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## Decision

**Matter of:** Millennium Corporation, Inc.

**File:** B-412866; B-412866.2

**Date:** June 14, 2016

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### DIGEST

1. Protest challenging agency's best-value award decision is denied where the record shows that the source selection authority analyzed the qualitative differences between the proposals and reasonably concluded that the higher-rated, higher-priced proposal offered the best value to the government.
2. Protest that awardee had unequal access to information organizational conflict of interest is denied where record reflects that any advantage arising from awardee's prior contract performance as a subcontractor was normally occurring incumbent advantage, and the agency did not provide awardee preferential treatment.

### DECISION

Millennium Corporation, Inc., of Arlington, Virginia, a small business, protests the award of a task order to Systems Technologies, Inc. (Systek), of West Long Branch, New Jersey, also a small business, by the Department of Veterans Affairs (VA) under request for quotations (RFQ) No. VA118-16-R-0909, for support services for the agency's acquisition and contracting administration office. Millennium challenges the agency's technical evaluation and best-value tradeoff decision, and contends that Systek has an organizational conflict of interest (OCI) because the awardee had unequal access to nonpublic information as a result of its status as an incumbent subcontractor.

We deny the protest.

## BACKGROUND

On January 22, 2016, the VA issued the solicitation, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding contracts under the General Services Administration's (GSA) Federal Supply Schedule (FSS) for Professional Services Schedule Special Item Numbers (SINs) 871-1 (strategic planning for technology programs/activities) and 871-6 (acquisition and life cycle management).<sup>1</sup> Contracting Officer's (CO) Statement at 2; see RFQ at 87. The RFQ contemplated the award of a fixed-price task order for a base year and two option years for acquisition policy, data, business operations, and acquisition technical support for the VA's acquisition and contracting administration office. RFQ at 16.

Award was to be made on a best-value basis considering four evaluation factors: (1) technical, (2) past performance, (3) price, and (4) veterans involvement. RFQ at 85. The technical factor was significantly more important than past performance, which was slightly more important than price, which, in turn, was slightly more important than the veterans involvement factor. Id. The non-price factors combined were significantly more important than the price factor. Id. In order to receive consideration for award, offerors needed to receive a "rating of no less than 'Acceptable'" for the technical factor, and offerors were cautioned that the agency may not necessarily issue an award to the lowest-priced or most highly-rated technical proposal. Id. The RFQ also advised that the award might be made without discussions. Id.

In addition, the RFQ incorporated Veterans Affairs Acquisition Regulation (VAAR) clause 852.209-70, Organizational Conflicts of Interest, which states that offerors are to provide a statement describing all facts concerning OCIs relating to the services to be provided under the solicitation. RFQ at 62. The contracting officer would utilize this information, and other information solicited or obtained, to determine whether an OCI exists, and if one exists, whether it could be mitigated. Id.

On February 5, the VA received proposals in response to the RFQ from four offerors, including Millennium and Systek. Agency Report (AR), Tab 11, Source Selection Decision Document (SSDD), at 1, 11. In addition, the agency prepared several source selection evaluation documents, including the evaluation reports for each offeror and the SSDD, which set forth the final evaluation results and the strengths and weaknesses, if any, for each offeror. AR, Tab 11, SSDD, at 1-7; see Tab 9, Millennium Technical Evaluation and Tab 10, Systek Technical Evaluation. The evaluation of the awardee's and protester's proposals is summarized below:

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<sup>1</sup> The agency issued the solicitation via GSA's e-Buy system.

<b>Evaluation Factor</b>	<b>Systek</b>	<b>Millennium</b>
Factor 1: Technical	Good	Acceptable
Factor 2: Past Performance	Low Risk	Low Risk
Factor 3: Total Evaluated Price	\$5,822,298.76	\$4,689,203.31
Factor 4: Veterans Involvement	Some Credit	Full Credit

AR, Tab 11, SSDD, at 2.<sup>2</sup>

The source selection authority (SSA), who was also the contracting officer, conducted a tradeoff decision between Systek (offeror D)<sup>3</sup> and Millennium (offeror C) and concluded that Systek represented the best value because it provided a superior proposal. Specifically, the SSA stated:

Offeror D's two significant strengths provide substantially more value to [the] VA than the proposal from Offeror C, which simply met the Government's requirement with no strengths or significant strengths. With respect to acquisition package development, Offeror D demonstrated a thorough understanding of how to develop packages that consider all elements of each requirement throughout its lifecycle (as detailed above). Considering that this level of support will be provided on as many as 300 acquisition packages over the life of this contract (100 packages per year), Offeror D would ultimately help to deliver more innovative, stable, and accessible IT functionality to Veterans and their beneficiaries over this time as compared to Offeror C. In addition, Offeror D proposed to implement a unified ERP

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<sup>2</sup> The source selection plan defined a rating of good as a “proposal that meets or exceeds all of the Government’s requirements, contains at least adequate detail, demonstrates at least an understanding of the problems, and is at least feasible (low to moderate risk).” AR, Tab 8, Source Selection Plan, at 15. The source selection plan defined a rating of acceptable as a “proposal that at least meets all of the Government’s requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the problems, and is at least minimally feasible (moderate to high risk).” Id.

<sup>3</sup> The evaluation materials identified the four offerors as offeror A through offeror D to retain anonymity.

[enterprise resource planning]<sup>4</sup> system to support acquisition management reporting, while Offeror C proposed to use the same methods currently used (MS Excel, MS SharePoint, BTT [budget tracking tool], and the Virtual Office of Acquisition) to accomplish the same task. The single, unified ERP system would more efficiently facilitate information sharing, business planning, and decision-making across PD [product development] compared to the multiple [facets] of information that are used currently. In fact, Offeror D's ERP system has been identified as important enough to warrant including it as a PWS [performance work statement] requirement in the final contract to ensure it is received.

