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# Decision

**Matter of:** Jardon and Howard Technologies, Inc.

**File:** B-414979; B-414979.2

**Date:** October 27, 2017

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Brian G. Walsh, Esq., Samantha S. Lee, Esq., and Moshe B. Broder, Esq., Wiley Rein LLP, for the protester.

William A. Shook, Esq., Law Offices of William A. Shook, for GAP Solutions, Inc., the intervenor.

Christina M. Austin, Esq., and Lisa Marie Golden, Esq., Department of Defense, Washington Headquarters Services, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that agency misevaluated protester's and intervenor's quotations for administrative and litigation support services is denied where contemporaneous record shows that agency evaluated both quotations reasonably, and made a rational source selection decision in favor of awardee's lower-priced quotation.

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## DECISION

Jardon and Howard Technologies, Inc. (JHT), of Orlando, Florida, protests the issuance of a Federal Supply Schedule (FSS) task order to GAP Solutions, Inc., of Herndon, Virginia, by the Department of Defense (DOD), Washington Headquarters Services (WHS), under request for quotations (RFQ) No. HQ0034-16-R-0269, for administrative and litigation support services for Defense Office of Hearings and Appeals (DOHA) locations in Arlington, Virginia and Woodland Hills, California. JHT, the incumbent contractor, argues that WHS misevaluated the quotations and made an unreasonable source selection decision.

We deny the protest.

## BACKGROUND

The RFQ, issued on August 17, 2016, requested quotations from FSS contractors holding professional services schedule (PSS) contracts with special item No. 874-1,

integrated consulting services. The RFQ solicited quotations to provide support services for 26 full-time-equivalent (FTE) positions<sup>1</sup> for a base year and 4 option years. The RFQ provided that quotations would be evaluated under two equally-weighted non-price factors: technical capability and experience, and staffing and retention plan. RFQ, amend. 1<sup>2</sup> at 6-7. Although the non-price factors were more important than price, price would “become increasingly more important as non-price technical factors become increasingly equal.” Id. at 6.

The RFQ included a performance work statement (PWS), which described the required services, and explained that DOHA provides hearings and issues decisions regarding personnel security clearance cases for DOD civilians, military personnel, and contractor personnel doing classified work for DOD and other agencies. In addition, DOHA settles claims from service members for pay and allowances, resolves claims by transportation carriers regarding deductions for damage or loss, and resolves certain other benefits disputes, among other things. RFQ at 13. The RFQ then went on to set forth requirements for staffing the contract, and for the qualifications of personnel. Id. Emphasizing the sensitivity of some of DOHA’s work, the PWS noted that it was “imperative that there be no degradation in service during transition” and that the selected contractor “must have all 26 FTEs [full time equivalents] in place, trained, on day one of the contract” and had to have a plan to limit employee turnover and ensure that its personnel had appropriate “experience, education, and capabilities necessary to produce error-free work on a daily basis.” Id. at 14. In response to a vendor question about the transition requirement, the agency responded that “Transition is to be completed within 7 days of being formally notified by the Government of the effective date [of transition].” RFQ, amend. 1 attach. at 2 (Answer to Question No. 17).

Section 4.0 of the PWS identified three key personnel positions, designated as lead administrative support litigation support specialists, and directed that one resume be submitted for each position, to demonstrate the person’s qualifications and experience. RFQ at 18; RFQ, amend. 1 at 4. The RFQ also specified that key personnel could not be substituted during the first 90 days of performance (except for death, illness, or termination of employment), and thereafter only by providing an explanation and an acceptable replacement. RFQ at 18.

The RFQ set forth evaluation criteria under each of the non-price factors. Id. at 6-7. Under the technical capability and experience factor, these criteria included:

- The extent to which the proposed Transition-In Plan will minimize disruption during the transition phase and strategy for obtaining

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<sup>1</sup> The RFQ refers to 26 FTEs and to 26 personnel, apparently reflecting the agency’s treatment of the two concepts as equivalent for purposes of this requirement. E.g., RFQ at 15 (“total of 26 FTE’s”); id. at 19 (“[a]ll 26 of the contractor support personnel”).

