
From: The LAB @ DOC
Subject: MMCB - Vol. 5 - Innovation is Inherently Part of a Technical Evaluation, Aug. 2019



Welcome to MMCB Volume 4! This Monday covers a case on INNOVATION and a quick clarification on GAO \$10M v. \$25M IDIQ task order jurisdiction.

Matter of: Quotient, Inc.
File: [B-416473.6](#)
Link: <https://www.gao.gov/assets/b-416473.6,b-416473.7.pdf>
Date: Jul 30, 2019

This is a good case to analyze as I believe it provides confidence in being subjective with evaluation criteria like innovation and creativity, even when it is included only in the PWS or requirements document and not specifically as an actual evaluation factor. Here, there was a technical factor with four subfactors: technical approach, management plan, project staffing, and organizational experience (there is no requirement to have subfactors, just make them factors or elements of an overall factor). The evaluators focused on innovation/creativity as major discriminators. This was for a FAR 8.405-3 BPA and they used point scoring as their evaluation methodology.

Here are some pertinent snippets, all direct quotes from the decision:

- Protest challenging the agency's evaluation of protester's technical quotation is denied where the agency's evaluation, **including consideration of creativity and innovation**, was reasonable and consistent with the stated evaluation criteria.
- Specifically, the protester maintains the weaknesses assessed under various technical subfactors for the vendor's **lack of innovation, creativity, and/or proposed improvements were improper**. The agency argues that the evaluation of Quotient was reasonable, as **NAGB's desire for innovation and improvements to the performance of the required website services was part of the solicitation's stated evaluation criteria. We agree.**
- The PWS, which set forth the agency's substantive requirements, stated, "the NAGB seeks a contractor to improve the efficiency and effectiveness of the NAGB's website in communicating to key audiences. Offerors are invited to suggest **innovative and creative improvements** to the current infrastructure of the Board's website and propose initiatives" to attain goals that included, "improving current web content and functionality on all platforms" and "**deploying innovative approaches** to use web technologies in **cost-efficient ways** to improve the effectiveness of the

AGB's communications with the public." PWS at 94-95; see also PWS at 92 ("The NAGB's website is constantly evolving and does not aim to be a static website").

- The TEP identified a total of 12 weaknesses in Quotient's technical quotation, many of which involved the vendor's lack of innovation and creativity, e.g., "Quotient did not specify how [it] would use web analytics to improve web experience and output," and "Quotient did not demonstrate a lot of innovation or creativity but rather simple improvements over current state," and "no new . . . approaches were offered in managing the work with technical and cost efficiencies." AR, Tab 8, TEP Report at 362-366.
- Quotient challenges the propriety of the assigned lack-of-innovation weaknesses. The protester does not assert that its quotation, in fact, proposed various innovations the agency evaluators overlooked, nor does Quotient dispute the existence of the various RFQ provisions signaling the agency's desire for innovation as set forth above. See Comments at 14-16. Instead, the protester contends that "[t]hese weaknesses are part of the stated evaluation criteria, but reflect the unstated preferences that colored NAGB's entire evaluation of Quotient." *Id.* at 15. We simply find no merit to Quotient's assertion.
- The record reflects the agency's evaluation of Quotient's technical quotation was reasonable and consistent with the stated evaluation criteria. First, as set forth above, the RFQ expressly and repeatedly stated--in the PWS, quotation preparation instructions, and evaluation criteria--that the agency desired an innovative solution and would appropriately take creativity and innovation into account as part its technical evaluation.^[7] The TEP then reasonably considered and fully documented the extent to which it assessed Quotient's technical approach met this innovation requirement (e.g., "Quotient did not specify how [it] would use web analytics to improve web experience and output for [NAGB]'s stakeholders"). AR, Tab 8, TEP Report at 362. Moreover, we fail to see--and the protester fails to explain-- how its lack-of-innovation weaknesses could be "part of the stated evaluation criteria," and yet reflect an "unstated preference" by the agency. Comments at 15. In sum, technical innovation and creativity was a stated agency preference, and a facet in which Quotient's quotation was reasonably found to be lacking.
- Moreover, the interpretation of the solicitation now advanced by the protester is wholly at odds with the content of its own quotation. In this regard, Quotient itself, noted in its technical quotation the importance of innovation and creativity to the performance of the PWS tasks here.^[8] Thus, it appears that the protester's litigation position--that innovation was essentially an unstated requirement and evaluation criterion--differs markedly from its view of the solicitation at the time of quotation submission. The integrity of the protest process, however, does not permit a protester to espouse one interpretation or position during the procurement, and then argue during a protest that the interpretation or position is unreasonable or otherwise improper. *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 8; *Guardian Moving & Storage Co., Inc.*, B-410171, Nov. 6, 2014, 2014 CPD ¶ 334 at 5. In sum, we conclude that Quotient's interpretation of the RFQ now fails to give effect to the numerous and unequivocal RFQ language providing that innovation was an explicit part of the technical evaluation criteria, and we deny this allegation.

In particular, I appreciated footnote 7 in its entirety. Innovation is an intrinsic part of an agency's technical evaluation, even if it is not directly discussed in the solicitation as being part of the evaluation methodology:

Additionally, while a solicitation must inform vendors of the evaluation criteria, a solicitation need not specifically identify each and every element an agency considers during an evaluation where such elements are intrinsic to, or reasonably subsumed within, the stated evaluation factors. FAR § 8.405-2(c); *Horizon Indus., Ltd.*, B-416222, B-416222.2, July 11, 2018, 2018 CPD ¶ 235 at 6; *Leader Commc'ns., Inc.*, B-412819, B-412819.2, June 13, 2016, 2016 CPD ¶ 197 at 5. We have repeatedly

found that, as here, in a best-value procurement in which proposals or quotations may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency's needs, innovation is an intrinsic part of the agency's technical evaluation. Millennium Space Sys., Inc., B-406771, Aug. 17, 2012, 2012 CPD ¶ 237 at 7 (“[W]e conclude that consideration of the level of innovativeness in a proposal was intrinsic to the agency’s technical evaluation of the ‘overall scientific and technical merits of the proposal’ and was not improper.”); McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 8 (“It is self-evident, we think, that the innovative approaches proposed by an offeror to accomplish a specified task logically relates to the effectiveness of the offeror’s technical approach.”); NJVC, LLC, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 10 (finding that innovations and creative approaches can properly be considered when determining the merits of an offeror’s technical approach). Thus, the agency here could reasonably take into account the extent of innovation, even if unstated, as part of evaluating the quality of vendors’ technical submissions.

This volume was originally authored in August 2019 and refreshed in March 2025.

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