



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

# Decision

**Matter of:** Softrams, LLC; Chags Health Information Technology, LLC

**File:** B-419927.4; B-419927.5; B-419927.6; B-419927.7; B-419927.8

**Date:** February 7, 2022

---

Amy L. O’Sullivan, Esq., and Zachary H. Schroeder, Esq., Crowell & Moring LLP, for Softrams, LLC; and David B. Dixon, Esq., Robert C. Starling, Esq., and Toghrul M. Shukurlu, Esq., Pillsbury Winthrop Shaw Pittman LLP, for Chags Health Information Technology, LLC, the protesters.

Elizabeth Jochum, Esq., and Oliver E. Jury, Esq., Blank Rome, for OmniFed LLC d/b/a Omni Federal, the intervenor.

Martin McEnrue, Esq., Department of Health and Human Services, for the agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

Protests challenging issuance of federal supply schedule order are sustained because, in making its source selection decision, the agency unreasonably relied upon a portion of the awarded quotation submitted by a vendor configuration that had been eliminated from the competition.

---

## DECISION

Softrams, LLC, a small business of Leesburg, Virginia, and Chags Health Information Technology, LLC (C-HIT), a small business of Columbia, Maryland, protest the issuance of an order from the General Services Administration (GSA) federal supply schedule (FSS) to OmniFed LLC d/b/a Omni Federal (Omni), a small business of Gainesville, Virginia. The order arises from request for quotations (RFQ) No. 210432 issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for operations and management of the agency’s identity management system. The protesters argue that Omni is ineligible for award, challenge the agency’s evaluation of quotations, and contend that the best-value tradeoff was unreasonable.

We sustain the protests.

## BACKGROUND

On March 11, 2021, using the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, the agency issued the solicitation to small business FSS contract holders. Agency Report (AR), Tab 2a, RFQ at 1.<sup>1</sup> The solicitation sought quotations for information technology services to maintain the agency's existing identity management solution while also implementing continuous integration and development best practices to further enhance the existing solution. AR, Tab 2b, RFQ attach. 1, Statement of Objectives at 3.

The solicitation contemplated issuance of a single fixed-price order with a 6-month base period, three 1-year option periods, and a fourth option period of four months. RFQ at 1, 7. The solicitation provided that award would be made on a best-value tradeoff basis considering price and the following non-price factors: (1) corporate experience; (2) performance work statement (PWS) response; (3) challenge exercise and communication ability; and (4) section 508 compliance.<sup>2</sup> *Id.* at 7-8. Non-price factors 1, 2, and 3 were of equal importance to each other, and were to be assessed using a confidence rating of high confidence, some confidence, or low confidence. *Id.* at 8-9. The section 508 compliance factor was significantly less important than the other three non-price factors, and was to be assessed on an acceptable/unacceptable basis. *Id.* at 9. The four non-price factors combined were significantly more important than price, which was to be evaluated for reasonableness. *Id.* at 9-10.

The solicitation established a two-phase evaluation. RFQ at 1-2, 9-10. During phase one, interested vendors were to submit quotations covering only factor 1 (corporate experience).<sup>3</sup> *Id.* at 3. Following evaluation of phase one quotations, the agency would conduct an advisory "down select," in which CMS would advise vendors if they were "invited to participate in Phase Two, or . . . unlikely to be a viable competitor," though all vendors were permitted to participate in phase two regardless of the information provided during the advisory down select. *Id.* During phase two, vendors were to submit written quotations covering pricing and factors 2 (PWS response) and 4 (section 508 compliance). *Id.* at 4.

---

<sup>1</sup> The agency provided individual reports responding to each protest using a uniform system for identifying documents. Throughout this decision, where a document has been submitted in the agency reports for both the Softrams and C-HIT protests, we will cite to the agency report tab without specifying the particular protest ("AR"). Where a document is included in only one of the protest records, citations will include a reference to the particular protest at issue (e.g., "Softrams AR" or "C-HIT AR").

