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REDACTED VERSION^{FN[FNa1]}

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COMPTROLLER GENERAL

***1 Matter of:** Omega World Travel, Inc.;
SatoTravel, Inc.

August 21, 2002

Barry Roberts, Esq., and Brian J. Hundertmark, Esq., Roberts & Hundertmark, for Omega World Travel, Inc., and James H. Roberts, III, Esq., Van Scoyoc Kelly, for SatoTravel, Inc., the protesters.

J. Scott Hommer, III, Esq., Rebecca E. Pearson, Esq., Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Venable, Baetjer and Howard, for Carlson Wagonlit Government Travel, the intervenor.

Raymond M. Saunders, Esq., Maj. Robert W. Clark, and Capt. Ronald Sullivan, Department of the Army, for the agency.

Paul I. Lieberman, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency consideration of discount offered by firm for award of contracts for all regions listed under solicitation, and award to that firm of contracts for all regions, is unobjectionable and consistent with solicitation evaluation and award provisions, which contemplated multiple awards but permitted awards for any combination of regions.

2. Agency properly declined to consider

contingent discount offered by protester under solicitation that called for fixed prices.

3. Agency properly declined to consider “alternative” monthly management fee pricing structure that did not provide any prices on the basis of transaction fees, as required by the solicitation.

4. Agency reasonably did not downgrade proposal under past performance evaluation factor because of 5-year old contract fee dispute under predecessor contract that did not affect contract performance and that had been resolved by a settlement favorable to the offeror.

DECISION

Omega World Travel, Inc. and SatoTravel, Inc. protest the award of contracts for commercial travel services for five travel regions to Carlson Wagonlit Government Travel by the Military Traffic Management Command, Department of the Army (MTMC), under request for proposals (RFP) No. DAMT01-01-R-0175. Omega objects that the agency improperly considered a discount offered by Carlson for the award of contracts for all five regions and improperly awarded contracts for all five regions to Carlson, and improperly declined to evaluate a contingent pricing discount proposed by Omega. SatoTravel primarily objects that the agency refused to consider its alternate proposal for a flat monthly management fee, and misevaluated Carlson's past performance.

We deny the protests.

BACKGROUND

The solicitation, issued on May 3, 2001, sought proposals to operate and manage commercial travel offices for five defense travel regions throughout the United States, providing travel services that include issuing airline tickets, booking car and hotel reservations for official travel, and issuing tickets for emergency leave travel. The RFP permitted offerors to propose on any or all of the regions

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listed in the schedule, and stated that the agency “contemplated” the award of multiple fixed-price contracts for a base year with eight 6-month option periods. RFP amend. 10, at 421. The RFP did not specify that any minimum number of firms would be selected for award, stating instead that “[a] maximum of five (5) contracts shall be awarded” *Id.* The RFP required that these services be provided by means of traditional service methods with travel agents at on-site facilities, and that offerors supply an on-line booking application as well. An agency pre-proposal conference was held on May 31, 2001, and was attended by representatives of all of the eventual offerors, after which the solicitation was amended and an October 11 closing time was set for receipt of initial proposals.

*2 The RFP set forth four evaluation criteria, technical acceptability/capability, participation of small and disadvantaged business concerns, experience/past performance, and transaction fees, in descending order of importance, and stated that “[t]he government intends to award based on the best overall value” *Id.* at 425. The RFP instructed offerors to submit a single proposal demonstrating their technical acceptability and capability, without any requirement to differentiate by region, and called for offerors to submit a pricing schedule listing prices by region for the required transaction fees. Three firms, Carlson, SatoTravel and Omega submitted proposals by the closing time, and based on the initial evaluation all were included in the competitive range. Thereafter, MTMC conducted discussions with all three offerors, and all three submitted final proposal revisions by the December 14, 2001 closing time.

Omega's proposal was evaluated as good under all three non-price factors; Carlson's proposal was evaluated as excellent under all three; and SatoTravel's proposal was evaluated as excellent under capability and past performance and good under the small and small disadvantaged business participation factor. In evaluating the prices, the agency considered the pricing by separate region and the proposed multi-region discounts offered by SatoTravel and Carlson, as well. The agency determined that the lowest overall pricing was available if the all-region discount proposed by

Carlson, the offeror whose technical proposal was highest rated, was applied. Agency Report (AR), Tab P-1, Price Analysis, at 5. Applying the multi-region discounts, the proposed transaction fees, that is, the total prices for all regions, were evaluated as \$129,358,939 for Omega, \$128,323,554 for Carlson, and \$132,950,393 for SatoTravel. AR, Tab Q-2 Price Negotiations Memorandum, at 17.^{FN[FN1]} The source selection authority (SSA) determined to make an award to Carlson for all five regions, and by letter of February 27, 2002, advised the two unsuccessful offerors that the SatoTravel and Carlson proposals had been evaluated as essentially equal technically, and that Omega's proposal had lower rated technically, and was higher priced than SatoTravel's, as a result of which Carlson's lower price had become determinative. AR at 3. After receiving debriefings, Omega filed an agency-level protest and a subsequent protest with our Office, and SatoTravel filed a protest with our Office, objecting to the award determination.

In the course of reviewing these protests, MTMC recognized that both the Carlson and SatoTravel proposals had failed to comply with an RFP requirement regarding the mandatory narrative describing the offeror's small and small disadvantaged business participation plan, and that this deficiency had not been raised with either offeror during discussions. As a result, MTMC determined that it would take corrective action in the form of permitting all three offerors to submit revised narratives, after which MTMC would perform a reevaluation. Thereupon, our Office dismissed the protests as academic, and all three offerors submitted revised narratives by a May 2, 2002, due date.

*3 After evaluating the revised narratives,^{FN[FN2]} the SSA made a new award determination on May 9, and again selected Carlson's proposal for awards for all of the regions. The SSA determined that Omega's proposal “continues to be technically inferior to both CWGT [Carlson] and SatoTravel and its overall prices remain higher than CWGT's.” AR, Tab Q-4-A, Addendum to Source Selection Decision, at 2. The SSA concluded that “CWGT and SatoTravel submitted essentially equal technical proposals” and “because CWGT's overall

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evaluated prices are over \$4 million lower than SatoTravel's, I determine that CWGT's offer represents the best overall value to the Government . . . for all of the awards under Solicitation No. DAMT-01-01-R-0175.” *Id.* Thereupon, Omega and SatoTravel^{FN[FN3]} filed these protests with our Office.

AWARD OF CONTRACTS FOR ALL FIVE REGIONS TO CARLSON

Omega states that it “understood that there were five competitions in place-- one for each region,” and objects to the agency's evaluation of Carlson's proposed price discount for awards of contracts for all five of the regions, and to the resulting award of contracts for all five regions to one firm. Omega's Comments at 5. Omega argues that “the [s]olicitation gave the impression that the Army would finally maximize competition by breaking up the single national contract into regions, and the terms of the [s]olicitation did not give the appearance that a single national contract was still a possibility.” *Id.* at 4. However, contrary to Omega's understanding, as noted above, while the RFP states that award of multiple contracts was contemplated, it also explicitly permitted offerors to propose on any or all regions, and allowed for award of up to five contracts to different offerors. In our view, the RFP did not preclude awards of combinations of regions to a single offeror.

Where an RFP states that it “contemplates” multiple awards, but also permits award of all solicited items to a single offeror, there is no obligation on the agency to make multiple awards. Outdoor Venture Corp., B-288894.2, Dec. 19, 2001, 2002 CPD ¶ 13 at 7. Here, it is undisputed that the RFP did not contain any provision either requiring or providing a particular preference for multiple awards. Accordingly, the agency was under no obligation to make multiple awards, and to the extent that Omega contends that the agency should have applied a preference for multiple awards, the allegation is without merit; implementation of such a preference would have been improper because it would have been inconsistent with the stated solicitation evaluation and award criteria. Crofton Diving Corp., B-289271, Jan. 30, 2002, 2002 CPD ¶ 32 at 7; Outdoor Venture Corp., *supra*.

Accordingly, we see no basis to object to the award of contracts for all five regions to a single offeror.

*4 As for the agency's consideration of the discount for multiple region awards proposed by Carlson (and also by SatoTravel), the agency points out that the RFP called for pricing by region and stated that alternative pricing was permitted. In the agency's view, the alternative pricing provision contemplated the multi-region discount pricing proffered by Carlson and SatoTravel. More important, it is undisputed that the RFP did not limit or prohibit such a multi-region discount. Omega's position is founded on its contention that under this solicitation, in order for a multi-region discount to be permissible, it was “incumbent on the [a]gency to explicitly state that multi-region or winner take all pricing will be considered.” Omega's Protest at 6. Omega is mistaken as a matter of law. Even where an RFP provides for multiple awards, offerors may properly condition offers on receipt of all items, or a combination of items unless the solicitation expressly prohibits “all or none” or similarly restricted offers. Uniroyal Plastics Co., Inc., B-240319, Nov. 2, 1990, 90-2 CPD ¶ 360 at 2. Here, Carlson's proposal of a discounted price for award of all five regions under an RFP which did not proscribe such a restriction was permissible, and MTMC properly considered Carlson's discounted pricing for award of all regions.

