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Comptroller General  
of the United States

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## Decision

**Matter of:** M-Cubed Information Systems, Inc.

**File:** B-284445; B-284445.2

**Date:** April 19, 2000

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Kenneth D. Brody, Esq., and Thomas K. David, Esq., David, Brody & Dondershine, for the protester.

Kenneth J. Ingram, Esq., Whiteford, Taylor & Preston, for STG, Inc., an intervenor. Daniel J. Mazella, Esq., and William J. Erle, Esq., Department of the Treasury, 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.

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### DIGEST

1. Agency reasonably determined that the awardee's price was realistic based on comparison with other offerors' prices and with the prior contract price for the same services and properly based its award selection on low price where competing proposals were reasonably determined to be otherwise equal.
2. Contention that agency misevaluated awardee's proposal is denied where the record shows that the evaluation was reasonable and in accordance with solicitation's evaluation criteria.

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### DECISION

M-Cubed Information Systems, Inc. (MC) protests the award of a contract to STG, Inc. under request for proposals (RFP) No. FHQ99R01280, issued by the Department of the Treasury, Financial Management Service (FMS). MC challenges the agency's evaluation of the MC and STG proposals and objects to the agency's price realism analysis.

We deny the protest.

The RFP was issued on July 1, 1999, as a three-part competitive 8(a) set-aside denominated as the FMS Enterprise Infrastructure Contract (EIC), for certain software and hardware, engineering and operational services and maintenance. Part I of the RFP covers labor support services, part II covers maintenance services,

and part III covers supply acquisition. Offerors could elect to propose on all of the RFP or on any one or two of the three parts. RFP part IV, § B.IV.1. This protest concerns part II only. Under part II, the solicitation provided for the award of a single, fixed-price indefinite-delivery/indefinite-quantity (ID/IQ) contract for various specified maintenance services for a 1-year base period with four 1-year options. RFP part IV, § L.IV.17. Under contract line item (CLIN) No. 00025, offerors were to provide a fixed 1-month price for these maintenance services for hardware/software components. RFP part II.A. This amount constitutes the total monthly maintenance cost based on an attached inventory list denominated as section J.IV.1 of the RFP. Id. The monthly maintenance price was to be multiplied by 12 (months) to arrive at the yearly maintenance cost. The RFP further provided that at contract award, the awardee under the maintenance portion would provide FMS with a detailed list of maintenance unit prices of all equipment to be maintained, as well as a complete breakdown of the monthly maintenance charge in CLIN No. 00025. Id.

Award was to be made to the offeror whose proposal was determined to be most advantageous to the government. RFP part IV, § M.IV.2. The RFP provided for an integrated assessment to determine “the overall value of the proposals when judged in the context of program risk; i.e., cost, schedule, and the technical capability to provide expertise required by the program,” id., and permitted award without discussions. RFP part IV, § M.IV.3.3. The RFP identified past performance, project management, technical approach and price as evaluation factors, with past performance of slightly greater importance than project management, which was of significantly greater importance than technical approach. RFP part IV, § M.IV.5. While non-cost factors were significantly more important than price, the RFP provided that as proposals became more equal in technical merit price would increase in importance. RFP part IV, § M.IV.2. Under past performance, an offeror was to be evaluated on its past performance in providing hardware/software/component maintenance services during the past 3 years, for five projects of a relevant scope and complexity. RFP part IV, § M.IV.5.A. Finally, the RFP provided that price proposals would not be point scored, but that price would be evaluated for fairness, reasonableness and appropriateness. RFP part IV, § M.IV.5.D.

The agency received [deleted] proposals by the August 10 closing date. The technical evaluation team (TET) scoring of the three highest rated proposals was as follows:

	MC	STG	[deleted]
Past Performance	47.5	37.5	[deleted]
Technical Approach	8.5	8.17	[deleted]
Project Management	31.08	34.5	[deleted]
Total Point Scores	87.08	80.17	[deleted]

Agency Report, Tab D 1, Technical Evaluation of Part II–Maintenance, Sept. 8, 1999.

The TET determined that the STG and [deleted] proposals had some risks and that the MC proposal had minor deficiencies and some definite strengths, and concluded that the MC offer was significantly better technically than either the STG or [deleted] proposals. Id.