<sup>2</sup> Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

<sup>3</sup> The solicitation established March 16 as the due date for receipt of phase one quotations, and provided that quotations "received after the due date and time will not be reviewed, evaluated, or considered for award." RFQ at 1.

Also during phase two, the agency would assess vendors' quotations under factor 3 (challenge exercise and communications ability). No written submissions were required for factor 3, however. RFQ at 5. Rather, the agency was to schedule an oral presentation with each vendor. *Id.* at 5-6. The solicitation required vendors to have their quoted key personnel present to provide the oral presentation. *Id.* Thirty minutes prior to the scheduled presentation, the agency would provide each vendor with the same "challenge exercise problem statement" to which the key personnel would respond during the presentation. *Id.* The solicitation explained that "[t]he goal of the oral presentation [was] to assess the Quoter's ability to problem solve, conduct user research, collaborate, and communicate." *Id.* at 5. During the oral presentation, the solicitation required vendors to "demonstrate their approach to Human Centered Design and Agile Project Management." *Id.* Vendors were to be given 90 minutes to conduct their oral presentations. *Id.*

Following evaluation of phase two quotations, the solicitation anticipated "award without exchanges." RFQ at 7. The agency reserved the right, however, to conduct exchanges with only the "best-suited" vendor (*i.e.*, the apparent successful quoter) "to address/ remedy any remaining issues, if necessary, and finalize a task order with that quoter." *Id.* The agency also reserved the right to hold exchanges with multiple vendors if it was unable to determine a best-suited vendor. *Id.* at 8.

In March 2021, the agency received ten phase one quotations, including those submitted by the two protesters (Softrams and C-HIT) and the awardee (Omni). AR, Tab 5l, Initial Award Decision Memorandum (Initial Award Memo) at 1. Following evaluations of the phase one quotations, the contracting officer sent notices advising four vendors to continue to phase two, including the two protesters and the awardee. *Id.* All four vendors submitted phase two quotations. *Id.*

Prior to submitting its phase two quotation, however, Omni, underwent a vendor configuration change. We refer to the awardee in a general, non-configuration specific sense, as "Omni" or as the awardee. Omni submitted its phase one quotation as a prime contractor quoting the use of a second vendor, Bana Solutions (Bana), as a subcontractor.<sup>4</sup> AR, Tab 3a, Awardee's Initial Phase One Cover Letter at 1; Tab 3b, Awardee's Initial Phase One Quotation at 1, 3. We refer to this configuration as "Omni-Prime" or the "Omni-Prime vendor." After the phase one advisory down select, Omni contacted the contracting officer and asked if it could submit its phase two quotation as a Contractor Teaming Arrangement (CTA) with Bana. AR, Tab 7c,

---

<sup>4</sup> At the time of initial phase one quotation submissions, Omni held an FSS contract, but Bana did not. AR, Tab 7c, Agency-Level Protest at 4. Bana received an FSS contract on March 31, after the due date for receipt of phase one submissions. *Id.*

Agency-Level Protest at 5.<sup>5</sup> The contracting officer responded that “[a] teaming arrangement should be fine as long as it meets the requirements discussed on the GSA website.”<sup>6</sup> *Id.* The phase two quotation, including conduct of the factor 3 oral presentation, was then submitted, not by Omni-Prime, but by Omni and Bana in a CTA--with Bana designated as the team leader, and Omni designated as a team member. AR, Tab 3c, Awardee’s Initial Phase Two Cover Letter at 1; Tab 3d, Awardee’s Initial Phase Two Factor 2 Quotation at 1, 3-4. We refer to this configuration as “Bana-Omni CTA” or the “Bana-Omni CTA vendor.”<sup>7</sup>

