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# Decision

**Matter of:** Wave Digital Assets, LLC

**File:** B-423217; B-423217.2

**Date:** March 14, 2025

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Francis E. Purcell Jr., Esq., and Joseph R. Berger, Esq., Thompson Hine LLP, for Command Services & Support, Inc., the intervenor.

C. Joseph Carroll, Esq., Samantha Davis, Esq., Shandora Acrey, Esq., and Jonathan E. O'Connell, Esq., Department of Justice, for the agency.

Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protest that agency failed to properly apply the solicitation's stated evaluation criteria is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation.

## DECISION

Wave Digital Assets, LLC, of Los Angeles, California, protests the award of a contract by the Department of Justice (DOJ), U.S. Marshals Service (USMS), to Command Services & Support, Inc. (CMDSS), of Haymarket, Virginia, pursuant to request for proposals (RFP) No. 15M50024QA4400003. The solicitation sought proposals to assist the USMS in "managing and disposing of [seized/forfeited] cryptocurrency assets." See Agency Report (AR), Tab 4, RFP attach. 6, Performance Work Statement (PWS) at 4.<sup>1</sup> Although Wave's proposal was rejected as technically unacceptable (which its protest does not contest), Wave asserts that CMDSS's proposal (and that of the third competing offeror) should have been rejected for failing to demonstrate possession of federal and state licenses. Protest at 4-10.

<sup>1</sup> The page numbers referenced in this decision are the Adobe PDF page numbers in the documents submitted.

We deny the protest.

## BACKGROUND

On April 5, 2024, the agency issued RFP No. 15M50024QA4400003, seeking proposals for the award of an indefinite-delivery, indefinite-quantity contract to provide assistance to the USMS in managing and disposing of “Class 2-4 cryptocurrencies”<sup>2</sup> that have been seized under the DOJ’s asset forfeiture program.<sup>3</sup> The solicitation stated that the “cryptocurrency portfolio” that will be transitioned to the contractor upon contract execution has a total market value of \$77.1 million. PWS at 4-5.

The solicitation’s PWS identifies specific tasks the contractor must perform,<sup>4</sup> as well as more general contractor responsibilities. Among other things, the PWS noted that “[t]he cryptocurrency industry is constantly evolving and changing” and provided that the contractor “shall remain up to date on trends, technology updates, regulations, etc.” *Id.* at 9. Similarly, under the heading “Relationship,” the PWS stated:

The Contractor shall maintain a close and cooperative working relationship with USMS and make appropriate recommendations. The Contractor shall perform required functions in accordance with all Federal, State, and local laws and regulations applicable to the services being provided as well as any policies as specified by the USMS. The Contractor shall obtain and keep current throughout the duration of the contract all licenses, insurance policies, permits, and related documents common within the industry and necessary as established by any regulations to operate this type of business.

*Id.* at 24-25.

With regard to source selection, the solicitation provided that award would be made on the basis of a best-value tradeoff and established the following evaluation factors:

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<sup>2</sup> In contrast to class 1 cryptocurrencies (which are “supported by cold storage wallets and can be liquidated on most exchange platforms”), class 2 through 4 cryptocurrencies are “less popular and typically require the use of software, and/or hardware wallets.” PWS at 4.

<sup>3</sup> The USMS is the primary custodian of seized assets under this program. *Id.* at 3.

<sup>4</sup> For example, of relevance to the evaluation of Wave’s proposal, the PWS provided that, “the Contractor shall remain capable of taking custody, and managing, all types and quantities of cryptocurrency, described as Class 2-4 without limitation,” and further stated: “the Contractor shall not swap, stake, pledge, hypothecate, borrow, invest, assign, convey, lend, or make other use of Government assets in the Contractor’s possession.” PWS at 6, 9.

experience/oral presentation; technical capability/resumes; other data; and price.<sup>5</sup> AR, Tab 4, RFP attach. 4, Evaluation Factors.

More specifically, with regard to the experience/oral presentation factor, the solicitation permitted offerors to submit slides to accompany their presentations and provided that the presentations would be divided into three parts: (1) responses to 13 questions related to their experience performing the PWS requirements; (2) demonstration of their understanding and capability by describing how their proposed systems will address eight particular aspects of contract performance;<sup>6</sup> and (3) responses to two on-the-spot questions from the agency.<sup>7</sup> AR, Tab 4, RFP attach. 3, Instructions to Offerors at 5-7.

With regard to the technical capability/resumes factor, the solicitation established six subfactors (facility/staffing, security, initial intake, storage/management, disposal, and resumes) related to various PWS requirements, and each offeror was required to submit a written proposal describing its proposed approach to performing those requirements.<sup>8</sup> AR, Tab 4, RFP attach. 4, Evaluation Factors at 3-4. The solicitation provided that, in evaluating proposals under the experience/oral presentation and technical capability/resumes factors, the agency would assign confidence ratings of “high confidence,” “some confidence,” or “low confidence.”<sup>9</sup> *Id.* at 2.