CONTINGENT ON-LINE PRICING DISCOUNT

Omega asserts that it would have been evaluated as having the lowest overall price if the agency had properly considered what Omega styles its “alternate pricing” consisting of a \$[deleted] discount per transaction “if at least [deleted]% of the bookings were on line.” Omega's Comments at 5. The agency declined to consider this discount in evaluating Omega's price because the discount was contingent on an event over which neither MTMC nor the offeror had any control, that is, the volume and percentage of on-line bookings, which is largely dependent on the level of comfort and familiarity travelers have with the on-line booking process. AR at 12. Where, as here, a solicitation requests offers on a fixed-price basis, an offer that is conditional and not firm cannot be considered for award. Assets Recovery Sys., Inc., B-275332, Feb. 10, 1997, 97-1

(Cite as: B- 288861.5, B- 288861.6, B- 288861.7, 2002 CPD P 149, 2002 WL 31018583 (Comp.Gen.))

CPD ¶ 67 at 4. Accordingly, MTMC's determination not to consider Omega's proposed contingent price discount, where there was no basis for the agency to know whether the contingency would be achieved, is unobjectionable.

SATOTRAVEL'S MANAGEMENT FEE PRICING PROPOSAL

In addition to offering discounts for combinations of regions, SatoTravel offered what it characterizes as an alternative form of pricing based on being paid a preset specific dollar amount each month regardless of actual reservation activity. SatoTravel's Initial Protest, Mar. 11, 2002, at 4. The agency declined to consider this proposal, and SatoTravel objects that had its management fee alternative been considered, "there are several alternative awards scenarios that could have been made resulting in significant cost savings to MTMC." *Id.* at 7. SatoTravel contends the solicitation encouraged offerors "to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of the solicitation" and that "MTMC deviated from the announced terms of the [s]olicitation when it failed to fully and properly evaluate SatoTravel's alternative pricing method on a region-by-region or combination of regions basis." SatoTravel's Comments, July 3, 2002, at 6-7. We disagree.

*5 As noted above, the solicitation expressly set forth "transaction fees" as the evaluation factor by which the offeror's prices would be evaluated. To this end, the solicitation included pricing schedules by region on which offerors were required to enter specified transaction fees, that is, a charge per transaction. As the agency correctly notes, "[a] flat fee is . . . the antithesis of a transaction fee, and would not therefore fall within an alternative pricing scheme contemplated by the RFP." AR at 5. MTMC also notes that a flat fee arrangement places an unacceptable risk on the agency in that the fees would be due even if aircraft were grounded in an emergency and there were no booking activity. *Id.* at 5-6. The agency also states that SatoTravel was advised during discussions held on December 4, 2001, that MTMC was not interested in pursuing the management fee approach. *Id.* at 5. SatoTravel contends that it does not recall this discussion, but

does not dispute that it occurred, as is reflected in MTMC's discussion minutes. In any event, it is clear that SatoTravel's management fee proposal is not contemplated by the "alternative" language in the RFP because it is inconsistent with the transaction fee pricing that represents the core contract requirement under the RFP. Accordingly, the agency had no obligation to consider, and properly declined to consider, SatoTravel's flat fee proposal.

EVALUATION OF CARLSON'S PAST PERFORMANCE

Both SatoTravel and Omega protest that Carlson's past performance evaluation of "excellent" was improper because of a contract fee dispute between MTMC and Carlson that occurred in 1997--1998, under the predecessor contract. Omega denominates the dispute a "default" and argues that MTMC was required to downgrade Carlson's past performance rating to something below "excellent." Omega's Comments at 8-9. SatoTravel refers to a 1998 edition of a travel trade journal to support a contention that it was public knowledge that Carlson had violated the terms of this predecessor contract by unilaterally withholding rebates due the government for an extended period, which SatoTravel characterizes as "defaulting," and objects that in light of this action, the agency could not reasonably evaluate Carlson's past performance as excellent. SatoTravel's Initial Protest, March 11, 2002, at 10-13. The agency has explained that there was no default, that the matter in question concerned a legitimate dispute pertaining to the calculation of fees, that during the period in question Carlson had "continued to maintain its high level of service and was able to keep its small business subcontractors 'alive' and performing without any disruption in service," and that the dispute was eventually resolved by an adjustment favorable to Carlson.^{FN[FN4]} AR at 7; AR, Tab A, Contracting Officer's Statement, at 12-13.

*6 In our view, the agency's evaluation is unobjectionable. There is no evidence in the record of any default by Carlson, and in the face of the agency's recognition of Carlson's continued high quality of performance during the period in which the fee dispute occurred, it would have been

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inappropriate for the agency to downgrade Carlson's past performance rating simply on the basis of the fee dispute absent evidence, which is not present here, that Carlson abused the dispute process. Nova Group, Inc., B-282947, Sept. 15, 1999, 99-2 CPD ¶ 56 at 8-9. The record otherwise supports Carlson's rating of excellent for past performance; this contract dispute, which was resolved in a manner favorable to Carlson, provides no basis to object to Carlson's past performance evaluation. FN[FN5]

Both protesters also object that the agency's above-referenced corrective action was insufficient and improper because it failed to address the various alleged evaluation deficiencies that are discussed in this decision. In view of our conclusion that the agency's evaluation is unobjectionable, this allegation is without merit. FN[FN6]

The protests are denied.

Anthony H. Gamboa
General Counsel

FN1. The prices were determined by multiplying the proposed transaction fees by the estimated numbers of transactions. While Omega asserts that, on the basis of price, it should have received awards for two of the regions for which it had the lowest evaluated price, in fact, because of the effect of the combination award discounts offered by the other two offerors, as noted above, Carlson's total overall price was lower than any possible award combination under which Omega would have received awards for those two regions.

FN2. Under the reevaluation, the only substantive change was that SatoTravel's small and disadvantaged business participation plan evaluation improved from "good" to "excellent."

FN3. After receiving the agency report, SatoTravel also filed a supplemental protest allegedly based on information contained in a document in the agency report entitled "Army Recompete Meeting Memorandum," prepared on December 6, 2001, which notes that actual numbers for air and rail workload estimates and non-air and

emergency workload estimates had not been obtained, and the air workload estimates included certain non-air workload. SatoTravel contends that this shows that the RFP estimates were inaccurate, and the solicitation should have been amended. The agency points out that offerors were advised of this fact on a teleconference on December 4, 2001, and that amendment 13 to the RFP specifically advised that a "[a] significant number of the non-air transactions listed in the technical exhibits and the non-air CLINS are included in the air/rail transactions technical exhibits and CLINS." Supplemental AR at 2. Accordingly, this constitutes an untimely allegation, first filed in a post-award protest, that the solicitation is defective because it contained misleading estimates, when the alleged defect is patently clear by the very terms of the solicitation and, therefore, was required to have been protested prior to the time for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1) (2002).

FN4. The agency has explained that the dispute arose when the airline industry cut travel agency commissions from 10 percent to 8 percent at a time when Carlson was performing under a contract that required it to rebate a percentage of these commissions to the agency. Carlson sought an equitable adjustment and while this claim was pending, it temporarily suspended rebate payments while performing all requirements under the contract. After negotiations, the agency agreed to resolve the dispute by granting the equitable adjustment requested by Carlson. AR, Tab A, Contracting Officer's Statement, at 12-13.

FN5. Omega also complains that the agency's corrective action constituted technical leveling prohibited under the Federal Acquisition Regulation (FAR). Omega's Protest at 9. In its agency-level protest, Omega had referred to the leveling prohibition that had been contained at FAR § 15.610(d), a superseded section of the FAR. In its protest to our Office, Omega contends that FAR § 15.306(e) prohibits leveling. *Id.* at 9. This is wrong as a matter of law. In relevant part, this FAR provision proscribes the agency's revealing of one offeror's technical solution or price to another offeror. It does not prohibit or even address technical leveling, which is no longer specifically prohibited by the FAR. Imagine One Tech. &

(Cite as: B- 288861.5, B- 288861.6, B- 288861.7, 2002 CPD P 149, 2002 WL 31018583 (Comp.Gen.))

Mgmt., Ltd., B-289334, Jan. 10, 2002, 2002 CPD ¶ 18 at 4. In any event, the agency's remedy clearly falls within the broad discretion afforded agencies to take corrective action reasonably determined to be necessary to ensure fair and impartial competition in a negotiated procurement. Pacific Island Movers, B-287643.2, July 19, 2001, 2001 CPD ¶ 126 at 3. Here, the agency took reasonable corrective action in the form of advising the two out of the three competing offerors that had failed to comply with a mandatory solicitation requirement, which the agency had not previously recognized, and thus had not addressed during discussions, and permitting all offerors to resubmit compliant proposal revisions. This does not constitute technical leveling, which consists of an agency's helping one offeror to bring its proposal up to the level of others through successive rounds of discussions. Imagine One Tech & Mgmt., Ltd., supra.

FN6. The protesters have also raised a number of collateral issues, each of which we have considered and find without merit.

B- 288861.5, B- 288861.6, B- 288861.7, 2002 CPD P 149, 2002 WL 31018583 (Comp.Gen.)

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