After reviewing the initial TET report, the contracting officer had concerns about the documentation provided by the TET. Agency Report, Tab D 2, Memorandum to File, Sept. 27, 1999. One concern was that the TET in its initial submission created its own scoring under the past performance factor. The contracting officer believed that the past performance score should be calculated by utilizing the actual scores provided by the past performance references. The contracting officer believed that the TET's purpose in reviewing the past performance factor was to look at the risks involved based on past performance data provided and to provide a detailed narrative on the perceived risks. According to the contracting officer the TET should not have scored past performance. As a result, the technical evaluation plan (TEP) was revised to eliminate the past performance matrix sheet. Id.

In response to the contracting officer's instructions, the TET submitted final evaluation results which did not rescore the past performance surveys as it had done previously, instead providing a narrative discussion of the strengths and weaknesses of the proposals with respect to past performance. The contract specialist calculated the past performance factor scores for the offerors using the survey responses. The TET in its final report stated that the [deleted] proposal had four moderate risks, the STG proposal had two high risks and one strength, and the MC proposal displayed one strength and two benefits. Agency Report, Tab D 3, Technical Evaluation of Part II–Maintenance, Sept. 25, 1999. The final scoring of the top three proposals was as follows:

	MC	STG	[deleted]
Past Performance	48.5	45.2	[deleted]
Technical Approach	8.5	8.0	[deleted]
Project Management	31.0	34.5	[deleted]
Total Point Scores	88.0	87.7	[deleted]

Agency Report, Tab D 7, Price Negotiation Memorandum, at 4-5.

The total prices proposed by these three offerors were:

STG	\$5,058,401.28
[deleted]	[deleted]
MC	\$6,416,318.00

Agency Report, Tab D 6, Price Analysis--Part II, at 1.

The contracting officer reviewed the TET's evaluation of each offeror and determined that these three proposals were technically acceptable. Agency Report, Tab F, Award Determination. The contracting officer concluded that MC and STG were technically equal, taking into account the closeness of their point scores and considering the supporting narrative assessment that neither had any deficiencies but only weaknesses in the technical approach and project management factors. The contracting officer also concluded that, while [deleted] score was slightly lower than MC's or STG's, it should be considered equal to MC and STG. Having determined that MC, STG and [deleted] were technically equal, the contracting officer selected STG for award of the maintenance services contract based on its low price.

On September 30, pre-award notices were issued to the unsuccessful offerors. At the September 30 contract signing meeting, the STG representative asked the agency representative why the applicable contract ceiling amount was \$14.8 million and was advised that this was an ID/IQ contract under which FMS can order emergency repair services under the second, unpriced line item, on an as-needed basis, and that this ceiling was the FMS's preliminary estimate for the entire maintenance services portion of the statement of work. Agency Report, Tab L 2, Memorandum to File, Oct. 4, 1999. Also, at this meeting, STG's representative questioned what its firm would be maintaining and was advised that section J.IV.1 of the contract was what offerors were required to use in pricing out their offers for line item one of the contract. Id. At the end of the meeting, the contract was signed by STG. Later, the

contract specialist realized that STG had failed to submit its complete pricing breakdown in support of the section J.IV.1 attachment and left a voicemail message telling STG it needed to submit this documentation.

On October 1, STG supplied its pricing breakdown and advised the agency that there was a mistake in its price proposal. Specifically, STG stated that it had not priced all of the maintenance requirements under the RFP and that its price did not reflect the work specified for all of the required six parts of the section J attachment to the RFP. On October 7, FMS requested STG to certify its claim, and to specify whether reformation or rescission of the contract was desired. Agency Report, Tab L, 5. On October 19, STG certified its claim and sought reformation of the contract price to \$8,505,081.15, which exceeded the prices of the next two technically acceptable low offerors. On October 26, the agency denied STG's claim and informed STG that the contract could not be reformed to correct STG's unilateral mistake discovered after award and that STG could either perform at the contract price or seek rescission of the contract. Agency Report, Tab L 10, Contracting Officer's Decision, Mistake in Bid Claim. By letter dated November 2, STG informed FMS that it had decided, after discussions with its suppliers, to perform at the original contract amount. Agency Report, Tab L 11, Letter from STG to Contracting Officer (Nov. 2, 1999). On January 7, 2000, MC was provided a debriefing and MC filed this protest on January 12.

MC essentially challenges the agency's evaluation of the proposals and the award decision.

The evaluation of technical proposals, including the evaluation of past performance, is primarily the responsibility of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them, and it must bear the burden of any difficulties resulting from a defective evaluation. Federal Envtl. Servs., Inc., B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. In reviewing protests challenging an agency's evaluation of proposals, we will not substitute our judgment for that of the agency regarding the merits of proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's evaluation criteria, and with procurement statutes and regulations. Id. A protester's mere disagreement with the agency's evaluation does not render it unreasonable. CORVAC, Inc., B-244766, Nov. 13, 1991, 91-2 CPD ¶ 454 at 5.

The protester's primary challenge to the proposal evaluation is based on the contention that the contracting officer misapplied the solicitation's past performance evaluation criteria when she eliminated the TET's responsibility for numerically scoring past performance and instead used the scoring provided by the references on

the past performance surveys.<sup>1</sup> The protester contends that this scoring methodology did not take into account the TET's main concern that STG failed to provide relevant past performance references.<sup>2</sup>

We find the agency's past performance evaluation unobjectionable. Under this evaluation factor, as noted above, offerors were to be evaluated on their past performance in providing hardware/software/component maintenance services during the past 3 years, for projects of relevant scope and complexity. RFP part IV, § M.IV.5.A. The RFP defined relevant scope and complexity as including projects similar or identical to those hardware/software/component maintenance services required in the RFP. In this regard, individual references provided by the offeror for five projects were to complete and submit past performance survey forms which included a review of the offeror's demonstrated success in meeting/providing/promoting; (a) quality of product/service; (b) timeliness of performance; (c) key personnel; (d) business relations; (e) price control; and, (f) any other significant performance measures or standards. The RFP stated that the survey scores would aid in determining the points awarded for this factor. RFP part IV, § M.IV.5.A.

As called for by the RFP, STG submitted five references. The three references considered most relevant by the agency involved system maintenance for the Department of State IBM mainframe, nationwide maintenance services to the Internal Revenue Service (IRS) for a variety of products including servers, desktop computers, laser printers, dot matrix printers, and monitors and maintenance support for all IBM-related equipment at FMS and its regional operating centers. The references rated STG on factors related to quality of service, timeliness of

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<sup>1</sup> The protester also argues that the TET determined its proposal to be significantly better than STG with respect to technical approach and project management. However, the record does not support this argument. The consensus TET report score for technical approach for MC was 8.5 and for STG was 8.0; for project management, the TET score for MC was 31.0 and the STG score was 34.5. Agency Report, Tab D 3. There was simply no meaningful distinction between the respective assessments.

<sup>2</sup> To the extent the protester argues that the original TEP gave the TET the responsibility to perform an independent past performance evaluation and numerically score past performance and that this plan was not adhered to, the protest is without merit. Source selection plans provide internal agency guidelines and, as such do not give outside parties any rights. Centech Group, Inc., B-278904.4, Apr. 13, 1998, 98-1 CPD ¶ 149 at 7 n.4. It is the evaluation scheme in the RFP, not internal agency documents, such as source selection plan, to which an agency is required to adhere in evaluating proposals and in making the source selection. Id.

performance, key personnel, business relations and price control.<sup>3</sup> Compiling the references' scoring resulted in an overall score of 42.5 for STG, which the TET had initially reduced to 37.5 because the references appeared to rate technical staff, rather than maintenance staff, and were therefore viewed as less relevant. As explained above, the contracting officer determined that it was improper for the TET to rescore under the past performance factor, but rather the TET's purpose in reviewing the past performance factor was to look at the risks involved with the past performance data provided and to provide a detailed narrative on the perceived risks. Implementing this directive from the contracting officer, the actual scores provided by the past performance references were used and the TET provided narrative assessments of the past performance factor for each offeror. With respect to STG, the consensus TET report found under the quality of product/service subfactor that one of STG's references was not an adequate reference for the types of service FMS needed and that another reference did not indicate the type of server maintained by STG. The TET considered these as weaknesses, but did not conclude that a risk arose as a result. Under timeliness of performance, the TET noted that one STG reference did not rate STG on maintenance but the TET also did not consider this a risk. For price control, the TET noted that one reference did not rate this factor; however, the TET also did not consider this to be a risk. With respect to key personnel and business relations, there were no weaknesses noted by the TET.

The protester argues that by not allowing the TET to numerically score past performance, the agency violated the evaluation criteria. We do not agree. The RFP past performance evaluation criteria provided simply that the survey scores would aid in determining the points awarded for this factor. The RFP did not state how the survey scores would be used and did not provide that the TET would independently score the past performance factor. We do not find it objectionable for the contracting officer to conclude that it was inappropriate for the TET to score the past performance factor, since under the past performance survey, references rated offerors on particular factors, such as compliance with quality requirements for products, technical excellence, accuracy of reports, meeting interim and final milestones, responsiveness to technical direction, qualification of personnel assigned to the contract, teaming relationships, prompt notification of problems, responsiveness, modifications and the ability to understand the importance of operational efficiency. These are all factors for which the references were in a unique position to assess the effectiveness of the offerors. Accordingly, we do not view as unreasonable the contracting officer's assessment that it was unfair for the TET to evaluate offerors on their abilities to meet these performance standards. Contrary to the protester's argument, the TET did document its position on the relevance of the offerors' references and did specifically consider the risk of performance for STG based on the relevance of its references. As explained, above,

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<sup>3</sup> The scoring for each subfactor was unsatisfactory--0, fair--1, good--2 and excellent--3.

the TET considered the relevance of STG's references in its evaluation and in certain areas considered that the lack of relevance constituted weaknesses in STG's proposal, but not risks, all of which was ultimately taken into consideration by the contracting officer. The contracting officer concluded that STG's references were sufficiently relevant that it was proper to consider them, and we do not view the contracting officer's determination in this regard as unreasonable. In short, the final past performance evaluation was unobjectionable.

MC disputes that the three technically acceptable proposals were essentially technically equal, arguing that the TET, even after being directed not to numerically score past performance, still determined that MC was significantly technically superior to the other offerors. MC contends that the contracting officer ignored the concerns and risks documented by the TET, and improperly made award on the basis of initial proposals without making a cost technical tradeoff.

Source selection officials are vested with a broad degree of discretion to determine the manner and the extent to which they will make use of evaluation results, and they are not bound by the recommendations made by lower-level evaluation panels. Grey Adver., Inc., B-184825, May 14, 1976, 76-1 CPD ¶ 325 at 11; PRC, Inc., B-274698.2, B-274698.3, Jan. 23, 1997, 97-1 CPD ¶ 115 at 7. In a negotiated procurement with a best value evaluation plan, point scores are useful as guides but do not mandate automatic selection of a particular proposal. PRC, Inc., supra, at 12. Where selection officials reasonably regard proposals as being essentially equal technically, cost can become the determining factor in making award notwithstanding that the evaluation criteria assigned cost less importance than technical factors. The Parks Co., B-249473, Nov. 17, 1992, 92-2 CPD ¶ 354 at 4. Moreover, an agency may properly award to a lower rated, lower cost offeror, even if cost is the least important evaluation factor, if it reasonably determines that award to the higher cost offeror is not justified given the level of technical competence available at the lower cost. PRC, Inc., supra, at 12. Here, the record shows that the contracting officer's decision to award the contract to STG was both reasonable and consistent with the RFP's evaluation scheme.

After reviewing the evaluation materials, including the TET's recommendation, the contracting officer concluded that the evaluation indicated that MC and STG were technically equal. She noted that the MC and STG proposals were scored, not including past performance, 39.5 and 42.5, respectively. Their overall score was 88.00 for MC and 87.70 for STG. The contracting officer noted that the supporting narrative stated that both offerors had only weaknesses and no deficiencies in the technical approach and project management factors. The contracting officer further noted that MC had one minor weakness in the technical approach factor and two in the project management factor, while STG had two weaknesses in the technical approach factor. On this basis, she concluded that the offerors were technically

equal and awarded to STG because of its lower price. In making the award determination, the contracting officer specifically concluded that there was little risk associated with STG's ability to perform the work.

The record shows that the contracting officer specifically evaluated the TET's enumerated weaknesses with respect to the proposals, and indicated her agreement or disagreement with the assessments. In the case of the evaluation of STG, in several instances, the contracting officer considered the TET's criticisms to be meaningless and not relevant. Agency Report, Tab D7. For example, under overall management plan, the TET noted a major strength for STG was that it generally described an effective management plan, but cited as a weakness the fact that STG's proposal discussed some irrelevant factors. The contracting officer considered the TET's comments to be meaningless, since the TET had already recognized that STG had presented an effective plan. The record shows that the contracting officer evaluated the TET report and analyzed the weaknesses for each offeror cited by the TET, along with the numerical rating, and concluded that the proposals were technically equal. In sum, the record establishes that the contracting officer reasonably determined that MC's and STG's proposals were technically equal and properly awarded to STG based on its lowest price.