After evaluating phase two quotations for price, factor 2 (PWS response), factor 4 (508 compliance), and assessing the oral presentations under factor 3 (challenge exercise and communication ability), the contracting officer determined that Bana-Omni CTA “was the best-suited contractor.” AR, Tab 5l, Initial Award Memo at 1. The contracting officer then engaged in exchanges with only Bana-Omni CTA, and requested and received a revised quotation for factors 2 and 4 from Bana-Omni CTA. *Id.* at 2. The contracting officer, who was also the source selection authority (SSA), performed a comparative assessment of the quotations of the four vendors that had reached phase two of the competition. Based on the combined evaluation of the Omni-Prime phase one quotation submission and the Bana-Omni CTA phase two quotation submissions (both written and oral), the SSA concluded that Bana-Omni CTA’s quotation, at a price of \$26,773,092, represented the best value to the government and selected Bana-Omni CTA for award. *Id.* at 28.

In June 2021, following notification of the agency’s selection decision, both Softrams and C-HIT protested to our Office. AR, Tab 10h, Final Award Memo at 1. In response

---

<sup>5</sup> The agency produced two versions of AR, Tab 7c. Our citations are to the latest-produced version submitted at Electronic Protest Docketing System No. 21.

<sup>6</sup> A CTA under the GSA FSS is a written agreement between two or more schedule contractors to work together to meet an agency’s requirements and to maximize a vendor’s competitiveness. See GSA Schedule CTAs, <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedule/schedule-features/contractor-team-arrangements> (last visited Feb. 1, 2022). Ordering activities may, because of the existence of CTAs, procure a total solution rather than making separate buys for each part of its requirement. *Id.* The CTA details the responsibilities of each team member. *Id.* Under GSA guidelines, the formation of a CTA between FSS vendors does not create a separate legal entity. *Id.* The FSS CTA does differ, however, from traditional FSS prime contractor-subcontractor arrangements in that: (1) each team member has privity of contract with the government for the goods or services that it is providing; (2) each team member is responsible for its duties laid out in the CTA document; and (3) each team member must have a GSA FSS contract. *Id.*; see also *Veterans Healthcare Supply Solutions, Inc.*, B-409888, Sept. 5, 2014, 2014 CPD ¶ at 4.

<sup>7</sup> As part of the phase two portion of the competition, Bana-Omni CTA made its factor 3 oral presentation on May 4. C-HIT AR, 2nd Supp. Contracting Officer’s Statement (COS) at 1.

to the protests, the agency notified our Office of its intent to take corrective action. Specifically, the agency proposed to reevaluate phase one quotations, conduct a new advisory down-select process, reevaluate phase two quotations, and make a new source selection decision; resulting in our dismissal of the protests as academic. *Softrams, LLC*, B-419927, Aug. 3, 2021; *Chags Health Info. Tech., LLC*, B-419927.2, B-419927.3, Aug. 3, 2021 (unpublished decisions).

Subsequent to our dismissal of the protests challenging the agency's June 2021 award decision, the agency conducted the reevaluation of phase one quotations. On August 5, the contracting officer notified Omni that its quotation had been eliminated from further consideration for award because Bana did not have a valid FSS contract at the time Omni submitted its phase one quotation (which, combined with Bana-Omni CTA's phase two quotation, formed the basis of the agency's original selection decision). AR, Tab 7b, Awardee's Elimination Notice at 1.

Omni filed an agency-level protest contesting the agency's elimination decision. AR, Tab 7c, Agency-Level Protest at 1. In response to the protest, the agency agreed that elimination of Omni-Prime from consideration was improper because, according to CMS, while prime contractors "must be on schedule," prime contractors were allowed to "use subcontractors not on schedule, but all the labor categories quoted must be on the prime's schedule." AR, Tab 7d, Resp. to Agency-Level Protest at 1.

