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# Decision

**Matter of:** Aurotech, Inc.

**File:** B-413861.4

**Date:** June 23, 2017

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Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for the protester.  
Robert J. Symon, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for the intervenor.

Anthony E. Marrone, Esq., Department of Health and Human Services, for the agency.  
Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging the agency's evaluation of quotations and award of a blanket purchase agreement and task order is denied where the record shows that the evaluation and source selection decision were reasonable and consistent with the terms of the solicitation.

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## DECISION

Aurotech, Inc., (Aurotech) of Silver Spring, Maryland, protests the establishment of a blanket purchase agreement (BPA) and issuance of a task order to Discover Technologies LLC (Discover Tech) of Reston, Virginia, under request for quotations (RFQ) No. FDA-16-RFQ-1151397, issued by the Department of Health and Human Services, Food and Drug Administration (FDA), for information technology support services. Aurotech contends that the FDA evaluated vendors' quotations disparately and contrary to the terms of the solicitation, and challenges the agency's best-value determination.

We deny the protest.

## BACKGROUND

The RFQ was issued on May 26, 2016, to eight small business vendors holding contracts under General Services Administration Federal Supply Schedule (FSS) 70, Category 132-51, Information Technology Professional Services. Agency Report (AR), Tabs 3A-B, RFQ Email & Cover Page; Contracting Officer's Statement (COS) ¶ 1. The

RFQ, as amended, stated that the BPA would be established (for a base year and 4 option years) on a best-value basis considering the following evaluation factors, in descending order of importance: technical understanding and approach (technical approach); management approach; relevant experience; and price. Rev. RFQ. § 8.1; § 17, at 25-26. The RFQ stated that the non-price factors were significantly more important than the price factor. Id. at 26. The solicitation did not indicate whether the agency intended to hold discussions, but stated that the FDA reserved the right to make award without discussions. Id. at 25.

The solicitation provided that call (or task) orders would be issued under the BPA on a time-and-materials, labor-hour, fixed-priced, or hybrid basis, and advised vendors that the FDA intended to issue the first (1-year) call order concurrent with the BPA award. Id. § 8.2; § 17 at 26. Separate statements of work (SOW) were provided for the overall BPA and the first call order, which require the vendor to provide SharePoint software support services, including migrating, or upgrading, to future versions of SharePoint.<sup>1</sup> Id. §§ 3-5; BPA SOW § 6.4.4; attach., Call Order SOW § 5.5. Vendors were to submit separate technical and price quotations. Rev. RFQ § 17, at 24.

Vendors were to address two subfactors under the technical approach evaluation factor: call order one understanding and approach (call order subfactor); and technical understanding and approach to technical scenario (technical scenario subfactor). Id. at 26-27. With respect to the call order subfactor, vendors were to propose an approach for achieving the call order objectives and technical requirements, and anticipating and mitigating risks, among other things. See id. at 26. With respect to the technical scenario subfactor, vendors were to propose an approach for migrating to SharePoint 2013. Id. at 27-28.

Vendors were also to address two subfactors under the management approach evaluation factor: management approach to BPA and call order one (BPA/order management subfactor); and key personnel. Id. at 28-29. With respect to the BPA/order management subfactor, vendors were to provide a comprehensive plan for managing the overall BPA, including an approach for managing multiple call orders simultaneously and meeting deadlines; a strategy for recruiting and retaining qualified staff; and a project management plan for the call order. See id. at 28-29. Vendors were also to propose (using the staffing matrix included with the solicitation) annual labor hours for 21 specified labor categories across 11 call order tasks. See id. at 29; attach. 2, Staffing Matrix. Vendors were to identify their corresponding FSS labor category and the staff experience level for each category. Rev. RFQ, attach. 2, Staffing Matrix. With respect to the key personnel subfactor, vendors were to propose individuals for seven key labor categories specified in the call order SOW, and provide a resume and commitment letter for each individual; a comprehensive list of their

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<sup>1</sup> Microsoft SharePoint is a customizable, browser-based platform for organizations to manage and share electronic documents among users. See Rev. RFQ §§ 1.1, 3.

proposed responsibilities; and a description of their specific roles. See Rev. RFQ § 17, at 29; attach, Call Order SOW § 11.

