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## Decision

**Matter of:** Sapient Government Services, Inc.

**File:** B-412163.2

**Date:** January 4, 2016

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Carol L. O’Riordan, Esq., Anthony J. Marchese, Esq., and Taimur Rabbani, Esq., O’Riordan Bethel Law Firm, LLP, for the protester.

Cyrus E. Phillips, IV, Esq., Albo & Oblon, L.L.P., for Sevatec, Incorporated, and David S. Cohen, Esq., John J. O’Brien, Esq., Gabriel E. Kennon, Esq., and Daniel J. Strouse, Esq., Cohen Mohr LLP, for Vencore Services and Solutions, Inc., the intervenors.

Joshua A. Kranzberg, Esq., Department of Homeland Security, United States Citizenship and Immigration Services, for the agency.

Matthew T. Crosby, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging agency’s evaluation of protester’s oral presentation is denied where record reflects evaluation was reasonable and consistent with solicitation’s evaluation criteria.
  2. Protest that agency conducted nonmeaningful discussions with protester is denied where record reflects protester never was afforded the opportunity to revise, and in fact never revised, its proposal, and, therefore, discussions did not occur.
  3. Protest challenging agency’s best-value determination is denied where record reflects protester’s proposal was evaluated as being higher-priced and lower-technically-rated than other proposals, and protester fails to show the underlying evaluation ratings were unreasonable.
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### DECISION

Sapient Government Services, Inc., of Arlington, Virginia, protests the issuance of a task order to Sevatec, Incorporated, of Fairfax, Virginia, under task order request for proposals (RFP) No. HSSCCG-15-R-00003 issued by the Department of Homeland Security, United States Citizenship and Immigration Services, for Agile development and maintenance services to support agency information technology (IT) systems.

Sapient alleges that the agency's evaluation of proposals was unreasonable, the agency conducted discussions with the firm that were not meaningful, and the agency's best-value decision was flawed.

We deny the protest.<sup>1</sup>

## BACKGROUND

On February 17, 2015, the agency issued the solicitation under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5 to firms holding contracts under functional category 1 (service delivery) of an existing multiple-award, indefinite-delivery, indefinite-quantity (ID/IQ) contract vehicle known as the second-generation Enterprise Acquisition Gateway for Leading-Edge Solutions (EAGLE II).<sup>2</sup> See RFP at 1.<sup>3</sup> The solicitation sought services to support the agency's joint engineering teams--sustainment (JETS) program. See id. The solicitation included a performance work statement (PWS) specifying, at the highest level, that the JETS contractors would be responsible for providing "high-productivity Agile development services and Lean processes focused on IT sustainment of applications that support [the agency's] core business areas." PWS § 3.

The solicitation anticipated the award of four fixed-price<sup>4</sup> task orders, each with a six-month base period and four one-year option periods. RFP at 2-9, 19. The task orders were for work in four mission-area "portfolios." The portfolios were records, benefits, customer service, and biometrics.<sup>5</sup> Id. This protest concerns only the customer service portfolio.

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

<sup>2</sup> Consistent with the procedures of FAR subpart 16.5 for orders under multiple-award, ID/IQ contracts, the solicitation advised that the policies of FAR subpart 15.3 would not apply to the competition. RFP at 21; see also FAR § 16.505(b)(1)(ii).

<sup>3</sup> Citations to the RFP refer to the "conformed" version that was issued under RFP amendment No. 01.

<sup>4</sup> The solicitation included a single time-and-materials type contract line item number for "surge" work. RFP at 2-9.

<sup>5</sup> The solicitation stated that the agency intended to award the task orders to four different contractors, but that it reserved the right to award more than one task order to the same contractor if adequate competition was not achieved. RFP at 19.

