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## Decision

**Matter of:** The Electronic On-Ramp, Inc.

**File:** B-407303; B-407303.2

**Date:** December 18, 2012

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William T. Welch, Esq., McMahon, Welch and Learned, PLLC, for the protester.  
Kara M. Sacilotto, Esq., Rand L. Allen, Esq., and Brian G. Walsh, Esq., Wiley Rein LLP, for the intervenor.

Jackson McGrady, Esq., David C. Shonka, Esq., Alex Tang, Esq., Olga Vaytsman, Esq., Federal Trade Commission, for the agency.

Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the awardee's quotation failed to comply with a minimum solicitation requirement is denied where the record evidences that the agency reasonably determined that the awardee's quotation satisfied the requirement.
2. Protest is denied where the protester has not shown that it was prejudiced by the awardee performing the operations capability test of its proposed system at a time later than the protester performed its test.

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### DECISION

The Electronic On-Ramp, Inc. (EOR), of Rockville, Maryland, protests the award of a contract to Booz Allen Hamilton (BAH), of Washington, D.C., under request for quotations (RFQ) No. FTC-12-Q-2004, issued by the Federal Trade Commission (FTC), for an electronic discovery (eDiscovery) software solution. EOR contends that BAH's eDiscovery software solution did not satisfy the minimum requirements of the RFP.

We deny the protest.

### BACKGROUND

Part of the FTC's mission is to protect consumers from anticompetitive, deceptive or unfair business practices. To effectuate this purpose, the agency routinely litigates questions related to consumer protection and competition before federal and administrative tribunals.<sup>1</sup> To support this litigation, the FTC needs to have an electronic discovery support system.

On February 17, 2012, the FTC issued this RFQ, under Federal Acquisition Regulation (FAR) subpart 8.4, to obtain a "fully integrated, end-to-end, Commercial-Off-the-Shelf . . . eDiscovery software solution" for a base period with 4 option years. RFQ, Statement of Objectives (SOO), at 2. The software was expected to reduce the FTC's response time and to increase the agency's overall effectiveness involving litigation documents. The vendor's eDiscovery software solution was expected to include software that satisfied certain functions described as minimum requirements, expected features, and desired features. One minimum requirement of the solution was "distributed processing." RFQ, SOO, attach. 1, Task Requirements, Minimum Requirements, at 1.

The RFQ provided for award on a best-value basis considering the evaluation factors of technical proposal<sup>2</sup>, past performance, small business size status, and price. For determining best value, the equally-weighted technical proposal and past performance factors were most important, followed by the equally-weighted but less important small business status and price factors. RFQ, Instructions to Offerors, at 7.

With respect to the technical proposal factor, the vendor's technical proposal was required to demonstrate its technical capability, including technical approach and methodology, management and staffing plan, and experience. As part of this criterion, the FTC reserved the right to request vendors to provide oral presentations and required vendors to provide the agency an opportunity to perform an operational capabilities test (OCT). To this effect, the RFQ stated:

Offerors shall provide FTC an opportunity to perform an [OCT]. This effort is intended to demonstrate how readily the Offeror's proposed service will fulfill the objectives of the SOO. The Offeror shall provide the government with a point of contact (providing their name, title, phone number, and e-mail address) and access to test accounts that can fully exercise the capabilities of their proposed solution. The government will execute a standard set of test tasks against the

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<sup>1</sup> The FTC, as an independent federal government law enforcement agency, has eight regional offices.

<sup>2</sup> The technical proposal factor had three subfactors: technical approach and methodology, management and staffing plan, and experience.

provided service to verify capability and ease of use. The test will be performed on a set of data provided by FTC. The Offeror shall include in this section the materials, information, and documentation required to support the OCT.

Id. at 4.

Seventeen vendors, including EOR and BAH, responded to the RFQ by the April 10 closing date. EOR proposed a software solution provided by AccessData and BAH proposed a software solution provided by ZyLab. A five-member technical evaluation team (TET) rated quotations utilizing an adjectival rating scale, and considered the risks of each vendor's quotation under the technical, past performance and price factors.<sup>3</sup> After reviewing the quotations, the TET continued to consider EOR, BAH and another vendor for award. On June 13, the TET invited these three vendors to complete their OCTs at the agency during the week of June 18. Both EOR and the other vendor completed their OCTs during this week. BAH, however, requested that its OCT be conducted at non-FTC facilities and that the agency provide the load data in advance. FTC rejected BAH's requests and rescinded the agency's invitation.

On June 22, following the completion of EOR's and the other vendor's OCTs, FTC again invited BAH to provide the agency an OCT.<sup>4</sup> As a condition of permitting the OCT, FTC required BAH to agree to provide its OCT under the same conditions as the other two vendors. BAH completed its OCT at the agency on July 9 and 10.

Following the OCTs, the final ratings of EOR and BAH were as follows<sup>5</sup>:

	<b>EOR</b>	<b>BAH</b>
Technical Proposal	Acceptable	Outstanding
Past Performance	Excellent	Excellent
<b>Overall</b>	<b>Excellent</b>	<b>Outstanding</b>

Agency Report (AR), Tab E.1, TET Consensus Evaluation, at 1-2. EOR's offered price was significantly higher than BAH's price.<sup>6</sup>

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<sup>3</sup> The possible adjectival ratings were outstanding, excellent, acceptable, marginal, and unacceptable. Statement of Facts, at 6.

<sup>4</sup> The agency reports that this second request of BAH was made because the agency was not fully satisfied with either EOR's or the other vendor's software solutions.

