



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Opti-Lite Optical

File: B-281693.2

Date: July 15, 1999

Jeffrey L. Sachs for the protester.

Phillipa L. Anderson, Esq., Merilee D. Rosenberg, Esq., and Philip Kauffman, Esq.,
Department of Veterans Affairs, for the agency.

Linda C. Glass, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Where General Accounting Office (GAO) sustained a protest against a contract award based on the inadequacy of the agency's documentation of its price/technical tradeoff analysis and recommended that the agency perform and document a proper tradeoff analysis, subsequent protest alleging that the reevaluation was improper because the agency used the original evaluators is denied. Where an agency's corrective action involves reevaluating proposals, there is no requirement that the evaluators be replaced, and the corrective action recommendation did not call for such replacement.
 2. In reevaluating proposals pursuant to GAO recommendation, contracting agency properly evaluated proposals in accordance with the solicitation criteria and made a documented award determination based on a reasonable tradeoff; this award decision did not involve a matter of responsibility which would have been subject to the Small Business Administration certificate of competency procedures.
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DECISION

Opti-Lite Optical protests the award decision of the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. 663-56-98, following VA's reevaluation of proposals under that solicitation. Opti-Lite had earlier protested VA's award of a contract to Classic Optical Laboratories, Inc. under this RFQ, and our Office sustained that protest. Opti-Lite Optical, B-281693, Mar. 22, 1999, 99-1 CPD ¶ 61. In response to our decision, the VA reevaluated the proposals using the original technical evaluation committee and determined that Classic's proposal represented the best value to the government. Opti-Lite protests that VA's reevaluation was improper because the original evaluators were used and because the VA failed to

refer the matter to the Small Business Administration (SBA) for review under its certificate of competency (COC).

We deny the protest.

The solicitation contemplated the award of an indefinite-delivery, indefinite-quantity requirements contract to supply prescription eyeglasses on an as-needed basis to listed participating VA facilities.¹ The stated technical evaluation criteria consisted of methodology of approach, personnel qualifications and past performance. RFQ Part IV at 103. The solicitation further provided that technical and past performance combined were approximately equal in weight to price. Id. at 105.

In our earlier decision, we sustained the protest on the basis that VA's source selection decision was purely mechanical and not adequately documented, and recommended that VA perform and document a proper tradeoff analysis. We also determined that the agency's contemporaneous concern about Opti-Lite's price reasonableness was in reality a concern about its responsibility and recommended that if the agency found Opti-Lite nonresponsible, the matter was for referral to the SBA for review under its COC procedures because Opti-Lite was a small business.

In response to our recommendation, VA reconvened the original evaluation panel and conducted a de novo technical evaluation of all proposals. The agency used the same price evaluation that was performed initially. The reevaluation resulted in the following new ratings for the two proposals (of the total of six) at issue here:

Offeror	Technical	Price	Total
Classic	91	90	181
Opti-Lite	53	100	153

Award Memorandum (Apr. 8, 1999).

The agency found Classic's technical approach to be significantly superior to that of all other offerors. The agency concluded that Classic provided an excellent plan to furnish a high quality product and fitting service and demonstrated extensive experience in filling high volume contracts outside of its geographical area. Classic

¹Further details concerning the procurement are set forth in our earlier decision. As noted there, while the solicitation is denominated as an RFQ, the agency treated it as a negotiated procurement and the entire record, including the RFQ provisions, speaks in terms of the submission and evaluation of proposals/offers and the resulting award of a contract. For the sake of consistency, we continue in this decision to use the negotiated procurement terminology.

provided detailed information on which staff and resources would be utilized to meet the VA's needs. It provided a detailed organization chart that exhibited both depth and experience of key individuals. It provided detailed information demonstrating that critical equipment and suppliers were in place and exhibiting long-term working relationships with key suppliers. It provided detailed subcontractors' information for fitting service, which demonstrated that the subcontractors were licensed dispensing opticians with extensive experience in this type of work. Id. at 2.

On the other hand, the agency determined that Opti-Lite's proposal failed to provide a plan to demonstrate how it planned to perform the work. The evaluators found that Opti-Lite's proposal demonstrated a lack of depth and qualifications of key staff. For example, Opti-Lite provided information for an individual who has an education as an optician, but it was unclear if this individual was a licensed dispensing optician. Opti-Lite provided no organizational chart, although it did provide information for five key individuals. However, Opti-Lite failed to demonstrate whether these key individuals had relevant on-the-job training. Additionally, the evaluators found that Opti-Lite did not demonstrate any experience in high volume contracts nor did it appear that any of its contracts were outside its geographical area. Id. at 2-3.

Based on this reevaluation, the agency determined to award the contract to Classic on the basis that Classic's proposal was more advantageous because it was superior to Opti-Lite's in the areas of methodology, approach, management, personnel and experience. The agency determined that these advantages were critical to meeting the VA's needs and were worth the associated price premium. Id. at 3. Award was made to Classic on April 13. On April 16, Opti-Lite requested a debriefing and by letter dated April 21, 1999, the contracting officer sent a written debriefing by certified mail to Opti-Lite. This protest was filed with our Office on April 23.

