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

**Comptroller General  
of the United States**

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# Decision

**Matter of:** SI International, SEIT, Inc.

**File:** B-297381.5; B-297381.6

**Date:** July 19, 2006

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Richard J. Vacura, Esq., Michael E. Anderson, Esq., Jonathan T. Linde, Esq., and Tim A. O'Brien, Esq., Morrison & Foerster LLP, for the protester.

Richard P. Rector, Esq., David E. Fletcher, Esq., Eliza P. Nagle, Esq., Eric M. O'Neill, Esq., and Nancy O. Dix, Esq., DLA Piper Rudnick Gray Cary US LLP, for Datatrac Information Services, Inc., an intervenor.

Mark A. Allen, Esq., and Joel R. Alvarey, Esq., Department of Homeland Security, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. In a competition conducted among vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, agency reasonably found that both the awardee and protester met the solicitation's requirements for an "emergency plan," where both plans adequately addressed the objectives and requirements of the solicitation and both vendors included the price for the plan in their quotations.
2. Discussions that were part of the agency's implementation of limited corrective action were not unfair, where the issues raised during discussions reasonably addressed the procurement flaws identified by GAO in a prior protest, and the agency raised with the vendors areas of weakness in their quotations; agency was not required to raise with the protester features that were identified as strengths, even where the agency considered them only to be of "limited value."
3. Source selection decision was reasonable, where agency selected the lower priced quotation between two vendors whose quotations were reasonably found to be technically equal.

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## **DECISION**

SI International, SEIT, Inc. (SI) protests the award of a blanket purchase agreement (BPA) and “first call” to Datatrac Information Services, Inc. (Datatrac), issued by the Department of Homeland Security, United States Citizenship & Immigration Services (USCIS), under request for quotations (RFQ) No. HSSCCG-05-Q-0020 for records digitization services.

We deny the protest.

### **BACKGROUND**

Currently, over 84 million “Alien Files” (A-files) are maintained and distributed among the National Record Center and various USCIS facilities. Performance Work Statement (PWS) ¶ 1. When USCIS personnel need to locate information from an A-file not located in their office, they query the National File Tracking System (NFTS) or other tracking and indexing system to locate the file and request personnel at that location to physically mail either the A-file or a copy of it. As part of an overall estimated \$150 million digitization effort to significantly reduce paper-based processes at USCIS, the USCIS has a need for a contractor to provide electronic access to all A-file data. RFQ §§ 1, 2.4; PWS ¶ 1.

The RFQ sought to award a BPA to a contractor to provide a variety of records management services as part of this digitization effort. Work performed through the BPA will be ordered as “calls” on either a fixed-price or time-and-materials basis, depending on the nature of the call. RFQ § 2.7. The “first call,” which is at issue in this protest, was issued on a fixed-price basis and included the following records management services: (1) maintain a “contractor owned-contractor operated” facility in accordance with National Archives and Records Administration standards to process and scan A-files, (2) arrange a delivery system for the A-files to be transferred between facilities, (3) scan and index paper A-files and related documents into a digitized format, and (4) provide and maintain a temporary file storage solution of digitized files in a format approved by the government and accessible to USCIS customers. PWS ¶¶ 1, 12.2. The A-files to be processed for the first call included alien registration files, “I-485” forms, certificate files, master index files, “flex-o-line” files, and historical files, with the understanding that this list of file types would be expanded in later calls as processes and technologies became more fully defined. *Id.* ¶ 1. The agency explains that the processing of these files, while necessary, is not “mission critical.” SI Hearing Transcript (Tr.) at 226, 422, 591.<sup>1</sup>

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<sup>1</sup> Our Office conducted a 3-day hearing where five agency witnesses, two SI witnesses, and one Datatrac witness testified concerning the issues in this protest.

Competition for the BPA and first call was limited to only those vendors that held contracts under General Services Administration (GSA) Federal Supply Schedule (FSS) Group 36 for Office Imaging and Document Solutions. RFQ § 2. The RFQ stated that the duration of the BPA would be 5 years or the expiration of the vendor's FSS contract, whichever comes first. Id. § 2.6. The solicitation provided that award of the BPA and first call would be made on a "best value" basis, considering technical and price factors. The technical factors--BPA management approach, resumes of key personnel, performance approach for the initial call, and past performance--were equally weighted and combined were "significantly more important than" the price factor. Id. § 8.4. The RFQ also contemplated that evaluators could give "added weight" in the technical evaluation based on "Special Preference Factors," which included small business and HUBZone utilization, and having an approach that would "reach full operational status within 60 days of award." Id. § 8.5.5. The RFQ stated that pricing for the call would be evaluated for "realism and reasonableness." Id. § 8.6.3.

The RFQ required each vendor, in its quotation, to provide a Project Management Plan (PMP) with the initial call that "shall include all requirements described in paragraph 4.2.1 of the initial call PWS." Id. § 7.8.1. Paragraph 4.2.1 of the PWS identified 12 different plans that were to make up the PMP, one of which was an emergency plan,<sup>2</sup> and referred vendors to "Attachment A.2" of the PWS for "detailed language of how the Contractor will address" the 12 plans in the PMP. With regard to the emergency plan, the evaluation of which is challenged here, Attachment A.2 states:

## **5.0 EMERGENCY PLAN**

The Contractor shall submit an Emergency Plan that shall meet the following Objectives and Requirements.

### **5.1 Objectives:**

- Establish contingency plans to ensure continuity of every operation during special and emergency situations such as fire, accidents, civil disturbances, national emergency, systems failure, labor walk-out, or other circumstances which could jeopardize the operations of USCIS Records Management Activities

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<sup>2</sup> The other plans included a project organization and communications plan, security plan, quality control plan, quality improvement plan, reporting notices and invoices plan, transition plan, personnel plan, training plan, daily operations plan, backlog avoidance/reduction plan, and earned value management system. PWS ¶ 4.2.1.