The agency, however, went on to explain that the advisory multi-step process is "a form of down selection and the phase one evaluation is part of the overall evaluation basis for award," thus "[o]nly those who responded with phase one submissions would be eligible for phase two; thereby the competition was closed to any new respondents." AR, Tab 7d, Resp. to Agency-Level Protest at 2. Put differently, because Omni-Prime was the vendor that submitted a phase one quotation, only Omni-Prime--as opposed to the Bana-Omni CTA--was permitted to participate in phase two. Specifically, the agency explained that the solicitation "did not provide the opportunity for quoters to change a quote from a prime/subcontractor quote to a CTA after submission of a Phase I quote as a prime/subcontractor." *Id.* The agency concluded:

We would not be following our own evaluation methodology if we allowed for a change to a CTA after phase one. In other words, once the solicitation closed under phase one, we would have had to amend our solicitation to allow quoters to change their quotes to CTAs.

*Id.* As a result, the agency clarified its earlier elimination notice as applying to Bana-Omni CTA. *Id.* Based on the agency's agreement with the assertion in the agency-level protest that it also had improperly eliminated Omni-Prime, however, the agency took corrective action in response to the agency-level protest. The corrective action taken was to permit Omni-Prime to continue in the competition and submit a revised quotation, while Bana-Omni CTA remained excluded. *Id.*

Following resolution of the agency-level protest, CMS issued discussions letters to all the vendors remaining in the competition, including the two protesters and Omni-Prime.

AR, Tab 10h, Final Award Memo at 1. With Softrams, the agency discussed issues with the vendor's phase one quotation for factor 1, its phase two quotation for factors 2 and 4, and its pricing, and requested a revised quotation. Softrams AR, Tab 9a, Softrams Discussions Letter at 1-4. In response, Softrams submitted quotation revisions for phase one, factor 1; phase two, factors 2 and 4; and pricing. See *generally* Softrams AR, Tabs 9b-9f, Softrams Revised Quotation.

With C-HIT, the agency discussed issues with the vendor's phase two quotation for factors 2 and 4, and its pricing, and requested a revised quotation. C-HIT AR, Tab 9a, C-HIT Discussions Letter at 1-5. In response, C-HIT submitted quotation revisions for phase two, factor 2 and pricing. See *generally* C-HIT AR, Tabs 9c-9f, C-HIT Revised Quotation.

With Omni-Prime, the agency discussed issues with Omni-Prime's quotation for factor 1, and issues with Bana-Omni CTA's quotation for factor 2, and requested a revised quotation. AR, Tab 8a, Awardee Discussions Letter at 2. In response, Omni-Prime submitted quotation revisions for phase one, factor 1; phase two, factors 2 and 4; and pricing. See *generally* AR, Tabs 8c-8f, Awardee's Revised Quotation.

Relevant here, the agency did not conduct discussions with any vendor regarding factor 3, nor did CMS permit any vendor to make revisions to or provide a new oral presentation under factor 3 (challenge exercise). C-HIT AR, Tab 1, COS at 12; Softrams AR, Tab 1, COS at 11.

The agency's evaluation of revised quotations resulted in the following ratings:

|   | <b>Softrams</b> | <b>C-HIT</b>    | <b>Omni</b>     |
|---|-----------------|-----------------|-----------------|
| <b>Factor 1:<br/>Corporate Experience</b>   | High Confidence | High Confidence | High Confidence |
| <b>Factor 2:<br/>PWS Response</b>   | High Confidence | Low Confidence  | High Confidence |
| <b>Factor 3:<br/>Challenge Exercise and<br/>Communication Ability<br/>(Oral Presentation)</b> | High Confidence | Low Confidence  | High Confidence |
| <b>Factor 4:<br/>Section 508<br/>Compliance</b>   | Acceptable      | Acceptable      | Acceptable      |
| <b>Price</b>  | \$26,679,328.48 | \$25,502,721.05 | \$26,776,154    |

AR, Tab 10g, Final Source Selection Decision (SSD) at 2-3; Tab 10h, Final Award Memo at 6-7. Based on the combined evaluation of the Omni-Prime revised quotation for factors 1, 2, 4, and pricing, and the Bana-Omni CTA initial quotation for factor 3, as well as a comparison of vendors' quotations, the SSA concluded that payment of Omni's price premium was warranted because of Omni's superior technical approach. AR, Tab 10g, Final SSD at 40-42. Accordingly, the SSA selected Omni's quotation as

representing the best value to the government, and issued an order to Omni-Prime on October 20. *Id.*; AR, Tab 11a, Issued FSS Order at 1. Following notification of the agency's new source selection decision, both Softrams and C-HIT protested to our Office.

