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# Decision

**Matter of:** OBXtek, Inc.

**File:** B-415258

**Date:** December 12, 2017

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Robert T. Wu, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that the awardee materially misrepresented its service-disabled veteran-owned small business (SDVOSB) status is dismissed. This allegation is within the authority of the Small Business Administration, and is not for our Office to decide.
  2. Protest challenging the evaluation of the protester's and awardee's quotations is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
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## DECISION

OBXtek, Inc., of Tysons Corner, Virginia, protests the issuance of a task order to Analytic Strategies, LLC, of McLean, Virginia, by the Department of Homeland Security (DHS), Network Security Deployment Division, under request for quotations (RFQ) No. HSSA01-17-Q-1813 for cybersecurity support services. OBXtek argues that Analytic Strategies materially misrepresented its status in order to compete for an order set aside for service-disabled veteran-owned small businesses (SDVOSB), for which the protester argues the awardee is not eligible. OBXtek also challenges its own technical evaluation and Analytic Strategies' evaluation under the past performance and price factors.

We dismiss the protest in part and deny the protest in part.

## BACKGROUND

The RFQ, issued on June 8, 2017, sought quotations from vendors who were holders of the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) Small Business - Pool 1 multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts for program management services. Specifically, the agency's Office of Cybersecurity and Communications, Network Security Deployment (NSD) Division sought quotations to provide program management office support services, including subject matter experts and resources to advise and assist the government in the execution of business operations, program control, budget, and financial management activities of the NSD Division and the National Cybersecurity and Communications Integration Center Division. Agency Report (AR), Tab E1, Award Decision, at 4.

One task order was to be issued on a competitive basis to the SDVOSB whose quotation represented the best value to the government. Quotations were to be evaluated considering four factors listed in descending order of importance: technical capability,<sup>1</sup> staffing plan, past performance, and price. RFQ at 102-103. While price was to be the least important factor, vendors were cautioned that price "may increase in importance, and become a discriminating factor as the [quotations] become similar in ratings for the other factors." Id. at 103.

The technical capability factor was to evaluate the vendor's approach and experience performing tasks in the statement of work (SOW). Id. This factor was also to evaluate the "quality and comprehensiveness" of each vendor's approach and experience to quality control and risk management. Id. at 104. The staffing plan factor was to assess each vendor's "strategy for staffing its organization, for retaining full staffing, [and] for filling vacancies in a timely manner." Id.

Past performance was to evaluate the "degree to which the experience submitted is relevant based on similarity in size, scope and complexity to the requirements of the solicitation." Id. at 105. Moreover, past performance was to be evaluated "on the quality of the referenced experience and/or Government discussions with provided references in terms of the quality of the work done and the timeliness and cost efficiency of the work performed. The quality of the relevant work performance is very important to the evaluation." Id. Finally, the RFQ instructed vendors that the agency would "consider the relevance of past performance information obtained in relation to the scope of this procurement. Past Performance, either positive or negative, which is considered by the Government to be more closely related to the scope of this effort will be given additional weight in the evaluation process." Id.

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<sup>1</sup> The technical evaluation factor has been referred to both as "technical approach" and "technical capability" in the solicitation. We refer to it as "technical capability" in this decision because that is what the agency uses in its memorandum of law (MOL) and contracting officer's statement (COS).

Price was to be evaluated for fairness, reasonableness, and completeness. Id. at 106. As relevant to the protester’s allegations, the RFQ instructed vendors that, “[w]hile the technical quotation must not contain any reference to price, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be provided so that the contractor’s understanding of the requirements may be evaluated.” Id. at 107. The RFQ also states that, “[o]fferors are on notice that [quotations] that are unrealistic in terms of technical commitment, lack technical competence, or are indicative of failure to comprehend the complexities of solicitation requirements will be rejected.” Id. at 103. Finally, the RFP warns that “[a]ny significant deviation or exception from the Government-estimated level of effort or labor mix that is not adequately justified by the Offeror will be considered indicative of a lack of understanding of the solicitation requirements and may be deemed unrealistic. Unrealistic quotations will not be considered for award.” Id. at 107.