- Coordinate Contractor plans with those of the USCIS ensuring appropriate linkages between the plans

### **5.2. Requirements:**

- Provide for the distribution of the Plan
- Provide for the identification of key Contractor personnel in the event of an emergency
- provide for orientation and training of the Contractor's employees regarding their responsibilities in the event the Emergency Plan is activated
- Appropriate cross-references to related plans

### **5.3 Records Management Operations**

The Contractor shall formalize any changes in the plan in accordance with paragraph 4.2.1 of the PWS [which required approval of Contracting Officer's Technical Representative].

PWS, attach. A.2.

In addition to the PMP, the PWS also required the contractor to assist the agency in developing a “Contingency Plan” relating to facility systems in accordance with a Systems Development Live Cycle (SDLC) Manual.<sup>3</sup> This contingency plan “describes the steps to be taken to ensure that an automated system or facility can be recovered from service disruptions in the event of emergencies and/or disasters.” PWS ¶ 7.9.2. The contingency plan was to be developed post-award through the joint efforts of the agency and selected vendor, who would meet after award of the BPA and together evaluate a number of “project risk factors,” such as development time and costs, mission criticality, system security, system performance, business processes, and development schedule, in order to best determine the plan that should be put in

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<sup>3</sup> The SDLC manual describes the “methodical progression of activities” that USCIS undertakes for “planning, developing, testing, implementing, maintaining, and retiring” agency systems. AR, Tab 12, SDLC Manual, ¶ ES1.0. In addition to developing a contingency plan, the vendor is also required to assist with other SDLC processes, including developing a sensitive system security plan, performing a risk assessment to identify threats and vulnerabilities, establishing security test and evaluation parameters, and assisting with acquiring facility certification and accreditation. PWS ¶ 7.9.2.

place to handle service disruptions. See Agency Report, Tab 12, SDLC Manual, at 32; Tr. at 722-25, 728-35.

In August 2005, SI and Datatrac responded to the RFQ with quotations of \$14,647,920 and \$13,785,450, respectively.<sup>4</sup> Out of a maximum possible technical score of 22 points, SI's quotation received a score of 22 and Datatrac's quotation received a score of 21. The 1-point difference was based on a weakness found under the performance approach factor because Datatrac's quotation indicated that the agency was to manifest A-files and place barcode shipping labels on the boxes of A-files to assist the firm with tracking the documents. The agency determined that since it did not have the processes or personnel to support this requirement, "the total cost to the Government to implement the Datatrac manifesting approach would be \$772,650 plus about a six month delay in modifying the IT [Information Technology] systems to accommodate the Datatrac approach." Agency Report (AR), Tab 3, Best Value Analysis Report, at 1; Datatrac Protest Record, Tab P, Award Determination, at 1-2. After adding this additional amount to Datatrac's quoted price, the agency concluded that the weakness in Datatrac's quotation was such that award to SI based on its higher-rated quotation was worth the relatively small difference in adjusted price between quotations. Datatrac Protest Record, Tab P, Award Determination, at 3. USCIS awarded the BPA and first call to SI in September, and Datatrac protested, alleging numerous evaluation errors and contending that the discussions were inadequate.

At the conclusion of a 2-day hearing on that protest, the GAO attorney handling the case conducted an "outcome prediction" alternative dispute resolution (ADR) conference and identified a number of issues as problematic. The first was that the agency may have conducted discussions unfairly by not raising with Datatrac the weakness arising from the firm's manifesting approach, while allowing SI to further revise its quotation regarding key personnel after the discussion period closed. Furthermore, the agency could not support its assessment that the weakness concerning manifesting translated to \$772,650 in additional costs plus a 6-month delay to the government. In addition, it was not clear from the record whether SI had priced its emergency plan, as required under the RFQ. The GAO attorney suggested that the agency "reopen discussions to treat the vendors fairly" and "perform a new price analysis and cost technical tradeoff . . . in the two areas, the emergency plan and the evaluation of the manifesting costs." Datatrac Hearing Tr. at 597. The agency agreed to take corrective action, and our Office dismissed the protest. Thereafter, at SI's request, the agency disclosed vendors' proposed prices to the competitors. AR, Tab 5, Letter from USCIS to SI (Dec. 12, 2005).

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<sup>4</sup> One other vendor, whose quotation is not relevant here, also responded to the RFQ.

On December 16, the agency notified vendors of its intent to take limited corrective action. Although it did not identify the topics for discussion, the agency advised the vendors that

[a]ny changes in the Price and Technical quote must be linked to discussion questions. No changes can be made to the Price and Technical Quote that are not linked to Discussion questions asked by the Government. Revisions to the Price and Technical Quote not linked to the Government's Discussion questions with a vendor will not be accepted, considered, or evaluated.

AR, Tab 1, Letters from USCIS to SI and Datatrac (Dec. 16, 2005).

On December 22, the agency issued letters to the three vendors that remained in the competitive range. All three were provided their "Original Request for Clarifications" and given the opportunity to further revise their responses to those requests. As the agency stated:

If after your review of this information it is determined that the clarifications have an impact on the original prices submitted[,] please make the necessary adjustment to your price schedule. You will also be required to provide a detailed explanation on how the price was affected.

AR, Tab 1, Letter from USCIS to SI (Dec. 22, 2005), at 1; Letter from USCIS to Datatrac (Dec. 22, 2005), at 1.

In addition, the agency asked SI whether a statement in its price quotation that its emergency plan was not priced meant that

you have not provided an Emergency Plan as required or that the Emergency Plan is available but at a separately negotiated price. Again, [if] after your review [of] this information it is determined that the Plan was not priced, please make the necessary adjustment to your price schedule. You will also be required to provide a detailed explanation on how the price was affected.

AR, Tab 1, Letter from USCIS to SI (Dec. 22, 2005), at 1.

Also, the agency advised Datatrac that USCIS "will not support manifesting and placing of barcode labels on boxes of files to be shipped to your facility" (which was the weakness that the agency had identified in the previous evaluation) and asked the firm to

state how you will support internal tracking of A-files at your facility without [the Office of Records Services] providing you with a paper

and electronic manifesting document. Also should the cost of your quote be affected by this change[,] please provide the new pricing along with a detailed explanation on how the price was affected.

AR, Tab 1, Letter to Datatrac (Dec. 22, 2006), at 1.

On December 23, SI asked the agency whether it could further revise its price based on “updated pricing from our team members.” AR, Tab 1, Letter from SI to USCIS (Dec. 23, 2005). The agency responded that “[t]he government stands by the instructions in the letter dated December 22, 2005 with respect to clarifications.” AR, Tab 1, Letter from USCIS to SI (Dec. 30, 2005).

On January 4, 2006, the date set for receipt of final revisions to the quotations, both Datatrac and SI responded with revisions to their technical approach and both vendors affirmed that they had made no change to their price quotations.

In its response, Datatrac changed its manifesting approach so that the agency no longer was required to manifest or label boxes, and affirmed that Datatrac, and not the agency, would be responsible for these efforts. The firm provided additional detail about how it would track A-files in three “redlined” pages to be substituted into its quotation.<sup>5</sup> AR, Tab 1, Letter from Datatrac to USCIS (Jan. 4, 2006) and Revised ¶ 1.1.2.

SI responded with several “clarifications and amendments” to its technical quotation, but stated that its price “has not changed based upon our understanding of the parameters set forth in your letter dated December 22, 2005, which limited our ability to revise our price.” AR, Tab 1, Letter from SI to USCIS (Jan. 4, 2006), at 1. With regard to its emergency plan, SI deleted a constraint and assumption in its price quotation, and affirmed that the “[c]omplete implementation of the Emergency Plan is included in SI[’s] initial pricing, including the proposed Disaster Recovery Site described in A.6.5 of the Project Management Plan.” *Id.* at 12 (emphasis in original).

On January 13, USCIS e-mailed SI requesting “clarification” on whether the deletion of the constraint and assumption coupled with the statement regarding emergency plan pricing meant that the “project management plan is deleted or does it mean that that is still included and that activation of the alternate site mention[ed] in the

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<sup>5</sup> The RFQ required changes to be accompanied by amended pages, stating that “[a]ny changes from the original quote shall be indicated through use of a vertical line, placed adjacent to the change, within the right side margin of the page.” Vendors were also required to note the date of the amendment on the change page. The RFQ further cautioned that “[q]uote amendments shall be allowed only prior to the due date for quotes” and “[q]uote revisions shall be permitted only at the [contracting officer’s] request. RFQ § 7.7.1.

original PMP is included in the current original pricing.” AR, Tab 1, E-mail from USCI to SI (Jan. 13, 2006), at 1; see Tr. at 881.

On January 17, SI responded that it did not intend to delete the disaster recovery site from its quotation and that the site constituted [REDACTED] of the total price quotation. SI then added:

We understand [that] the Disaster Recovery Site was not expressly called out in the RFP, but it was proposed by [SI] as part of our value added solution. Should the government decide it does not want the Disaster Recovery Site as part of our value added solution, it is severable from the rest of our proposed Emergency Plan, and deleting it at the government’s option will have no impact on the remaining Emergency Plan. If the Government does not want the Disaster Recovery Site, our proposed price would be reduced by [REDACTED] reducing our overall proposal price to [REDACTED].

AR, Tab 1, Letter from SI to USCIS (Jan. 17, 2006), at 2-3.

The vendors’ responses to the clarification and discussion questions were forwarded to the technical evaluation team (TET), and the TET issued a “draft” report. In that draft report, the TET stated that “[a] significant strength in the SI . . . quote is a robust emergency plan that outlines the establishment of a disaster recovery site in support of contingency planning. SI . . . indicates the costs for this site are already included in the pricing.” AR, Tab 3, Best Value Analysis Report, at 4; Tab 9, Draft Final TET Report, at 8. This evaluation conclusion differed from the findings preceding the earlier Datatrac protest, where the TET had rated SI’s emergency plan as a strength, but not a significant strength, based on the inclusion of the disaster recovery site. The TET explains that it added the word “significant” to the evaluation since it was clear that SI’s quotation now included the price for its emergency plan, whereas before it was unclear whether the price had been included. Tr. at 569, 571, 1031-32.

On February 9, the contract specialist<sup>6</sup> commented that the word “significant” “needs to be removed from the [draft] report” on the basis that SI had not changed its emergency plan since the initial evaluation. AR, Tab 9, Agency E-mails, at 53. However, on February 23, the contracting officer requested additional information regarding the value of the disaster recovery site, stating that “the [source selection authority (SSA)] must understand what the added value is and how significant

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<sup>6</sup> The contract specialist for the re-evaluation served as the contracting officer under the first evaluation. After the Datatrac protest, a new contracting officer was appointed to oversee the evaluation and serve as the source selection authority. Tr. at 897-99.

‘significant’ is. Therefore we need for you to provide some additional information that will give the SSA a clearer understanding of significant and added value.” *Id.* at 66.

As a result of these inquiries, the TET members, chairperson, and advisor engaged in a series of communications among themselves and with the contract specialist and contracting officer (who was also the SSA) regarding Datatrac’s and SI’s emergency plans, the valuation of SI’s disaster recovery site, and how to account for this in the evaluation. The TET informed the SSA that SI’s proposed disaster recovery site was of “limited value” and therefore deserving only of a strength and not a significant strength in the final evaluation. The TET reasoned that “there is a small likelihood of using the Disaster Recovery site” since it would only be used in case of a “catastrophic event,” and that “any harm from the disruption of scanning operations is mitigated by the fact that [USCIS] still [has] access to paper files.” In this regard, the TET noted that the files to be scanned under the call were not “time sensitive” and did not need to be readily accessible. Furthermore, SI’s disaster recovery site, as proposed, would not be operational immediately because site employees would need to obtain security clearances. The TET also noted that it had not determined whether a disaster recovery site was needed, or even “desirable,” as that determination would not be made until a risk assessment and contingency plan were established under the SDLC process. *Id.* at 62; Tab 3, Best Value Analysis Report, at 5; Tr. at 420, 479-80, 493-95, 1006. For the foregoing reasons, the word “significant” was removed from the final evaluation report; however, SI still received a strength for its “robust emergency plan” under the performance approach factor. AR, Tab 2, Final TET Report, at 8; Tab 3, Best Value Analysis Report, at 5.

The TET concluded that SI’s quotation deserved the maximum possible score under each of the evaluation factors, noting several strengths and no weaknesses under each factor, and concluding that the quotation provided “enhanced value to the government.” AR, Tab 2, Final TET Report, at 16; Tab 3, Best Value Analysis Report, at 5. The TET also concluded that Datatrac’s quotation deserved the maximum possible score under each of the evaluation factors, noting several strengths (albeit somewhat different strengths from SI) and no weaknesses under each factor. The previously assessed weakness associated with Datatrac’s manifesting approach was removed because the TET found that Datatrac’s explanation of its approach “demonstrat[ed] an outstanding knowledge of USCIS records processing” and that the approach provided “enhanced value to the Government.”<sup>7</sup> AR, Tab 2, Final TET Report, at 14; Tab 3, Best Value Analysis Report, at 5. The TET did not express a

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<sup>7</sup> Both Datatrac and SI also received 6 points under the “special preference factors” for using small businesses, performing in a HUBZone, and providing a plan to “standup” its facility within 60 days of award. AR, Tab 2, Final TET Report, at 9, 15.

preference for either Datatrac or SI in its final report to the SSA.<sup>8</sup> AR, Tab 3, Best Value Analysis Report, at 5.

In making his best value decision, the SSA considered the TET report findings, the communications among the evaluators concerning the evaluation and valuation of SI's emergency plan, and the vendors' prices.<sup>9</sup> The SSA considered the strengths in each firm's quotation, including the strength in SI's quotation relating to its "robust emergency plan," and specifically reviewed each firm's emergency plan for compliance with the RFQ. Tr. at 217, 234. Although the SSA noted that both SI's and Datatrac's quotations were "technically outstanding in all areas," he also considered that SI's price for the first call (\$14,647,920) was \$862,470 higher than Datatrac's price of \$13,785,450. AR, Tab 3, Best Value Analysis Report, at 6. The SSA specifically commented on SI's "attempted price reduction offer [of January 17 that] was made in response to the [contract specialist's] clarification request of 13 January 2006." Id. The SSA declined to reduce SI's price or delete the disaster recovery site from SI's quotation because he determined that the contract specialist's communication was only a clarification and was not an invitation to revise the price or technical quotation, and that SI's "offer" occurred after the date set for receipt of quotation revisions. He further concluded that in this best value competition for a fixed-price award, it was "not the Government's place to add or exclude features in a proposal." Id. at 6; Tr. at 168-85, 1071-72, 1077.

After considering the technical merits and price of each quotation, the SSA selected Datatrac for award. The SSA concluded that Datatrac's lower-priced quotation "offers the best mix of technical and cost value in accordance with the award criteria" and that it "offers the best value to the Government, all factors considered." AR, Tab 3, Best Value Analysis Report, at 6. After receiving notice of award and a debriefing, SI protested to our Office.

## ANALYSIS

SI protests the evaluation of both its and Datatrac's quotations. It argues that the agency misevaluated the vendors' emergency plans, misevaluated Datatrac under the special preference factors, and conducted a flawed price evaluation. SI also alleges unequal treatment of the vendors both in the evaluation of quotations and in the

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<sup>8</sup> The TET gave the third vendor's quotation a score that was less than the maximum and found the quotation to be inferior to both Datatrac's and SI's quotations. AR, Tab 2, Final TET Report, at 16.

<sup>9</sup> A new price analysis was not performed, since neither vendor altered its price quotation. The SSA relied on the analysis performed prior to the Datatrac protest. Tr. at 137-38.

conduct of discussions. SI further asserts that the agency's discussions with it were inadequate.

When an agency conducts a formal competition under the FSS program, we will review the agency's actions and source selection decision to ensure that the evaluation was fair and reasonable, and consistent with the terms of the solicitation. WorldWide Language Res., Inc., B-297210 et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 3; COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5. As discussed below, based on our review of the record here, we find no basis to question the agency's award decision.

### Emergency Plan

SI contends that SI's and Datatrac's emergency plans were evaluated unfairly under the RFQ. It complains that Datatrac's emergency plan does not meet the required objective of Attachment A.2 to "[e]stablish contingency plans to ensure continuity of every operation during special and emergency situations" because the plan lacks sufficient detail and does not include a disaster recovery site, which SI asserts is necessary to meet this objective. SI Comments at 8-9; SI Post-Hearing Comments at 5-8, 10-13. SI contends that the agency waived the required objective for the benefit of Datatrac without informing SI or allowing it to revise its quotation.

The agency responds that both vendors' emergency plans met the requirements and objectives of Attachment A.2. The agency explains that neither vendor provided "complete" detailed plans and in fact that level of detail was not required by the RFQ. Tr. at 77, 205. According to the agency, vendors were only required to "address" the objective in order to give the agency an understanding of what the vendor would do on a "conceptual basis." Tr. at 74-75, 192, 214, 444, 446, 823. The agency contends that a disaster recovery site was not required under the RFQ, but was merely a "value added" feature included by SI in its quotation. Tr. at 421.

Based on our review, we find the agency's evaluation of the vendors' emergency plans unobjectionable. The record shows the neither SI nor Datatrac provided complete detailed emergency plans in their PMPs, but instead, for the most part, addressed the objectives and requirements of Attachment A.2 on a conceptual basis. In this regard, SI's emergency plan made reference to a "Disaster Recovery/Business Continuity Plan" and "Emergency Response Procedures," the details of which were not provided. Agency Hearing exh. 12, SI's Emergency Plan, at A-34-35. SI also identified a disaster recovery site to be used as a "backup" site in the event of a "major disruption in services," but did not provide the plans and procedures for operating this site. Id. at A-36. SI indicated that the firm would perform a "Business Impact Assessment," which would result in the development of a "Disaster Recovery Plan" that "provides recovery, resumption, and restoration procedures for all critical

business and/or operations processes,” but did not provide the details of this plan.<sup>10</sup> Id. at A-36-37. SI states that this analysis would be performed after contract award and would determine whether the disaster recovery site would be used. Tr. at 1281-82, 1285-86. The firm also conceptually described its “Business Continuity Approach” and “Contingency Capabilities.” Agency Hearing exh. 12, SI’s Emergency Plan, at A-37-38. As noted above, SI received a strength in the evaluation for its “robust emergency plan” and disaster recovery site. AR, Tab 2, Final TET Report, at 8.