<sup>2</sup> RFQ amendment 1 was erroneously numbered as amendment 2.

fully trained staff available to fulfil the 26 contractor positions in various locations with minimal disruption of services with Active or Current Top Secret (TS) clearance<sup>3</sup>[; and]

- The extent of proposed Key Personnel meeting the minimum qualifications as provided in the Section 4.0 of the PWS and the extent of the years of experience and relevancy of desired technical expertise identified in the PWS[.]

RFQ, amend. 1 at 6-7.

Under the staffing and retention plan factor, these criteria included:

- The extent of the demonstrated ability to accomplish the requirements in the PWS with the proposed staff[; and]
- The extent of their proposed comprehensive strategy to maintain staffing for the 26 positions throughout the period of performance of the contract and minimize employee turnover[;]

Id. at 7.

The agency was to assign adjectival ratings to each of these two factors. RFQ, amend. 1 at 6. An outstanding rating was to reflect “an exceptional approach and understanding” with multiple strengths, and a low risk of unsuccessful performance. Id. A good rating would apply to “a thorough approach and understanding [with] at least one strength” and a low to moderate risk of unsuccessful performance. Id. An acceptable rating reflected a quotation that met requirements with an “adequate approach and understanding,” and a risk of unsuccessful performance that was “no worse than moderate.” Id.

The price factor was to be evaluated through a “comprehensive review” to assess accuracy and completeness, and to determine whether the quoted prices were fair and reasonable. Id. The RFQ also cautioned vendors that their quotations had to be aligned with labor categories in either the vendor’s own FSS contract, or the FSS contract of a subcontractor or contractor teaming arrangement partner. Personnel identified in the quotation were required to meet both the RFQ’s minimum requirements for their respective positions and of the FSS labor category identified in the vendor’s price list. Id. at 7-8.

The agency received quotations from two firms, GAP and JHT. In its quotation, JHT emphasized its experience as the incumbent, and its plan to continue with all personnel

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<sup>3</sup> As discussed later, JHT disputes this interpretation of the RFQ language regarding interim clearances. See Protester’s Comments at 7.

in place with no disruption in services. In addition, JHT described its experience performing the incumbent contract and other similar contracts. JHT also provided information about its PSS contract and provided a crosswalk of the labor categories. See generally, Agency Report (AR), Tab 4, JHT Quotation.

GAP's quotation explained that it expected to recruit and retain all of the incumbent staff through various efforts including providing information to incumbent staff about the advantages of working for GAP, as well as **[DELETED]** recruiting incentives. As it lacked access to the resumes and qualifications for the incumbent staff, GAP also identified "back-up" personnel to staff all 26 positions, in the event that any of the incumbent employees were uninterested in accepting employment with the firm. AR, Tab 3, GAP Solutions Quotation, Factor 1, at 1 (executive summary), 6 (discussion of transition approach); see also Intervenor's Comments at 2.

Based on an initial evaluation, the contracting officer selected JHT's quotation for award on February 22, and WHS issued a task order. Contracting Officer's Statement at 1. GAP submitted an agency-level protest, after which WHS decided to take corrective action, which involved performing a new evaluation of both quotations, and presenting the results to the contracting officer in a technical evaluation consensus report. Id. at 2.