Opti-Lite challenges the reevaluation of its proposal on the basis that the agency's use of the original technical evaluation committee without requiring new data to reevaluate technical proposals was prejudicial to Opti-Lite. Opti-Lite essentially argues that the contracting officer and evaluation committee cannot conduct an objective reevaluation.²

The details of implementing our protest decision recommendations for corrective action are within the sound discretion and judgment of the contracting agency. DynaLantic Corp., B-274944.5, Aug. 25, 1997, 97-2 CPD ¶ 75 at 4. Our Office will not

²In its initial submission, Opti-Lite argued that there was no contemporaneous evaluation documentation and that the agency refused to provide it a debriefing. In its report submitted in response to the protest, the agency responded to these allegations. Since the protester's comments did not respond to the agency's explanation we deem those allegations abandoned. TMI Servs., Inc., B-276624.2, July 9, 1997, 97-2 CPD ¶ 24 at 4 n.3.

question an agency's ultimate manner of compliance, so long as it remedies the procurement impropriety that was the basis for the decision's recommendation. QuanTech, Inc., B-265869.2, Mar. 20, 1996, 96-1 CPD ¶ 160 at 2. In our decision, we recommended that the agency perform and document a proper tradeoff analysis because the agency failed to document the reasonableness of its tradeoff analysis and not because of any finding of bias. Here, while Opti-Lite questions whether the same evaluation committee that conducted the initial inadequate evaluation could perform a fair reevaluation, where an agency's corrective action involves reevaluating proposals, there is no requirement that the reviewing personnel be replaced, Arco Management of Washington, D.C., Inc., B-248653.2, Oct. 13, 1992, 92-2 CPD ¶ 241 at 2, and Opti-Lite has provided no evidence that these individuals acted improperly in the reevaluation.

Government officials are presumed to act in good faith and, where a protester contends that contracting officials acted in bad faith, it must provide convincing proof since this Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. ACS Sys. & Eng'g, Inc., B-275439.3, Mar. 31, 1997, 97-1 CPD ¶ 126 at 5. Opti-Lite has provided no evidence to support its speculation in this regard. In fact, Opti-Lite does not specifically challenge the agency's reevaluation of its technical proposal or the agency's determination that Opti-Lite failed to demonstrate an understanding of the VA's needs and failed to provide evidence of how it intended to provide service to the VA's patients, nor has Opti-Lite indicated how being provided with an opportunity to provide additional data or information would have altered this assessment. In short, there is no basis to question the manner in which the agency conducted its reevaluation in response to our recommendation.

Opti-Lite next argues that the agency disregarded our recommendation to have the SBA perform a COC evaluation. Opti-Lite contends that the agency's initial evaluation placed great emphasis on the VA's concerns about Opti-Lite's ability to perform at its proposed price and objects to the fact that this issue was ignored by the agency in its reevaluation.

Opti-Lite misconstrues the decision language with respect to possible referral of the matter to the SBA for a COC determination. In our initial decision, we noted that the contemporaneous analysis of the contracting officer demonstrated that the contracting officer had concerns about Opti-Lite's financial capability to perform the contract at its low price, which in reality concerns Opti-Lite's responsibility. We recommended that if the agency believed that Opti-Lite was nonresponsible, the matter should be referred to the SBA for COC consideration. In its reevaluation, the agency performed a *de novo* evaluation of the proposals and found weaknesses in Opti-Lite's proposed methodology and approach, as well as in its documentation of the qualifications of its personnel. Additionally, the contracting officer used experience and past performance to assess the comparative ability of the offerors to manage a high volume multi-state contract. The contracting officer evaluated

Classic's past performance and experience more highly than Opti-Lite's because Classic demonstrated the kind of experience necessary to perform the requirement. An agency may use traditional responsibility factors, such as experience or past performance, as technical evaluation factors, where, as here, a comparative evaluation of those areas is to be made. Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 3. Accordingly, the reevaluation was not tantamount to a finding of nonresponsibility and consequently referral to the SBA for COC consideration was not necessary, nor was it called for by the terms of our recommendation. The record shows that the agency simply determined that Opti-Lite's proposal was significantly weaker technically than Classic's, as a result of which Classic's proposal was found to represent the best value, notwithstanding the associated price premium.

The current tradeoff analysis is fully documented and the record supports the selection of Classic as reasonable and consistent with the selection criteria in the solicitation. Classic's price was second low overall, next to Opti-Lite's, and its proposal was ranked first technically. Given that the solicitation provided for equal consideration of price and technical factors, the record contains no basis for concluding that the selection of Classic's much higher-rated proposal over Opti-Lite's somewhat lower-priced one was either unreasonable or inconsistent with the solicitation.³ Dawco Constr., Inc., B-278048.2, Jan. 2, 1998, 98-1 CPD ¶ 32 at 5.

The protest is denied.

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³Opti-Lite also complains that the agency failed to issue a stop work to Classic after Opti-Lite filed this protest. Our Office does not review the propriety of an agency's determination to proceed with performance of a contract notwithstanding the pendency of a protest. Mark Group Partners and Beim & James Properties III, Joint Venture, B-255762 et al., Mar. 30, 1994, 94-1 CPD ¶ 224 at 5-6.