Datatrac’s emergency plan provided an overview of the firm’s “managerial framework for business continuity” and “emergency preparedness” response efforts for such events as “fire, smoke, bomb threats, or other life-threatening emergencies affecting the safety and/or well being” of personnel. The emergency plan included the establishment of an “Emergency Preparedness Team” to evaluate potentially dangerous situations and coordinate evaluations, and described how Datatrac would evaluate and react to potential “threats.” The plan included emergency evacuation and reporting procedures, and dealt with such things as fire drills and fire exit procedures. The plan also described the “roles and responsibilities” of the site personnel (such as the project site manager, operations manager, supervisors, clerks, quality control manager, and administrative staff and IT personnel) with regard to emergency responses, and included “backups” for these persons. Agency Hearing exh. 13, Datatrac’s Emergency Plan, at 47-53.

Datatrac’s emergency plan included a section titled “Disaster Recovery.” This section referred to a “Disaster Recovery Plan,” which Datatrac stated “will be implemented” in the event of a “total disruption” of services. Although this section of Datatrac’s quotation mentioned such things as “loss of center operations” and “business recovery,” Datatrac provided little detail regarding the actual “Disaster Recovery Plan.” Id. at 53. Both the agency and Datatrac assert that the plan’s details could not be developed until the parties work through the SDLC process post-award.<sup>11</sup> Tr. at 639-41, 775-76, 1115, 1117-20. The agency concluded that Datatrac’s emergency plan, including its “Disaster Recovery Plan,” met the objectives

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<sup>10</sup> It is not clear from the record whether the “Disaster Recovery Plan” mentioned in connection with the Business Impact Assessment is the same as the “Disaster Recovery/Business Continuity Plan” mentioned elsewhere in the emergency plan section of SI’s quotation.

<sup>11</sup> This is similar to SI’s “Disaster Recovery Plan” insofar as the details will not be known on either offeror’s plan until after the “Business Impact Assessment” and SDLC processes are completed post-award. Tr. at 293-95, 302, 717-18.

and requirements of Attachment A.2 and warranted neither a strength nor a weakness.<sup>12</sup> Tr. at 203, 524-25, 635.

Based on our review, we find nothing unreasonable in the agency's judgment. While it is true that SI provided more detail than Datatrac regarding its disaster recovery approach, as stated above, neither SI nor Datatrac provided full disaster recovery or emergency plans. In fact, as indicated, completed plans were not required by the RFQ. In this regard, paragraph 4.2.1 of the PWS required only that vendors "address" the requirements and objectives of Attachment A.2, which both quotations did here. Although SI's emergency plan focused more on disaster recovery of IT systems and Datatrac's focused more on physical threat responses and emergency procedures, this demonstrates only that the vendors had different emphases in meeting the objectives of an emergency plan; the fact that Datatrac's approach does not mirror SI's does not mean that Datatrac's approach is insufficient, or that the agency's evaluation of these different approaches evidences unequal treatment. In fact, the record shows that the agency recognized that SI's plan was more detailed and "robust" than Datatrac's and included a disaster recovery site, and acknowledged this as a "strength" in the evaluation. Tr. at 212, 405-06; AR, Tab 2, Final TET Report, at 8.

SI complains, however, that Datatrac's emergency plan provided too little detail for the agency to determine what the agency was getting, or to sufficiently bind Datatrac to implement a fully developed disaster recovery plan without additional costs. We disagree. As described above, Datatrac provided sufficient detail regarding its approach for the agency to reasonably conclude that Datatrac understood, and would comply with, the objectives and requirements of Attachment A.2. With regard to the disaster recovery plan, the exact requirements of which would be fleshed out during the SDLC post-award process,<sup>13</sup> Datatrac promised to both develop and

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<sup>12</sup> SI asserts in its post-hearing comments that Datatrac did not cross-reference "related plans" as is also required by Attachment A.2. Although it is true that SI referred to "Section 7.3.5 [of the SDLC Manual], Contingency Plan" in its emergency plan, Agency Hearing exh. 12, SI's Emergency Plan, at A-34, and Datatrac did not expressly include a similar reference, it is evident from the hearing testimony that Datatrac's emergency plan overlaps with, and relates to, to the SDLC contingency plan requirements, in a manner similar to SI's. See Tr. at 465-66, 480-82, 529, 544-46.

<sup>13</sup> SI argues that Datatrac cannot "fill the [informational] void" of its emergency plan using the SDLC process because the emergency plan is required pre-award, whereas the SDLC planning occurs after award. SI Post-Hearing Comments at 14. However, as discussed above, a completed emergency plan is not required pre-award, and since both the emergency plan requirement identified in Attachment A.2 and SDLC requirements identified elsewhere in the solicitation (see, e.g., PWS ¶ 7.9.2) address system continuity, we find reasonable the agency's explanation that the SDLC

(continued...)

“implement” the plan and collaborate with the government to define SDLC “deliverable requirements,” Agency Hearing exh. 13, Datatrac Emergency Plan, at 53; Datatrac Protest Record, Tab C, Datatrac’s Technical Quotation, at 64-65, and included the price for both the development and implementation of the plan in its fixed-price quotation. Tr. at 1088, 1187-89; Datatrac Protest Record, Tab E, Datatrac Price Quotation, at 25-26. Therefore, to the extent that the SDLC process identified additional detail, or features that may be required as part of an acceptable disaster recovery plan, the agency found, and Datatrac conceded, that Datatrac is obligated to provide them at no additional cost to the government.<sup>14</sup> Tr. at 224-25, 251, 1066, 1150, 1175; Declaration of Datatrac’s Chief Executive Officer ¶ 12.

Additionally, we do not agree with SI’s contention that a disaster recovery site is required by the RFQ, as nothing in the RFQ limits vendors to a particular approach for ensuring continuity of operations and nothing specifically requires the provision of a disaster recovery site. Indeed, as indicated, the approach for ensuring continuity of operations was to be defined through the SDLC post-award process, where an evaluation of permissible downtime and other risk factors is performed to determine how to best satisfy this requirement. AR, Tab 12, SDLC Manual, at 32; Tr. at 93-94, 542-43, 638-41, 731-32, 761, 916. In this case, as the agency explains, a disaster recovery site likely is not going to be required, given that the work effort is not “mission critical” and thus some “downtime” for systems and facilities to be restored will likely be acceptable. Tr. at 225-26, 422, 591, 600, 818. This should have been reasonably evident to the vendors, given the nature of the files to be scanned, which included historical and other files for which immediate access would not be required. PWS ¶ 1; see Tr. at 1197-1201. Although SI may have placed greater importance on the continuity of operations requirement than the RFQ suggested, the record does not show that the firm was misled as to the requirements or otherwise

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(...continued)

process can, and will, be used to flesh out the details of the vendors’ emergency plans.

<sup>14</sup> SI asserts that Datatrac would not be bound to provide a disaster recovery site, citing agency witnesses’ testimony that the addition of a site would result in an equitable adjustment to Datatrac’s contract. See Protester’s Post-Hearing Comments at 16. However, the witnesses’ statements were based on their belief that an additional site was not required by the solicitation, and would not be required through the SDLC process. Under those circumstances, should the agency require a disaster recovery site, the witnesses anticipated that the requirement would lead to an equitable adjustment. Tr. at 532-36, 1022. On the other hand, if an additional site was required through the SDLC process, then the agency expected that Datatrac would provide it at no additional cost to the government. See Tr. at 224-25, 251, 1066, 1150, 1175.

induced to provide a disaster recovery site.<sup>15</sup> Indeed, the record affirms that SI fully understood—as demonstrated in its January 17 response to the agency’s request for clarification—that a disaster recovery site “was not expressly called out in the RFP,” but was part of the firm’s “value added solution.”<sup>16</sup> AR, Tab 1, Letter from SI to USCIS (Jan. 17, 2006), at 2.

In sum, we find no basis to conclude that the agency relaxed the RFQ requirements for Datatrac or that Datatrac’s emergency plan did not meet the requirement of Attachment A.2.

Nonetheless, SI asserts that the evaluation was flawed since the evaluators believed that Datatrac “deferred” contingency planning and the costs for this planning until after award. This argument is based on an e-mail from the TET advisor sent during the re-evaluation, which stated:

The Government requirement alludes to the contingency requirement but did not specifically state the contractor shall include in the quote the establishment and costs for a disaster recovery site. SI . . . based on the information in the Call decided to establish and cost the site.

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<sup>15</sup> SI also disputes the agency’s conclusion that its disaster recovery plan was of only “limited value” and deserving of only a “strength” and not a “significant strength.” In this regard, SI argues that the site is “essential” to meeting the Attachment A.2 objective of ensuring “continuity of every operation.” See Tr. at 1220-21. According to SI, it cannot conceive of another way to meet this objective other than through a disaster recovery site. Tr. at 1221, 1263, 1288-89. However, due to the nature of the work, that it was not mission critical, and that other means for accessing A-files are available, the agency could reasonably determine that using the site was unlikely and, therefore, of limited value to the agency. AR, Tab 3, Best Value Analysis Report, at 5; Tab 9, Agency E-mails, at 62. Although SI disagrees with the agency’s judgment, it has not shown it to be unreasonable. See Entz Aerodyne, Inc., B-293531, Mar. 9, 2004, 2004 CPD ¶ 70 at 3. In any event, SI’s quotation received a strength under the performance approach factor, in part, because of the proposed disaster recovery site.

<sup>16</sup> Although SI’s witness testified that the firm proposed the site in response to the RFQ’s “derived” requirement to “ensure continuity of every operation,” Tr. at 1258 (discussing PWS, attach. A.2), the firm’s quotation and contemporaneous writings, which refer to the site as “not expressly called out in the RFP” and part of the firm’s “value added solution,” belie this post-protest testimony. Furthermore, nothing in SI’s technical quotation or in the firm’s discussion of its disaster recovery site suggests in any way that SI believed the site was specifically required by the RFQ. See AR, Tab 1, Letter from SI to USCIS (Jan. 17, 2006), at 2; Agency Hearing exh. 12, SI’s Emergency Plan, at A-36; Tr. at 421.

Datatrac did not interpret the requirement that way and did not include the costs. The Datatrac approach was to acknowledge the requirement and defer action on contingency planning until after award. Therefore, Datatrac through their action deferred contingency costs and did not include them in their quote. SI clearly did a better job in addressing the contingency requirements, albeit possibl[y] too much better. On the other hand, Datatrac may not have addressed these requirements adequately.

AR, Tab 9, Agency E-mails, at 53-2.

At the GAO hearing, the TET advisor explained that he did not mean to say that Datatrac deferred all contingency planning and related costs, but only those associated with a disaster recovery site. Tr. at 1015, 1017. He further stated that he found this to be consistent with the RFQ since the determination about whether a disaster recovery site is “desirable” will not be made until completion of the SDLC analysis. Tr. at 1015-17; see id. at 1066-67; AR, Tab 9, Agency E-mails, at 62. The recipients of the e-mail (the TET chair and contract specialist) also understood him to be referring to the disaster recovery site and not contingency planning in general. See Tr. at 673, 678, 912-13. In addition, the TET believed that Datatrac’s quotation met the emergency or contingency planning requirements of the RFQ without a disaster recovery site. Tr. at 636-37, 685.

The TET advisor’s e-mail also was provided to the SSA, who carefully considered the advisor’s analysis and recommendations (as well as other comments from the TET) and rejected the concerns stated in the e-mail as not “credible” given that the TET did not have access to the firms’ price quotations. Tr. at 247-48, 1086, 1100. The SSA personally reviewed both Datatrac’s and SI’s emergency plans, and confirmed that both met the objectives and requirements of the RFQ, and he had “no doubt” that the costs for both developing and implementing all aspects of the emergency plan were included in Datatrac’s quotation. Tr. at 217, 234, 1088. Although he recognized that SI included the price for a disaster recovery site in its quotation, and that Datatrac did not, the SSA determined that a disaster recovery site was not required by the RFQ and that it was part of SI’s “value added” approach for which SI’s quotation was given a strength. Tr. at 421; AR, Tab 3, Best Value Analysis Report, at 6. Given the reasoned approach taken by the SSA, we cannot find the award improper on this basis.

SI next asserts that the cost of its disaster recovery site should be removed from its quotation in order to make an “apples to apples” price comparison. SI complains that since the agency knew that SI proposed a feature that Datatrac did not, the agency was obligated to normalize the firms’ prices, especially in light of its conclusion that the disaster recovery site was not likely to be required and was only of “limited value.” However, SI has not cited to, and we are unaware of, any requirement in a best value evaluation involving the award of a fixed price contract

where an agency is required to add, or delete, the costs of a “value added” feature, even one that the agency finds of little value. Here, the record shows that SI made a reasoned business judgment to include a disaster recovery site as part of its “value added solution.” AR, Tab 1, Letter from SI to USCIS (Jan. 17, 2006), at 2. Although the TET evaluators discussed whether to “eliminate” the disaster recovery site costs from SI’s quotation as a means of comparing “like quotes,” AR, Tab 9, Agency E-mails, at 53-2, the SSA, after considering these suggestions, concluded that this approach was not appropriate given that, in his view, this would constitute an impermissible “leveling” of quotations. Tr. at 352, 1073-74. Under the circumstances, we find that agency could reasonably evaluate the desirability of that feature without normalizing the prices among vendors. See Marquette Med. Sys., B-277827.5, 99-1 CPD ¶ 90 at 6 n.7 (normalization of costs is not proper where the varying costs in competing quotations result from different technical approaches that are permitted by the solicitation).

### Discussions

SI also asserts that the agency should have accepted its January 17 attempt to eliminate the disaster recovery site from its quotation, or, given the agency’s conclusion that the site was only of “limited value,” held further discussions to inform SI that the site was unimportant. It contends that the implementation of corrective action resulting from the prior protest was unfair, in that the discussions allowed Datatrac to improve its competitive standing by revising its manifesting approach, but did not afford SI a similar opportunity to improve its chance for award by revising its emergency plan. The agency responds that it had no obligation to consider SI’s January 17 response or hold additional discussions with SI, and that the discussions were not unfair.

Where discussions are held in order to implement a recommendation of our Office for corrective action, discussions and proposal revisions may be limited in appropriate circumstances. Rel-Tek Sys. & Design, Inc.–Modification of Remedy, B-280463.7, July 1, 1999, 99-2 CPD ¶ 1 at 3; Serv-Air, Inc., B-258243.4, Mar. 3, 1995, 95-1 CPD ¶ 125 at 2-3. The agency here determined to limit discussions to only those areas that our Office’s attorney identified as problematic during the prior protest—namely, the failure to discuss with Datatrac a weakness relating to its manifesting approach while allowing SI to revise its quotation after the discussion period closed, and the failure to confirm whether SI included the price for its emergency plan in its quotation. The agency made the determination to limit discussions with the vendors to only these issues, plus any previously issued clarifications or discussions, to remedy the unfair treatment and lack of meaningful discussions issues that our Office identified in the prior protest. The agency did not allow broader revisions because both vendors’ prices had been disclosed (at SI’s request), and the agency did not want to give one vendor an unfair competitive advantage over another. Tr. at 179-83.

We do not decide whether it was appropriate for the agency to limit discussions in this case because SI did not timely protest the limitations the agency placed on the discussions prior to the closing date for receipt of revised proposals. See 4 C.F.R. § 21.2(a)(1) (2006); Smith of Galeton Gloves, Inc., B-271686, July 24, 1996, 96-2 CPD ¶ 36 at 7. However, we will consider whether the discussions were fairly conducted within the context of those limitations.

The record shows that SI was not invited to broadly revise its emergency plan because the plan was not considered a weakness. The agency, instead, interpreted it to be a strength that was properly evaluated as part of SI's "value added" solution. Unlike the weakness previously assessed to Datatrac's quotation for its manifesting approach, USCIS had no duty to bring this assessed "strength" to SI's attention or to allow SI to revise its emergency plan to eliminate this "value added" feature.<sup>17</sup> See Federal Acquisition Regulation (FAR) § 15.306 (d)(3)<sup>18</sup>; Tr. at 351.

With regard to SI's January 17 suggestion that the disaster recovery site feature was "severable" and could be deleted from SI's quotation to reduce the price, USCIS asserts that it rejected this option because this possible attempted revision occurred after the discussion period had closed (on January 4). Tr. at 182, 185, 944. In any event, SI now admits that this communication was not an attempt to revise its quotation; the feature was intended to remain in the quotation as originally identified, and information was provided in case the agency decided it did not want this feature.<sup>19</sup> Tr. at 1264.

SI argues that the January 17 price reduction should have been allowed, however, since it was in response to "continued" discussions with the agency that took place after January 4. Because the agency sought additional information on January 13, SI argues, its response was within the scope of the limited correction action, which allowed revisions that were tied to discussion questions. We find nothing in the January 13 request for clarification that would suggest that discussions were being "continued" or that invited further revisions to SI's quotation. To the contrary, the

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<sup>17</sup> To the extent the SI argues that USCIS was required to discuss the fact that the agency waived a required element of the RFQ, that is, the disaster recovery site feature, as discussed above, no such waiver occurred.

<sup>18</sup> Although FAR Part 15 procedures do not directly apply to FSS buys, our Office looks to Part 15 as guidance when, as here, an agency treats vendor responses as if it were conducting a negotiated procurement. TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6 n.3.

