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**Comptroller General
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Washington, DC 20548**

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Decision

Matter of: Savvee Consulting, Inc.

File: B-408416.3

Date: March 5, 2014

Kristen E. Ittig, Esq., and Dominique L. Casimir, Esq., Arnold & Porter LLP, for the protester.

Paul F. Khoury, Esq., Eric W. Leonard, Esq., Tracye Winfrey Howard, Esq., and Michael P. Grogan, Esq., Wiley Rein LLP, for Edmonds Enterprise Services, Inc., an intervenor.

Tudo N. Pham, Esq., and John W. Cox, Esq., Department of State, for the agency. Louis A. Chiarella, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging an agency's evaluation of vendors' technical quotations is dismissed as untimely where the protester could have and should have raised the challenges (or did so and abandoned the challenges) in a prior protest.
 2. Protest that the agency improperly made award on a lowest-price, technically acceptable basis, where the solicitation provided for award on a best-value basis, is denied where the record shows that the agency reasonably found the protester's and awardee's quotations to be technically equal and selected the lower-priced quotation.
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DECISION

Savvee Consulting, Inc., of Chantilly, Virginia, protests the issuance of a task order by the Department of State (DOS) to Edmonds Enterprise Services, Inc., of Alexandria, Virginia, under Edmonds' General Services Administration (GSA) Federal Supply Schedule (FSS) contract pursuant to request for quotations (RFQ) No. SAQMMA12R0371 for support services to DOS's Directorate of Defense Trade Controls (DDTC). Savvee challenges the agency's evaluation and selection decision.

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

BACKGROUND

The DDTC is responsible for the regulation of defense trade pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations. DDTC regulates temporary and permanent exports and the temporary import of defense articles and services involving items on the United States Munitions List (it also regulates the brokering of defense articles and defense services). In carrying out this function, DDTC maintains the registration of more than 12,000 manufacturers, exporters and brokers, and issues approximately 85,000 export authorizations annually. Statement of Work (SOW) at 1.

The RFQ was issued on August 30, 2012, as a service-disabled, veteran-owned small business set-aside to holders of GSA FSS contracts for mission-oriented business integrated services. The solicitation provided for the issuance of a time-and-materials type task order for a base year and four option years. In general terms, vendors were required to provide 23 full-time employees in various labor categories to augment the DOS workforce and support DDTC's performance of four specified tasks: commodity jurisdiction determinations; Office of Defense Trade Controls licensing; Office of Defense Trade Controls compliance; and logistical support.¹ Agency Report (AR), July 10, 2013, at 5; SOW at 1-3.

Vendors were informed that the task order would be issued on a "best value" basis, considering the following evaluation factors: management approach, corporate experience, personnel, past performance, and price. The non-price factors were of equal importance to each other and, when combined, were significantly more important than price. RFQ amend. 2, at 2. The solicitation also informed vendors that the task order's total ceiling price was \$28,652,970 over 5 years. RFQ at 16.

Edmonds and Savvee submitted quotations by the September 17 closing date. The agency's technical evaluation panel (TEP) evaluated vendors' nonprice quotations using an adjectival rating scheme that was set forth in the solicitation: excellent; good; marginal; unacceptable; and with regard to past performance, unknown/neutral. Edmonds' and Savvee's quotations were evaluated as follows:

¹ The solicitation provided vendors with the specific labor categories and labor amounts, and sought fixed labor rates from vendors. RFQ at 4-16.

	Edmonds	Savvee
Management Approach	Excellent	Good
Corporate Experience	Excellent	Good
Personnel	Excellent	Excellent
Past Performance	Good	Good
Overall	Excellent	Good
Price	\$28,070,395	\$28,243,139

AR, Tab 25, TEP Report, May 29, 2013, at 2-3; Tab 26, Source Selection Decision, Apr. 11, 2013, at 4.

The contracting officer, who was the source selection authority (SSA), determined that Edmonds' quotation, which was both higher-rated and lower-priced than Savvee's, represented the best value to the government. AR, Tab 26, Source Selection Decision, Apr. 11, 2013, at 3-4. A task order was issued to Edmonds on May 31, 2013.

On June 10, Savvee protested to our Office, challenging the agency's evaluation of quotations and selection decision.² On September 18, we sustained Savvee's protest in part. Savvee Consulting, Inc., B-408416, B-408416.2, Sept. 18, 2013, 2013 CPD ¶ 231. Specifically, we found that certain aspects of the TEP's evaluation were inconsistent with the RFQ's stated evaluation criteria or otherwise improper.³ Id. at 4-10. Further, we found that Savvee had demonstrated a reasonable possibility that it was prejudiced by the agency's actions. That is, although Edmonds' quotation was lower priced and Savvee's quotation would have to be viewed as technically superior to Edmonds' quotations in order to force a price/technical tradeoff, we could not say, given the deficiencies in the agency's evaluation, what Edmonds' and Savvee's ratings should have been or how the agency may have viewed the relative technical merits of the respective quotations.⁴

² Savvee filed a supplemental protest on July 22, raising additional challenges to the agency's evaluation of quotations.

³ Our decision, however, also denied a number of Savvee's challenges to the agency's evaluation and, in other instances, found that Savvee had abandoned certain protest grounds it had raised. Id. at 4-11.

⁴ "To the extent the results of this protest raise questions about whether Savvee or Edmonds would be viewed as offering the best value, we resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest." Savvee Consulting, Inc., supra, at 12-13; citing Kellogg, Brown & Root Servs., Inc.--Recon., B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

Id. at 12-13. We recommended that the agency reevaluate Edmonds' and Savvee's quotations and make a new source selection decision. Id. at 13.

The TEP reevaluated Edmonds' and Savvee' quotations as follows:⁵

	Edmonds	Savvee
Management Approach	Excellent	Excellent
Corporate Experience	Excellent	Excellent
Personnel	Excellent	Excellent
Past Performance	Excellent	Excellent
Overall	Excellent	Excellent
Price	\$28,070,395	\$28,243,139

AR, Tab 41, TEP Report, Oct. 18, 2013, at 1-3. The TEP's adjectival ratings were accompanied by a narrative report detailing the areas where vendors' quotations exceeded SOW requirements. Id. at 2. The TEP concluded that there were no significant discriminators between Edmonds' and Savvee's quotations. Id. at 2-3.

On October 22, the SSA again selected Edmonds' quotation as the best value to the government. AR, Tab 42, Source Selection Decision, Oct. 22, 2013, at 1-5. Specifically, the SSA found that Edmonds's and Savvee's quotations were technically equal, and that Edmonds' quotation should be selected on the basis of its lower price (i.e., "[g]iven [that] the technical evaluation did not identify any significant discriminators . . . , price stands as the sole discriminator"). Id. at 3.

After Savvee received notice of the issuance of the task order to Edmonds and a brief explanation, this protest followed.

DISCUSSION

Savvee again challenges the agency's evaluation and selection decision. In this regard, Savvee contends that the agency ignored obvious discriminators between the vendors' quotations, and improperly selected Edmonds' quotation on a lowest-price, technically acceptable basis, rather than best value as provided by the RFQ. Protest, Nov. 27, 2013, at 1-20.

⁵ The initial TEP consisted of three DOS employees. AR, Tab 25, TEP Report, May 29, 2013, at 3. The TEP that reevaluated quotations consisted of the one evaluator who was still employed by the agency. Contracting Officer's Statement, Dec. 20, 2013, at 1.

As detailed below, we find Savvee's challenge to the agency's evaluation of vendors' quotations to be untimely. We also find that the agency's selection decision was reasonable and consistent with the stated evaluation criteria.⁶

Technical Evaluation

Savvee challenges the agency's evaluation of vendors' quotations under each technical factor, arguing that the TEP failed to recognize various weaknesses (or deficiencies) in Edmonds' quotation and additional strengths in Savvee's quotation. Savvee contends that had DOS performed a reasonable evaluation, its quotation would have been rated higher than Edmonds' under each technical factor and overall. Protest, Nov. 27, 2013, at 9-16. We find that Savvee's arguments in this regard are untimely.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Under these rules, protests generally must be filed no later than 10 calendar days after the protester knew, or should have known, the basis of its protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (2013). Moreover, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 3 n.3; Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 4.

Here, Savvee's arguments concerning the agency's evaluation were known or should have been known to the protester from the record developed in response to the firm's earlier protest. As illustrated below, Savvee's challenges to DOS's evaluation of vendors' quotations either seek to: (1) resurrect arguments (essentially verbatim) that it raised and abandoned in its previous protest; (2) raise arguments that were previously addressed and denied by GAO in our prior decision; or (3) raise new arguments based on information that was known to Savvee in the prior protest. We will not consider arguments that could have and should have been raised in prior protests. Waterfront Techs., Inc.--Protest & Costs, B-401948.16, B-401948.18, June 24, 2011, 2011 CPD ¶ 123 at 11 n.12; Tony Western--Recon., B-241169.3, May 21, 1991, 91-1 CPD ¶ 489 at 3; see also HK Sys., Inc.--Protest & Recon., B-291647.6, B-291647.7, Aug. 29, 2003, 2003 CPD ¶ 159 at 6.

⁶ After developing the record, including holding a hearing, the GAO attorney responsible for the protest conducted an "outcome prediction" alternative dispute resolution conference and informed the parties in a detailed discussion that our Office was likely to deny in part and dismiss in part the protest. Notwithstanding the predicted outcome, the protester elected not to withdraw.

For example, Savvee protests the evaluation of Edmonds' past performance, arguing that DOS failed to reasonably consider adverse information about the awardee's proposed subcontractor. Protest, Nov. 27, 2013, at 15-16. In its prior protest, Savvee raised this same argument, see Protest, June 10, 2013, at 13, which we found that Savvee abandoned when it did not reply to the agency's explanation in its report. Savvee Consulting, Inc., supra, at 11 n.12. Savvee also protests that the agency's evaluation of its own past performance unreasonably overlooked differentiators which indicated Savvee's superiority (the TEP found Savvee's and Edmonds' past performance to be technically equal both in the initial evaluation and reevaluation). Protest, Nov. 27, 2013, at 15-16. In our prior decision, we denied Savvee's challenge to its past performance rating. Savvee Consulting, Inc., supra, at 11.

As another example, Savvee protests the evaluation of Edmonds' quotation under the personnel factor, arguing that the TEP should have recognized that Edmonds lacked a comprehensive strategy for acquiring necessary personnel. Protest, Nov. 27, 2013, at 13-15. Savvee could have, but did not raise this challenge to the evaluation of Edmonds' quotation, in its prior protest. See Protest, June 10, 2013, at 8-15; Protest, July 22, 2013, at 3-18. As there is no apparent reason why Savvee could not have raised the evaluation issues set forth in this protest when Savvee filed its previous protest (or did so but abandoned them), we consider these protest grounds to be raised in an unwarranted piecemeal manner and will not consider them.

Savvee does not dispute that it knew or should have known the facts on which it bases its evaluation challenges here from the prior protest (e.g., that the agency's initial evaluation of Edmonds' quotation under all technical factors revealed no weaknesses). Rather, Savvee contends that its protest here is timely because DOS reevaluated the vendors' quotations, and it is the reevaluation that Savvee challenges. Savvee Response to GAO Timeliness Inquiries, Feb. 3, 2014, at 1-5. We disagree.

The protester was aware that the agency's corrective action did not involve the submission of revised quotations, but rather, the reevaluation of existing quotations. While Savvee could reasonably expect the TEP's reevaluation to address those parts of the initial evaluation where the GAO decision had found errors, there was no reasonable expectation that DOS would address those aspects of the initial evaluation which GAO had found to be reasonable, or issues that Savvee had raised but subsequently abandoned. Such unwarranted piecemeal presentation or development of protest issues undermines our goal of affording parties the opportunity to present their cases with the least disruption possible to the orderly and expeditious conduct of government procurements. Labat-Anderson Inc., B-246071.4, Oct. 9, 1992, 92-2 CPD ¶ 244 at 5. Accordingly, we see no reason to provide the protester here with a "second bite at the apple," nor condone a situation where an agency performs a reevaluation after our Office recommends corrective

action, and the protester advances issues that could have and should have been raised in the previous protest (and claims that they are timely vis-à-vis the reevaluation). In sum, we find Savvee's assertion that it is timely protesting the agency's reevaluation--as opposed to protesting again the agency's initial evaluation--unreasonably reflects an elevation of form over substance.

Determination of Technical Equality

Savvee also complains that the agency unreasonably ignored obvious discriminators between the vendors' quotations when considering them to be technically equal. Savvee contends that the agency improperly selected Edmonds' quotation on a lowest-price, technically acceptable basis, rather than best value as provided by the RFQ. As detailed below, our review of the record does not support Savvee's claims.

In reviewing protests of an agency's evaluation, our Office does not reevaluate quotations, rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme and procurement statutes and regulations, and adequately documented. IBM Global Bus. Serv. - U.S. Fed., B-409029, B-409029.2, Jan 27, 2014, 2014 CDP ¶ 43 at 4; InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 4. A protester's disagreement with the agency's judgments or its belief that its quotation deserved a higher technical rating does not establish that the agency acted unreasonably. Encompass Group LLC, B-310940.3, Mar. 17, 2009, 2009 CPD ¶ 60 at 3.

Where, as here, a solicitation provides for award on a "best value" or "most advantageous to the government" basis, it is the function of the source selection authority to perform (if necessary) price/technical tradeoffs, that is, to determine whether one quotation's technical superiority is worth the higher price, and the extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. SoBran, Inc., B-408420, B-408420.2, Sept. 10, 2013, 2013 CPD ¶ 221 at 4; The MIL Corp., B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. The fact that no price/technical tradeoff is required between quotations found to be technically equal does not negate the fact that the agency made award on a best-value basis. The MIL Corp., supra.

Here, the TEP evaluated vendors' quotations using an adjectival rating scheme that was set forth in the solicitation. As noted above, the agency found in its reevaluation that Edmonds' and Savvee's quotations were excellent under all nonprice factors and overall. The RFQ defined an "excellent" rating as follows: "The offeror exceeds the requirements of the solicitation. There is no question as to

the offeror's ability to perform successfully. The proposal contains no deficiencies or significant weaknesses."⁷ RFQ amend. 2, at 3.

At a hearing conducted by our Office, the agency's evaluator detailed that his methodology for performing the reevaluation first involved analyzing each quotation independently as it related to the evaluation criteria. Hearing Transcript (Tr.) at 21-60. This included identifying those aspects of vendors' quotations which represented "weaknesses or strengths that could be used in helping to determine a best value judgment." Id. at 24-25. Based on those aspects in each vendor's quotation that exceeded the stated requirements, the evaluator rated Edmonds' and Savvee's quotations as excellent under each of the technical factors and overall. Id. at 30-60.

The evaluator then conducted a comparative analysis to determine whether there were any "discriminators" between the vendors' quotations. Tr. at 21-23, 60-82. While recognizing that there were differences between the vendors' quotations (*i.e.*, they were not "cookie-cutter"), the evaluator considered "discriminators" to be those differences which provided additional value, or benefit, to the government. Id. at 23. In each instance the agency evaluator found the quotations to be essentially equal and without discriminators. Id. at 62-79. For example, with regard to the management approach factor, the agency evaluator stated as follows:

I looked at management approach and kind of looked at the two side by side . . . , looked at the two wiring diagrams side by side, looked at the experience of program managers side by side, looked at the -- reassessed their ability as it relates to ability to support multiple locations, looked at their clearly defined chain of command, looked at the . . . degree to which they provide their personnel autonomy to work kind of directly for us without much need for a program office supervision. So I looked at all those factors, and all in all, when I looked at all of these, they're doing business slightly differently, but there was no indication . . . that led me to believe that any one of the differences in any way would lead to a greater benefit or a detractor for the government.

Id. at 61-62.

The agency evaluator documented his management approach findings as follows:

⁷ With regard to past performance, "excellent" was defined as, "[b]ased on the offeror's performance record, the Government has a high expectation that the offeror will successfully perform the required effort." RFQ amend. 2, at 3.

Both proposals are technically acceptable with respect to management approach.⁸ Both have proposed approaches which facilitate the timely assignment and execution of work. Both have addressed management of staffs at all locations and both clearly demonstrate a defined chain of command that allows for decentralized management decision making. Both bidders have proposed highly experienced Program Managers with over 20 years of management experience with large dispersed staffs and confidence in their personnel to handle daily tasking without the need for direct daily on-site supervision. Each prime bidder has proposed a team approach heavily reliant upon separate subcontractors (each of which are currently working directly with DDTC). The Management Approach rating criteria did not provide any significant discriminators between the two offerors.

AR, Tab 41, TEP Report, Oct. 18, 2013, at 1-2.

We find the agency's evaluation and selection decision to be reasonable and consistent with the stated evaluation criteria. The record demonstrates that the agency reasonably evaluated Edmonds' and Savvee's quotations as excellent under each technical factor, and documented the reasons supporting the assigned ratings. The agency then reasonably considered the comparative merit of the vendors' quotations. Here, the evaluator reasonably determined that, although there were differences between the vendors' quotations, the differences were not ones that provided greater value or benefit to the government. From this, the agency reasonably concluded that Edmonds' and Savvee's quotations were essentially technically equal, thereby making price the deciding factor.

Savvee argues that both the evaluator's assignment of excellent ratings and his determination that there were no meaningful technical discriminators between the vendors' quotations were flawed because the evaluator was unqualified to fully understand Savvee's quotation. For example, as to corporate experience, Savvee alleges that the evaluator did not understand the benefits of Savvee's access to credit, its cost accounting system, or its human resource system.

Although Savvee alleges that the evaluator did not understand the benefits of Savvee's quotation, the protester fails to demonstrate that its quotation was in fact superior to Edmonds' in any specific area or that the evaluation was otherwise unreasonable. For example, with regard to access to credit, Edmonds' quotation stated it had a \$4 million line of credit, while Savvee's quotation did not specify the

⁸ The evaluator explained that he first looked to see whether a quotation met all requirements, and was technically acceptable, before determining the extent to which a quotation, as here, exceeded requirements. Tr. at 28-31.

amount of its credit line. AR, Tab 5, Edmonds Quotation, Vol. II, Technical Proposal, at 9; Tab 7, Savvee Quotation, Vol. I, Technical Proposal, at 9. The evaluator reasonably concluded that both Savvee and Edmonds demonstrated mature, responsible business arrangements able to uphold their financial obligations. Tr. at 109-11; AR, Tab 41, TEP Report, Oct. 18, 2013, at 2. Similarly, the evaluator reasonably found that both Edmonds and Savvee had Defense Contract Audit Agency-approved cost accounting systems (thereby demonstrating mature internal accounting controls), and that Savvee's mention, without explanation, of its Deltek accounting system did not represent a meaningful discriminator between vendors' quotations. AR, Tab 41, TEP Report, Oct. 18, 2013, at 2; tr. at 35, 52, 70. Quite simply, we find Savvee's assertion that the evaluator must be unqualified because he found no discriminators between with vendors' quotations to be without merit.⁹

In sum, we find that the agency did not improperly convert the procurement into a lowest-price, technically acceptable award, as the protester alleges, but properly made award to Edmonds based on its lower price among vendors' quotations that were reasonably determined to be technically equal.

The protest is dismissed in part and denied in part.

Susan A. Poling
General Counsel

⁹ Moreover, we have long held that the selection of individuals to serve as evaluators is a matter within the discretion of the agency, and, accordingly, we do not review allegations, such as these, concerning the evaluators' qualifications or the composition of evaluation panels absent a showing of possible fraud, conflict of interest, or actual bias on the part of evaluation officials, none of which have been alleged or shown here. See IMLCORP LLC; Wattre Corp., B-310582 et al., Jan. 9, 2008, 2008 CPD ¶ 15 at 5; Eggs & Bacon, Inc., B-310066, Nov. 20, 2007, 2007 CPD ¶ 209 at 4.