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## Decision

**Matter of:** Computer World Services Corporation

**File:** B-410567.2; B-410567.3

**Date:** May 29, 2015

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Lee Dougherty, Esq., and Katherine A. Straw, Esq., Offit Kurman Attorneys at Law, for the protester.

Scott M. McCaleb, Esq., Tracye Winfrey Howard, Esq., and Craig Smith, Esq., Wiley Rein LLP, for VariQ Corporation, an intervenor.

Mark A. Allen, Esq., Eric C. Crane, Esq., Beth Sturgess, Esq., and Barbara Walthers, Esq., Department of Homeland Security, United States Citizenship and Immigration Services, for the agency.

Paul N. Wengert, Esq., and Scott H. Riback, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency misevaluated protester's task order proposal as unacceptable under staffing approach factor is denied where record demonstrates that protester's proposed project manager's resume did not include required experience and professional qualifications required by the solicitation.
  2. Protest that agency acted improperly by issuing task order that unilaterally reduced the successful vendor's price for transition services from 48 months to three months is denied where the record shows that the protester actually priced the transition services for only three months rather than 48 months, and thus the protester was not prejudiced by the agency's action.
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### DECISION

Computer World Services Corporation (CWS), of Washington, D.C., protests the issuance of a task order to VariQ Corporation, of Rockville, Maryland, by the Department of Homeland Security, United States Citizenship and Immigration Services (DHS), under task order request for proposals (TORFP)

No. HSSCCG-14-R-00045 for software development and maintenance services.<sup>1</sup> CWS argues that DHS misevaluated both firms' proposals and held discussions only with VariQ.

We deny the protest in part, and dismiss it in part.

## BACKGROUND

On August 4, 2014, DHS issued the TORFP to numerous contractors under the DHS Enterprise Acquisition Gateway for Leading-Edge Solutions II multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts. Agency Report (AR) at 2. The TORFP requested fixed-price task order proposals from eligible vendors to perform technical support services to operate and maintain the DHS verification information system and related applications. AR at 1; TORFP, Section I, at 12. The TORFP provided that DHS would issue a single task order for a base year and 3 option years to the vendor submitting the proposal deemed to offer the best value to the government considering four factors: experience doing the work, staffing approach, past performance, and price. The solicitation provided that the three non-price factors were equally weighted, and that, when combined, the non-price factors were significantly more important than price. TORFP, Section V, at 1.

The TORFP included a performance work statement (PWS) that identified and described seven tasks, set forth a method for performance of each task, and included the staffing level and the labor categories to be used during performance. As is relevant to the protest, task one specified that vendors were required to provide a six-person project management team. One of the specified personnel was a project manager, who also was identified in the solicitation as a key employee. TORFP, Section I, at 13. Task six was for the provision of services related to transitioning out of the task order at the end of performance. Id. at 46. The task six narrative provided that "a transition period of ninety (90) days" could be required at the end of any performance period. Id.

With respect to the project manager, the PWS listed several mandatory qualifications, including the following:

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<sup>1</sup> The task order at issue here is valued at approximately \$63.4 million. As its value exceeds \$10 million, this procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award indefinite-delivery, indefinite-quantity contracts. 41 U.S.C. § 4106(f)(1)(B).

- Ten (10) years of IT [information technology] Project management experience, at least eight (8) of which shall be specialized in Enterprise System Operations.

\* \* \*

- Certified Scrum Master (CSM)<sup>2</sup>
- Experience managing scrum team(s)

TORFP, Section I at 54-55.

The price schedule required vendors to submit a separate price for each task. For task six (transition), the price schedule specified 12 months of transition services for the base year, and also 12 months of transition services during each option year. TORFP at 3-5. In response to a vendor question for clarification whether task six was to be priced for the full base year and for each of the three option years, as the price schedule provided, DHS responded, “Yes, you are to price transition in each year.” TORFP amend. 3 at 1-2.

CWS’s proposal included a resume for its project manager candidate. The proposed candidate was described generally as having 15 years of experience delivering measurable results for clients in program and project management, [etc.], however, the resume only listed specific work experience dating back to 2007. AR, Tab C, CWS Task Order Proposal, vol. II, at 24, 27. Also, while the individual’s qualifications included being “well-versed in . . . Agile project management methodologies . . .,” there was no specific statement that the individual had experience managing scrum teams, or that the candidate possessed a Certified Scrum Master credential. Id. at 24-28.

