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# Decision

**Matter of:** Open Technology Group, Inc.

**File:** B-416313; B-416313.2

**Date:** August 2, 2018

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## DIGEST

Protest that agency misevaluated protester's quotation and made an unreasonable source selection decision is denied where contemporaneous record showed that the evaluation and source selection decision were reasonable and consistent with the solicitation.

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## DECISION

Open Technology Group, Inc., of Herndon, Virginia, a small business, protests the issuance of a Federal Supply Schedule (FSS) order to SaiTech, Inc., of Bethesda, Maryland, also a small business, by the Department of the Treasury, Internal Revenue Service (IRS), under FSS request for quotations (RFQ) No. BEPIT-RFQ-17-0017, for commercial information technology operations and maintenance support services for offices of the Bureau of Engraving and Printing (BEP), in Washington, D.C. Open, the incumbent contractor, argues that its own quotation was misevaluated under each evaluation factor, that Treasury applied different standards in evaluating SaiTech's quotation, and that the agency made an unreasonable best-value tradeoff.

We deny the protest.

## BACKGROUND

The RFQ, dated June 13, 2017, was provided by email to 11 preselected small business vendors (including Open and SaiTech) under Schedule 70 (the general purpose commercial information technology equipment, software, and services schedule). The RFQ anticipated the issuance of a single fixed-price FSS order for up to 5 years of services, including a 3-month transition period. Agency Report (AR) at 1-2.

The RFQ described the required services in an accompanying performance work statement (PWS), and specified that quotations would be evaluated under five non-price factors, listed in descending order of importance: technical approach, management approach, key personnel, corporate experience, and past performance. The evaluation of quotations under the non-price factors would be used to determine which quotation would provide the best value through a tradeoff, where the combined non-price factors were significantly more important than total evaluated price. RFQ amend. 2 at 6.

The technical approach factor evaluation was to assess whether the vendor demonstrated a clear understanding of the work that was effective, efficient, and achievable in the time allowed, responded to the PWS, and provided a detailed staffing plan to depict the vendor's organizational structure and labor mix. Id. Under the management approach factor, the evaluation would assess the vendor's plan to recruit, retain, and train its personnel, and whether the vendor showed a management approach suitable to the requirement and consistent with its technical approach. Id. at 7. The key personnel factor evaluation would assess the skills and experience of proposed key personnel. Id. These three factors were to be rated adjectivally as excellent (exceeding many requirements and having several strengths or significant strengths), good (exceeding some requirements and having one or more strengths or significant strengths), acceptable (meeting all requirements and having at least one strength or significant strength), or unacceptable (failing to meet minimum requirements and having one significant weakness or multiple weaknesses). Id.

Under the corporate experience evaluation factor, the agency was to assess the vendor's "years of relevant corporate experience working on projects similar in size, scope and complexity to the requirement." Id. It was to be rated adjectivally as excellent (extensive experience on similar projects), good (better-than-adequate experience on similar projects), acceptable (adequate experience on similar projects), or unacceptable (little or no experience on similar projects). Id. at 8.

The past performance factor was to assess information provided by references combined with any information obtained by the agency from other sources. Id. The adjectival ratings were excellent (highly relevant performance that significantly and consistently exceeded contract requirements), good (highly relevant performance that met or exceeded some requirements and any problems were corrected effectively), acceptable (relevant or highly relevant performance that met contract requirements and minor problems were corrected satisfactorily), or unacceptable (similar performance that

did not meet requirements and contractor failed to recover adequately and showed ineffective response to serious problems). Id. at 8-9.

The IRS received quotations from eight vendors. The agency evaluated the quotations, and then held two rounds of discussions. During discussions with Open, the IRS identified as weaknesses under the technical approach and past performance factors several perceived flaws in the firm's performance of the incumbent contract. Open responded to the agency's discussions in its final revised quotation.

The evaluation of the final revised quotations resulted in four vendors being rated unacceptable under the corporate experience factor. The evaluations of the remaining four vendors' quotations were as follows:

	<b>SaiTech</b>	<b>Open</b>	<b>Offeror A</b>	<b>Offeror B</b>
<b>Technical Approach</b>	Excellent	Good	Good	Good
<b>Management Approach</b>	Good	Acceptable	Good	Acceptable
<b>Key Personnel</b>	Good	Excellent	Good	Acceptable
<b>Corporate Experience</b>	Good	Good	Acceptable	Acceptable
<b>Past Performance</b>	Excellent	Good	Neutral	Acceptable
<b>Total Evaluated Price</b>	\$25.1 million	\$26.6 million	\$30.5 million	\$22.2 million

AR Tab F.1.2, Best Value Decision Document, at 4.

Following receipt of a notice that the IRS had selected SaiTech, Open filed this protest. After receiving a brief explanation of the selection decision, Open filed an amended protest that reiterated and amplified the allegations of the initial protest. In this decision, we address both the initial and amended protest together without distinguishing between them, except where necessary for avoiding ambiguity.

## PROTEST

Open argues that both its own quotation and SaiTech's were misevaluated, and that the tradeoff decision was unreasonable as a result.

Open challenges IRS's evaluation of SaiTech's quotation. Specifically, the protester alleges that SaiTech was a "newcomer" that lacked a background providing the required services, and thus it could not have understood the agency's needs as well as Open. Id. The protester contends that IRS's evaluation of SaiTech's quotation as superior to Open's under the technical approach, management approach, and past performance factors was therefore unreasonable. Id.

As an initial matter, both the IRS and SaiTech requested dismissal of Open's challenges to the evaluation of SaiTech's quotation. SaiTech argued that the protest allegations consisted of irrelevant, purely speculative, and otherwise legally insufficient allegations. Intervenor's Dismissal Request at 1. SaiTech also argued that the protest presented no factual information about the content of SaiTech's quotation, and that the protester's claim that SaiTech was an inexperienced "newcomer" was easily refuted by publicly-available information. Id. at 4-5. The IRS likewise argued that Open's challenges to the evaluation of SaiTech's quotation were speculative and baseless. Agency Response to Dismissal Request at 1-2.

In response, Open argued that even though SaiTech had been in business for 20 years, data from the [usaspending.gov](https://www.usaspending.gov) database for the past 18 years showed that the firm had not received information technology contracts similar to the current requirement until 2016. Protester's Opposition to Dismissal at 2-3. Additionally, Open argued that a comparison of the data for Open and SaiTech over the same 18-year period showed that Open was experienced whereas SaiTech should have been considered a newcomer, and thus SaiTech's quotation should have reflected that inexperience. Id. at 4. As a result, Open maintained that it was "inexplicable how SaiTech, a company with limited federal experience, received higher ratings . . . unless the evaluation was flawed." Id. According to Open, SaiTech's "performance history and its reputation as a newcomer" constituted a sufficient factual basis for the challenge to the evaluation of SaiTech's quotation. Id. at 5.

After reviewing the arguments, our Office advised the parties that we would not develop the record further on Open's challenge to the evaluation of SaiTech's quotation because the protester's allegations did not reflect a valid basis of protest, and would likely be dismissed. In that regard, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Id.

As indicated above, Open's challenge to the evaluation of SaiTech's quotation was founded on speculation about SaiTech's experience. Open's allegations thus fail to meet the requirement that each ground of protest have a sufficient factual basis. Accordingly, we dismiss Open's challenges to the evaluation of SaiTech's quotation.<sup>1</sup>

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<sup>1</sup> Open's comments on the agency report raised further challenges to the evaluation of SaiTech's quotation, arguing that job postings on SaiTech's website showed that the firm had been seeking to hire personnel under minimum qualifications that were similar to the requirements in the RFQ for several key personnel positions. Protester's Comments at 20-22. Open argues that SaiTech's quotation must have been misevaluated as excellent under the technical approach factor because the job postings show that (with the exception of one position) SaiTech must have offered only minimally-qualified personnel. Id. at 22. Once again, Open's allegations are based on  
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With regard to its protest, Open argues that the IRS improperly considered Open's performance of the incumbent contract in the evaluation. Specifically, Open argues that various performance issues raised by the IRS during discussions were reflected "in the paucity of strengths and significant strengths" in the evaluation of Open's quotation. Protester's Comments at 11-12. In effect, Open claims that the IRS developed a bias against Open based on its performance of the incumbent contract that tainted the evaluation. Government officials are presumed to act in good faith, and we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Triton Marine Constr. Corp., B-250856, Feb. 23, 1993, 93-1 CPD ¶ 171 at 6. Our examination of the contemporaneous record here does not support Open's claim that the final evaluation was affected by bias against the firm, or that the evaluation considered its performance of the incumbent contract in the final evaluation. Accordingly we deny Open's challenges to the overall fairness of the evaluation.

We next consider Open's challenges to a number of specific issues regarding the evaluation of its quotation under the technical approach, management approach, and past performance factors. When assessing such challenges, our Office recognizes that the evaluation of an offeror's quotation is a matter within the agency's discretion. Accordingly, 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. By itself, a protester's disagreement with the agency's judgment assessing the relative merit of competing quotations does not establish that the evaluation was unreasonable. KinetX Aerospace, Inc., B-406798 et al., Aug. 21, 2012, 2012 CPD ¶ 303 at 7.

Open challenges the evaluation of its quotation under the technical approach factor as unreasonable. The record reflects that the IRS rated the protester's quotation good, based on the evaluators' judgment that Open's technical approach met or exceeded most requirements and, although the quotation offered multiple strengths (and neither weaknesses nor deficiencies), there were no significant strengths that would justify a rating of excellent. AR Tab F.1.1, Technical Evaluation Panel Report Excerpt, at 8-9. Open argues that its quotation should have been assessed a significant strength for the firm's "deep understanding of BEP's work" and another for proposing a staffing plan with "3 personnel who hold both MCSE [Microsoft Certified Solutions Expert] and CCNA [Cisco Certified Network Associate] certifications." Amended Protest at 13-14.<sup>2</sup>

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nothing more than speculation--about the purpose of SaiTech's hiring and still further speculation about the key personnel that were proposed in its quotation.

<sup>2</sup> In its comments on the agency report--and for the first time--Open identified 24 specific items, each of which it alleged should have been assessed as a technical approach strength or significant strength. Protester's Comments at 13-17. There is no reason Open could not have raised these issues in its initial protest. The timing associated with Open's presentation of these arguments is the type of piecemeal presentation of issues that is inconsistent with the requirements of our Bid Protest Regulations. Where, as

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The IRS responds that the evaluators reasonably assessed multiple strengths for Open's technical approach, and that the strengths the agency assessed actually correspond to the technical aspects of Open's quotation that the firm argues were overlooked, such as the depth of Open's understanding of BEP's work and its proposal to provide highly-qualified personnel. AR at 6-7. In particular, the agency notes that strengths were assessed under the technical approach factor for Open's experience with a specific server platform that would significantly mitigate several risks, another strength for the firm's advanced understanding of network engineering requirements, and a third strength for the firm's "demonstrate[d] understanding of the depth of tasks" in the PWS. Id. at 6-7. Furthermore, with respect to the allegedly overlooked personnel qualifications, the agency explains that the RFQ required the personnel to hold either of the two certifications, and that the evaluators reasonably deemed the possession of both certifications not to provide additional value that would merit assessment of a strength. Id. at 7.

Where a protest challenges an agency's technical evaluation, our Office's role is to 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. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13. The contemporaneous record here demonstrates that the agency's evaluation of Open's technical approach was reasonable. In particular, the evaluation identified Open's experience and understanding of specific requirements as providing valuable strengths. On the other hand, the evaluators also reasonably concluded that having personnel who possessed both of the certifications did not provide additional value to the agency, so the evaluators reasonably did not assign additional strengths. In neither instance has Open shown that the evaluation was unreasonable or inconsistent with the solicitation. Accordingly, we deny Open's challenges to the technical approach evaluation.

Next, under the management approach factor, Open argues that its quotation should have received an additional significant strength, and an adjectival rating of good or excellent. Open argues that it proposed to provide an early bird report each morning that would review the health of critical systems and networks, and the status of efforts to resolve yellow or red conditions. Amended Protest at 14.

The IRS counters that the contemporaneous record shows that the evaluators reasonably identified one strength for Open under the management approach factor, and expressly determined that none of the other elements of the quotation were strengths or weaknesses. AR at 13 (quoting AR Tab F.1.1, Technical Evaluation Report

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here, allegations presented in a piecemeal fashion do not independently satisfy the timeliness requirements under our Bid Protest Regulations, we will not consider them further. E.g., Planning & Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11-12.

Excerpts, at 9). The IRS argues further that Open's argument for an additional strength and a higher adjectival rating represents mere disagreement with the agency's evaluation judgment.

We agree. While Open's early bird report was not required, and thus exceeded the PWS requirements, the protester has not shown that the evaluation was unreasonable. Here, an early bird report did not provide sufficient value to the agency to be evaluated as a strength, and similarly did not merit a higher adjectival rating. Where an agency's evaluation judgment is reasonable, a protester's disagreement with that judgment is insufficient to provide a basis to sustain the protest. XLA Assocs., Inc., B-412333.2, Jan. 29, 2016, 2016 CPD ¶ 54 at 6. Accordingly, we deny Open's challenge to the management approach evaluation.

In challenging its evaluation under the corporate experience factor, Open argues that although the IRS assessed four strengths that recognized the firm's experience, particularly as the incumbent contractor, the agency then unreasonably applied an adjectival rating of good, rather than excellent. Open argues that because its experience as an incumbent was "the most similar, most relevant corporate experience possible," the adjectival rating was unreasonable. Amended Protest at 14.

The IRS responds that the evaluation record shows that the agency recognized the strength of Open's corporate experience, including its experience as the incumbent contractor. The IRS argues that the adjectival rating applied was based on reasonable evaluation judgment, and that the contemporaneous record reflects that the contracting officer understood the underlying differences in corporate experience between Open and SaiTech in making the source selection. AR at 13-14.

Our review of the contemporaneous record shows that the IRS's evaluation judgments were reasonable. The agency recognized Open's experience, and at the same time it recognized that SaiTech had shown experience with work similar to the PWS. AR Tab F.1.1, Technical Evaluation Report Excerpts, at 11; see also AR Tab F.1.2, Award Decision Document, at 6, 10. The good adjectival rating under the corporate experience factor for both firms reasonably reflects the evaluators' conclusion that both firms had similar levels of corporate experience, even considering Open was the incumbent contractor. Accordingly, we deny this ground of protest.

Next, in challenging its evaluation under the past performance factor, Open argues that the IRS unreasonably failed to consider that the agency itself was allegedly at fault for problematic communication with Open during performance of the incumbent contract. Open asserts that problems arose because the agency prevented Open from backfilling open positions during contract extensions. Amended Protest at 14. The protester argues that the IRS should have taken responsibility for that problem and should have rated the firm's past performance excellent, rather than good. Id.

The IRS argues that its evaluation of Open's past performance was reasonable, and within the considerable discretion that an agency has in evaluating a vendor's past performance. AR at 14. Additionally, the IRS argues that in response to a discussions

question, Open itself acknowledged that it was “aware that there ha[d] been occasional lack of effective communication between BEP customers and the service desk in the past,” and then explained that it had emphasized the importance of correcting the problem to Open’s staff--without suggesting that the problem was caused by the IRS. AR at 6 (quoting AR Tab D.2.9, Open Second Revised Quotation Cover Letter, at 2). We find that the contemporaneous record provides a reasonable basis for the agency to conclude that Open acknowledged responsibility for problematic communication on the incumbent contract. As a result, on this record, we cannot find that the agency’s evaluation of Open’s past performance was unreasonable.

Finally, Open challenges the agency’s source selection decision. Open’s challenge to the source selection decision is based on the foregoing challenges to the underlying evaluation. Since we have dismissed or denied those challenges as reflected above, we have no basis to sustain Open’s challenge to the source selection decision.

The protest is denied.

Thomas H. Armstrong  
General Counsel