of the SOW, the RFQ stated that a quotation would be evaluated on the soundness of its proposed technical approach to providing the operational support, training, development, testing, maintenance, and configuration services discussed in section 3.7 of the SOW. Id. at 3. IT security support, which was one of the services identified in Section 3.7 of the SOW, was defined in an attachment to the RFQ. Id. at 26. The attachment stated, among other things, that "[t]he contractor shall designate a management official responsible for fulfilling the responsibilities of an SSO [system security officer]," followed by a list of duties that the SSO was to fulfill. RFQ, attach. A, at 38. The SSO was required to ensure appropriate physical, operational, and technical

² The 8(a) STARS II contract is a multiple-award, indefinite-delivery/indefinite-quantity contract set aside for section 8(a) small disadvantaged business concerns. Although the SBA has stated it issued an order to TMS in accordance with the Federal Supply Schedule procedures of Federal Acquisition Regulation (FAR) Part 8.4, orders under the 8(a) STARS contract are required to be issued in accordance with FAR § 16.505, which governs orders under indefinite-delivery contracts. See 8(a) STARS II Ordering Guide, March 2015, available online at http://www.gsa.gov/portal/content/209173#_Ordering_guide.

³ Technical factors were to be rated excellent, good, marginal, and poor. RFQ at 4.

security through implementing controls described in an SBA-approved system security plan. Id.

With regard to element 2, contractor's personnel plan, the RFQ required vendors to identify eight key persons and provide a resume for each, demonstrating compliance with technical and functional qualifications required by the SOW. RFQ at 4, 11. As relevant here, the RFQ identified a Senior Web Service/XML Developer as a key person who was required to have, as a technical qualification, at least five years of experience with object-oriented technologies (identified as SQL, Java, and SOAP) and XML simulation and modeling, among other things.⁴ Id. at 11, 14-15.

With regard to the past performance factor, the RFQ instructed vendors to provide documentation and references showing performance of comparable projects from the past three years.⁵ Id. at 2. As relevant here, the RFQ advised that past performance would be evaluated based on the vendor's references, and other relevant past performance information from other sources known to the government.⁶ Id. at 4. The RFQ stated a preference for, but did not require, experience working on projects of similar size and scope, which involved the assessment of IT requirements and system integration in evolving organizations similar to SBA.⁷ Id. at 5.

With regard to price, the RFQ stated that each vendor's unique approach to meeting the SOW requirements, including its proposed labor mix and labor hours category, would be evaluated; the level of effort and mix of labor categories would be evaluated for realism, and labor categories would be evaluated for reasonableness and completeness.⁸ Id. at 3, 5.

With regard to the best value determination, the RFQ advised that the agency might consider award to other than the vendor offering the lowest price or highest

⁴ The functional qualifications required 5 years of recent experience in areas such as role planning and analysis. Id. at 14.

⁵ The term "comparable" is not defined in the RFQ.

⁶ Past performance was to be rated excellent, good, satisfactory, neutral, marginal, or poor. Id. at 5.

⁷ The RFQ also stated that it was preferred, but not required, that the contractor demonstrate experience with loan-centric IT applications, government loan accounting, government privacy and security issues, and web page solutions and web services solutions. Id. at 4.

⁸ The RFQ also stated that the agency would evaluate cost and price realism with regard to the vendor's ability to meet requirements in terms of skills required, complexity of disciplines and job difficulty, if necessary. Id. at 5-6.

technical rating, using tradeoffs between price and the technical factors. Id. at 6. The RFQ noted that as the technical merit of quotations approached equality, the importance of price would increase and could become the determinative factor for award. Id.

Following the initial evaluation of quotations, the agency selected TMS to receive the task order. After Diamond protested the award, SBA proposed to take corrective action by reevaluating Diamond's quotation. On October 14, our Office dismissed that protest as academic.

SBA's technical evaluation board (TEB) reevaluated Diamond's quotation and revised its best-value analysis and award recommendation to reflect the reevaluation.

In the reevaluation, Diamond's quotation was rated as marginal under the technical approach factor, with one poor rating and two good ratings under the factor's three elements, as described in further detail below.⁹ AR, Tab 6, Consensus Reevaluation, at 10. The TEB found that Diamond failed to provide sufficient information in many areas of its quotation, and showed only a marginal understanding and methodology for completing the work within the standards and workload specified. Id.