Quotations were received from various vendors, including OBXtek and Analytic Strategies. AR, Tab E1, Award Decision, at 8. The agency evaluated quotations, with the following relevant results:

	<b>OBXtek</b>	<b>Analytic Strategies</b>
<b>Technical Capability</b>	Acceptable	Good
<b>Staffing Plan</b>	Acceptable	Outstanding
<b>Past Performance</b>	Confident	Confident
<b>Overall Rating</b>	Acceptable	Good
<b>Price</b>	\$90,746,241	\$79,409,077

Id. at 10, 24.<sup>2</sup> Under the technical capability factor, OBXtek received an acceptable rating. In particular, the technical evaluators assigned OBXtek’s quotation one strength under the technical capability factor for “[c]learly articulated knowledge and understanding of all existing processes,” but the evaluators also assigned one weakness under the same factor, finding the following:

The [quotation’s] discussion of best practices, strategy, approach, and details within the process (Tasks 1-6 and 8) were lacking or non-existent. For example: Section 1.1.4.1 spoke to what cost is, but there were no further explanations provided. Similarly, section 1.1.5 speaks to the pre- and post-award process, but there is no discussion of the approach to providing the needed support or best practices associated with procurement support.

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<sup>2</sup> Technical factors were to be assigned one of the following ratings: blue/outstanding, purple/good, green/acceptable, yellow/marginal, or red/unacceptable. RFQ at 108. Past performance was to be evaluated as either confident, not confident, or neutral. Id. at 109.

Id. at 16. OBXtek's quotation also received an acceptable rating under the staffing plan factor, with the evaluators assigning one strength for providing an excellent retention plan, and one weakness for the following:

The proposed Financial Budget Specialist (IV) candidate does have the minimum years of experience. However, the candidate's experience shows more project management and limited working knowledge of finance and budget. There are limited examples through the resume which show budget formulation and execution.

Id. The source selection authority (SSA) adopted the findings of the evaluation team, and conducted a comparative analysis of the three technically acceptable quotations. Id. at 32. In doing so the SSA found that OBXtek's quotation "met all minimum requirements, but really nothing further came through their [quotation]." Id. The SSA noted grammatical errors and tracked changes in the quotation that "did not instill confidence" with evaluators that OBXtek "would be capable to control quality on highly complex projects." Id. The SSA noted that although OBXtek demonstrated knowledge of the program, it failed to convey a deeper level understanding of the requirements. Ultimately, the SSA found that while OBXtek met the minimum requirements, its quotation could not be viewed as preferable to the quotation of Analytic Strategies or the other technically-acceptable vendor. Id.

Of the two quotations rated higher than the protester's, the SSA concluded that the quotation of Analytic Strategies was superior for various reasons. Id. at 33. The SSA noted that Analytic Strategies' quotation merited a "high good" rating under the technical capability factor, even though the evaluators did not see enough technical merit to warrant an outstanding rating. The awardee was rated outstanding under the staffing plan factor. Id. With respect to past performance, the SSA specifically noted that Analytic Strategies had several strengths, including prior work with DHS in a cyber environment and similar work related to procurements. Id. After comparing price, the SSA concluded that Analytic Strategies' quotation represented the best value to the government. Id. at 34. This protest followed.<sup>3</sup>

## DISCUSSION

OBXtek alleges that Analytic Strategies materially misrepresented its status, and was not eligible for an order set aside for SDVOSB's. OBXtek also contends that the agency was unreasonable in its evaluation of OBXtek's quotation, specifically challenging the two weaknesses assigned, under the technical capability and the staffing plan factors.

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<sup>3</sup> The awarded value of the task order at issue is \$79,409,076. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity contracts valued over \$10 million. 41 U.S.C. § 4106(f).

Finally, the protester challenges the agency's evaluation of Analytic Strategies' quotation under both the past performance and price evaluation factors. OBXtek alleges that the awardee should have received a neutral past performance rating because the awardee does not have a record of relevant performance. The protester also argues that if the agency conducted a proper price realism analysis in accordance with the terms of the solicitation, the agency would have found Analytic Strategies' price to be unrealistically low.

We dismiss OBXtek's allegation that Analytic Strategies misrepresented its SDVOSB status because questions about a contractor's size status rest solely within the jurisdiction of the Small Business Administration (SBA). We deny the remainder of the protest as the allegations are without merit.

#### Material Misrepresentation

OBXtek first argues that Analytic Strategies was ineligible to compete for the task order because the firm was not an SDVOSB when it submitted its quotation, and was ineligible for award. Protest at 5. In this regard, the protester asserts that the awardee had been acquired by another company in August of 2016, and based on that acquisition, the firm no longer qualified as an SDVOSB. *Id.* at 5-6. While recognizing the jurisdictional limitations to hear SBA issues as articulated in our Bid Protest Regulations, OBXtek argues that our Office, nonetheless, has jurisdiction over its protest because the firm does not directly challenge the awardee's SDVOSB status, "but simply asserts that Analytic made a material misrepresentation by competing for the SDVOSB Order after expressly certifying that it is not an SDVOSB." Protester's Comments at 3. The protester asserts that "the only issue GAO needs to address is whether, as a result of its [a]cquisition, Analytic was still eligible for award of the SDVOSB Order." *Id.* at 4.

The Small Business Act, 15 U.S.C. § 637(b)(6), gives the SBA, not our Office, conclusive authority to determine matters of small business size status for federal procurements. Bid Protest Regulations, 4 C.F.R. § 21.5(b)(1); Randolph Eng'g Sunlasses, B-280270, Aug. 10, 1998, 98-2 CPD ¶ 39 at 3. Similarly, the SBA is the designated authority for determining whether a firm is an eligible SDVOSB concern, and it has established procedures for interested parties to challenge a firm's status as a qualified SDVOSB concern. 15 U.S.C. §§ 632(q), 657(b); 13 C.F.R. § 125.17 et seq. As a consequence, our Office will neither make nor review SDVOSB status determinations. See PPG-CMS-PSI JV, B-298239, B-298239.2, July 19, 2006, 2006 CPD ¶ 111 at 4-5.

The agency requests that we dismiss this allegation because the material misrepresentation issue turns on the interpretation of SBA regulations, and our Office cannot decide the issue "without determining whether Analytic Strategies is eligible to compete for and receive task order award as an SDVOSB, which is a determination for SBA." Agency Response at 1-2. We agree with the agency. While the protester may be correct in asserting that allegations of a vendor submitting a quotation with a material

misrepresentation is within our Office's jurisdiction, the issue as it is here, of whether a vendor is an SDVOSB (and eligible to compete under a set-aside) is a matter within the jurisdiction of the SBA. See PPG-CMS-PSI JV, supra. Moreover, while not relevant to our determination, the SBA has informed our Office that it has decided to initiate a status determination on Analytic Strategies regarding its status as a SDVOSB for the underlying contract and this solicitation. SBA Comments at 1. As such, this protest allegation is dismissed. 4 C.F.R. § 21.5(b)(1).

## OBXtek's Evaluation

OBXtek next protests the evaluation of its quotation under the technical factors, specifically challenging the assignment of two weaknesses to the firm's quotation, one under the technical capability factor and one under the staffing plan factor. Protest at 8. OBXtek, in essence, argues that the assigned weaknesses were inconsistent with the detailed information included in the firm's quotation. See Protest at 8-9.

The evaluation of a vendor's quotation is a matter within the agency's discretion. Kellogg Brown & Root Servs., Inc., B-400614.3, Feb. 10, 2009, 2009 CPD ¶ 50 at 4. In reviewing a protest against an agency's evaluation of quotations, our Office will not reevaluate quotations, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Triple Canopy, Inc., B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 7.

With respect to the weakness assigned to it under the technical capability factor, OBXtek argues, without elaboration, that it "provided a detailed explanation and model of its integrated approach to acquisition, procurement, and contract management throughout the life of the contract." Protest at 8. In challenging the weakness assigned under the staffing plan factor, the protester argues, again without elaboration, that "the [a]gency's description . . . is inconsistent with the candidate's resume, which includes extensive experience in budget analysis, development of new cost models, and financial management." Id.

The agency, in responding to these challenges, provided the contemporaneous evaluation documents, and supplemented those filings with declarations from the contracting officer and the lead for the technical evaluation team (TET). See generally AR, Tab A2, Contracting Officer's (CO) Statement of Facts (SOF); Tab A3, TET Lead SOF. The agency's documentation provides further details as to why it assigned to OBXtek the relevant weaknesses, as well as additional details as to other shortcomings in OBXtek's quotation, including the various grammatical and other errors referred to in the award decision memorandum. See AR, Tab E1, Award Decision, at 32. In response, the protester, however, does not challenge the agency's explanations, but instead simply asserts that the contemporaneous record is "deficient." Protester's Comments at 9. In this regard, OBXtek argues that while the agency report "does provide additional details on how the evaluation was conducted, there is simply no contemporaneous documentation that the Agency's evaluation of OBXtek's quotation was reasonable." Id. We disagree.

On this record, we are provided no basis to question the agency's evaluation. Agencies are required to adequately document the final evaluation conclusions on which their source selection decision was based. Booz Allen Hamilton, Inc., B-409355, B-409355.2, Mar. 19, 2014, 2014 CPD ¶ 100 at 7. Where the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fills in previously unrecorded details, such explanations will generally be considered in our review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. Management Sys. Int'l, Inc., B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 6.

Here, the contemporaneous record adequately documents the weaknesses assigned to OBXtek by the agency. Moreover, we conclude that the agency's post-protest statements providing more details as to the basis of the evaluation are credible and consistent with the record. For example, the TET lead's statement of facts (SOF) details the fifteen sections of OBXtek's quotation that contained grammatical or other errors, which caused the evaluators to question the firm's ability to control quality on highly complex projects. AR, Tab A3, TET Lead SOF, at 1-3. The TET lead also provided reference to various areas of OBXtek's quotation where it was lacking required details of its proposed approach. Id. at 3-5. Finally, the TET lead provides additional information explaining the agency's concerns with respect to OBXtek's proposed Financial Budget Specialist (IV), which formed the basis for the weakness assigned to OBXtek under the staffing plan factor. Id. at 5-6. Our review of the record provides us no basis to question the agency's evaluation in this regard.

### Analytic Strategies' Evaluation

Finally, the protester challenges the agency's evaluation of Analytic Strategies' quotation under the past performance and price evaluation factors, essentially arguing that the awardee should have received a neutral past performance and that the awardee's price should have been found to be unrealistically low. Both allegations are without merit.

#### Past Performance

OBXtek initially argued that the agency's assignment of a confident rating to the awardee's quotation under the past performance factor was unreasonable because the firm has no relevant past performance. Id. at 9-10. Upon reviewing the agency report, the protester shifts its argument, now contending that the record is inadequately documented, that the evaluators identify "just one specific relevant contract . . . in support of its Confident rating," and "[t]he fact that the [a]gency was able to cite to only one relevant contract shows that Analytic's relevant past performance is . . . so sparse that no meaningful past performance rating can be reasonably assigned." Protester's Comments at 11.

The agency responds that, while the value of the contracts identified for the awardee's past performance were smaller than the estimated value of the current requirement,

they “were nonetheless substantial enough to establish a record of relevant past performance.” MOL at 13. The agency points out that the evaluators recognized strengths in the awardee’s relevant past performance experience, and in particular the firm’s high-quality performance under one of those contracts. Id. The agency argues that OBXtek’s protest represents nothing more than disagreement with the agency’s judgment. Id. We agree.

Our Office examines an agency’s evaluation of past performance to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations; however, the necessary determinations regarding the relative merits of vendors’ quotations are primarily matters within the contracting agency’s discretion. Advanced Envtl. Solutions, Inc., B-401654, Oct. 27, 2009, 2010 CPD ¶ 7 at 5. We will not question an agency’s determinations absent evidence that those determinations are unreasonable or contrary to the stated evaluation criteria. Id.

The record shows that Analytic Strategies submitted references for three prior contracts: two for itself, and one for its subcontractor. See generally, AR, Tab C5, Analytic Strategies Vol. II. Our review of the responses from these references generally accords with the agency’s appraisal of the record. Moreover, in contrast with the protester’s arguments, the record shows that the agency assigned three strengths to the firm’s quotation, one specifically discussing the awardee’s first past performance reference, the second favorably discussing the firm’s subcontractor’s experience with the DHS cyber environment, and the last strength addressing the responses provided from all three references, focusing on the high quality performance by the awardee under the third contract reference. AR, Tab E1, Award Decision, at 19. Our review of the record shows that the agency’s assignment of a confident rating to the awardee’s quotation under the past performance factor was reasonable.

### Price Evaluation

Finally, OBXtek challenges the agency’s price evaluation, arguing that based on Analytic Strategies’ “extremely low price,” the agency “either failed to conduct and document a price realism analysis or failed to evaluate [the awardee’s] proposed pricing against the Agency’s estimated level of effort and the technical requirements as the RFQ required.” Protest at 11. The protester points to the following language in the solicitation as the basis for its assertion that a price realism analysis was required: “Any significant deviation or exception from the Government-estimated level of effort or labor mix that is not adequately justified by the Offeror will be considered indicative of a lack of understanding of the solicitation requirements and may be deemed unrealistic. Unrealistic quotations will not be considered for award.” Protest at 11; RFQ at 107.

The agency responds that the solicitation did not require a price realism analysis and the protester’s “out-of-context” reading is strained and unreasonable. MOL at 14-15. According to the agency, any such analysis would have only been triggered if a vendor significantly deviated from the government-estimated level of effort or labor mix. Id.



at 14. Our review of the record confirms that a price realism analysis was not required by the terms of the solicitation.

Where a solicitation contemplates the award of a fixed-price contract, an agency may provide in the solicitation for the use of a price realism analysis for the purpose of measuring a vendor's understanding of the requirements or to assess price risk in its quotation. IBM Corp., B-299504, B-299504.2, June 4, 2007, 2008 CPD ¶ 64 at 10-11. In the absence of an express price realism provision, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and the solicitation states that a quotation can be rejected for offering low prices. Dyncorp Int'l LLC, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9.

We have reviewed the RFQ, including the language cited by OBXtek, and conclude that a price realism analysis was not required by the terms of the solicitation. As discussed, absent an explicit requirement to conduct a price realism analysis, we will only conclude that a solicitation contemplates a price realism evaluation where the solicitation expressly states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding or proposal risk, and the solicitation states that a quotation can be rejected for offering low prices. Id. Here, while the solicitation does use the term "unrealistic" and "lack of understanding of the solicitation requirements," it does so in the context of significant deviation or exception from the government-estimated level of effort or labor mix, not in the context of price. RFQ at 107. Thus, the RFQ obligated the agency to undertake an analysis of level of effort or labor mix, which the record confirms it did,<sup>4</sup> and not an analysis of price realism as the protester suggests.

OBXtek cites to various decisions of our Office to support its proposition that a price realism analysis was required here by the terms of the solicitation. For example, the protester cites to Iron Vine Security LLC, B-409015, Jan. 22, 2014, 2014 CPD ¶ 193, where we found that a solicitation called for a price realism analysis of a vendor's proposed cost/price where the solicitation stated that the quotation "would be evaluated to determine if it reflects understanding of the government's requirements and the degree of risk it presents." Id. at 6. In fact, each of the decisions cited by the protester discusses solicitation language where some technical aspect would be evaluated as a function of price to evaluate proposal risk or technical understanding. In contrast, the solicitation here does not call for such an evaluation; instead the solicitation calls for an

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<sup>4</sup> In this regard, the agency concluded that, "[t]he offerors provided labor hour estimates and labor mix that were consistent throughout the [period of performance] with the hours provided by the Government and therefore the labor hour estimates are deemed reasonable for all five offerors." AR, Tab E1, Award Decision, at 30.

evaluation of the realism of vendors' quotations as a function of level of effort and labor mix, not price.

The protest is dismissed in part and denied in part.

Thomas H. Armstrong  
General Counsel