Each award was to be made on a best-value tradeoff basis, considering price and the following four equally-weighted nonprice factors: corporate experience of the prime contractor; technical approach of the contractor team; management approach of the contractor team; and oral presentation. RFP at 19-20. The solicitation stated that the nonprice factors, when combined, were more important than price. Id. at 19. Additionally, the solicitation included evaluation criteria for each nonprice factor, and stated that under these factors, the agency would assign adjectival ratings of high confidence, some confidence, or low confidence. Id. at 19-20. Finally, the solicitation stated that the agency would employ a multistep source selection process under which only those offerors whose proposals were evaluated as the “most likely to provide the best value solutions” under factors 1 (corporate experience), 2 (technical approach), 3 (management approach), and 5 (price) would be further considered for award and invited to give oral presentations under factor 4. Id. at 20.

The agency received numerous proposals in response to the solicitation, including proposals from Sapiient and Sevatec. Agency Report (AR), Tab 32, Source Selection Decision Document (SSDD), at 1, 9. A technical evaluation committee (TEC) evaluated the proposals under factors 1, 2, and 3 and assigned adjectival ratings. See id. Based on the TEC’s evaluations, as well as a price evaluation by a business evaluation committee, the source selection authority (SSA) selected 10 offerors to provide oral presentations under factor 4. See id. at 1. Of those 10 offerors, 5 submitted proposals for the customer service portfolio, including Sapiient and Sevatec. Id. at 9-10.

Following the oral presentations, the TEC completed its evaluation. The adjectival ratings and total evaluated pricing for the proposals submitted for the customer service portfolio are shown in the table below.

	Sapiient	Sevatec	Offeror 3	Offeror 4	Offeror 5
<b>Factor 1--Corporate Experience</b>	High Confidence	High Confidence	[DELETED]	[DELETED]	[DELETED]
<b>Factor 2--Technical Approach</b>	High Confidence	High Confidence	[DELETED]	[DELETED]	[DELETED]
<b>Factor 3--Management Approach</b>	High Confidence	High Confidence	[DELETED]	[DELETED]	[DELETED]
<b>Factor 4--Oral Presentation</b>	Low Confidence	Some Confidence	[DELETED]	[DELETED]	[DELETED]
<b>Factor 5--Price</b>	\$74 million	\$72.6 million	[DELETED]	[DELETED]	[DELETED]

AR, Tab 32, SSDD, at 9.

The SSA documented a source selection decision for each portfolio. For the customer service portfolio, the SSA selected Sevatec for award, documenting numerous reasons why, in his view, Sevatec's proposal represented the best value to the government relative to the lower-priced proposals of offerors 3, 4, and 5. AR, Tab 32, SSDD, at 9-10. With respect to Sapiient's higher-priced proposal, the SSA documented the following conclusion: "I considered Sapiient, but the Low Confidence rating it received for the oral presentation and the TEC's explanation for that rating, along with Sapiient's price, which was higher than the other offers, convinced me that it did not offer the best value." Id. at 9-10.

Based on the SSA's best-value determination, the agency awarded a task order to Sevatec for the customer service portfolio. Following a debriefing, Sapiient filed a protest with our Office.

## DISCUSSION

In its protest, Sapiient raises three chief claims: the agency's evaluation of the firm's oral presentation was unreasonable; the agency conducted discussions during the firm's oral presentation, and those discussions were not meaningful; and the SSA's best-value tradeoff decision was flawed. Based on the record, we find that none of these claims have merit. We discuss them below in turn.<sup>6</sup>

Sapiient challenges various TEC findings regarding the firm's oral presentation under factor 4. Before addressing Sapiient's claims, we observe that in reviewing protests of an agency's evaluation and source selection decision, even in a task or delivery order competition as here, we do not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. Ball Aerospace & Techs. Corp., B-411359, B-411359.2, July 16, 2015, 2015 CPD ¶ 219 at 7. A protester's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. Id.

