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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: DGC International

File: B-410364.3

Date: April 22, 2015

Ayman Bekdash, DGC International, for the protester.
Kevin Ofchus, Host Nation Perspectives Southwest Asia, for the intervenor.
Scott Risner, Esq., United States Agency for International Development, for the agency.
Pedro E. Briones, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of an agency's technical evaluation and source selection decision is denied where the evaluation and award were reasonable and consistent with the solicitation's evaluation criteria.
 2. Protest that the agency failed to give adequate consideration to the awardee's potential organizational conflict of interest is dismissed where the protester failed to provide a valid basis of protest.
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DECISION

DGC International, of Vienna, Virginia, protests the award of a contract to Host Nation Perspectives Southwest Asia, (HNPSWA) of Atlanta, Georgia, under request for proposals (RFP) No. 306-14-000014, which was issued by the United States Agency for International Development (USAID) for logistical support services in Afghanistan. The protester asserts that the agency's technical evaluation and selection decision were biased and flawed, and that the agency failed to investigate whether HNPSWA has a potentially disqualifying organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

The solicitation provided for the award of a fixed-price, 2-year contract for logistical support services (such as warehousing, open-air staging, and property management services) to support USAID's efforts to reutilize and distribute foreign excess personal property (FEPP) available after the drawdown of International Security Assistance Forces in Afghanistan. RFP amend. 5 at 7; § J, attach. 1, Statement of Objectives (SOO), at 62. The RFP stated that award would be made to the offeror whose proposal provided the best value to the government based upon the agency's evaluation of the following four factors: (1) technical approach; (2) organization and key personnel; (3) past performance; and (4) price. RFP at 55-60. Offerors were to submit separate technical and cost/business proposals. Id. at 49.

The RFP's stated objective was to ensure the quick and efficient transfer of the maximum amount of FEPP that USAID partners could absorb. The solicitation provided specific minimum contractor facility and operational requirements. Id., § J, attach. 1, SOO, at 63-65. For example, the RFP provided that the contractor must provide a large, secure warehouse facility that is capable of accommodating a minimum number of shipping containers, while also providing additional storage space. Id. at 63. The RFP also stated that the contractor is expected to have a system and procedures in place that, among other things, anticipate delays without impeding the contractor's ability to intake and process arriving FEPP. See id. at 63-65. In their technical proposals, offerors were to describe a realistic approach to achieving these objectives, and provide meaningful milestones to ensure a prompt and effective launch of contract activities. See RFP amend. 5 at 49.

DGC previously filed two protests with our Office concerning this procurement. Our Office dismissed DGC's first protest, which challenged USAID's initial award to HNPSWA, because the agency proposed to take corrective action. DGC Int'l, B-410364, Sept. 18, 2014 (unpublished dismissal). We denied DGC's second protest, which challenged the proposed corrective action, because we found that USAID had reasonably determined it necessary to take corrective action, by reopening discussions, requesting and evaluating revised proposals, and making a new selection decision. DGC Int'l, B-410364.2, Nov. 26, 2014, 2014 CPD ¶ 343.

USAID reopened discussions with the four offerors in the competitive range, including DGC, and requested and received final revised proposals which were evaluated by a technical evaluation committee (TEC). Contracting Officer (CO) Statement at 2. The TEC documented its evaluation in a detailed report. See Agency Report (AR), Tab 14, TEC Selection Mem.

The evaluators assessed a number of strengths in DGC's final technical proposal, as well as a number of weaknesses; as discussed below, DGC specifically challenges two of these weaknesses. Id. at 13-14. The first weakness reflected

the evaluators' assessment that DGC's proposal contained confusing and inconsistent references to its proposed facilities, including their GPS coordinates. See CO Statement at 3-4. The second weakness reflected the TEC's assessment that aspects of DGC's proposal created doubt about the offeror's ability to perform at full capacity immediately upon receipt of the award. Id. at 4.

The agency's contracting officer reviewed the TEC's evaluation and conducted a price evaluation and best-value tradeoff analysis. See id. at 2. He concluded that, compared to DGC's (\$1,903,601) proposal, the technical superiority of HNPSWA's (\$2,799,722) proposal offered significant advantages that were worth its price premium, and provided the best-value to the agency. Id. at 3; see AR, Tab 15, Mem. of Negotiations, at 26-36. Award was made to HNPSWA, and DGC filed this protest following its notice of unsuccessful offeror and an oral debriefing from the contracting officer.