Finally, with respect to the price evaluation factor, vendors were to quote fully-burdened labor rates for each BPA performance year and the call order using the pricing spreadsheets included with the solicitation. Id. at 31-32. For each BPA year, vendors were to propose hourly labor rates for 21 labor categories for both government-site and contractor-site (hereinafter, on-site and off-site, respectively) services, and identify their corresponding FSS labor category, FSS labor rate, and the percentage of any discount from the FSS rate (which the RFQ requested). Id. at 31; attach. 3, Pricing Tables, BPA Pricing Spreadsheets. For the call order, vendors were to: propose a labor mix (labor category and hour) for each of nine specified on-site tasks; identify the corresponding BPA labor category and on-site rate; provide the total number of annual hours and full time equivalents (FTE) for each category; and calculate the total price by category, task, and overall. Id., Call Order Pricing Spreadsheet. Vendors were also to include notes describing their pricing assumptions.<sup>2</sup> Id., Assumptions Spreadsheet.

#### Initial Evaluation & Award

The FDA received quotations from seven vendors by the June 28 deadline, including from Aurotech and Discover Tech (the incumbent); evaluated quotations; set a competitive range comprised of Aurotech and Discover Tech and conducted discussions with the two vendors; and, after evaluating their revised quotations, made an initial award to Aurotech on September 19. See COS ¶ 1; AR, Tab 9B, Award Dec., Sept. 19, 2016, at 1; Tab 3I, Rev. RFQ Email. Discover Tech subsequently filed a timely protest with our Office challenging the evaluations and best-value determination. Following the filing of an agency report and the protester's comments and supplemental protest, the FDA advised the parties on November 17 that it intended to take corrective action based on the issues raised in Discover Tech's supplemental protest.<sup>3</sup> Notice of Corrective Action. The agency stated that it would, at a minimum, reevaluate revised quotations, enter into further communications if necessary, and prepare a new award determination. Id. Our Office dismissed Discover Tech's protests as academic, accordingly. Discover Techs. LLC, B-413861, B-413861.2, Nov. 28, 2016 (unpublished decision).

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<sup>2</sup> The RFQ's evaluation provisions are discussed in relevant part below.

<sup>3</sup> Discover Tech's protest and supplemental protest grounds are discussed in Discover Techs. LLC--Costs, B-413861.3, Mar. 29, 2017, 2017 CPD ¶ 108, where we denied Discover Tech's request that our Office recommend that the FDA reimburse the firm for its costs of filing and pursuing the protests.

Corrective Action

FDA reevaluated Aurotech’s and Discover Tech’s revised quotations; reopened discussions; received final revised quotations (FRQ) from the two vendors; and subsequently requested clarifications from them, as discussed below. COS ¶ 5.2; AR, Tabs 15A & 16A, Discussions (Disc.); Tabs 15F & 16F, Clarifications.

Aurotech’s and Discover Tech’s quotations were evaluated (before and after corrective action) as follows:

	Aurotech		Discover Tech	
	Pre-Corrective Action	Post-Corrective Action	Pre-Corrective Action	Post-Corrective Action
<b>TECHNICAL APPROACH</b>	Highly Satisfactory	Highly Satisfactory	Highly Satisfactory	Highly Satisfactory
<i>Call Order</i>	Highly Satisfactory	Highly Satisfactory	Highly Satisfactory	Highly Satisfactory
<i>Technical Scenario</i>	Highly Satisfactory	Satisfactory	Satisfactory	Satisfactory
<b>MANAGEMENT APPROACH</b>	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<i>BPA/Order Management</i>	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<i>Key Personnel</i>	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<b>RELEVANT EXPERIENCE</b>	Satisfactory	Satisfactory	Satisfactory	Highly Satisfactory
<b>OVERALL TECHNICAL</b> <sup>4</sup>	Highly Satisfactory	Satisfactory	Satisfactory	Highly Satisfactory
<b>CALL ORDER NO. 1 PRICE</b>	\$2,990,639	\$2,990,639	\$4,469,540	\$2,346,115
<b>BPA PRICE</b>	\$87,489,918	\$87,489,918	\$90,160,211	\$84,515,972
<b>TOTAL EVALUATED PRICE</b> <sup>5</sup>	\$90,480,556	\$90,480,556	\$94,619,751	\$86,862,086

AR, Tab 19A, Pre-Negotiation Mem., Feb. 8, 2017, at 5-6, 11-12; Tab 19B, Award Summ. Mem., Mar. 2, 2017, at 15, 23.