With regard to the procedure for the oral presentation, the solicitation stated that agency evaluators would invite the offeror's representatives into a conference room and share with them "a standard set of management/technical questions and a problem statement . . . involving issues the offering contractor should reasonably

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<sup>6</sup> Sapiient's protest and comments on the agency report include various other arguments. Although not discussed in this decision, we have considered all of them, and we conclude that they either fail to raise a cognizable basis of protest, or they have no merit based on the record.

expect on an Agile contract.” RFP at 18. After receiving this information, the offeror’s representatives were to caucus among themselves, then share their “answers and problem resolution” with the evaluators. Id. After that, the agency evaluators would caucus and then pose “any clarifications [they] may require to understand the presentation.” Id. This entire process was limited to three hours. Id. As to the evaluation criteria for the oral presentation, the solicitation stated as follows: “The Government will assess its level of confidence that the offering contractor will successfully perform the task order requirements based on its oral presentation.” Id. at 20.

Sapient’s protest challenges the following four findings that the TEC documented for the firm’s oral presentation:

- This contractor won’t lead us, push forward.
- Presentation did not provide a complete understanding or feeling of confidence.
- A number of key concepts were not defined, or defined incorrectly.
- Focus on [DELETED] is an important continuous improvement method, but not a substitute for portfolio management.

Protest at 22 (quoting AR, Tab 35, Sapient Debriefing, at 5); Comments at 11 (quoting AR, Tab 31, TEC Rep., Factor 4, at 14). Sapient claims that these findings are unreasonable, arguing that they allegedly reflect “too much impression and too little substance.” Comments at 11. Similarly, Sapient argues that the findings were “so vague and subjective” that they were “per se inadequate to permit the SSA to make an intelligent and independent best value determination.” Id. at 10; see also Protest at 21-22. We disagree.

First, although Sapient argues that the findings are “vague,” each finding references a discrete, identifiable concern that the TEC had about Sapient’s oral presentation. Second, these concerns reasonably relate to the solicitation’s evaluation criteria for the oral presentation--namely, the effect an offeror’s oral presentation had on the TEC’s confidence in the offeror’s ability to successfully perform the task order. See RFP at 20. Finally, the record reflects that before making the source selection decision, the SSA considered the evaluation results under each nonprice factor “on paper and also in discussions with the [TEC],” and that for Sapient’s oral presentation, the SSA specifically considered “the TEC’s explanation for [Sapient’s] rating.” AR, Tab 32, SSDD, at 2, 9. On this record, we see no merit in Sapient’s challenge to the TEC’s evaluation of the firm’s oral presentation or the SSA’s consideration of the TEC’s evaluation findings.

Sapient also alleges that discussions occurred during the firm's oral presentation, and that the discussions were not meaningful. Protest at 18-19; Comments at 8-9. As discussed above, the solicitation provided that during the three-hour oral presentation session, Sapient was to develop a solution to a problem statement that the agency would provide at the outset of the session. RFP at 18. The solicitation also provided that after Sapient presented its solution, the agency evaluators would caucus and then pose "any clarifications [they] may require to understand the presentation." Id. Sapient alleges that the agency's clarification questions and Sapient's responses thereto constituted discussions because the firm was permitted to "change, expand, and even reverse" what its representatives initially said in the session. Protest at 18-19; Comments at 9.

The test for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. Companion Data Servs., LLC, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 12; TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4. The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule govern task and delivery order competitions conducted under FAR part 16, such as the procurement here. See NCI Info. Sys. Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. Nonetheless, we have determined that exchanges in the context of a task order competition must be fair and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9. For the reasons explained below, we find that here, discussions did not occur.

As described above, the exchange that Sapient characterizes as discussions occurred entirely within the confines of the three-hour oral presentation session. Sapient has not shown, and it is not clear to us, that anything said during the exchange revised some aspect of the firm's previously-submitted proposal. Further, at the conclusion of the session, Sapient was not permitted to submit anything further to the agency. Thus, following the oral presentation, Sapient was not afforded an opportunity to revise anything that was said during the oral presentation or any part of the firm's previously-submitted proposal.<sup>7</sup> Under these circumstances, we do not consider the exchange to have been discussions; rather, we view it simply as a component of the oral presentation itself. See Aliron Int'l,

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<sup>7</sup> Sapient apparently concedes that the agency's questions during the oral presentation did not pertain to the firm's previously-submitted proposal. See Comments at 9 ("[T]he questions asked of Sapient were not . . . asking Sapient to confirm the terms of its proposal"; "Sapient was asked questions not to confirm information in its proposal, but for additional information beyond what was contained in its oral presentation."). This is consistent with the solicitation, which provided that the proposal was to address the corporate experience, technical approach, management approach, and price factors, not the oral presentation factor. See RFP at 16-18.