With regard to element 1, understanding of the SOW, the TEB rated Diamond's quotation under this element as poor, based on its conclusion that Diamond's quotation did not provide a sufficiently detailed discussion of the technical issues to demonstrate a sound and effective approach.¹⁰ AR, Tab 6, Consensus Reevaluation, at 2. In this regard, the reevaluation report identified more than 20 sections of the SOW where evaluators found Diamond failed to provide sufficient detail regarding its proposed technical approach. Id. at 2-8. For example, the TEB found that the quotation failed to adequately address Diamond's compliance with IT security measures because it did not mention developing a system security plan (SSP) and did not designate a system security officer (SSO). Instead, the IT security section of Diamond's quotation stated, '[t]he *IT Security Specialist* (see personnel plan, section 1.5) will create a *software* security plan (SSP), [deleted]

⁹ As relevant here, a marginal rating means that some doubt exists regarding the vendor's ability to successfully perform and that the vendor's technical approach showed a marginal understanding and methodology for completing the work. Id. at 4.

¹⁰ As relevant here, a poor rating means that serious doubt exists as to whether the vendor will successfully perform the requirement and the technical approach demonstrates significant deficiencies in understanding and implementing performance of the work. Id. at 4.

Plan, and [deleted] Plan for the SBA Security Officer.”¹¹ AR, Tab 4, Diamond Quotation, at 13 (*italics added*).

With regard to element 2, personnel plan, Diamond’s quotation was rated as good. Although the TEB found that most of Diamond’s proposed personnel met or exceeded the requirements, it found that the submitted resumes did not make clear that two of Diamond’s proposed key personnel--a Senior Cobol programmer and a Senior Web Service/XML Developer--met all of the functional and technical requirements in the SOW position descriptions. AR, Tab 6, Consensus Reevaluation, at 8. For example, the TEB stated that although there was some discussion of expertise in the technical qualification areas, the TEB could not establish that the individuals possessed five years of recent experience in certain required areas. Id. at 8-9.

Regarding the past performance factor, the TEB assigned Diamond a rating of good.¹² AR, Tab 6, Consensus Reevaluation, at 12. Diamond’s quotation referenced four contracts, among which two had good performance ratings, one had an excellent rating, and one was evaluated as neutral (because no response was received from the reference). Id. at 11. In addition to those four contracts, the agency considered Diamond’s performance on a contract that Diamond did not include in its quotation, which it had performed for SBA for the Microloan Program Electronic Reporting System (“the MPERS contract”), and for which its performance was evaluated as marginal. Id. at 12. The TEB determined that the performance of IT development work on the MPERS contract was similar to the current requirement, and therefore relevant. Id. The contracting officer’s representative for the MPERS contract reported that after accepting Diamond’s work under that contract, the SBA became dissatisfied with the performance and functionality of the web application that Diamond created under that contract. Id. The marginal rating on the MPERS contract led the TEB to determine that some performance risk would be associated with award to Diamond. Id. However, considering Diamond’s successful performance overall, and its other references, the TEB found the risk to be relatively low. Id.

The TEB found Diamond’s pricing reasonable and complete, but was concerned that the quoted price was too low. Id. at 15. The TEB analyzed Diamond’s

¹¹ We note that Diamond’s quotation does not include a section 1.5. Rather, the personnel plan, labeled as section 1.4, identifies Diamond’s staff and qualifications. AR, Tab 4, Diamond Quotation, at 16-18. While two proposed staff are identified as IT Security Specialists, no one is designated as the SSO. Id.

¹² As relevant here, a rating of good reflects that although all contract requirements were met and some were exceeded, there were a few minor problems which the contractor resolved in a timely, effective manner. RFQ at 5.

proposed level of effort and staffing, observed that it was significantly less than the government's staffing estimate, and concluded that the staffing levels were insufficient. Id. at 13. Given its assessment of Diamond's staffing level and proposed labor mix as insufficient, the TEB concluded that Diamond's price was unrealistic and created serious doubt that Diamond understood or would be able to successfully perform the required technical effort. Id.

The ratings for Diamond and TMS were as follows:

	Diamond	TMS
Technical Evaluation	Marginal	Excellent
Past Performance	Good	Excellent
Price	\$23,689,189	\$27,950,325

AR, Tab 7, Award Decision, at 2-3, 5, 7.