In the reevaluation, under the technical capability and experience factor, the technical evaluation team (TET) did not identify any strengths, weaknesses, or deficiencies in GAP's quotation, but the evaluators did identify a risk. The TET viewed GAP's approach as posing a risk that it could need to utilize back-up personnel who, because they were not as trained and experienced as the incumbent personnel, could cause decreased productivity and a loss of management time. AR, Tab 7, TET Consensus Report (June 21, 2017), at 1. The evaluators concluded that GAP's approach met requirements in several other areas, but as a whole, posed a risk of unsuccessful performance that was "no worse than moderate." Id. The TET assigned an overall rating to GAP of acceptable under the technical capability and experience factor. Id. In assigning that rating, the TET also considered two other aspects of GAP's quotation: its **[DELETED]** transition schedule, and its agreement to reduce its **[DELETED]** if the agency **[DELETED]** services. Id.; see also AR, Tab 3, GAP Quotation, Factor 1, at 10.<sup>4</sup> The TET found that neither aspect provided significant benefit to the agency, and thus did not justify a higher rating.

With respect to GAP's proposed key personnel, the TET concluded that the resumes showed that each person met the requirements for education, expertise, and ability, but that each lacked specific experience in directly similar types of work. AR, Tab 7, TET Consensus Report, at 5.

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<sup>4</sup> GAP's quotation was arranged to address each factor in separate sections, and the quotation then independently numbered the pages within each factor.

Under the staffing and retention plan factor, the TET assigned no weaknesses or deficiencies to GAP’s quotation, but noted the potential for inefficiencies if GAP had to use replacement personnel rather than retaining all incumbent staff. On the other hand, the TET identified as a strength that GAP provided a comprehensive retention plan with a 3-prong strategy to minimize staff turnover and benefit DOHA. Id. at 7.

For JHT, the reevaluation found that the firm offered an approach that provided no risk of degradation of support or disruption to DOHA operations during transition. The TET noted the firm’s experience as the incumbent and on other contracts, which overall posed what the TET characterized as “low to moderate” risk of unsuccessful performance. Id. at 9. Under the technical capability and experience factor, the TET identified no weaknesses or deficiencies, and three strengths. As strengths, the TET identified JHT having letters of intent from employees for continuing to support the DOHA contract, the knowledge obtained by the firm’s employees having provided support to DOHA over many years, and that all three of JHT’s key personnel exceeded the RFQ education requirements. Id. at 10-11.

Under the staffing and retention plan factor, the TET identified no weaknesses or deficiencies for JHT, and identified one strength for the firm’s proven retention strategy, and for having a recruiting process specifically tailored to DOHA. The TET noted that the firm’s staffing vacancies typically occurred when the firm’s best personnel obtained employment with the government itself. Id. at 13.

Accordingly, the result of the TET reevaluation was as follows:

	<b>JHT</b>	<b>GAP</b>
<b>Tech. Capability &amp; Exper.</b>	Good	Acceptable
<b>Staffing &amp; Retention Plan</b>	Good	Good
<b>Evaluated Price<sup>5</sup></b>	\$17.0 million	\$13.5 million

AR, Tab 7, Memorandum from Technical Evaluation Team to Contracting Officer, at 1; AR, Tab 8, Price Evaluation Report, at 3.

The contracting officer reviewed the new evaluations of both quotations, and while agreeing with the TET’s conclusions in most respects, determined that the rating of GAP’s quotation under the technical capability and experience factor should be elevated from acceptable to good. AR, Tab 9, Source Selection Decision, at 4-7. In particular, the contracting officer determined that the TET had overlooked two strengths in GAP’s approach, specifically that the firm had a plan to retain incumbent staff that began with pre-award activities and **[DELETED]**. The transition plan was thus **[DELETED]** than required by the RFQ, and the plan for retaining the incumbent staff was bolstered by the firm’s experience with expedited transitions, its commitment shown through its offer of a

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<sup>5</sup> The pricing evaluation included pricing for the 5-year contract term plus the additional 6-month extension of services option.

price reduction, its specific retention techniques, and its plans for staff training. Id. at 6-7.