For task six, transition, CWS’s proposal included a price for only 3 months, and stated that that price applied only if task six was required to be performed before performance of all the other tasks; otherwise CWS’s proposal represented that the firm would provide the task six services at no cost. AR, Tab C, CWS Task Order Proposal, vol. I, at 9.

The agency evaluated proposals and issued a task order to CWS on September 25, 2014. AR at 2. VariQ then filed a protest challenging the selection of CWS. Id.

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<sup>2</sup> References to “scrum” relate to a set of techniques for performing “Agile” software development and other types of work. Scrum techniques are promoted by an entity called Scrum Alliance, which also administers teaching, testing, and issuance of credentials in the use of its techniques, such as “Certified Scrum Master.” See [www.scrumalliance.org/certifications/practitioners/certified-scrummaster-csm](http://www.scrumalliance.org/certifications/practitioners/certified-scrummaster-csm).

Shortly thereafter, DHS announced that it would take corrective action by reevaluating proposals and making a new source selection decision. Id. Our Office dismissed VariQ's protest as academic.

During the reevaluation of CWS's proposal, DHS concluded that the firm's staffing approach was unacceptable. Specifically, DHS determined that the resume CWS had submitted for its proposed project manager did not clearly show that the 15 years of experience listed for the candidate included the required experience in IT project management and enterprise system operations, nor did the resume mention possession of a Certified Scrum Master credential. AR, Tab D, CWS Technical Evaluation, at 10. DHS determined that, by proposing a project manager who did not demonstrate all of the required qualifications, CWS's proposal was unacceptable under the staffing approach factor, and therefore unacceptable overall. Id. at 4.

In reviewing the proposals under the price factor, DHS determined that the TORFP incorrectly required vendors to provide prices for 12 months of the transition task in each year of performance. Accordingly, DHS recalculated VariQ's pricing to include the cost of providing only 3 months of the transition task, as the agency had intended, thus reducing VariQ's total price by approximately \$[DELETED] million, to \$63.4 million. AR, Tab G, Memorandum to File from Contract Specialist, Jan. 20, 2015, at 1-2.

As a result, following reevaluation, the revised adjectival ratings and prices were as follows:

| <b>Offeror</b> | <b>Experience</b> | <b>Staffing Approach</b> | <b>Past Performance</b> | <b>Evaluated Price</b> |
|----------------|-------------------|--------------------------|-------------------------|------------------------|
| <b>CWS</b>     | Outstanding       | Unacceptable             | Acceptable              | \$70.0 million         |
| <b>VariQ</b>   | Good              | Good                     | Acceptable              | \$63.4 million         |

AR at 5.

DHS issued the task order to VariQ on February 13, 2015. AR at 3. This protest followed.

## PROTEST

CWS challenges the evaluation of its proposal under the staffing approach and past performance factors, and challenges the evaluation of VariQ's proposal under the past performance factor.<sup>3</sup> CWS also argues that DHS engaged in discussions with VariQ, as evidenced by the reduction of VariQ's price after the reevaluation.

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<sup>3</sup> CWS also argues that, because VariQ lacks experience performing the requirement, there is a risk that the firm will be unable to provide qualified staff on time. We dismiss this aspect of CWS's protest. This assertion is based entirely on (continued...)

We note at the outset that, in reviewing protests challenging an agency's evaluation, our Office does not reevaluate proposals; rather, we review the agency's evaluation to determine whether it was reasonable and consistent with the solicitation, as well as applicable statutes and regulations. ASRC Research & Tech. Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 8; see also Halfaker & Assocs., LLC, B-407919, B-407919.2, Apr. 10, 2013, 2013 CPD ¶ 98 at 6. On the record before us, we have no basis to object to the agency's evaluation here. We discuss CWS's principal allegations below.