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<sup>5</sup> The solicitation provided for a two-phase procurement. In phase one, the agency evaluated proposals under the experience/oral presentation factor and, thereafter, advised each offeror whether it should proceed to phase two; offerors invited to submit phase two proposals submitted written technical proposals and were evaluated under the remaining evaluation factors. AR, Tab 4, RFP attach. 3, Instructions to Offerors at 1.

<sup>6</sup> One of the eight matters each offeror was required to address was: “Describe how your system ensures compliance with regulations and laws related to the selling of cryptocurrency assets.” *Id.* at 7.

<sup>7</sup> The solicitation stated that, under the experience/oral presentation factor, the agency would evaluate: “prior experience with regards to architecture, security, insurance, and ability to recruit and maintain [] critical personnel”; “the offeror’s use and implementation of System and Organization Controls (SOC) 2 Type II audits”; “the relevance of the Offeror’s demonstrated prior experience”; and “[the] successful execution of a system solution implementation that encompassed all aspects and phases of cryptocurrency managed services.” AR, Tab 4, RFP attach. 4, Evaluation Factors at 2-3.

<sup>8</sup> The solicitation provided that, under the technical capability/resumes factor, the agency “will evaluate the Offeror’s proposed technical approach based on their demonstrated understanding of the objectives of the PWS and planned execution of the project.” *Id.* at 3.

<sup>9</sup> Of relevance here, a “low confidence” rating was defined as: “The Government has low confidence that the Offeror understands the requirement, does not propose a sound  
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During the week of May 6 through May 10, five offerors, including Wave and CMDSS, made oral presentations to the agency pursuant to the experience/oral presentation evaluation factor. Thereafter, the agency invited Wave, CMDSS, and a third offeror, to submit phase two proposals. Following submission of phase two proposals, the agency conducted two rounds of discussions, seeking clarification of, or revisions to, offerors' proposals. Following the conclusion of discussions, the proposals were evaluated as follows:

	<b>Experience</b>	<b>Technical Capability</b>	<b>Other Data<sup>10</sup></b>	<b>Overall Tech. Rating</b>	<b>Price<sup>11</sup></b>
Third Offeror	Some Confidence	Some Confidence	Compliant	Some Confidence	\$30,213,140
CMDSS	Some Confidence	Some Confidence	Compliant	Some Confidence	\$23,076,450
Wave	Some Confidence	Low Confidence	Compliant	Low Confidence	\$19,746,500

AR, Tab 9, Source Selection Decision (SSD) at 13.

More specifically, the agency concluded that Wave's technical proposal was unacceptable, describing it as "not viable without major revisions," and assessed "low confidence" ratings under four of the six technical capability evaluation subfactors for failure to adequately demonstrate compliance with the solicitation's requirements.<sup>12</sup> *Id.*

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approach, or will be successful in performing the contract even with Government intervention." *Id.* at 2.

<sup>10</sup> Under the "other data" evaluation factor, the solicitation required offerors to submit documents regarding various matters (if relevant) including teaming arrangements, conflicts of interest, and quality control, and provided for evaluation on a compliant/noncompliant basis. Instructions to Offerors at 11-13; Evaluation Factors at 2.

<sup>11</sup> The solicitation required offerors to submit fixed prices for various line items, and provided that price would be evaluated with regard to fairness and reasonableness. Instructions to Offerors at 13; Evaluation Factors at 5.

<sup>12</sup> Among other things, the agency concluded that Wave's proposal: failed to demonstrate that [redacted] could support all of the class 2-4 cryptocurrencies (as required by the solicitation, see PWS at 6); indicated an intent to [redacted] (which the solicitation precluded, see PWS at 9); and "doesn't account for insurance [and] SOC  
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at 5-6, 11-13. In contrast, the agency concluded that CMDSS's proposal complied with the solicitation requirements; provided the agency with a sufficient level of confidence regarding CMDSS's ability to successfully perform the contract; and offered a fair and reasonable price that was lower than that of the (technically acceptable) third offeror. *Id.* at 13. Accordingly, CMDSS's proposal was selected for award.

On October 29, the agency notified Wave of its source selection decision. On November 8, Wave filed an agency protest and, on November 21, filed a supplemental agency protest. On November 26, the agency denied Wave's protests. On December 6, Wave filed this protest with our Office.