After reviewing and confirming the strengths of both firms, the contracting officer then determined that both quotations had multiple strengths, no weaknesses, and no deficiencies under the non-price factors. Id. at 13. The contracting officer noted that GAP's quotation provided a lower price, and concluded that there were no advantages associated with JHT's quotation that could justify paying the higher associated price. Accordingly, the contracting officer selected GAP's quotation for award based on its lower evaluated price. Id. at 12-13. After receiving notice of the award and a brief explanation, JHT filed this protest.

## PROTEST

JHT challenges the evaluation of GAP's quotation on the basis that WHS overlooked omissions and flaws in its evaluation of GAP's quotation, and challenges the evaluation of JHT's own quotation on the basis that the evaluators disregarded the evaluation criteria while unreasonably dismissing important advantages in JHT's quotation. We have reviewed JHT's challenges, and conclude that none provides a basis to sustain the protest. We review the resolution of the most significant of those challenges below.

JHT argues that WHS should have rejected GAP's quotation because it was based on an intention to retain incumbent key personnel and staff, yet it lacked resumes for those incumbent key personnel, and lacked names and detailed qualifications for the other incumbent staff. See Protester's Comments at 4. JHT also argues that the TET recognized areas where GAP's proposed key personnel—that is, the backup staff for whom GAP could provide resumes--lacked 5 years of experience in providing administrative litigation support that the PWS specified. Based on these flaws, JHT argues that GAP's quotation should have been rejected entirely for failing to meet minimum requirements in the RFQ.

WHS argues that the TET reasonably evaluated GAP's quotation based on the personnel listed, but also the recognition of the firm's approach for recruiting all of the incumbent personnel. WHS argues that the RFQ did not preclude an approach that proposed to recruit all incumbent staff but offered specific personnel as back-ups to be used if not all incumbent personnel were recruited, and that the agency's evaluation of the offered personnel was reasonable and consistent with the evaluation criteria. Further, with respect to evaluating the experience of GAP's key personnel, WHS argues that it was not limited to considering only experience that satisfied a narrow definition of administrative litigation support; rather, WHS argues that it reasonably assessed whether each person's experience had a sufficient relationship to the PWS tasks, but not whether each person's experience corresponded to each discrete element of the

PWS.<sup>6</sup> WHS argues that it applied the same broader standard in concluding that both offerors' key personnel possessed sufficient administrative litigation support experience, and that doing so was reasonable.

In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate the proposals or substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria, as well as applicable statutes and regulations. Veterans Evaluation Servs., Inc. et al., B-412940 et al., July 13, 2016, 2016 CPD ¶ 185 at 6.

The record here supports the reasonableness of WHS's evaluation. First, the evaluation of GAP's quotation appropriately assessed the qualifications of the personnel listed for both the key and non-key positions, and took into account both the availability of those personnel and the firm's approach to recruiting and retaining the incumbent workforce expeditiously. In our view, the RFQ did not preclude an approach that proposed to recruit all incumbent staff but offered specific personnel as back-ups to be used if not all incumbent personnel were recruited, and correspondingly, it did not require WHS to evaluate that approach as unacceptable.<sup>7</sup> Although JHT argues that the RFQ requirement that quotations include resumes precluded GAP's reliance on recruiting incumbent personnel, we have concluded that an agency could properly credit an offeror for the strengths of incumbent staff (rather than the alternates), where a solicitation permitted did not require evidence of commitment by the incumbent key personnel, so long as the offeror showed that it would be able to hire those individuals. E.g., Construction Tech. Labs., Inc., B-281836, Apr. 12, 1999, 99-1 CPD ¶ 7 at 5 (where solicitation required clear identification of individuals proposed and either a letter of commitment or detailed plans for recruiting staff, agency properly credited strengths of incumbents when awardee proposed to recruit incumbent staff but also identified specific alternates). The agency can reasonably evaluate the incumbent personnel where it is well aware of their identities and qualifications. Id. at 6.