## DISCUSSION

Both Softrams and C-HIT argue that the agency improperly relied upon the factor 3 oral presentation made by Bana-Omni CTA in selecting Omni-Prime's revised quotation for award. Softrams Protest at 20; Softrams Comments at 13-14; C-HIT Amended & 1st Supp. Protest at 28-31; C-HIT Comments at 23-26; C-HIT Supp. Comments at 13-16. For the reasons discussed below, we sustain the protest on this basis. The protesters raise numerous additional arguments contesting additional aspects of Omni-Prime's eligibility for award, and challenging the agency's evaluation of quotations, CMS's conduct of discussions, and the best-value tradeoff decision. While we do not discuss these arguments, we have considered them all and find that none provides any further basis to sustain the protests.

When, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation. *EA Eng'g, Sci., and Tech., Inc.*, B-417361, B-417361.2, June 13, 2019, 2019 CPD ¶ 218 at 3. Our Office will not limit its review of an agency's evaluation to contemporaneously documented evidence, but instead will consider all the information provided, including a party's arguments and explanations. *Public Properties, LLC*, B-419414, B-419414.2, Feb. 9, 2021, 2021 CPD ¶ 78 at 3. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details generally will be considered in our review so long as those explanations are credible and consistent with the contemporaneous record. When, however, an agency's post-protest defense of its evaluation is not supported by the contemporaneous record, or is inconsistent with the record, such explanations may be considered unpersuasive and afforded little weight. *Id.* at 3, 5-6; *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

As explained above, the quotation that formed the basis of the selection decision here was submitted by two different vendors--Omni-Prime and Bana-Omni CTA.<sup>8</sup> During the original competition that occurred from March to June 2021, the Omni-Prime vendor

---

<sup>8</sup> As noted above, GSA's guidance on CTAs formed under the FSS provides that the formation of a CTA between FSS vendors does not create a separate legal entity. GSA's guidance, however, acknowledges that issuance of an FSS order to a CTA results in privity of contract between each CTA member and the ordering agency, in contrast to privity of contract with only the prime contractor when an agency issues an FSS order to a prime/subcontractor vendor configuration. *Id.*; see also *Veterans Healthcare Supply Solutions, Inc.*, B-409888, Sept. 5, 2014, 2014 CPD ¶ at 4. Thus, we refer to Omni-Prime and Bana-Omni CTA as two different vendors.

submitted a quotation for phase one, factor 1, and the Bana-Omni CTA vendor submitted a quotation for phase two, factors 2, 3, and 4, and the pricing. After protests to our Office, followed by corrective action, the Bana-Omni CTA vendor was eliminated from the competition. Subsequent to an agency-level protest, resulting in a decision to permit the Omni-Prime vendor to reenter the current competition, the submission and evaluation of revised quotations occurred from August to October.

To recap, the selection decision that is the subject of this protest was based on: (1) the submission by the Omni-Prime vendor of a revised quotation for phase one, factor 1; phase two, factors 2 and 4; and pricing; and, (2) the original phase two, factor 3 oral presentation from the Bana-Omni CTA vendor.

As an initial matter, we note that agencies generally have broad discretion to take corrective action when the agency has determined that such action is necessary to ensure fair and impartial competition. *Integrated Sci. Solutions, Inc.*, B-406025, Jan. 17, 2012, 2012 CPD ¶ 49 at 2; *SMS Data Prods. Group, Inc.*, B-280970.4, Jan. 29, 1999, 99-1 CPD ¶ 26 at 2. Further, the details of implementing corrective action are within the sound discretion and judgment of the contracting agency. *Rockwell Electronic Commerce Corp.*, B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4. We generally will not object to specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. *Id.*; *Castro & Co., LLC*, B-415508.4, Feb. 13, 2018, 2018 CPD ¶ 74 at 3.