## DISCUSSION

First, as noted above, Wave's initial protest is not based on a challenge to the agency's determination that Wave's proposal was ineligible for award. Rather, Wave maintains that both of the other offerors' proposals should have also been found ineligible for award, complaining that the agency "deviated from the stated Solicitation evaluation criteria." Protest at 1-2. More specifically, Wave asserts that, because the solicitation's PWS provides that the contractor must perform in accordance with applicable laws and regulations, and offerors were required to describe how their proposed systems ensured such compliance, CMDSS's proposal (and that of the third offeror) should have been rejected for failing to demonstrate possession of federal or state licenses related to cryptocurrency. *Id.* at 5-10.

In addition to failing to consider whether the offerors held federal or state cryptocurrency licenses, Wave complains that the agency's consideration of whether the offerors adequately described how their proposed systems will comply with "applicable laws and regulations" was inadequate. *Id.* at 9. To be eligible for award, Wave asserts that the offerors should have been required to affirmatively demonstrate how they will comply with specific laws and regulations, including the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940. *Id.*; Protester's Comments on AR at 5-8. Accordingly, Wave maintains that, because USMS did not receive any acceptable proposal, the agency must resolicit its requirements.<sup>13</sup> Protest at 10.

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[system and organization controls] audits." *Id.* AR, Tab 8, Technical Evaluation Report (TEB) at 49-58.

<sup>13</sup> Wave also asserts that CMDSS's proposal should have been excluded from the procurement based on an alleged organizational conflict of interest (OCI) created by the employment of a former USMS employee (who left USMS in September 2022) by one of CMDSS's proposed subcontractors [redacted]. In response, the agency conducted an investigation and concluded there was no OCI. As part of the investigation, the agency obtained a declaration from the former USMS employee stating: "I was not involved in preparing CMDSS's proposal . . . [and] I did not provide any information to CMDSS as part of CMDSS's preparation of their proposal." AR, Tab 18, Declaration of Former USMS Employee. Similarly, the agency obtained a declaration from CMDSS's  
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First, the agency responds by noting that the solicitation provisions requiring the awardee to obtain unspecified licenses and permits, and to comply with applicable law and regulations, constitute matters of contract administration, which are outside the scope of GAO's bid protest review. In any event, with regard to Wave's assertion that the terms of the solicitation required USMS to evaluate offerors' possession of licenses or permits, the agency maintains it did not. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 12-20. To the contrary, the agency notes that nothing in the solicitation's instructions to offerors, its stated evaluation factors, or the terms of the PWS identified any particular license or permit that an offeror must possess. *Id.* Similarly, the agency notes that nothing in the solicitation identified specific laws or regulations (including either the Securities Exchange Act of 1934 or the Investment Advisers Act of 1940) with which the contractor must comply.<sup>14</sup> In this context, the agency notes that Wave did not challenge any lack of specificity in the solicitation prior to submitting its proposal.

Finally, the agency maintains that it properly considered each offeror's response to the requirement to: "Describe how your system ensures compliance with regulations and laws related to the selling of cryptocurrency assets." See Instructions to Offerors at 7. The agency first notes that Wave's own response to this question echoed the uncertainty that exists in this area, stating:

In light of evolving regulations and legal interpretations surrounding digital asset treatment under applicable law, Wave determined to take a conservative approach by [redacted].

AR, Tab 5, Wave Oral Presentation Slide.

In recognition of Wave's approach, the agency assessed a "high confidence" rating to Wave's response. AR, Tab 8, TEB Report at 21. Nonetheless, the agency states that it reasonably and properly considered both CMDSS's and the third offeror's responses to this question and concluded that both responses were adequate and warranted ratings

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president, stating: "[redacted] and its personnel did not participate in the development of CMDSS's proposal." AR, Tab 18, Declaration of CMDSS President. Based on our review of the record, including these declarations, we find no basis to question the agency's OCI investigation. See *Mortgage Contracting Servs., LLC*, B-418483.2, B-418483.3, Sept. 10, 2020, 2020 CPD ¶ 340 at 5.

<sup>14</sup> In this context, the agency notes the "unsettled nature of the law regarding cryptocurrency," and references ongoing litigation regarding the laws and regulations applicable to cryptocurrency. Agency Response to GAO Questions, Feb. 18, 2025, at 2-3.

of “some confidence.”<sup>15</sup> *Id.* at 11, 30. In short, the agency maintains that it reasonably determined that, while Wave’s response provided the highest level of confidence, all three of the offerors’ responses were acceptable.

Overall, the agency maintains that Wave’s protest improperly seeks to transform various solicitation provisions into unstated evaluation factors. Accordingly, the agency maintains that Wave’s assertion that the agency “deviated” from the solicitation’s evaluation criteria is without merit and should be denied. We agree with the agency.