Inc., B-285048.2, Aug. 3, 2000, 2000 CPD ¶ 125 at 2-3 (agency questions during oral presentation did not trigger discussions where, as here, solicitation established oral presentation as part of evaluation process and where questions sought only “amplification” of information already presented to agency). Sapiient’s claim that the agency engaged in nonmeaningful discussions is denied.<sup>8</sup>

Finally, Sapiient claims that the SSA’s best-value determination was flawed, arguing that the SSA failed to meaningfully compare the technical merits of Sapiient’s proposal relative to Sevatec’s proposal, and that the SSA failed to exercise independent judgment. Protest at 19-20, 22-23; Comments at 2-8. In support of these claims, Sapiient relies on section 15.308 of the FAR. See Protest at 20.

FAR section 15.308 of the FAR provides, in the context of a negotiated procurement, that a source selection decision shall be based on a comparative assessment of proposals against all of the solicitation’s source selection criteria. Section 15.308 further provides that the SSA may use reports and analyses prepared by others, but that the source selection decision must represent the SSA’s independent judgment.

FAR subpart 16.5, however, expressly provides that the policies in FAR subpart 15.3 do not apply to the ordering process under multiple award, ID/IQ contracts. FAR § 16.505(b)(1)(ii). As stated above, the competition here was conducted using FAR subpart 16.5 procedures, and among firms holding contracts under the EAGLE II multiple award, ID/IQ contract vehicle. See RFP at 1. Additionally, and as noted above, the solicitation expressly advised that the policies of FAR subpart 15.3 would not apply to the competition. Id. at 21. Thus, while Sapiient asserts that the agency failed to follow certain procedures under FAR subpart 15.3, both the FAR and the solicitation provide that those policies do not govern the task order competition here. FAR § 16.505(b)(1)(ii), RFP at 21; see also Bay Area Travel, Inc. et al., Nov. 5, 2008, B-400442 et al., 2009 CPD ¶ 65 at 9 n.13.

In any event, putting aside the applicability of FAR section 15.308, we see no merit in Sapiient’s claims that the SSA failed to meaningfully compare the technical merits of the firm’s proposal relative to Sevatec’s proposal or that the SSA failed to exercise independent judgment. In this regard, the record reflects that the SSA considered the evaluation results under each nonprice factor “on paper and also in discussions with the [TEC],” and that he documented the following conclusion regarding Sapiient’s proposal: “[T]he Low Confidence rating [Sapiient] received for

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<sup>8</sup> In any event, even if we were to assume for the sake of argument that the exchange somehow constituted discussions, Sapiient has not demonstrated that the discussions were not meaningful; i.e., Sapiient has not demonstrated that prior to revising its proposal, the agency failed to lead the firm to an area that was identified as a significant weakness or deficiency. See FAR § 15.306(d)(3).

the oral presentation and the TEC's explanation for that rating, along with Sapien's price, which was higher than the other offers, convinced me that it did not offer the best value." AR, Tab 32, SSDD, at 2, 9-10. Although this analysis is brief, we find it unobjectionable given that Sapien's proposal was evaluated as being higher-priced and lower-technically-rated than other proposals, and given that Sapien has not shown the underlying evaluation finding to be unreasonable.<sup>9</sup> See Segovia, Inc. d/b/a Inmarsat Gov't, B-408376, B-408376.2, Sept. 3, 2013, 2013 CPD ¶ 203 at 10 (no tradeoff required when selecting highest-rated, lowest-priced proposal).

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>9</sup> The record reflects that the SSA documented much more detailed tradeoff analyses regarding the relative merits of the proposals that were lower-priced and higher-technically-rated than Sapien's proposal. See AR, Tab 32, SSDD, at 9-10.