DISCUSSION

DGC protests USAID's evaluation of its technical proposal and the source selection decision, and also contends that the agency failed to investigate DGC's allegation (raised in its first protest) that HNPSWA has a potentially disqualifying OCI.¹ We have considered all of the protester's contentions, and as discussed below, we find none furnishes a basis to sustain the protest.²

¹ DGC also challenges the agency's past performance evaluation arguing, "[t]o the best of our knowledge, HNPSWA has no such contracts nor are any logistics contracts mentioned on their website." Protest at 2. This allegation is too speculative to state a sufficient legal or factual basis for protest. Bid Protest Regulations, 4 C.F.R. § 21.5(f). In any event, the website relied upon by the protester to form the basis of its allegation is not the website of the awardee, and the record reflects that the agency reasonably evaluated the references provided in the awardee's proposal. AR at 6; Id., Tab 14, TEC Selection Mem. at 6-7.

² DGC was not represented by counsel who could obtain access to non-public information pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the evaluation is necessarily general in nature in order to avoid reference to non-public information. We note that in response to the agency report, the protester complains that it "has nothing to comment on" because the agency has redacted "all the particulars." Protester's Comments at 3. Having made the business decision not to retain counsel and obtain access to information under the protective order, we believe DGC's review was appropriately limited to protect non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

Technical Evaluation

DGC challenges USAID's assessment of two weaknesses under the technical approach factor. The protester argues that the first weakness reflected the evaluators' misunderstanding of the number of facilities that DGC proposed, because, according to the protester, the locations were clearly identified in DGC's proposal. DGC disputes the second weakness, arguing that its proposal "unambiguously and unequivocally" committed full operational capability at contract execution. Protest at 7. We have examined the contemporaneous evaluation record and find that DGC's challenges to its technical evaluation lack merit.

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, rather, we review the record to determine if the evaluation was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. See Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6; Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. An agency's evaluation of technical proposals is primarily the responsibility of the contracting agency, since the agency is responsible for defining its needs and identifying the best method of accommodating them. Wyle Labs., Inc., B-311123, Apr. 29, 2008, 2009 CPD ¶ 96 at 5-6.

The RFP stated that the agency would evaluate the extent to which an offeror's technical approach and proposed plans were clear, well-conceived, technically sound, and directly addressed objectives identified in the statement of objectives, among other things. RFP amend. 5 at 55. The solicitation also stated that the agency would evaluate the extent to which proposed facilities reflected an offeror's understanding of the opportunities and problems likely to be encountered. Id.

With regard to the first weakness, DGC contends that the agency's evaluation irrationally faulted its proposal for confusing and inconsistent GPS coordinates. The protester argues that the agency conflated sets of coordinates on two different pages of its proposal because the evaluators' failed to recognize that the coordinates represent two different proposed facilities. In response, the agency asserts that the evaluators did recognize that DGC proposed two separate facilities, but explains that the proposal's discussion and coordinates for the proposed facilities created confusion.³ CO Statement at 4. Based on our review of the record, including the protester's proposal and USAID's evaluation, we find that the agency's evaluation was reasonable.

³ The agency states that DGC's proposal of separate facilities was also assessed as a weakness. CO Statement at 3; see AR, Tab 14, TEC Selection Mem., at 15.

In its comments on the agency report, DGC additionally complains that the agency's explanation is inconsistent with the information provided to DGC in its debriefing, and alleges that the weakness was assigned as a pretext to justify award to HNPSWA. To the extent that the protester and contracting officer dispute each other's representations regarding statements made during the debriefing we need not resolve the dispute since our Office is primarily concerned with the evaluation itself, not the debriefing. See, e.g., JSA Healthcare Corp., B-242313, B-242313.2, Apr. 19, 1991, 91-1 CPD ¶ 388. A debriefing is only an explanation of the agency's evaluation and source selection decision, not the evaluation or decision itself; therefore, the adequacy of the debriefing is a procedural matter that does not involve the validity of contract award. The Ideal Solution, LLC, B-298300, July 10, 2006, 2006 CPD ¶ 101 at 3 n.2. Additionally, insofar as DGC's comments on the agency report allege bad faith in USAID's award to HNPSWA, government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Here, apart from DGC's numerous unsupported allegations, it has provided no evidence, and there is none in the record, showing bias in favor of HNPSWA or against DGC.

With regard to the second weakness, DGC asserts that the agency improperly found its proposal unclear as to whether DGC would be ready to perform on day one of the contract's period of performance. The protester argues that this conclusion was unreasonable because DGC stated its commitment to start performance on day one in clear and unambiguous terms, multiple times throughout its proposal.