The protester also contends that the agency did not perform an adequate assessment of STG's price proposal. The RFP provided that price would be evaluated for fairness, reasonableness, and appropriateness, without specifying the manner or degree of analysis to which proposals would be subjected. Essentially, the protester is arguing that STG's price was so low that the agency should have had concern about the realism of the proposed price. We note first that the solicitation did not commit the agency to analyze price realism (except, perhaps, in the context of evaluation of the "appropriateness" of proposed prices). Moreover, an allegation that STG submitted an unrealistically low offer provides no basis for protest because there is no prohibition against an agency accepting a below-cost offer on a fixed-price contract. Shel-Ken Properties, Inc.; McSwain and Assocs., Inc., B-261443, B-261443.2, Sept. 18, 1995, 95-2 CPD ¶ 139 at 3. In the context of fixed-price procurements, the only potential bases of protest related to an offeror's low price (other than matters related to the offeror's responsibility) are generally that the low price indicates the offeror's lack of understanding of the solicitation's requirements or constitutes an excessive risk. Consolidated Eng'g Servs., Inc., B-279565.5, Mar. 19, 1999, 99-1 CPD ¶ 76 at 10. Here, however, STG's price was not significantly lower than the price of other offerors, and we therefore see no legal requirement for the agency to have had concern in that regard.

To the extent that MC appears to question STG's ability to perform the contract at its proposed price, that allegation concerns STG's responsibility. Our Office will not review the agency's determination that STG was responsible absent a showing of possible bad faith by government officials, or the misapplication of definitive

responsibility criteria, neither of which is present here. Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2000); Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115 at 6 n.3. In sum, the agency's determination that STG's proposed price was reasonable is unobjectionable.

The protester next argues that the agency was aware prior to the contract signing that STG appeared to lack an understanding of the RFP requirements and also failed to show an understanding of the pricing components of its own proposal. On this basis, the protester maintains that STG should not have been allowed to execute the contract and its proposal should have been rejected by the agency due to a gross mistake in price. Notwithstanding whatever confusion existed on STG's part and the firm's request for correction of a mistake (a request denied by the agency), we do not believe that the agency's actions violated any procurement statute or regulation.

In this regard, the protester surmises that the agency may have engaged in discussions with STG during the contract signing meeting prior to contract award. The protester contends that to the extent that STG was given an opportunity to qualify its proposal during the contract signing meeting, the agency was obligated to establish a competitive range and request final proposal revisions from the offerors remaining in the competitive range.

The record simply does not support the protester's claim that discussions were held with STG during the contract signing meeting. While there appeared to be some discussion between STG and the agency concerning the requirements of the contract, STG was not given an opportunity to revise or qualify its already technically acceptable offer.

Lastly, the protester contends that the agency improperly relaxed a mandatory solicitation requirement by not requiring STG to provide copies of its price breakdown at the time of award.

The solicitation required that the awardee provide, at time of contract award, a detailed list of maintenance unit prices of all equipment to be maintained, as well as a complete breakdown of the monthly maintenance charge. RFP part II, § B.II.1.A. The agency failed to request this pricing breakdown at the contract signing meeting. STG did, however, submit this information the day after contract award. The record shows that this pricing information was not used by the agency for evaluation purposes; the evaluation was based instead on the fixed-price monthly maintenance prices. The agency reports that the detailed list of unit prices is used in post-award administration of the contract as a basis to negotiate task orders and any

modifications to the maintenance contract that may occur because of changing technology.<sup>4</sup> In these circumstances, we fail to see how MC was adversely affected by the agency's allowing STG to submit its pricing breakdown one day after award.

The protest is denied.

Comptroller General  
of the United States

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<sup>4</sup> The record shows that the actual fixed monthly price is used to determine the pricing of the task orders. The initial task order issued to STG under this contract was valued by the agency at \$968,000 based on the contract price and while STG submitted itemized pricing significantly in excess of this amount, the agency required STG to resubmit its itemized pricing to reflect the agreed-upon contract price. Agency Report, Tab 60.