At the conclusion of its reevaluation, the TEB performed a tradeoff between price and technical responses and recommended award to TMS, which the TEB considered to offer the best value to the government based on its higher technical ratings, excellent past performance, and complete and reasonable price. AR, Tab 6, Consensus Reevaluation, at 16; Tab 7, Award Decision, at 4. The TEB then presented the results of its reevaluation to the contracting officer (CO), who also served as the source selection authority.

The CO reviewed and adopted the TEB's evaluations and tradeoff recommendations before conducting his own best-value analysis. Contracting Officer's Statement at 24; AR, Tab 7, Award Decision, at 1, 8. The CO's best-value tradeoff considered the technical factors, past performance, and price. Tab 7, Award Decision, at 6-7. The CO found that Diamond's technical approach failed to address all of the SOW's technical requirements and did not include a sound approach to performing the requirements, while TMS's quotation, in contrast, showed "an understanding of each line item of the technical requirements of the SOW and provided a sound explanation for how it would perform those technical requirements." Id. The CO observed that Diamond's pricing was considered unrealistic, and adopted the TEB's full discussion of Diamond's level of effort and labor mix. Id. at 7. The CO also concluded that TMS's quotation offered a technical approach that was far superior to Diamond's. Id. The CO determined that "a tradeoff in favor of technical superiority over a lower price [was] appropriate, especially given that Diamond's labor mix and level of effort is considered unrealistic," and selected TMS for the task order. Id.

On December 10, SBA notified Diamond that it had again selected TMS. On December 12, Diamond requested a debriefing, and was informed that a debriefing was not required pursuant to FAR subpart 8.4; Diamond was, however, provided a

brief explanation of SBA's reevaluation of Diamond's quotation.¹³ This protest followed on December 19.

DISCUSSION

Diamond protests the agency's evaluation of its technical approach and past performance, the agency's price realism analysis, and the best-value tradeoff decision.¹⁴ While we address only the protester's primary arguments, we have reviewed all of the protester's contentions and find that none provides a basis to sustain the protest.

In reviewing protests of an agency's evaluation and source selection decision, even in a task order competition as here, we do not reevaluate quotations but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7.

Diamond first argues that its quotation should have been rated as excellent under the technical approach factor, and that its quotation specifically and comprehensively addressed each of the issues identified as a weakness.¹⁵ Regarding its evaluation under element 1, understanding of the SOW, the protester disagrees with the agency's conclusion that Diamond's quotation did not discuss the development of a system security plan or designate an SSO. Protest at 12.

¹³ The brief explanation included the consensus reevaluation findings regarding the SSO, system security plan, and technical qualifications for the Senior Web Service/XML developer key position. Tab 8, CO's Brief Explanation, at 3-4. It also discussed aspects of the agency's price realism analysis. Id. at 4.

¹⁴ Diamond also argued in its initial protest that it was treated unequally and that the agency improperly ignored an organizational conflict of interest on the part of TMS. Protest at 18, 24. On January 9, 2015, SBA sought dismissal of these contentions on the basis that the protester failed to set forth a detailed statement of the legal and factual grounds of protest sufficient to state a valid basis of protest. We agreed with the SBA and dismissed these contentions.

¹⁵ In its initial protest, Diamond also challenged other aspects of the agency's evaluation of element 1 and element 2--for example, the weaknesses assessed for the IT and financial audit process, data corrections, and the Cobol programmer's resume experience. Protest at 13-16. The SBA's report responded to each argument raised in Diamond's initial protest. Because Diamond did not respond to these arguments, or instead raised new arguments on the same topic, we consider these initial protest claims to be abandoned. See Sigmatech, Inc., B-409837 et al., Aug. 22, 2014, 2014 CPD ¶ 245 at 9 n.5.

With respect to the system security plan, the protester points to a section in its quotation that states that the “IT Security Specialist . . . will create a software security plan . . .,” and argues, further, that the “SOW made it clear that the creation of the system/software security plan is an integral part of the duties of the [SSO].” Id. at 14. On this basis, the protester asserts that “[i]t was therefore implied in Diamond’s [quotation] that Diamond’s IT Security Specialist, who has many years of experience in supporting the SBA’s IT Security program, would be its System Security Officer.” Id. In response, the agency notes that Diamond’s quotation neither explained that the *IT Security Specialist* would be the *System Security Officer*, nor indicated that its *software* security plan was the same thing as a *system* security plan.¹⁶ Legal Memorandum at 6.

The RFQ required the designation of an SSO as part of IT security, and required quotations to include discussion of a system security plan. RFQ at 26, 38. As Diamond acknowledges in its protest, see protest at 14, Diamond’s quotation only implies, rather than expressly designating, an SSO and does not clarify or identify that its software security plan should be considered the system security plan. Because Diamond’s quotation failed to address a requirement of the RFQ, we find no basis to question the agency’s evaluation of this element.¹⁷

Regarding the agency’s evaluation of Diamond’s personnel plan, the protester argues that the agency erred in finding that the proposed Senior Web Service/XML

¹⁶ The term “system/software security plan” used by Diamond appears only in the protest, not in the RFQ or Diamond’s quotation. See Protest at 14; AR, Tab 4, Diamond Quotation, at 13.

¹⁷ In its comments and supplemental comments, Diamond raises alternate contentions that the designation of a system security plan or SSO was a post-award performance requirement, rather than a proposal requirement, because the RFQ used the term “contractor” instead of vendor. Diamond argues on this basis that the agency applied unstated evaluation criteria in rejecting the protester’s quotation. See Comments at 6; Supp. Comments at 4. While we see no merit to these contentions, they are also untimely at this juncture. Our Bid Protest Regulations require that a protest be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier). 4 C.F.R. § 21.2(a)(2). The CO’s December 12, 2014 post-award brief explanation notified the protester that the agency had identified as a weakness in Diamond’s quotation the lack of any discussion of a system security plan or designation of an SSO. Accordingly, Diamond had the information it needed to argue that these matters were performance requirements rather than quotation requirements, as of December 12, thus this protest had to be raised in the protester’s December 19 protest filing to be considered timely.

Developer did not have five years of recent experience with SQL, Java, SOAP and XML simulation and modeling, as required by the RFQ. Protest at 16-17. Specifically, Diamond alleges that experience with these technologies and standards was inherent in the experience provided in the resume. Protest at 16. In response, the agency asserts that Diamond's protest does not identify any language in its quotation indicating 5 years' recent experience with the outlined requirements and that the explanations of the proposed staff's experience in Diamond's protest would require the SBA to make inferences based on information not provided in the quotation. Legal Memorandum at 10-11.

The record in this case supports the agency's position. The resume for the Senior Web Service/XML Developer generally indicated experience with the technologies and standards required by the RFQ, but did not make clear that the positions this individual performed met the technical requirements of the RFQ.¹⁸

Regarding past performance, Diamond argues that it was unreasonable for the agency to consider Diamond's performance under the MPERS contract in the context of this procurement because the MPERS contract was too different in terms of size, scope, and IT requirements. Protest at 19-20. In this regard, Diamond asserts that the MPERS contract required the development of a non-financial, internal SBA system to be used by a small set of SBA personnel, for only one year of limited support, valued at approximately \$400,000. In contrast, Diamond notes that the current requirement is for the development and full support of loan and bond systems for use across the SBA, with an awarded price of nearly \$28 million.

An agency is generally not precluded from considering any relevant past performance information, regardless of its source. Weidlinger Assocs., Inc., B-299433, B-299433.2, May 7, 2007, 2007 CPD ¶ 91 at 8. Regarding the relative merits of vendors' past performance information, this matter is generally within the broad discretion of the contracting agency, and our Office will not substitute our judgment for that of the agency. Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5.

We do not find the protester's argument persuasive. First, while a contractor's successful performance of a small contract might not provide a reasonable basis for predicting success in performing a much bigger requirement, an agency might

¹⁸ In its supplemental protest, the protester attempted to raise new protest grounds, alleging the application of unstated evaluation criteria and unequal treatment regarding the SSO, system security plan, and Senior Web Service/XML Developer. Supp. Protest at 14-15. On February 4, the SBA sought dismissal of these grounds on the basis that the protester failed to set forth a detailed statement of the legal and factual grounds of protest sufficient to state a valid basis of protest. Our Office dismissed these grounds as untimely.

reasonably to conclude that a firm's marginal performance of a much smaller effort may suggest a level of risk in that firm's performance of a much bigger and more complex project. Moreover, as noted above, the RFQ disclosed the agency's intention to evaluate relevant past performance information from known government sources and did not limit relevant past performance based on a contract's specific size or scope. Further, Diamond has not shown that the agency unreasonably concluded that the MPERS contract was relevant, based on the similar requirement to use SQL skills and design a relational database. Considering that the MPERS contract was performed for the same SBA office and consisted of IT requirements that were viewed as similar to those here, we find the agency's consideration of this contract to evaluate Diamond's past performance unobjectionable.¹⁹

The protester next asserts that the agency's price analysis was unreasonable because it was limited to a simple and mechanical comparison of Diamond's quotation to the independent government estimate (IGE). Protest at 21; Comments at 9. SBA contends that it performed a reasonable analysis, in accordance with the solicitation. Legal Memorandum at 17.