<sup>4</sup> Under the agency’s evaluation scheme, technical quotations were assigned adjectival ratings of excellent, highly satisfactory, satisfactory, or unsatisfactory for each non-price evaluation factor, and overall. AR, Tab 17B, Tech. Eval. Rep., Mar. 1, 2017, at 6-7.

<sup>5</sup> The RFQ stated that a vendor’s total evaluated price (TEP) would be the sum of the total prices for each BPA performance year and the call order. Rev. RFQ § 17, at 33.

As reflected in the table above, Discover Tech, in its FRQ, reduced its proposed call order price by over \$2 million. Following corrective action, Discover Tech's ratings under the relevant experience subfactor and overall also improved, increasing from satisfactory to highly satisfactory. By contrast, Aurotech's ratings under the technical scenario evaluation subfactor and overall were downgraded from highly satisfactory to satisfactory. The findings of the Project Advisory Group, which evaluated technical and price quotations, are discussed in relevant part below. See AR, Tab 17B, Tech. Eval. Rep., Mar. 1, 2017, at 1-134; Tab 18B, Bus. Analysis Rep., Mar. 1, 2017, at 1-37.

FDA determined that Discover Tech's higher-rated, lower-priced quotation provided the best value to the agency, over Aurotech's lower-rated and higher-priced quotation. AR, Tab 19B, Award Summ. Mem., at 23-24. The agency established the BPA with Discover Tech and issued the first call order to the vendor on March 7, 2017, for \$1,414,080.<sup>6</sup> Aurotech filed this protest following receipt of a written debriefing.

## DISCUSSION

Aurotech protests the reevaluations and new best-value determination, arguing that the agency evaluated Aurotech's and Discover Tech's quotations disparately and contrary to the terms of the solicitation. Although we only address Aurotech's salient arguments, we have considered all of the protester's contentions and find that none provides a basis to sustain the protest.<sup>7</sup>

### Evaluation of Discover Tech's Quotation

Aurotech challenges the evaluation of Discover Tech's technical and price quotations with respect to the call order, and alleges that the agency held unequal exchanges in that regard. See Protest at 8-12; Protester's Comments at 6-16. According to Aurotech, the FDA "permitted [Discover Tech] to materially and substantially reduce

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<sup>6</sup> The difference between Discover Tech's evaluated and final award prices for the call order reflects the shortened period of performance due to the pendency of this protest. See AR, Tab 20F, Call Order, at 1; Tab 21B, Award Email to Discover Tech, Mar. 8, 2017. The estimated value of the BPA is \$100,000,000. Rev. RFQ § 8.3.

<sup>7</sup> For example, with respect to FDA's reevaluation of Discover Tech's relevant experience, Aurotech alleges that "all the evaluators did is change a few of the descriptive terms they used in their initial evaluations to justify arbitrarily elevating" Discover Tech's adjectival rating, without actually reevaluating Discover Tech's relevant experience. Protester's Comments at 7-9. However, Aurotech identifies no aspect of the evaluation record or Discover Tech's quotation that was allegedly inconsistent with the RFQ's relevant experience evaluation criteria. See id. We thus dismiss this aspect of the protest because it fails to provide a legally sufficient basis of protest. In sum, Aurotech's allegation fails to establish the likelihood that the FDA violated applicable procurement laws or regulations. See 4 C.F.R. § 21.5(f).

the number of labor hours and labor rates it proposed, without evaluating the impact of those reductions on [Discover Tech's] proposed technical and management approaches[.]” Protester’s Comments at 9. For example, Aurotech maintains that the agency did not consider whether, at such a reduced level of effort, Discover Tech could recruit and retain qualified staff and key personnel, mitigate risks, or manage multiple call orders simultaneously. Id. at 11-12.

FDA maintains that it evaluated Discover Tech’s quotation consistent with the RFQ, and that Aurotech has not shown that the agency gave unfair or preferential treatment to Discover Tech. See Memorandum of Law (MOL) at 13-23. FDA argues that it thoroughly reviewed Discover Tech’s justifications for its call order labor reductions and reasonably determined that they were supported. Id. at 19; Supp. MOL at 8. The agency explains that the reductions were due to Discover Tech’s proposal of on-site labor rates;<sup>8</sup> additional rate discounts; and corrected estimates for the level of effort required for the call order transition period. See MOL at 19; Supp. MOL at 8-9.