#### Evaluation of CWS's Staffing Approach

CWS argues that the agency unreasonably found its proposal unacceptable based on the qualifications of its proposed project manager. CWS maintains that the agency acted unreasonably in finding its proposed candidate unacceptable for lacking the required experience. CWS also maintains that its candidate's lack of a scrum master credential is a minor matter. CWS argues that its candidate is well qualified, and that he could obtain the required scrum master credential in a matter of days. CWS also argues that its candidate's shortcomings should have been considered in the context of its other proposed key personnel, whose qualifications significantly exceeded the agency's requirements

Our review of the record confirms the reasonableness of the agency's evaluation. As noted above, the RFP required the proposed project manager to have 10 years of IT project management experience, 8 years of enterprise system operations experience, experience in the management of scrum teams, and a certified scrum master credential. TORFP, Section I, at 54-55. CWS's proposal provided imprecise information about the nature and extent of its candidate's experience, made no mention of scrum management experience, and did not represent that he possessed the required scrum master credential. Although its task order proposal described the "CWS team" as being experienced and skilled in the use of Agile Scrum methodology on the incumbent contract, see, e.g., AR, Tab C, CWS Task Order Proposal, vol. II, at 10-11, 20, the proposal made no mention of scrum experience in connection with the proposed project manager's experience.<sup>4</sup> Id. at 24, 26-28.

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(...continued)

speculation, and CWS has provided no evidence in support of its position. As such, this aspect of CWS's protest fails to state a basis for protest. 4 C.F.R. § 21.21.5(f). In addition, to the extent that CWS is alleging that VariQ will be unable to timely provide qualified personnel during task order performance, that is a matter of contract administration not for consideration by our Office. 4 C.F.R. § 21.5(a).

<sup>4</sup> Notably, a certified scrum master credential also was required for the position of senior application engineer, TORFP at 55. The resume submitted by CWS for this position clearly states that the candidate for that position held a certified scrum master credential. AR, Tab C, CWS Technical Proposal, at 25, 31.

Furthermore, CWS has not argued that its candidate met the requirements, but instead argues only that his shortcomings should not have been viewed as significant. We disagree. Where a solicitation states that the qualifications of key personnel will be evaluated, and a proposal fails to demonstrate that key personnel hold certifications that the solicitation requires them to possess, the proposal may be evaluated as unacceptable. Enterprise Solutions Realized, Inc.; Unissant, Inc., B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 10-11. In view of the foregoing discussion, we deny this aspect of CWS's protest.

## Discussions

In its initial protest, CWS argued that DHS conducted discussions with VariQ by allowing the firm to lower its price during corrective action. In response to the protest, DHS stated that no discussions were held, and the price reduction was due to a recalculation performed by DHS due to the agency's error in requesting pricing for 12 months of transition services during each year of the task order.

In its comments responding to the agency report, CWS argued that, by issuing the task order for three months of transition services, rather than for the 48 months specified in the pricing schedule, DHS effectively held discussions with VariQ because the firm was given an opportunity to accept or reject a contract that varied materially from its proposal.

We find no merit to this aspect of CWS's protest. Under Federal Acquisition Regulation (FAR) § 15.306(d), discussions are exchanges with offerors after the establishment of a competitive range. Such exchanges should be tailored to each offeror's unique proposal, with the intent of obtaining proposal revisions through bargaining, give and take, attempts at persuasion, the alteration of assumptions and positions, and negotiations. FAR § 15.306(d). In situations where there is a dispute concerning whether an exchange between an agency and an offeror constitutes discussions, we consistently have held that the acid test of whether or not discussions have occurred is whether the offeror has been afforded an opportunity to revise or modify its proposal. Archer Western Federal JV, B-410168.2, B-410168.3, Nov. 12, 2014, 2014 CPD ¶ 351 at 5-6.

We have no basis to conclude that discussions occurred here. There was no exchange between the agency and VariQ during which the firm was afforded an opportunity to modify or revise its proposal. Instead, the agency offered VariQ a proposed task order that varied materially from the terms of VariQ's offer. VariQ was never afforded an opportunity to exercise its business judgment to modify or revise its proposal as it saw fit (or, alternatively, to exercise its business judgment to continue to offer what it originally had proposed). Therefore, the central feature of discussions--affording an offeror an opportunity to exercise its business judgment to revise or modify (or not revise or modify) its proposal--is absent from the transaction. See Equa Solutions, Inc., B-409848.2, B-409848.3, Nov. 20, 2014, 2014 CPD ¶ 354 at 10 (amendment requesting response to revised requirements did not initiate

discussions); see also Equa Solutions, Inc. v. United States, 120 Fed. Cl. 371, 378-80 (2015) (same).<sup>5</sup>