The record reflects that the evaluators acknowledged DGC's multiple statements that it would be fully operational and prepared to perform 100 per cent of the statement of work on the day of contract signing. AR, Tab 14, TEC Selection Mem. However, the evaluators also concluded that the proposal did not offeror "clear, explicit, demonstrable evidence of [its] existing capacity," which "undermine[d] the offeror's claims" of day one performance, and created uncertainty and doubt. Id. at 14. For example, the evaluators found that DGC's assertion that it would start performance on day one was contradicted by its proposed operations start plan, which contained five steps prior to award, and therefore called into question DGC's ability to process inventory at full capacity immediately upon award. Id.

Based on our review of the record, we agree with USAID that DGC's proposal was neither clear nor unambiguous, as the protester asserts. Instead, the record reflects that the agency's concerns with regard to inconsistencies in the protester's proposal were reasonable. Because it is an offeror's burden to submit an adequately written proposal that contains all of the information required under a solicitation, we find the agency's evaluation unobjectionable. Battelle Mem'l Inst., B-299533, May 14, 2007,

2007 CPD ¶ 94 at 3; Great Lakes Towing Co. dba Great Lakes Shipyard, B-408210, June 26, 2013, 2013 CPD ¶ 151 at 7-8 (where a proposal omits, inadequately addresses, or fails to clearly convey required information, the offeror runs the risk of an adverse agency evaluation.) While the protester contends that the agency has offered no analysis or justification for finding that DGC's five-step operational start plan⁴ would not be accomplished before contract award, or would take more than a single day, a protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Best Value Determination

Next, DGC protests USAID's source selection decision, arguing that it was flawed because it was biased and based on the use of the allegedly improper evaluation conclusions discussed above.

Selection officials have considerable discretion in making price/technical tradeoff decisions. American Material Handling, Inc., B-297536, Jan. 30, 2006, 2006 CPD ¶ 28 at 4. The propriety of a cost/price-technical tradeoff decision does not turn on the difference in the technical scores or ratings per se, but on whether the selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the RFP's evaluation scheme. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6.

As discussed above, we find no merit to DGC's objections to the agency's technical evaluation. Thus, we have no basis to question the agency's reliance upon those judgments in making its source selection. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

Organizational Conflict of Interest

Finally, the protester argues that USAID's contracting officer did not sufficiently investigate whether HNPSWA personnel were involved in drafting the RFP's statement of objectives, which DGC alleged in its first protest, as follows:

We are also very concerned since HNPSWA is an active USAID contractor and has a substantial presence in Afghanistan that they were involved in the Statement of Work [sic]. We respectfully request a copy of the Contracting Officer's Conflict of Interest determination.

⁴ DGC did not redact its discussion of this aspect of its proposal. See Protester's Comments at 2.

Protest B-410364 at 5. As evidence of the contracting officer's failure to conduct even a cursory OCI analysis, DGC's current protest additionally cites a publicly available LinkedIn profile for HNPSWA's chief executive officer,⁵ which, according to the protester, reveals that HNPSWA participates in a number of U.S. Government affiliated organizations, including OSAC.⁶ DGC maintains that this gives HNPSWA "unprecedented access, opportunity, and motive" to gain competitively useful information, including for this procurement, which, in DGC's view, required the contracting officer to conduct an OCI investigation under the provisions of Federal Acquisition Regulation subpart 9.5. Protest at 3-5; Protester's Apr. 13, 2015, Response to GAO Interrogatory.

As our Office has explained, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Science Applications Int'l Corp., B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 8-9. Here, DGC does not allege any actual conflict of interest but rather speculates that an OCI may exist because HNPSWA has substantial presence in Afghanistan and participates in the U.S. Department of State's OSAC. Aside from these general allegations, however, the protester does not provide any specific facts concerning any alleged role by HNPSWA in drafting portions of the SOO. Because the protest does not set forth hard facts that satisfy the standard for review of OCI protest arguments, we conclude that the protester has failed to state a valid basis for this protest allegation.⁷ See 4 C.F.R. § 21.5(f); Science Applications Int'l Corp., supra (hard facts necessary to show actual or potential conflict).

The protest is denied.

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General Counsel

⁵ LinkedIn is a social networking website for people in professional occupations, which it is mainly used for professional networking.

⁶ That is, the Overseas Security Advisory Council, which, according to its website, was created by the U.S. Department of State in 1985 to promote security cooperation between the agency and American private sector interests worldwide. See www.osac.gov/Pages/AboutUs.aspx.

⁷ In any event, the contracting officer submitted a statement in response to the protester's allegations that states that USAID personnel drafted the statement of objectives and that no one from HNPSWA was consulted, provided input, or participated in that regard. CO Statement at 7. The contracting officer also states that USAID personnel planned the procurement; that OSAC has no involvement in the procurement or the logistical services to be provided by the awardee; and that the agency followed established OCI procedures. See id. at 7-8.