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# Decision

**Matter of:** Marquis Solutions, LLC

**File:** B-419891; B-419891.2

**Date:** September 14, 2021

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Alan Grayson, Esq., for the protester.  
Kimberly Kegowicz, Esq., Department of Veterans Affairs, for the agency.  
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest challenging agency's evaluation of quotations and source selection decision is sustained where record shows that evaluation was unreasonable and inconsistent with the terms of the solicitation and applicable statutes and regulations.

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## DECISION

Marquis Solutions, LLC, of Westfield, Indiana, protests the award of a contract to FG Management Group, LLC, of Maplewood, New Jersey, under request for quotations (RFQ) No. 36C24220Q0977, issued by the Department of Veterans Affairs (VA) for medical courier services in the New York metropolitan area. Marquis argues that the agency miscalculated quotations and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

The RFQ contemplates the award, on a best-value tradeoff basis, of a fixed-price indefinite-delivery, indefinite-quantity contract for a base year and four 1-year options to provide medical courier services in the New York metropolitan area.<sup>1</sup> Firms were advised that the agency would evaluate quotations considering price and two non-price factors: (1) technical capability, and (2) management, certification and training. RFQ

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<sup>1</sup> The competition was conducted utilizing simplified acquisition procedures of part 13 of the Federal Acquisition Regulation (FAR) and confined to service-disabled veteran-owned small businesses (SDVOSBs).

at 11. The technical capability factor included two subfactors, performance capability and technical experience (also referred to as past performance).<sup>2</sup> *Id.*

In response to the RFQ, the agency received a total of five quotations. The agency eliminated two quotations from consideration without evaluating them for reasons not relevant here.<sup>3</sup> Agency Report (AR), exh. 10, Contracting Officer's Analysis, at BATES 000194. The agency explained that it forwarded "redacted versions" of the remaining three quotations to an evaluation team that reviewed them for consideration under the performance capability subfactor. *Id.* After reviewing the redacted quotations, the agency assigned an overall rating of outstanding to the quotation submitted by FG Management, a rating of acceptable to the quotation submitted by Company A, and a rating of unacceptable to the protester's quotation.

The agency then evaluated the past performance references for FG Management and Company A, and concluded that both firms warranted a rating of satisfactory for past performance (the agency did not give further consideration to the protester's quotation). AR, exh. 10, Contracting Officer's Analysis, at BATES 000195. Ultimately, the agency made award to FG Management, finding that the technical superiority of its quotation warranted making award to the firm at a price of \$3,437,923, which was higher than the price offered by Company A.<sup>4</sup> *Id.* at BATES 000195-196. After being advised of the

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<sup>2</sup> The RFQ did not specify the relative importance of the evaluation factors or subfactors. Under the circumstances, we conclude that the factors--technical, management and price--are relatively equal in importance, and the two subfactors are relatively equal in importance. *Bio-Rad Labs, Inc.*, B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

<sup>3</sup> The record reflects that the agency eliminated one quotation as being "non-responsive" even though this is a negotiated simplified acquisition, not a sealed bid procurement. There is no explanation in the record for this finding.

<sup>4</sup> During the course of the protest, the agency filed a request for dismissal before filing its agency report, arguing that Marquis was not an interested party because, among other reasons, Company A was higher rated and lower in price compared to Marquis. The agency did not include the quotation or any of the evaluation materials for Company A, and we declined to dismiss the protest at that juncture for the reasons advanced by the agency.

Thereafter, the agency filed its "five-day" letter, contending that the quotation or evaluation materials relating to Company A were not relevant to the protest grounds advanced. The agency's "five-day" letter argued that Marquis's protest was confined to allegations relating to Marquis and FG Management. Marquis objected, arguing that the agency should produce the documents relating to Company A. We did not require the agency to provide the quotation or evaluation materials relating to Company A because we agreed that this information was not relevant to the issues raised by the protester, given the posture of the case. The agency then filed its agency report, and renewed its

agency's selection decision and receiving a brief explanation from the agency regarding that decision, Marquis filed the instant protest.

## DISCUSSION

Marquis argues that the agency failed meaningfully to evaluate its quotation and also evaluated its quotation disparately in comparison to the evaluation of the FG Management quotation. Specifically, Marquis argues that the agency appears not even to have read its quotation or understood what it was offering. Marquis asserts that, contrary to the agency's conclusion, its proposal offered a detailed description of how it intended to meet the agency's requirements, and also offered many of the same features identified by the agency as favorable features in the FG Management quotation. Marquis maintains that if the agency had evaluated its quotation meaningfully and on a comparable basis in relation to the FG Management quotation, it would have been selected for award as the firm submitting the quotation that offered the best overall value to the government. Marquis notes that its price is substantially lower than the awardee's price (the FG Management price was \$3,437,923, compared to Marquis's price of \$2,236,598).