<sup>19</sup> That SI did not intend to revise its quotation is further supported by the fact that SI did not provide amendment pages in conformance with section 7.7.1 of the RFQ, as was required whenever a vendor changed its quotation.

January 13 e-mail merely asked SI to confirm whether the cost of its disaster recovery site was included in its quotation. In any case, as noted, SI did not intend to modify its quotation in responding to this request for additional information. Based on this record, we find the agency's conduct of the limited discussions to be fair and unobjectionable. In contrast to the significant unaddressed weakness in Datatrac's manifesting plan for which it had previously been denied fair discussions, SI was not entitled to discussions regarding a strength, nor was the agency required to identify features of SI's value-added approach that it found to be of limited value. Furthermore, the agency was not required to accept SI's January 17 suggestion to delete the disaster recovery site from its quotation since it was submitted after the discussion period was closed and was not in response to continued discussions, as SI now asserts. On these bases, we find the agency's implementation of our recommended correction action to be reasonable and not unfair.

#### Security Clearance "Waivers"

SI also contends that Datatrac's quotation should not have received the maximum number of points under the special preference factors because there is doubt whether Datatrac's facilities will be fully operational within 60 days. This is so, SI argues, because Datatrac initially represented that one of its subcontractors had received security clearance "waivers," a representation which turned out to be false.

Security clearance waivers were mentioned in only two places in Datatrac's quotation--in the past performance section and in connection with recruitment and retention--and was based on erroneous information provided to Datatrac, which Datatrac clarified during discussions. Datatrac Protest Record, Tab C, Technical Quotation, at 17, 78; AR, Tab 1, Letter from Datatrac to USCIS (Aug. 26, 2005), at 1; Tab 1, Letter from Datatrac to USCIS (Jan. 4, 2006), at 2. However, the record does not evidence that this inaccuracy was material to Datatrac's quotation, or that the agency relied on it in evaluating operational capability. Tr. at 616, 702-03. Indeed, Datatrac's quotation did not depend on the provision of waivers to be fully operational within 60 days. Rather, Datatrac's transition plan explains that Datatrac will "leverage [its] experience" to establish a digitization center within 60 days, describes the steps it will take to become fully operational within that time, establishes a transition schedule that does not depend on waivers, and includes commitment letters from the building owner, architect, and construction companying demonstrating that the facility build-out will be completed to applicable specifications within 45 days of award. Datatrac Protest Record, Tab D, PMP, at 66-69; Tr. at 619-20. Thus, the record shows that the agency had sufficient information available to it to reasonably conclude that Datatrac's facilities would be

operational within 60 days and, thus, Datatrac was deserving of the special preference points.<sup>20</sup>

#### Price Realism

SI complains that the agency failed to consider in its price realism analysis “whether Datatrac’s proposed resources, equipment, facility, and records management processes were adequate—at the proposed prices—to satisfy the RFQ requirements,” in particular the manifesting requirements. Protest at 26. In this regard, the record shows that although Datatrac has revised its technical quotation concerning its manifesting procedures, the agency did not conduct a new price realism analysis to account for this additional work. The agency explains, however, that a new price realism analysis was not required since Datatrac did not alter its approach or take on additional work; it just eliminated a manifesting requirement previously imposed on the agency. Such changes, the agency concluded, would have “minimal effect” on Datatrac’s price. Tr. at 138-39. The agency asserts that Datatrac’s price was reasonable and that the firm could perform at the price proposed. Contracting Officer’s Statement (May 11, 2006) ¶ 37; Tr. at 137-38.

The record here shows that although Datatrac’s revised quotation provided further explanation of the firm’s manifesting approach and eliminated the previous requirement that USCIS manifest and label boxes, Datatrac did not take on any new work other than to place a barcode label on the boxes. A comparison of Datatrac’s initial and revised quotes show that its document tracking process was in no way otherwise affected, or changed, by the elimination of the manifesting requirement previously imposed on the agency. Compare Datatrac Record, Tab C, Datatrac Technical Quotation, at 50-52 with AR, Tab 1, Attachment to Letter from Datatrac to USCIS (Jan. 4, 2006), at 1-3. The protester has provided no evidence that placing barcodes on the boxes will result in significant additional cost, or that Datatrac cannot perform this additional work at the price quoted. Accordingly, we find no basis to sustain the protest on this ground.<sup>21</sup>

#### Source Selection

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<sup>20</sup> We note that SI similarly does not have security clearance waivers, so it is in no better a position than Datatrac in this respect to be fully operational within 60 days. Tr. at 827-28.

<sup>21</sup> SI also complains that the agency did not perform a price realism analysis regarding the vendors’ emergency plans, but since no changes to either plan was made, a new cost realism analysis was not required. To the extent that SI complains that the agency did not either delete from SI’s quotation the cost of its disaster recovery site, or add the costs for a site to Datatrac’s quotation, as we discussed above, this cost adjustment was not required.

Finally, SI challenges the agency's "best value" decision, based on the arguments above and because the agency failed to acknowledge the weaknesses in Datatrac's quotation or the strengths in SI's. However, the record demonstrates that the TET conducted a thorough evaluation that was consistent with the RFQ and, based on this evaluation and his own independent judgment, the SSA made an informed, reasonable decision to select Datatrac for award. In making this determination, the SSA recognized the different strengths in each vendor's quotation, but found that both quotations were "technically outstanding in all areas" and deserving of the highest possible ratings under the technical factors. The SSA recognized that SI had proposed a "slightly superior feature" in the disaster recovery site, but overall found the quotations to be "technically equal," and further recognized that the TET did not identify a preference for either Datatrac or SI. Given that Datatrac's quotation was \$862,470 less than SI's and provided, in the SSA's view, "the best mix of technical and cost value in accordance with the award criteria," the SSA selected Datatrac for award. AR, Tab 3, Best Value Analysis Report, at 6. Based on our review of the record, we find the SSA's judgment to be reasonable.<sup>22</sup>

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>22</sup> SI raises a number of other challenges to the agency's technical and price evaluation. We have reviewed each of the protest grounds and find them to be without merit.