Where, as here, the issuance of a fixed-price task order under FAR part 16.5 procedures is contemplated, an agency is not required to perform a price realism analysis unless the solicitation so requires. Worldwide Info. Network Sys., Inc., B-408548, Nov. 1, 2013, 2013 CPD ¶ 254 at 7 n.2. We will review an agency's price realism evaluation only to determine whether it was reasonable and consistent with the solicitation requirements. Chameleon Integrated Servs., B-407018.3, B-407018.4, Feb. 15, 2013, 2013 CPD ¶ 61 at 6.

As relevant here, the RFQ stated that the price realism analysis would evaluate proposed rates for labor categories "for reasonableness and completeness," would evaluate cost and price realism with regard to the level of effort and mix of labor categories, and if deemed necessary, would evaluate the vendor's ability to meet the requirement. RFQ at 3, 5-6. The record shows that Diamond's price was determined unrealistic because its level of effort and labor mix would not provide the minimum staffing necessary to perform the requirement, creating doubt that Diamond could successfully perform the required technical effort. AR, Tab 6, Consensus Reevaluation, at 13; Tab 7, Award Decision, at 4.

¹⁹ To the extent that the Diamond asserts that the SBA should not have considered the MPERS contract because it is "currently under dispute," Diamond states only that it "will be pursuing a claim," without providing any additional information to support this allegation, and without explaining why this should preclude considering Diamond's performance evaluation under the MPERS contract. Protest at 20 n.8; Legal Memorandum at 15.

The crux of the protest in this regard is that the SBA evaluated Diamond's labor mix improperly by mechanically comparing the number of employees proposed to the number of employees in the independent government estimate (IGE). Comments at 9. This argument is belied by the record, however; while the agency did use the IGE as a basis of comparison, its analysis did not stop there. For example, the re-evaluation report observes that Diamond proposed [deleted] full-time equivalents (FTEs), and compares that to the current contractor's staffing (43 FTEs) and to the IGE (32 FTEs). AR, Tab 6, Consensus Reevaluation, at 13. Further, the evaluators describe seven specific weaknesses in Diamond's quotation under the cost/price factor, identifying, for example, positions Diamond proposed that are not required by the SOW (in some instances because government staff performs the work) and noting that "[b]y proposing this position, Diamond reduces the number of technical workers available to perform the technical staff work." *Id.* at 13-14. In other examples, the reevaluation identifies positions for which it considers Diamond's proposed staffing inadequate, noting for example that only one [deleted] was proposed, "failing to account for 2 shifts of support required . . .," and concluding that it is unreasonable to assume that one [deleted] would be able to support the SOW's requirement for 24-hour, 7 days per week, 365 days per year operations support. *Id.* at 14. In short, while the evaluation referred to the IGE in assessing the adequacy of the protester's staffing level, it also performed specific analysis with respect to Diamond's individual approach. Accordingly, we conclude the agency's price realism analysis was consistent with the terms of the RFQ, and the protester's assertions to the contrary do not provide a basis to sustain the protest.

Finally, Diamond asserts that the SBA performed an improper and inadequately documented best-value tradeoff. Protest at 24; Supp. Protest at 13.

An agency may select the higher-rated, higher-priced quotation as reflecting the best value to the agency where that decision is consistent with the evaluation criteria and the agency reasonably determines that the technical superiority of the higher-priced quotation outweighs the price difference. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 9. Source selection decisions must be documented, and must include the rationale for any business judgments and price/technical tradeoffs made or relied upon by the SSA. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6; *see* FAR § 16.505(b)(7). However, there is no need for extensive documentation of every consideration factored into a tradeoff decision. *See Terex Gov't Programs*, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Id.*

We find no merit to Diamond's argument, which is premised on the protester's objections to the agency's evaluation of the protester's quotation. Given our rejection of those arguments, above, we find the CO's selection of TMS's higher-

priced, technically-superior quotation over Diamond's lower-rated and unrealistically-priced quotation both reasonable and adequately supported.

The protest is denied.

Susan A. Poling
General Counsel