Here, however, in implementing its corrective action, the agency failed to address fully the original error it was attempting to correct. Specifically, in allowing the Omni-Prime vendor to submit a revised quotation to replace the phase two quotation submitted by the eliminated Bana-Omni CTA vendor, the agency failed to obtain a complete replacement quotation from Omni-Prime by not conducting or allowing for a new factor 3 oral presentation. In sum, the agency based its selection decision on a quotation that was composed of submissions from two different vendors.

In responding to the current protests before our Office, the agency contends that because Omni-Prime “did not form a separate legal entity when entering into the GSA CTA with Bana, nothing under the GSA rules or the solicitation prohibited them from changing their formation under the same quotation.” C-HIT AR, Memorandum of Law (MOL) at 13-14; Softrams AR, MOL at 13-14; C-HIT AR Supp. MOL at 4. The agency further maintains that because the formation change was permissible, the agency reasonably considered portions of the quotation submitted by the different vendor configurations as a single quotation. *Id.*

This argument, however, is squarely at odds with the agency’s contemporaneous finding in response to Omni’s agency-level protest challenging the elimination of the Bana-Omni CTA vendor from the competition. There, the agency recognized that the two vendor configurations were separate respondents to the solicitation. Specifically, in upholding its decision to eliminate from the competition the Bana-Omni CTA vendor, the agency stated “[o]nly those who responded with phase one submissions would be



eligible for phase two; thereby the competition was closed to any new respondents.” AR, Tab 7d, Resp. to Agency-Level Protest at 2. Moreover, the agency’s response to the agency-level protest further explained that “once the solicitation closed under phase one, [CMS] would have had to amend [the] solicitation to allow quoters to change their quotes to CTAs.” *Id.*

Based on the record, we find unpersuasive the agency’s argument submitted in response to the current protests. Rather, we agree with the conclusion reached by the agency in the earlier agency-level protest--that CMS had erred by permitting the Omni-Prime vendor to change its identity to the Bana-Omni CTA vendor between phases one and two of the evaluation. Accordingly, we conclude that the agency’s selection decision was unreasonably based on a quotation that was submitted in part by the Omni-Prime vendor and in part by the Bana-Omni CTA vendor. Thus, we sustain the protests on this basis. *See generally Dick Enters., Inc.*, B-259686, B-259686.2, June 21, 1995, 95-1 CPD ¶ 286 at 2, 6 (sustaining protest where proposal submissions were ambiguous with respect to precisely which of numerous corporate entities was the actual offeror because an agency may not accept an offer that does not make clear which entity bears responsibility for performance of the contract).

## RECOMMENDATION

In light of the above-discussed error, we recommend that the agency take one of the following courses of action, or other action as it deems appropriate to remedy the error. The agency could elect to return to the point in the procurement at which the initial error occurred (when Bana-Omni CTA was permitted to participate in phase two of the evaluation despite not having participated in phase one) by: (1) amending the solicitation to reopen the competition to set a new due date for vendors that participated in phase one of the evaluation to submit phase two quotations, including factor 3 oral presentations; (2) evaluating the new quotation submissions; and (3) making a new source selection decision based on the combined evaluations of existing phase one quotations and new phase two quotations.

Alternatively, the agency could elect to conclude that Omni-Prime was ineligible for award due to the selection decision improperly having been based on submissions from two different vendors, neither of which submitted a complete quotation. If the agency elects this course, we recommend that the agency terminate the issued order for the convenience of the government, and make a new source selection decision from the vendors remaining in the competition.

Additionally, we recommend that the protesters be reimbursed the reasonable costs of filing and pursuing their protests, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1). The protesters should submit their claims for costs, detailing and certifying the time expended and costs incurred, to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

Edda Emmanuelli Perez  
General Counsel