In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals or quotations; 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. *TekSynap Corporation*, B-419464, B-419464.2, Mar. 19, 2021, 2021 CPD ¶ 130 at 6. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, or not reasonably based. *Id.*

In addition, an agency's evaluation of proposals or quotations, and the source selection decision, should be documented in sufficient detail to allow us to review the merits of a protest. *TekSynap Corporation, supra*. An agency that fails to document its evaluation or its source selection decision adequately bears the risk that its determinations will be considered unsupported and, absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its findings. *Id.*

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argument that Marquis was not an interested party because Company A would be in line for award ahead of Marquis, notwithstanding that we already had declined to dismiss the protest on that basis. However, because the agency failed to produce the documents, and because while these documents may not be relevant to the protester's argument they were indeed relevant to the agency's dismissal request, we again decline to dismiss the protest on this basis. In any event, given that the current evaluation of the protester's quotation is open to question, and could change, there is no way to know, at this juncture, which of these companies will be in line for the award.

We find the agency's evaluation conclusions relating to the Marquis quotation reflect a fundamental failure to meaningfully evaluate it. The RFQ did not include particularly detailed instructions or information relating to how firms were to prepare the technical capability portion of their quotations. The RFQ provision that the agency directs our attention to in particular provides--in its entirety--as follows: "The offeror's performance capability document shall include a *detailed* statement of contractor's capability to perform the duties of this requirement. (*\*not a cut/paste of the SOW*)." RFQ, amend No.3, at BATES 000131.

In noting their concerns with the protester's quotation, the record shows that the evaluators appear principally to have been concerned with the formatting and level of detail included in the Marquis quotation. For example, one evaluator found as follows:

Rationale [for Unacceptable Rating]:

The document presented doesn't address the contractor's capability to perform the duties of this requirement.

Weaknesses:

Document lacks the details to be properly evaluated.

Significant Weaknesses:

Offeror's proposal fails to follow the instructions as per posted evaluation criteria.

Deficiencies:

In completing the documents for RFQ No: 36C24220Q0977, offeror fails to follow instructions by the government on the structure of the proposal.<sup>5</sup>

AR, exh. 7, Technical Evaluation of Marquis, at BATES 000172.

The other two evaluators made similarly vague and conclusory findings.<sup>6</sup> For example, one of the other evaluators criticized the Marquis quotation for failing to address the solicitation's evaluation criteria, AR, exh. 7, Technical Evaluation of

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<sup>5</sup> There is no explanation in the record for why essentially the same observation constituted--separately--a weakness, a significant weakness and also a deficiency.

<sup>6</sup> The evaluation record is comprised principally of individual evaluator rating sheets. Although the record also included a consensus evaluation report, that report includes just a single sentence relating to the Marquis quotation which states: "Company C [Marquis] was deemed **Unacceptable** as their proposal fails to satisfy the government's technical requirement as is evident on the evaluation forms." AR, exh. 9, at BATES 000190.

Marquis, at BATES 000175, while the third evaluator criticized the Marquis quotation for cutting and pasting from the solicitation's statement of work. *Id.* at BATES 000176.

Other than these vague, conclusory statements, the evaluators failed to explain in any meaningful way the underlying rationale for their findings. For example, the evaluators did not explain, or even provide examples of, what particular details were lacking from the Marquis quotation. AR, exh. 7, Technical Evaluation of Marquis. The evaluation materials also fail to address the requirements of either the technical capability subfactor (quoted above) or what elements of the statement of work--if any--the protester's quotation failed to address.<sup>7</sup> *Id.*

At the same time, the evaluators failed to criticize the FG Management quotation for similar deficiencies in terms of its technical capability statement. For example, as set forth below, the record shows that FG Management's capability statement appears to have been copied directly from the solicitation's statement of work. Notably, this is precisely one of the bases cited by the evaluators for assigning the Marquis quotation an unacceptable rating. AR, exh. 7, Technical Evaluation of Marquis at BATES 000176. In this connection, the statement of work provided, among other things, as follows:

VA NYHHS [Veterans Administration New York Harbor Healthcare System] reserves the right to change the frequencies of pick-up and deliveries to meet the demand of our patient's needs. VA New York Harbor Healthcare System requires the courier to be at the VA Medical Center for pick-up within 45 minutes from the time a service call is placed. Pick up beyond the required 45 minutes will be prorated accordingly, unless extenuating circumstances can be documented. Prorated: - 46 mins – 60 mins at 90%; 61 mins – 90 mins at 80%; 91 mins – 120 mins at 50%.