The RFQ here expressly provided for the agency to assess the "extent" to which each quotation satisfied the listed criteria under each factor. With respect to personnel

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<sup>6</sup> The agency argues that the restrictive interpretation of the key personnel experience standard that JHT argues for would disqualify at least one of JHT's own incumbent key personnel, whose duties as described in the resume were largely administrative and whose experience lacked most aspects of litigation support. AR at 14.

<sup>7</sup> JHT points out that the incumbent staff signed agreements granting JHT "sole and exclusive use of my resume," and argues that this agreement prevents WHS from crediting GAP for its proposal to recruit the incumbent staff. Protester's Comments at 4. In our view, the private agreements between JHT and its personnel cannot restrict the ability of another competitor from proposing a staffing approach, nor can it restrict the agency's discretion in evaluating the competitor's proposal.

experience, we do not read the RFQ as specifically limiting experience to litigation support. Instead, we think that the “extent” standard permitted the evaluators to exercise reasonable judgment in assessing the significance of any areas where a quotation did not precisely meet every aspect of, for example, key personnel minimum qualifications. The TET recognized that the experience of GAP’s key personnel did not include 5 years of administrative litigation support experience for each person, but also that the key personnel experience was sufficiently similar to the PWS that the experience shown in GAP’s key personnel resumes made them acceptable. In our view, this evaluation was reasonable and consistent with the terms of the RFQ.

JHT also challenges the acceptability of GAP’s quotation on the basis that three of its proposed staff, including one of its key personnel, allegedly lacked an active top secret security clearance as required by the RFQ.<sup>8</sup> JHT points out that while GAP’s quotation lists a top secret clearance date for each of the 26 proposed personnel, it also contains the annotation “open investigation” for two people, and the annotation “pending adjudication” for one other person next to those dates. JHT argues that an open investigation is not synonymous with an active clearance, so the personnel should have been considered unacceptable.

GAP disputes JHT’s arguments, and states that the personnel possessed active clearances, and that the notations merely advised WHS of the status of routine updates to those existing active clearances. Intervenor’s Comments at 4. WHS argues that it independently confirmed that all of GAP’s proposed staff had active or interim clearances as specified in the RFQ, and that the evaluators reasonably determined that the staff in GAP’s quotation possessed top secret security clearances as required. AR at 16.

We agree with the agency. In our view, JHT has failed to provide a factual basis to claim that the “open investigation” and “pending adjudication” annotations in GAP’s quotation should have been interpreted as a concession that the affected personnel had not met the RFQ requirement of holding an active or interim top secret clearance. We note in particular that the annotations accompanied dates indicating that each person held a current top secret security clearance. WHS reasonably (and correctly, it appears) interpreted the quotation as confirming that each of the personnel possessed the required clearance. JHT has failed to show that the agency’s evaluation in this regard was unreasonable or inaccurate.

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<sup>8</sup> In response to a vendor question, the agency stated that contractor personnel with an interim top secret security clearance were acceptable. RFQ, amend. 1 attach. at 2 (Answer to Question No. 30). Although JHT argues that this answer only permitted a person with an interim clearance to provide services, but did not permit an offeror to include such a person in its quotation, see Protester’s Comments at 7, we disagree. JHT’s position is an unreasonable construction of the answer, which we will not adopt over the agency’s more reasonable interpretation permitting a person with an interim clearance both to be offered and to perform services.

JHT also raises a number of challenges to the evaluation of its own quotation. As a whole, JHT argues that WHS overlooked and minimized the advantages of the firm's incumbent status and its proposed approach of continuing to perform using the same employees without any risk of disruption of services. Protester's Comments at 7-9. Given this approach, JHT argues that its adjectival rating for this factor should have been outstanding. Id.

WHS responds that the evaluation recognized the advantages of avoiding disruption and ensuring the continuation of services with the incumbent personnel. But, WHS argues, the assessment of the quotation as good, rather than outstanding, was a reasonable evaluation judgment. The agency explains that the focus of the evaluation was not as narrowly focused on transition as JHT suggests, and thus JHT's asserted insurmountable advantage in that aspect was not sufficient to raise its overall evaluation to outstanding. AR at 19-20. Rather, the agency argues, the contracting officer found that both JHT and GAP provided similar value to DOHA under the non-price criteria, with little to distinguish materially one vendor's quotation over the other's. Id. at 20.

We view JHT's argument that its quotation should have been rated outstanding as disagreement with the agency's evaluation judgments, which the contemporaneous record demonstrates to have been reasonable. Beyond that, the contracting officer provided a side-by-side comparison of numerous aspects of both quotations. JHT points out that the comparison is not a contemporaneous documentation of the contracting officer's evaluation. While we will accord greater weight to the contemporaneous record in determining whether an evaluation was reasonable, post-protest explanations that are credible and consistent with the contemporaneous documentation will be considered in our review. Harris IT Servs. Corp., B-406067, Jan. 27, 2012, 2012 CPD ¶ 57 at 6. The document explains in greater detail the basis for the contracting officer's judgment (which was documented in the contemporaneous record) for concluding that the two quotations were technically equal and that the non-price evaluation criteria did not provide a basis to pay the premium associated with JHT's quotation. The explanation is thus consistent with the documentation of the contracting officer's judgment in the source selection decision.

Finally, JHT challenges the contracting officer's source selection decision. JHT argues that the contracting officer failed to document the source selection judgment, and did not reasonably account for the differences in the two quotations. Instead, JHT argues that the contracting officer unjustifiably treated the two firms' quotations as equal under the non-price criteria. In particular, JHT argues that it was unreasonable for the contracting officer to treat the uninterrupted continuation of services by JHT, the experienced incumbent contractor, as being equal to GAP's approach of recruiting the incumbent personnel.

The contracting officer argues that the contemporaneous record reflects recognition of the TET's concerns about GAP's approach under the technical capability and experience factor, and the contracting officer's own permissible decision to exercise the prerogative, as the source selection authority, to overrule the TET and to increase GAP's adjectival rating to good. Contracting Officer's Statement at 8. The rationale

provided in the source selection decision is that GAP's approach provided a thorough transition plan that included [DELETED] to ensure the risk of disruption to DOHA was minimized. AR, Tab 9, Source Selection Decision, at 6. During the contracting officer's independent review, he identified strengths in GAP's quotation for its experience with, and use of, an [DELETED] transition, and for the evidence of an achievable approach to recruiting, retaining, and improving the staff. *Id.* at 6-7. Although JHT argues that the contracting officer overlooked concerns that should have arisen from GAP's quotation, and minimized alleged advantages in JHT's quotation, our review of the record shows that the contracting officer considered numerous specific aspects of both firms' approaches under both non-price factors before ultimately determining that the quotations were essentially technically equal.

In a best-value tradeoff procurement, it is the function of the selection official to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. Savvee Consulting, Inc., B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 7. Where a source selection official reasonably regards proposals as being essentially technically equal, however, price properly may become the determining factor in making award, notwithstanding that the solicitation assigned price less importance than the technical factors. Staff Tech, Inc., B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6-7. The fact that no price/technical tradeoff is required between quotations found to be technically equal does not negate the fact that the agency made award on a best-value basis. Lynxnet, LLC, B-409791, B-409791.2, Aug. 4, 2014, 2014 CPD ¶ 233 at 13-14.

Altogether, the source selection decision reflects reasonable consideration of both quotations, and reasonable judgments about whether either quotation was significantly superior to the other, at least in the context of the evaluated price difference. The record thus supports the contracting officer's judgment that JHT's quotation did not provide a basis to pay the premium associated with JHT's quotation, and thus the contracting officer selected GAP's quotation as the best value. This judgment was reasonable, consistent with the criteria in the RFQ, and adequately documented. Accordingly, we have no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
General Counsel