The circumstances here are no different than any other case where an agency makes award for its actual requirements on a basis that is materially different from the basis upon which it has solicited proposals. For example, in System Studies & Simulation, Inc., B-409375.2, B-409375.3, May 12, 2014, 2014 CPD ¶ 153, the agency awarded a contract for only approximately 30 percent of the quantity of services it had solicited. We sustained that protest, finding that agencies may not properly award a contract on a basis that is fundamentally different from the basis upon which the competition was conducted. Id. at 4; see also, Symetrics Indus., Inc., B-274246.3 et al., Aug. 20, 1997, 97-2 CPD ¶ 59 at 6-9.

Here, while ordinarily we would sustain CWS's protest on this basis, the record shows that CWS was not prejudiced by the agency's actions. Competitive prejudice is an essential element of every viable protest, and where no prejudice is shown or otherwise evident from the record, we will not sustain a protest, even if the agency's actions arguably were improper. Avaya Gov't Solutions, Inc., B-409037 et al., Jan. 15, 2014, 2014 CPD ¶ 31 at 6.

As noted above, CWS actually based its proposal on providing three months of transition services rather than the 48 months of transition services specified in the

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<sup>5</sup> In support of its position, CWS directs our attention to PRC Info. Scis. Co., B-188305, July 7, 1977, 77-2 CPD ¶ 11. In that case, the awardee submitted an ambiguous proposal that could be interpreted either as offering pricing on the basis of the term of the contract ("term" pricing), or, alternatively, pricing based on the quantity of units being purchased ("quantity" pricing). The agency made award on the basis of quantity pricing, and we concluded that the agency's actions were tantamount to discussions. That case is distinguishable, however, because the awardee's proposal there was ambiguous; it embodied two pricing schemes, both of which had been developed by the offeror using its business judgment to prepare its proposal. The agency offered the firm a contract embodying one of the two pricing schemes developed by the offeror.

Here, in contrast, VariQ was not given a choice between two alternatives it had proposed. Instead, it was offered a task order based on terms it had never proposed or contemplated. We note as well that the principles applicable to an agency's interactions with an offeror were largely governed by a different set of rules at the time of our decision in PRC Info. Scis. Co., supra., which applied the then-current version of the Federal Procurement Regulation. The rules governing discussions have been significantly revised since then. See generally, Dynacs Eng'g Co., B-284234 et al., Mar. 17, 2000, 2000 CPD ¶ 50 at 3-4 (discussing the effects of the 1997 FAR Part 15 rewrite).

pricing schedule (CWS offered, alternatively, to provide the transition services at no cost, in the event that the agency did not acquire those services initially). Accordingly, the record demonstrates conclusively what CWS would have proposed had it known about the agency's actual requirements. The underlying reason for recommending recompetition in those cases where an agency makes award on a basis materially different than the basis upon which proposals were solicited is to afford the protester an opportunity to compete for the agency's actual requirements. Here, since, serendipitously or otherwise, CWS's proposal was for the agency's actual requirements (three months, rather than the 48 months of transition services specified in the pricing schedule), it follows that the firm was not prejudiced by the agency's otherwise improper actions. We therefore deny this aspect of CWS's protest.

#### Past Performance Evaluation

CWS argues that DHS unreasonably evaluated the two firms as equal under the past performance factor, because the agency should have found past performance differences that would have favored CWS. We dismiss this aspect of CWS's protest.

A protester must be an interested party, that is, an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). A protester is not an interested party where it would not be in line for award, if its protest was sustained. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57.

As discussed, CWS's proposal properly was found unacceptable because it did not propose a program manager that met the requirements of the solicitation. Because its proposal properly was found unacceptable, CWS is ineligible for award. It follows that the protester is not an interested party to challenge other aspects of the agency's evaluation. See Aquila Fitness Consulting Sys., Ltd., B-286488, Jan. 17, 2001, 2001 CPD ¶ 4 at 4.

The protest is denied in part and dismissed in part.

Susan A. Poling  
General Counsel