RFQ at BATES 00038. In comparison, the FG Management quotation provides as follows:

We understand that VA NYHHS reserves the right to change the frequencies of pick-up and deliveries to meet the demand of their patient's needs. VA New York Harbor Healthcare System requires the courier to be at the VA Medical Center for pick-up within 45 minutes from the time a

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<sup>7</sup> During the protest the agency argued that the Marquis quotation also was unacceptable because it failed to include a quality control plan, and instead included only the quality assurance surveillance plan that had been included in its predecessor contract. Agency Legal Memorandum at 11. Despite this contention, there is nothing in the contemporaneous record to show that this was a concern of the evaluators during their review of the Marquis quotation. The agency also has not explained why the quality assurance surveillance plan from Marquis's predecessor contract failed to satisfy the requirement for Marquis to submit a quality control plan with its quotation.

service call is placed. Pick up beyond the required 45 minutes will be prorated accordingly, unless extenuating circumstances can be documented. Prorated: - 46 mins – 60 mins at 90%; 61 mins – 90 mins at 80%; 91 mins – 120 mins at 50%.

AR, exh. 6, FG Management Quotation, at BATES 000156. The record therefore shows that, in this example, other than minor changes to the wording of the first sentence, this portion of FG Management’s technical capabilities statement tracks verbatim with portions of the statement of work.

The record also shows that the agency assigned significant strengths and strengths to the FG Management quotation for features that also appear to have been offered by Marquis in its quotation. For example, one evaluator assigned the FG Management quotation a significant strength for its ability to start performance immediately with fully trained staff that were familiar with the routes and facilities to be serviced; the second evaluator assigned the FG Management quotation two significant strengths for the same reason, and the third evaluator assigned the FG Management quotation a strength for this reason as well. AR, exh. 8, FG Management Technical Evaluation, at BATES 000180, 000183, 000186.

The reason for assigning these significant strengths was the fact that FG Management is an incumbent courier for the agency with trained staff available to perform the requirement. However, the record shows that Marquis also recently was an incumbent courier for the agency (having performed the predecessor contract) and also offered to use its staff of fully trained drivers to perform the solicited requirement. (“Marquis Solutions, LLC is the incumbent and has been doing this route for over 18 months.” “Marquis Solutions has a full staff of drivers and vehicles in place that will provide the service per the SOW daily as a primary solution.” AR, exh. 5, Marquis Quotation, at BATES 000138, 000139.) There is no explanation in the record for these disparate conclusions given that Marquis also offered a full staff of experienced drivers and vehicles ready to perform the requirement.

As a second example, the record shows that one evaluator assigned the FG Management quotation a strength because its employees will wear appropriate attire and have badges displaying the company and employee name. AR, exh. 8, FG Management Technical Evaluation, at BATES 000184. However, the Marquis quotation also affirmatively represents that its employees will be uniformed and have employee badges. (“All drivers are uniformed with logoed clothing and all have employee badges.” AR, exh. 5, Marquis Quotation at BATES 000140.)<sup>8</sup>

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<sup>8</sup> For the record, several of the strengths the evaluators identified in the FG Management quotation are not explained. Instead, the evaluators quoted materials verbatim from the FG Management quotation with no explanation about why the quoted language merited a significant strength or strength. See e.g. AR, exh. 8, FG Management Technical Evaluation at BATES 000180-181.

In sum, the record here does not support a conclusion that the agency performed a meaningful evaluation of the Marquis quotation. Further, the agency has not explained the apparent inconsistencies in its evaluation of the two quotations. We recognize that this procurement was conducted using the simplified acquisition procedures outlined in FAR part 13, and that under such procedures, agencies are not required to perform the more in-depth evaluation that would otherwise be required using the more stringent procedures dictated under FAR part 15. Nonetheless, where, as here, an agency elects to perform an evaluation that assesses the comparative merits of competing quotations, it still is required to treat the competitors fairly and equally, and to sufficiently document its evaluation conclusions in a manner that provides our Office with an opportunity to understand the bases for their findings. Here, the agency's evaluation simply does not withstand logical scrutiny. On this record, we find the agency's evaluation of quotations unreasonable. We therefore sustain Marquis's protest.<sup>9</sup>

## RECOMMENDATION

We recommend that the agency reevaluate quotations and make a new source selection decision that is consistent with the above discussion. If the agency determines that a quotation other than the quotation of FG management is properly in line for award, we recommend that the agency terminate the contract awarded to FG Management for the convenience of the government, and make award to the successful firm, if otherwise proper. Finally, we recommend that Marquis be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. Marquis's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez  
General Couns

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<sup>9</sup> In a supplemental protest filed by Marquis after its receipt of the agency report, Marquis argued that the agency's independent government estimate is inflated, and that this fact resulted in the agency improperly finding FG Management's price reasonable. The basis of Marquis's allegation is its position that the independent government estimate was supposedly based on actual pricing from its predecessor contract, but that its actual pricing under its predecessor contract was not nearly as high as the prices reflected in the independent government estimate.

We need not address this issue in any detail since we recommend below that the agency reevaluate quotations and make a new source selection decision. In the course of implementing our recommended corrective action, the agency should consider reviewing the accuracy of its government estimate in light of the claims advanced and information presented in Marquis's protest.