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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Optimal Solutions & Technologies

File: B-310123.2

Date: September 21, 2007

Shelton H. Skolnick, Esq., Skolnick & Leishman, P.C., for the protester.
David A. Ingold, Esq., Department of Treasury, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

In a negotiated procurement, which required the submission with proposals of a Capability Maturity Model Integration (CMMI) appraisal dated within the 12 months prior to the proposal closing date, the agency reasonably rejected the protester's proposal that provided a CMMI appraisal dated almost 24 months before the proposal closing date.

DECISION

Optimal Solutions & Technologies protests the rejection of its proposal under request for proposals (RFP) No. TIRNO-07-R-00013, issued by the Internal Revenue Service, Department of Treasury, for middleware support services for the agency's information technology infrastructure.¹

We deny the protest.

The RFP provides for the award of a contract for a base year with 2 option years for monthly operation and maintenance and software development services. Offerors were informed that award would be made on a "best value" basis considering identified technical and price evaluation factors, and that all non-price factors were of equal importance and together were significantly more important than price.

With respect to software development services, offerors were informed that

¹ "Middleware" is computer software that connects software components or applications.

[i]t is mandatory that all contractors awarded delivery order for any activity related to software development for the IRS shall comply with the IRS policy. All tasks that fall within the software development life cycle shall at minimum comply with Level 2 of the staged representation of the software engineering standard Capability Maturity Model Integration (CMMI). There are no exceptions to this policy.

RFP § C.2.3. The RFP also included clause 1052-239-9005, “Software Development Prerequisite,” as a special contract requirement that would require the contractor to substantiate its CMMI rating “on an annual basis.” RFP § H.4.f. As a part of the RFP’s proposal preparation instructions, offerors were required to provide an appraisal, “dated within the 12 month period preceding the proposal due date,” showing that the firm had achieved at least CMMI Level 2. RFP § L.8.

Optimal submitted a proposal in response to the solicitation that included an appraisal dated August 4, 2005, indicating that the firm had achieved CMMI Level 3. On August 20, Optimal was informed by IRS that its proposal was unacceptable because the firm’s CMMI appraisal was “almost 24 months old and falls outside of the 12 month period preceding the proposal due date of August 6, 2007.” See Agency Report, Tab B, Contracting Officer’s Letter to Optimal. This protest followed.

Optimal argues that the firm’s submitted CMMI appraisal satisfies section L.8 of the solicitation. Specifically, Optimal states that it has achieved CMMI Level 3 (which exceeds the level required by the RFP) and that its CMMI appraisal is valid until August 4, 2008. Optimal argues that, because its appraisal is valid during and after the 12 months preceding the closing date for receipt of proposals, its appraisal satisfies the RFP’s requirement that offerors submit an appraisal “dated” within that period of time. In this regard, Optimal contends that the only “rational requirement is one that seeks a current and valid appraisal.” Protester’s Comments at 4.

The IRS recognizes that a CMMI appraisal can be valid for a maximum period of 3 years, but contends that, in its view, accepting an appraisal dated more than 12 months prior to the closing date for proposals is risky, given that “due to mergers or other organizational changes, vendors may no longer have the capability that they formerly attained.”² Agency Report at 6.

We agree with the agency that the RFP was unambiguous and required the submission of a CMMI appraisal, bearing a completion date within the 12 months

² In this regard, as noted above, the contractor will be required to substantiate its CMMI rating “on an annual basis.” RFP § H.4.f.

prior to the proposal closing date. Under no reasonable reading of the solicitation can Optimal's CMMI appraisal, which bears a date of August 4, 2005, be viewed as complying with the requirement for an appraisal dated within the 12 months prior the RFP's August 6, 2007 closing date for submission of proposals. We therefore find that the IRS reasonably found that Optimal's proposal failed to satisfy this RFP requirement.³

Optimal also argues that the requirement for submission of a CMMI appraisal dated within the 12 months prior to the closing date was effectively removed from the solicitation by amendment No. 3. We disagree. That amendment, which provides the agency's answers to offerors' questions, merely confirms that the CMMI appraisal must be submitted with offerors' proposals by the closing date for receipt of proposals and does not address the effective date of the appraisal.

Optimal also argues that, even if its CMMI appraisal failed to satisfy the above noted RFP requirement, the RFP did not inform offerors that failure to satisfy this requirement could result in rejection of the proposal. However, the RFP "Basis for Award" provision, RFP § M.1, provided that "[t]he Government will evaluate the Contractor's ability to demonstrate their compliance with the RFP instructions in Section L," and the section L proposal preparation instructions (which required the submission of a recently dated CMMI appraisal) cautioned offerors that failure to show compliance with the instructions could be grounds for exclusion of the proposal from further consideration. See RFP § L.8. In any event, a proposal, which as here fails to conform to a material RFP term and condition, should be considered unacceptable and may not form the basis for an award. See Wiltrex Inc., B-297234.2, B-297234.3, Dec. 27, 2005, 2006 CPD ¶ 13 at 4.

The protest is denied.⁴

Gary L. Kepplinger
General Counsel

³ To the extent that Optimal challenges the reasonableness of the RFP requirement for a recently dated CMMI appraisal, its protest is untimely, inasmuch as challenges to alleged apparent solicitation improprieties must be filed by the time set for the receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (2007).

⁴ In its September 17 supplemental comments, Optimal argues that the IRS should have conducted discussions with Optimal with respect to the firm's CMMI appraisal. This objection is untimely, inasmuch as it was first raised more than 10 calendar days after the date that Optimal learned that its proposal had been rejected. See 4 C.F.R. § 21.2(a)(2). In any event, Optimal does not allege that it could provide a CMMI appraisal dated within 12 months prior to the closing date for receipt of proposals.