As an initial matter, contrary to Aurotech’s repeated assertions, Discover Tech’s FRQ did not fail to explain or provide new information regarding its proposed reductions to its call order labor rates and level of effort. See Protester’s Comments at 6, 10. The record shows that Discover Tech’s FRQ stated, expressly, that it was providing additional discounts to its labor rates and that it corrected its call order pricing to provide on-site rates, as requested by the agency during discussions. See AR, Tab 16E, Discover Tech Disc. Response, at 1. In this respect, the record shows that Discover Tech’s earlier quotation offered, on average, off-site and on-site labor rates of \$[DELETED] and \$[DELETED] per hour, respectively; whereas Discover Tech’s FRQ reduced those rates to \$[DELETED] and \$[DELETED], respectively.<sup>9</sup> Discover Tech also explained that it reduced its level of effort for several SOW tasks (from 12 months to 10 months) to account for the ambiguity in the SOW regarding the 2-month transition period, which we address below. See AR, Tab 16D, Discover Tech Price Quotation, Pricing Tables, Assumptions.

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<sup>8</sup> Prior to corrective action, Discover Tech’s price quotation incorrectly quoted off-site labor rates for the call order (instead of on-site rates as required by the RFQ), which agency evaluators had overlooked during the earlier evaluation, but subsequently addressed in discussions with Discover Tech during corrective action. See AR, Tab 18A, Bus. Analysis Rep., Feb. 2, 2017, at 16, 22; Rev. RFQ, attach. 3, Pricing Tables, Call Order Pricing Spreadsheets. Aurotech does not challenge this aspect of the FDA’s exchanges with Discover Tech.

<sup>9</sup> Compare AR, Tab 5O, Discover Tech Rev. Price Quotation, Pricing Spreadsheets, Call Order 1 & BPA Base Year Rates with Tab 16D, Discover Tech FRQ, Pricing Spreadsheets, Call Order 1 & BPA Base Year Rates; see Tab 18A, Bus. Analysis Rep., Feb. 2, 2017, at 24-25; Tab 18B, Bus. Analysis, Mar. 1, 2017, at 33-36.

Based on our review of the contemporaneous record, we find that the agency evaluated Discover Tech's quotation reasonably. Where, as here, an agency conducts a formal competition under the FSS program for the award of a BPA or task order contract, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. Advanced Tech. Sys., Inc., B-296493.6, Oct. 6, 2006, 2006 CPD ¶ 151 at 5. In reviewing an agency's evaluation, we will not reevaluate vendors' quotations, and an offeror's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. Id.; see Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4.

As set forth above, the RFQ stated that the agency would evaluate prices for fairness and reasonableness. Rev. RFQ § 17, at 33. When agencies conduct competitions for the issuance of orders or BPAs under the FSS, Federal Acquisition Regulation (FAR) subpart 8.4 requires agencies to evaluate "the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable."<sup>10</sup> US Info. Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 6-7, citing FAR § 8.405-2(d). In this respect, the RFQ stated that the FDA would evaluate whether a vendor's staffing plan included reasonable labor estimates and personnel with the requisite skill level to perform their proposed tasks. See Rev. RFQ § 17, at 29-30. The RFQ also provided that the agency would evaluate whether a vendor's level of effort proposed in its call order pricing, was consistent with the level of effort in the vendor's call order staffing plan. See id. at 33. Furthermore, the agency would evaluate the extent to which the vendor proposed key personnel with the appropriate experience, skills, training, and certifications for their assigned tasks. See id. at 30.

The record shows that the FDA's evaluations were consistent with these provisions. Here, the Project Advisory Group (PAG) evaluators (who, as stated above, evaluated both technical and price quotations), analyzed call order prices for reasonableness by comparing the vendors' proposed task prices to each other and to an independent government cost estimate (IGCE). AR, Tab 18B, Bus. Analysis, Mar. 1, 2017, at 31. The PAG evaluators also compared each vendors' proposed BPA prices for each performance period, their call order prices, and their total evaluated prices, to each other and to the IGCE.<sup>11</sup> Id. at 30. In addition, the evaluators compared the vendors' levels of effort to each other and to the IGCE, and to their respective staffing plans. See id. at 15-16, 22-23, 29-31. For each BPA performance period, the evaluators further

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<sup>10</sup> An agency's concern in making a price reasonableness determination is whether the offered prices are too high, rather than too low. Vital Link, Inc., B-405123, Aug. 26, 2011, 2011 CPD ¶ 233 at 6.

<sup>11</sup> As stated above, the RFQ required that the call order labor categories and rates correspond to the applicable BPA labor categories and on-site rate. Rev. RFQ, attach. 3, Pricing Tables, Call Order Pricing Spreadsheets.

compared the difference between the vendors' on-site and off-site rates for each labor category, as well as their average rates. Id. at 32-36. They also verified that vendors' proposed labor categories and rates were consistent with their FSS contracts, and considered the extent to which vendors proposed discounts from their FSS rates. See id. at 15-16, 20-21, 23, 32. Finally, the evaluators reviewed the vendors' assumptions, including for the transition period requirements discussed below. Id. at 27-31.

Based on this price evaluation, the agency reasonably concluded that: (1) both vendors' labor rates were fair and reasonable; (2) Discover Tech's average on-site labor rates were 15 to 17 percent less than Aurotech's average rates;<sup>12</sup> (3) Discover Tech's BPA price was 12 percent less than Aurotech's; (4) Discover Tech's TEP was 4 percent less than Aurotech's; (5) Discover Tech discounted its FSS rates for 13 labor categories (both on-site and off-site) and provided additional discounts that affected its rates for a number of call order tasks; and (6) as the incumbent contractor, Discover Tech's transition costs would be very minimal. Id. at 29-32. Significantly, after evaluating Discover Tech's FRQ, the evaluators found that its updated staffing plan and proposed changes to its labor hours corresponded to Discover Tech's revised call order pricing, and that those changes affected the level of effort for 14 labor categories. See id. at 29.

The record also shows that the evaluation of Discover Tech's call order level of effort, as well as its call order technical and management approach, was reasonable and consistent with the RFQ's criteria. In evaluating Discover Tech's FRQ, the PAG found that: (1) the vendor provided a staffing plan with an appropriate mixture of resources, hours, skill sets, and experience to be successful for the duration of the BPA and call order; (2) its staffing plan was detailed and clearly identified the labor categories needed to fulfill the call order requirements and the anticipated level of effort; (3) its labor estimates were reasonable for performing the SOW tasks; (4) the key personnel proposed had the length of experience and skill similar to the call order SOW; and (5) Discover Tech's management approach would allow the vendor to adequately manage the overall BPA and the call order.<sup>13</sup> See AR, Tab 17B, Tech. Eval. Rep., Mar. 1, 2017, at 36-39.

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<sup>12</sup> The PAG evaluators determined that the net difference in the vendors' off-site labor rates was negligible. AR, Tab 18B, Bus. Analysis, Mar. 1, 2017, at 32.

<sup>13</sup> With respect to the call order technical evaluation subfactor, the RFQ stated that the agency would evaluate whether the vendor's proposed technical approach to the call order was logical and would satisfy the technical requirements, among other things. See Rev. RFQ § 17, at 27. In this respect, the PAG evaluators assessed strengths in Discover Tech's technical approach because its proposed transition schedule would allow it to continue service immediately and focus on improvements in service, and because the approach exceeded certain SOW requirements. See AR, Tab 17B, Tech. Eval. Rep., Mar. 1, 2017, at 29-30.



Although Aurotech disagrees with these conclusions, the protester has not shown that the evaluators' judgments regarding Discover Tech's proposed call order pricing, level of effort, and technical and management approach, were unreasonable or violated the terms of the solicitation or the FAR. See Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 11-12 (denying protest where agency evaluated vendors' proposed prices and labor mixes reasonably and consistent with the RFQ and the FAR); USGC Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 7-9 (denying protest where the agency reasonably evaluated the awardee's level of effort and labor mix under a FAR part 8.4 BPA procurement).

### Unequal Exchanges

Aurotech also alleges that the FDA held unequal exchanges with the vendors. See Protest at 10-12. Of significance here, during its price evaluation of FRQs, the evaluators discovered an ambiguity in the call order SOW with respect to the period of performance for several tasks. See AR, Tab 18B, Bus. Analysis Rep., Mar. 1, 2017, at 27. The evaluators found a potential inconsistency insofar as the SOW required a 2-month transition period, but also specified 30-day deadlines (after award) for a number of deliverables under various tasks. Id. The PAG evaluators were concerned that this implied that these tasks and deliverables were to be performed concurrently with the tasks specified for the 2-month transition period. The evaluators determined that, in order to fully understand the vendors' quotations, it was necessary to seek clarification on how they interpreted the period of performance for the varying tasks.

In this respect, Aurotech challenges the following exchange between the contract specialist and Discover Tech:<sup>14</sup>

Upon initial review of the corrective action revised quotation, the Government observed that Discover Technologies reduced the staffing on Call 1 significantly without having adjusted the technical quotation/management approach to explain the changes. Why was the level of staffing reduced?

This is a clarification request, not a request for revised quotations.

AR, Tab 16F, Discover Tech Clarification Request, at 1. Discover Tech responded on that same date as requested, stating:

[I]n reviewing our previous quotation we realized that we were over estimating the level of effort to provide support for tasks 5.2 through 5.9. We had quoted a full 12 months of effort, however the transition of services as described in the [RFQ] is for two months. The assumption for a transition of services is that it overlaps with the current contract which

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<sup>14</sup> Aurotech challenges no other aspect of the FDA's communications with the vendors.

would be providing the services required for tasks 5.2 through 5.9. Our revised quotation reflects 10 months of efforts for tasks 5.2 through 5.9 which we call out in our revised assumptions [in our] Pricing Tables. . . .

AR, Tab 16G, Discover Tech Clarification Response, at 1-2.

According to Aurotech, this communication afforded Discover an unfair “opportunity to cure the defect resulting from its failure to explain the changes it made to its proposed level of staffing.” Protester’s Comments at 6, 16. By contrast, Aurotech complains “FDA did not . . . afford Aurotech any opportunity to provide additional information, or to make improvements to any aspect of its proposal.” *Id.* at 6. Aurotech also claims that Discover Tech’s response to the contract specialist was “[t]he only information Discover provided” to explain its reduced level of effort. *Id.* at 10.

FDA contends that it properly requested that Discover Tech clarify its reduced labor hours, and points out that the agency specifically noted in its request that the communication was a clarification and not a request for a revised quotation. MOL at 21.

There is no requirement in FAR subpart 8.4 that an agency seek clarifications or otherwise conduct discussions with vendors or offerors. See USGC Inc., *supra*, at 3. However, exchanges that do occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable; our Office has looked to the standards in FAR part 15 for guidance in making this determination.<sup>15</sup> See, e.g., Ricoh USA, B-411888.2, Nov. 18, 2015, 2015 CPD ¶ 355 at 5-6. In this regard, FAR part 15 defines clarifications as “limited exchanges” that agencies may use to allow offerors to clarify certain aspects of their proposals (or in this case quotations) or to resolve minor or clerical mistakes. See FAR § 15.306(a)(1), (2); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 11 (using FAR part 15 definitions of post-proposal communications, or exchanges, as guidance in FSS context).

Discussions, by contrast, occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or quotations, or provides the offeror with an opportunity to revise or modify its proposal or quotation. Diversified Collection Servs., Inc., *supra*, at 11-12; see FAR § 15.306(d). 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. See Kardex Remstar, LLC, B-409030, Jan. 17, 2014, 2014 CPD ¶ 1 at 4.

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<sup>15</sup> As we have previously noted in our decisions, the procedures of FAR part 15 governing contracting by negotiation—including those concerning exchanges with offerors after receipt of proposals—do not govern competitive procurements under the FSS program. FAR § 8.404(a); USGC Inc., *supra*.

Contrary to Aurotech's assertion, the communication quoted above did not afford Discover Tech an opportunity to "cure" its FRQ's alleged failure to explain its reduced level of effort. At no point after this communication was Discover Tech permitted an opportunity to revise or modify its call order level of effort, staffing plan, or technical and management approach, which would have triggered discussions.<sup>16</sup> See Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6 ("[t]he 'acid test' for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to modify or revise its proposal"). Communications that do not permit a vendor to revise or modify its quotation, but rather request that the vendor confirm what it has already committed to do are clarifications and not discussions. See Highmark Medicare Servs., Inc. et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11; cf. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 10 (concluding that exchanges with vendors that permitted vendors to materially revise price quotations were analogous to discussions). In fact, as we discuss above, Discover Tech's FRQ did explain its proposed labor reductions for the call order.

Rather, in our view, the contract specialist here merely sought to clarify Discover Tech's proposed reduction to its call order level of effort. See CH2M Hill Antarctic Support, Inc., B-406325 et al., Apr. 18, 2012, 2012 CPD ¶ 142 at 11 (agency's request that offeror confirm the agency's understanding regarding cost proposal, without allowing the offeror to revise its costs, constituted clarifications, not discussions); Career Training Concepts, Inc.--Advisory Op., B-311429, B-311429.2, June 27, 2008, 2009 CPD ¶ 97 at 6 (agency request for narrative description of components in price proposal constituted clarifications). The contract specialist's communication did not invite or permit Discover Tech to revise its quotation, nor turn an otherwise noncompliant quotation into a compliant one.

Moreover, contrary to Aurotech's insistence, the FDA did not "afford[] Discover multiple opportunities to improve its quotation that [the agency] did not afford to Aurotech." Protester's Comments at 16. The record here shows, clearly, that the agency held discussions with Aurotech that: (1) identified an assessed weakness in its revised quotation with respect to subcontractor management; (2) requested that Aurotech revise its quotation accordingly; (3) requested that Aurotech affirm the continued availability of its proposed key personnel; (4) update its staffing plan and technical quotation accordingly; and (5) provide, if possible, additional pricing discounts. AR, Tab 15A, Aurotech Disc. Questions, at 1-2. Furthermore, the agency subsequently asked Aurotech to clarify whether, for the call order, the vendor intended to propose a 2-month

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<sup>16</sup> Indeed, Aurotech complains that, "[d]espite the notice [i.e., the contract specialist's email] provided, Discover still did not update its technical quotation[.]" Protester's Comments at 13.

transition with 10 months or 12 months of services under the other tasks, to address the ambiguity discussed above.<sup>17</sup> AR, Tab 15F, Aurotech Clarification Request. Accordingly, we find no merit to Aurotech's contention that the FDA treated the vendors unequally in its exchanges or its evaluation of the vendors' responses. See SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc., B-4132001.4 et al., May 19, 2017, 2017 CPD ¶ \_\_\_ at 17-20 (denying protest that the agency failed to conduct equal discussions where the record reflects that the disputed communication with the awardee constituted clarifications).

#### Evaluation of Aurotech's Technical Quotation

Aurotech also challenges the evaluation of its quotation under the technical scenario evaluation subfactor. See Protest at 11. Aurotech maintains that the PAG evaluators arbitrarily removed a previously assessed strength, lowering Aurotech's rating under the subfactor and overall, even though "nothing changed in Aurotech's proposal." Protester's Comments at 10.

At issue here, the PAG, in its initial evaluation, assessed a strength in Aurotech's technical quotation, because the vendor "exceeded the FDA's requirement by suggesting a technical approach that includes migration to SharePoint 2016 as opposed to SharePoint 2013." AR, Tab 7F, Tech. Eval. Rep., Sept. 16, 2016, at 17-18. The contracting officer states that upon reevaluation during corrective action, the PAG determined that assigning a strength for proposing to migrate to SharePoint 2016 was unreasonable, because the RFQ specified that vendors were to address migrating to SharePoint 2013. See COS ¶¶ 13-14. Aurotech, in response, argues that the PAG penalized Aurotech for exceeding the solicitation's requirements, because the BPA SOW contemplated that the "[c]ontractor may be tasked to perform all tasks associated with upgrading the SharePoint application from its current version to a future version (likely SharePoint 2013 or SharePoint 2016) when FDA specifies[.]" and because the PAG's adjectival rating scheme provided for rewarding vendors that submitted quotations that exceeded the government's requirement. Supp. Comments at 2-3, citing BPA SOW § 6.4.4; see AR, Tab 17B, Tech. Eval. Rep., Mar. 1, 2017, at 6-7.

We agree with the FDA. As the agency points out, the RFQ required vendors to propose an approach for migrating to SharePoint 2013, and provide a narrative demonstrating their understanding of, and technical approach to, the following scenario:

Your company has been hired by FDA to perform an intranet site migration from the current CMS Platform (Oracle Universal Content Management System) to SharePoint 2013. In addition to migrating the

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<sup>17</sup> Here, the agency chose to seek clarifications from both offerors. We note, however, that requesting clarification from one offeror does not trigger a requirement that the agency seek clarification from other offerors. See ADNET Sys., Inc. et al., B-408685.3 et al., June 9, 2014, 2014 CPD ¶ 173 at 15.

current intranet content, your company will be responsible for creating a new user interface, maintaining a link management strategy, implementing a search capability and keeping SharePoint 2013 available during the duration of the migration. There are approximately 100,000 pieces of content including images, PDFs, Word, Excel, and HTML files that will need to migrate from the existing site to the new site that will be in SharePoint 2013. . . .

Rev. RFQ § 17, at 27-28.

Contrary to these express instructions, Aurotech's quotation did not address migrating to SharePoint 2013; in fact, Aurotech's quotation acknowledged that the solicitation "stipulated a move to SharePoint 2013 . . . in the scenario description," but the quotation nevertheless stated that "our team is recommending Microsoft's latest product version, SharePoint 2016[.]" AR, Tab 15B, Aurotech Tech. Quotation, at 13. It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. Sigmatech, Inc., B-410933, March 18, 2015, 2015 CPD ¶ 110 at 7. A vendor that fails to do so runs the risk that its quotation will be evaluated unfavorably. Security Mgmt. & Integration, Inc., B-409463, Apr. 3, 2014, 2014 CPD ¶ 120 at 3.

To the extent that Aurotech complains that its evaluation ratings changed, even though its technical quotation did not, the mere fact that a reevaluation after corrective action varies from the original evaluation does not support a finding that the reevaluation was unreasonable. TeleCommunication Sys, Inc., B-408269.2, Dec. 13, 2013, 2013 CPD ¶ 291 at 6. Rather, it is implicit that a reevaluation can result in different findings and conclusions. Phoenix Grp. of VA., Inc., B-407852, Mar. 12, 2013, 2013 CPD ¶ 80 at 5-7. The overriding concern for our review is not whether the final ratings are consistent with an earlier set of ratings, but whether they reasonably reflect the relative merit of quotations. TeleCommunication Sys, Inc., *supra*.

Although Aurotech objects that the evaluators removed their previously assessed strength for this evaluation subfactor, the protester has not shown that the FDA acted inconsistently with the evaluation criteria, which provided that the agency would evaluate a vendor's technical understanding of the scenario and whether it proposed a sound, logical approach to migrating to SharePoint 2013. *See* Rev. RFQ § 17, at 27. Aurotech's disagreement with the FDA's judgment is not sufficient to establish that the agency acted unreasonably. *See* 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. We deny this aspect of Aurotech's protest accordingly. *See* Phoenix Grp. of VA., Inc., *supra* (denying protest that agency unreasonably reevaluated protester's quotation during corrective action because the previously assessed strengths were not identified as strengths in the reevaluation).

## Source Selection Decision

Finally, Aurotech argues that the selection decision was flawed insofar as it was based on the allegedly flawed evaluations discussed above. See Protest at 12-13; Protester's Comments at 14-17. Aurotech also contends that the FDA "permitted Discover to target the lower price that Aurotech initially proposed, and that FDA disclosed to Discover during its debriefing, by allowing Discover to substantially reduce the amount of labor hours it proposed, and to lower its rates without requiring Discover to make any showing of the reasons for the changes, or how they impacted Discover's proposed technical and management approaches." Protester's Comments at 16-17. In this respect, Aurotech argues that the agency engaged in "unlawful technical leveling" and essentially converted the RFQ's stated award basis from best-value to lowest-price, technically-acceptable. Protest at 8-9, 12-13.

As we discuss above, we find no merit to Aurotech's protest of the evaluation of Discover Tech's technical and price quotations.<sup>18</sup> Thus, there is no basis to question the agency's reliance upon those evaluation judgments in concluding that Discover Tech's higher-rated, lower-priced quotation provided the best value to the FDA, rather than Aurotech's lower-rated, higher-priced quotation. Where, as here, one vendor's quotation is reasonably evaluated as technically superior and also offered the lowest price, the agency need not perform a price/technical tradeoff to determine which vendor offers the government the best value. See USGC Inc., supra, at 8; Alliance Tech. Servs., Inc., B-311329; B-311329.2, May 30, 2008, 2008 CPD ¶ 108 at 3 ("[S]ince the proposals selected for award were both higher technically rated and lower priced than [the protester's] proposal, such a comparative evaluation--i.e., a price-technical tradeoff--was not required.").

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>18</sup> To the extent that Aurotech suggests that it was prejudiced by the agency's disclosure of Aurotech's price after the initial evaluation and award, an agency's request for revised price offers is not improper merely because the protester's price has been exposed, where the corrective action taken by an agency is otherwise unobjectionable. See, e.g., Crewzers Fire Crew Transp., Inc., B-406601, July 11, 2012, 2012 CPD ¶ 204 at 8.