First, a solicitation’s provisions requiring a contractor to comply with applicable laws and regulations and to obtain unspecified licenses and permits are generally considered to constitute performance requirements to be satisfied during contract performance. As such, whether an awardee complies with those requirements is a matter of contract administration, which we will not review. 4 C.F.R. § 21.5(a); *Crown Worldwide Moving and Storage*, B-406614, July 17, 2012, 2012 CPD ¶ 208 at 2-3; *see also ThyssenKrupp Elevator Corp.*, B-410456, Dec. 30, 2014, 2015 CPD ¶ 18 at 4-5; *Chem-Spray-South, Inc.*, B-400928.2, June 25, 2009, 2009 CPD ¶ 144 at 5; *United Seguranca, Ltda.*, B-294388, Oct. 21, 2004, 2004 CPD ¶ 207 at 4.

Further, the evaluation of an offeror’s proposal is a matter largely within the agency’s discretion. *Frontline Healthcare Workers Safety Foundation, Ltd.*, B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. In reviewing a protest challenging an agency’s evaluation of proposals, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Ocean Servs., LLC*, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5.

Here, we first reject Wave’s assertion that the provisions in the solicitation’s performance work statement regarding contractor compliance with applicable laws and regulations required the agency to evaluate whether the offerors held particular licenses or permits. These provisions, by their terms, do not pertain to the agency’s evaluation, but rather the selected contractor’s subsequent compliance with applicable laws (which may require the contractor to obtain necessary licenses and permits) and therefore concern matters of contract administration outside the scope of our review. 4 C.F.R. §

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<sup>15</sup>Specifically, CMDSS’s response referenced the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Financial Crimes Enforcement Network (FinCEN) as [redacted], and further noted the relevance of: the “Bank Secrecy Act [which] endeavors to address the AML/KYC [anti-money laundering and know your customer] risks”; “Executive Order 14067 [which] specifically calls for an examination of the risks and benefits of cryptocurrencies [redacted]”; and state-level “money transmitter licenses . . . [which] control the use and movement of cryptocurrency assets.” AR, Tab 6, CMDSS Oral Presentation Slide. Similarly, the third offeror’s response referenced compliance with various laws and regulations, including: the Bank Secrecy Act and FinCEN regulations; state-level money transmitter laws; and SEC guidance “for [redacted].” AR, Tab 7, Third Offeror’s Oral Presentation Slide.

21.5(a); *Crown Worldwide Moving and Storage, supra*; *ThyssenKrupp Elevator Corp., supra*; *Chem-Spray-South, Inc., supra*; *United Seguranca, Ltda., supra*.

Similarly, we reject Wave's assertion that the solicitation's evaluation criteria required the agency to make assessments regarding offerors' subsequent compliance with specific laws and regulations. Rather than providing for such a specific assessment, the terms of this solicitation contemplated consideration of each offeror's description of how its proposed system would meet the requirements of the evolving laws and regulations governing the services at issue here. As noted above, CMDSS's and the third offeror's descriptions in this regard were primarily directed at identifying the potential application of various laws and regulations, while Wave's response specifically stated that, among other things, it had registered with the SEC as an investment adviser. The agency's evaluation of those responses reflected a "high confidence" rating for Wave's response, and lower "some confidence" ratings for the responses of CMDSS and the third offeror. Based on our review of the record in the context of the unsettled nature of applicable law and regulation, we do not question the reasonableness of the agency's assessments regarding all three offerors. In sum, we reject Wave's assertions that the agency should have found either CMDSS's or the third offeror's proposal unacceptable; accordingly, Wave's assertion that a proper application of the solicitation's terms would have rendered the other offerors' proposals unacceptable is denied.

On February 3, 2025 (nearly two months after filing its initial protest), Wave filed a supplemental protest alleging unequal treatment between the evaluation of its proposal and the proposal submitted by the third offeror.<sup>16</sup> Supp. Protest at 3-5. In its supplemental protest, Wave, in effect, attempts to challenge the agency's evaluation of Wave's proposal by using the evaluation of the other unsuccessful offeror's proposal as a benchmark.

Our Office has recognized that, absent a demonstration of prejudice flowing from the alleged disparate treatment of another unsuccessful offeror, the allegation will not be considered. *Operations Servs., Inc.*, B-420226, Jan. 4, 2022, 2022 CPD ¶ 21 at 5 n.4; *Smiths Detection, Inc.*, B-420110, B-420111, Nov. 5, 2021, 2021 CPD ¶ 359 at 6-7 n.4; *Environmental Chemical Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 6 n.5. In light of our conclusion that the agency's evaluation of CMDSS's proposal and the resulting source selection decision were reasonable and consistent with the

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<sup>16</sup> Wave asserts that, on January 24, 2025, the third offeror voluntarily provided Wave with information regarding the agency's evaluation of the third offeror's proposal. Supp. Protest at 1-2.

terms of the solicitation, we will not consider Wave's complaint regarding the allegedly disparate treatment of its proposal as measured against the third offeror's proposal.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel