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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: ACS Federal Solutions, LLC

File: B-404129

Date: January 7, 2011

Thomas C. Papson, Esq., Jason A. Carey, Esq., and Erin B. Sheppard, Esq., McKenna Long & Aldridge LLP, for the protester.

Carl J. Peckinpugh, Esq., and Jill R. N. Chung, Esq., for Computer Sciences Corporation, an intervenor.

Dennis Adelson, Esq., Herman Narcho, Esq., and Virginia Ackerman, Esq., Department of Labor, for the agency.

Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to engage in meaningful discussions is denied, where record shows that protester was led during discussions into consideration of that aspect of its proposal that the agency ultimately found introduced a risk; agencies are only required to generally lead offerors into those aspects of their proposals requiring amplification or correction, and need not identify every possible consequence of an offeror's business decision to offer a particular solution.

DECISION

ACS Federal Solutions, LLC, of Fairfax, Virginia, protests the award of a contract to Computer Sciences Corporation (CSC), of Falls Church, Virginia, under request for proposals (RFP) No. DOL089RP20548, issued by the Department of Labor (DOL) for medical bill processing services. ACS asserts that the agency failed to conduct adequate discussions.

We deny the protest.

The RFP contemplates the award, on a "best value" basis, of a fixed-price contract to perform medical billing services in connection with DOL's Office of Workers' Compensation programs. The RFP contemplated an implementation period of up to 18 months (comprised of a base implementation period of 5 months, followed by an optional 7-month implementation period, and a second, 6-month, optional implementation period), followed by 4 option years and 2 award years of operational

performance. RFP, amend. 12. Firms were advised that the agency would evaluate proposals in three non-price areas (technical/management, prior experience and past performance), and that the non-price factors were, collectively, slightly more important than price. RFP, § M.2.

The record shows that the agency assigned adjectival ratings of either exceptional, very good, satisfactory, marginal or unacceptable for the technical/management factor; adjectival ratings of either extremely similar, very similar, somewhat similar, slightly similar or neither similar nor relevant for the prior experience factor; and adjectival ratings of either exceptional, good, satisfactory, neutral, marginal or unacceptable for the past performance factor. Agency Report (AR) exh. A-9, at 43-44.

In response to the solicitation, the agency received four proposals. The agency ultimately established a competitive range comprised of the protester and CSC, and engaged in several rounds of both written and oral discussions. AR, exh. A-12; files B and I; oral discussion videos 1 and 2.

At the conclusion of those discussions, the agency assigned both the protester's and the awardee's proposals overall ratings of satisfactory under the technical/management factor; ratings of very similar to the protester's proposal and somewhat similar to CSC's proposal under the prior experience factor; and ratings of good to both proposals under the past performance factor. Source Selection Decision Document, at 7. However, while both proposals received overall ratings of satisfactory under the technical/management factor, the agency assigned satisfactory ratings to the protester's proposal under each of the subfactors, whereas it assigned the CSC proposal ratings of very good under three of the subfactors and satisfactory under four of the subfactors of the technical/management factor. Source Selection Decision Document, at 7. In addition, while the awardee proposed a price of \$142,504,296, the protester proposed a price of \$160,729,150. Id. On the basis of these evaluation results, the agency made award to CSC, finding that its proposal represented the best value to the government. After being advised of the agency's source selection decision and receiving a debriefing, ACS filed this protest with our Office.

ACS protests the adequacy of the agency's discussions in connection with a single aspect of its proposed solution to the requirement. ACS, the incumbent contractor, has been providing the agency's requirements using a highly customized software product developed for DOL, and [deleted]. In its initial proposal, ACS offered to transition its software product from the [deleted] it currently uses to an [deleted] solution (referred to in the record as [deleted] or [deleted]), and to do so during performance under its predecessor contract, so that ACS could offer the [deleted]

solution to the agency for the solicited requirement.¹ The protester maintains that the [deleted] solution would offer improved performance and, potentially, lower cost over the life of the solicited requirement.

After evaluating ACS's initial proposal and advising the firm that implementation of the [deleted] solution under its predecessor contract was not acceptable, the agency subsequently advised the protester during discussions that its proposal was based on an incorrect assumption, specifically, the assumption that the agency would allow ACS to migrate its existing system to an [deleted] solution during performance of the predecessor contract. The agency therefore advised ACS that "[b]ecause [ACS's] assumption is incorrect, the Offeror may wish to reconsider the effect of this incorrect assumption and revise its proposal accordingly." AR, exh. C-5, Initial Ratings, Factor 1, deficiency.

In response to the agency's initial discussion question, ACS eliminated the proposed migration from its current [deleted] system to its originally proposed [deleted] solution, stating as follows:

ACS understands, respects, and will attend to the DOL's remarks regarding the [deleted] Migration referenced in our original proposal. In response to DOL's concerns, ACS has halted the [deleted] Migration and removed [deleted] from the revised proposal. Instead, ACS will deliver a . . . solution based upon the proven [deleted].

AR, exh. J-1-1, File 6, at 2.

In the source selection decision, the agency identified a risk associated with the firm's use of its existing [deleted] system. Specifically, the agency noted that, because ACS was proposing legacy technology (i.e., its [deleted] system), support for the system might end, and the expertise required for the [deleted] system and the [deleted] used by ACS in its [deleted] system solution could become scarce over time. Source Selection Decision Document, at 9.

ACS asserts that the agency never identified this specific risk during discussions, despite the fact that the agency engaged in several additional rounds of discussions after ACS proposed eliminating the [deleted] solution and using its [deleted] solution instead. According to the protester, the agency's failure in this regard amounted to inadequate discussions because this risk constituted a new deficiency in its proposal, and the agency was obliged to discuss it with ACS.

¹ Separately, ACS also sent the agency a request to migrate its software product from the [deleted] to the [deleted] solution during performance of the predecessor contract. The agency denied ACS's request.

We have no basis to object to the adequacy of discussions here. Discussions are adequate where offerors are advised of the weaknesses, excesses or deficiencies in their proposals. US Filter Operating Serv's., Inc., B-293215, Feb. 10, 2004, 2004 CPD ¶ 64 at 3. While discussions should be as specific as practicable, there is no requirement that they be all-encompassing or extremely specific in describing the agency's concerns; rather, the legal requirement is that they generally lead the offerors into the areas of their proposals that require amplification or correction, without being misleading. Id. Moreover, where an agency has advised an offeror of its concern, there is no requirement that it raise the issue again in subsequent rounds of discussions, even where the issue continues to be a concern to the agency. Id.

Subsequent to the written discussions described above, the agency and ACS engaged in oral discussions, during which ACS again represented that it intended to use its [deleted] solution instead of the [deleted] solution originally proposed. Specifically, the protester's representative stated:

ACS has withdrawn and completely removed any references to our technology refresh initiative. We referred to this previously as [deleted] migration We intended to have this refresh completed in our current contract year. And quite frankly, cost . . . lower cost infrastructure was the driver behind that We decided not to put it in our current proposal because we believe that implementing both the enhancements [to the [deleted] system] to meet the additional requirements and the technology refresh quite honestly compounded the complexity and introduced risk.

Video 1, at 13:00-13:49. ACS's representative also specifically recognized during those oral discussions that its current [deleted] solution, while generally meeting the solicitation requirements, nevertheless was, in his words, "short of state-of-the-art." Id. at 40:15.

The protester's representatives went on to suggest that, once its [deleted] solution was fully implemented and certified, ACS intended again to propose to the agency migration from the [deleted] solution to the [deleted] solution. Video 1, at 41:55-42:22. In response to that suggestion, the agency's technical evaluation panel chairman specifically cautioned the protester that it would not receive credit for any proposed migration from one [deleted] to another, unless such a migration was included in the firm's proposal:

[A]ny tech value enhancement . . . would probably, may, add value to the best value decision that we have to make. But, what you just stated about doing this sometime in the future, we can't consider that unless it's part of the proposal.

Video 1, at 42:31-42:49. In response, the protester's representative specifically acknowledged that he understood, but that the firm had made a decision--based on

its assessment of implementation risk--to forego offering the migration from one [deleted] to another as part of its proposal. Id.

In summary, the record shows that ACS understood that its proposed [deleted] solution was "short of state-of-the-art," but that it had made a business decision to forego implementation of the state of the art [deleted] solution because of risks inherent in implementing any migration. The record further shows that ACS understood that the agency would not give it credit in the evaluation and source selection decision based merely on a suggestion that the migration could take place sometime in the future. While the protester is correct that the agency did not expressly identify the specific risk it ultimately articulated in its source selection decision during discussions, we think it nonetheless adequately led the protester into that area of its proposal, and made clear to the protester that the consequences of not including the [deleted] solution in its proposal would affect the agency's best value deliberations. In response, the protester clearly decided, on the basis of its business judgment, that not including the [deleted] solution in its proposal was its best--least risky--proposal strategy. We therefore conclude that the agency's discussions with the protester in this area were adequate. Simply stated, an agency need not identify every conceivable consequence of an offeror's business decision in order to discharge its duty to engage in meaningful discussions.

The protest is denied.

Lynn H. Gibson
Acting General Counsel