<sup>5</sup> The record contains no documentation of how the small business status factor was rated.

In recommending award to BAH, the TET found that BAH's technical proposal demonstrated a clear understanding of the FTC's needs and that its ZyLab software met all minimum requirements and nearly all of the expected features listed in the SOO. Specifically, based on the OCT, the TET found that the ZyLab product incorporated a very strong search tool and had impressive ingestion and processing speed of data; that the tool's ability to process data and add it to existing case databases, without any inconvenience to the end-user during data processing, would be a great benefit; and that the licensing model allowed unlimited data ingestion. AR, Tab E.2, TET Recommendation Memorandum, at 2.

In contrast, while the protester's AccessData software was considered highly flexible and compliant with all of the minimum requirements and desired features listed in the SOO, the TET also found weaknesses in the protester's software solution. Specifically, the TET found that a major component of the AccessData solution had been rebuilt during the last year and was largely untested; that AccessData's approach of purchasing various components meant the software's suite had not yet been fully integrated; and that the end-users found that the summation interface was too busy (too many features) and that this could present challenges to less technical users. Id. at 3.

## DISCUSSION

EOR first argues that BAH's ZyLab software tool did not meet the RFQ's distributed processing requirement. "Distributed processing" was defined in the RFP as a "system of multiple autonomous computers/processors that interact with each other on a computer network to achieve a common goal." RFQ, SOO Definitions, at 3. BAH's technical proposal stated the following with regard to distributed processing:

[DELETED]

AR, Tab B.4, BAH Technical Proposal, at 11.

EOR argues that, under the terms of the solicitation, distributed processing was to take place across "multiple autonomous computers," which would require the use of two or more physically distinct computers networked together utilizing the computing power of each computer combined into a single effort. Protest Comments at 2. EOR asserts that BAH's ZyLab software cannot run across multiple autonomous computers, but instead runs across a virtualized environment

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(...continued)

<sup>6</sup> The agency record provided our Office does not report the total evaluated prices, but our calculation reveals that EOR's price was higher than BAH's.

(i.e., multiple virtual machines running on each physical computer) with distributed computing and parallel processing. Id. at 3-4.

The FTC responds that the solicitation requirement did not limit distributed computing to physical machines or suggest that a solution using multiple autonomous virtual processors would not meet the distributed processing requirement. The FTC advises that machines and processors, or cores, can be virtual or physical; that the distinction between virtual and physical processors is not significant; and that two virtual machines can accomplish the same tasks as two physical ones.<sup>7</sup> In any case, the agency conducted several rounds of clarifications with BAH, during which BAH provided information which evidences that ZyLab can satisfy the distributed processing requirement not only in a virtualized environment, but also across multiple physical processors. Supp. Agency Report at 2.

In reviewing a protest against an agency's evaluation of proposals or quotations, our Office will not substitute our (or the protester's) judgment for that of the agency but, rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. In this regard, the evaluation of an offeror's proposal or quotation is a matter within the agency's discretion, U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2, and a protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

We find reasonable the agency's determination that BAH's eDiscovery software solution, including its ZyLab software, complied with the solicitation's distributed processing requirement. The agency has reasonably explained that the distinction between virtual and physical processors is not significant for purposes of satisfying the agency's distributed processing requirement. The protester has not refuted the agency's explanation.

Moreover, the BAH clarification responses make clear that the ZyLab solution even satisfied EOR's more restrictive interpretation of the distributed processing requirement. For example, BAH stated that the Zylab software solution would conduct processing on [DELETED] to provide optimum bandwidth and future growth that can be addressed through the [DELETED]." BAH Clarification Response (July 23, 2012) at 1-2. BAH also provided a graphic illustrating that the solution would integrate [DELETED]. BAH Clarification Response (July 27, 2012) at 1-2.

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<sup>7</sup> The FTC observes that one powerful computer subdivided into multiple virtual machines could achieve faster processing than two lesser computers linked together.

While the protester claims that these clarification responses cannot be considered in assessing BAH's quotation, we think, in the context of a FAR subpart 8.4 acquisition, the agency can solicit and consider information from a vendor, through exchanges conducted after receipt of the quotations, that bears on the merits or technical acceptability of a vendor's quotation, so long as the exchanges to obtain this information are conducted in a fair and equitable manner. See USGC Inc., B-400184.2 et al., Dec. 24, 2008; 2008 CPD ¶ 9 at 3-5. There is nothing in the record that shows that the exchanges here were unfair or inequitable or that this information should not be considered in the evaluation.

EOR also contends that BAH's quotation should have been rejected because BAH did not complete its OCT when first requested by the agency and in the same timeframe as the other vendors. EOR argues that the additional time could have afforded BAH a greater opportunity to work on its solution to the disadvantage of the other vendors, including EOR.

The record here reflects that the solicitation did not establish any specific parameters for the OCT, and that while the agency permitted BAH to perform its test 2 weeks after the other vendors, BAH performed its test under the same conditions as the other vendors. For example, there is no evidence that BAH was aware of any of the test protocols in advance of its OCT. Since EOR has not claimed that it could have improved its OCT performance had it been afforded additional time, we find it has not been prejudiced by the later scheduling of BAH's OCT. Competitive prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. CWTSatoTravel, B-404479.3, B-404479.4, Sept. 24, 2012, 2012 CPD ¶ 281 at 8-9.

The protest is denied.

Susan A. Poling  
General Counsel