AR, Tab 11, SSDD, at 6-7. The SSA further determined that the technical benefits of Systek's proposal "clearly outweigh the 20% price premium (the third most important factor) and marginally lower Veterans Involvement rating (the least important factor)." Id. at 7.

On March 7, the VA notified Millennium that it had selected Systek's proposal for award. CO Statement at 4; AR, Tab 12, Unsuccessful Notification Letter. This protest followed.

## DISCUSSION

Millennium challenges the VA's evaluation of technical proposals and the resulting best-value award decision. In addition, the protester contends that the awardee's work as a subcontractor on the prior contract for acquisition support to the VA's program office created an unequal access to information OCI. As set forth below, we find no basis to sustain the protest.

### Technical Evaluation and Best-Value Determination

Millennium contends that the VA did not sufficiently document and support its basis for assigning Systek's proposal a higher technical rating than Millennium's proposal and as a result, the best-value award decision was not reasonable.<sup>5</sup> Protest at 5;

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<sup>4</sup> The SSDD explained that the ERP would unify VA's manual data collection tools such as Excel, SharePoint, and the Budget Tracking Tool (BTT) to "provide visibility into the entire [office's] enterprise to include the acquisition lifecycle [and] increase and automate data validation and verification, which would . . . enable a unified real-time view of the [the office's] acquisitions." AR, Tab 11, SSDD, at 4-5.

<sup>5</sup> Millennium also protested that the RFQ did not set forth the adjectival ratings used by the agency. Protest at 3-4. In its request for dismissal, the agency stated that questions and answers (Q&As) submitted on the RFQ show the protester had asked "...to be eligible for award the proposal must be rated at least

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Comments at 2-5. Specifically, Millennium argues that there is no explanation or documentation to support its assigned technical rating of only acceptable as compared to the awardee's rating of good; the strength assigned to the awardee's proposal relating to its enterprise resource planning system is not permitted by the RFQ; and the trade-off analysis is insufficient to support the agency's decision. Comments at 2-5. The VA maintains that its evaluation and resulting trade-off analysis were reasonable and sufficiently documented. AR at 4-6; Supplemental AR at 4-9.

In reviewing protests of an agency's evaluation and source selection decision in procurements conducted under Federal Supply Schedule procedures (*i.e.*, FAR subpart 8.4), we do not conduct a new evaluation or substitute our judgment for that of the agency. Research Analysis & Maintenance, Inc., B-409024, Jan. 23, 2014, 2014 CPD ¶ 39 at 5. Rather, we examine the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Id.; U.S. Information Techs. Corp., B-404357, B-404357.2, Feb. 2, 2011, 2011 CPD ¶ 74 at 8-9.

Here, the RFQ stated the offerors would be evaluated on their technical approach, to include their understanding of the problem and the extent to which the offeror "demonstrates a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the solicitation." RFQ at 85. In addition, the agency would evaluate offerors on the feasibility of the approach, including the extent to which the proposed approach is "workable and the end results achievable." Id. at 86.

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'acceptable'. What other adjectival ratings will be used – what is the highest and lowest rating an offer may receive?" Request for Dismissal at 3; AR, Tab 5c, Q&As, at 4. In response to this question, the agency stated that this was "source selection sensitive information [and u]pon award or notification of non-award, Offerors may request a debriefing to include its technical rating." Id. At that time, the protester was placed on notice that the agency would be using adjectival ratings that were not set forth in the RFQ. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1), specifically require that a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. Since the protest allegation concerns the terms of the solicitation, and was not filed before the due date for receipt of quotations, it is dismissed as untimely. Further, and in any event, an allegation that the agency improperly used adjectival ratings as part of its evaluation, which were not disclosed in the solicitation, is not a valid basis for a protest since there is no requirement that the solicitation describe the agency's rating scheme. See Swift & Staley, Inc., B-408792, Dec. 6, 2013, 2013 CPD ¶ 284 at 3 n.4; FAR subpart 8.4.

The technical evaluators found that Millennium “outlined the proposed level of effort along with its staffing approach to meet the requirements of the PWS,” proposed “a hybrid of engineering and acquisition expertise,” stated it would be fully staffed in thirty days, detailed its expertise on similar requirements, and provided an approach using a “bottom up” assessment. AR, Tab 9, Millennium Technical Evaluation, at 1. Both the technical evaluators and SSA concluded that Millennium’s proposal met the minimum requirements of the RFQ, but contained no strengths, weaknesses or deficiencies. AR, Tab 11, SSDD, at 4; Tab 9, Millennium Technical Evaluation, at 1-2. Specifically, the SSDD stated that Millennium:

. . . provided a proposal that at least meets all of the Government’s requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the problems, and is at least minimally feasible (moderate to high risk). [Millennium] received no significant strengths, no strengths, no weakness, no significant weaknesses, and no deficiencies.

AR, Tab 11, SSDD, at 4. Despite Millennium’s contention, there is no requirement that an agency document all “determinations of adequacy” or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Building Operations Support Servs., LLC, B-407711, B-407711.2, Jan. 28, 2013, 2013 CPD ¶ 56 at 5.

In comparison, the technical evaluators and SSA found that Systek demonstrated a “thorough understanding of developing and/or reviewing Product Descriptions and PWS’s [sic] to ensure the technical requirements are adequate and all elements of the life cycle of the project are covered.” AR, Tab 11, SSDD, at 4; Tab 10, Systek Technical Evaluation, at 1. For example, the evaluators and SSA noted that the awardee went into “significant” detail about the product life cycle that needs consideration when developing a PWS, and identified acceptance testing and other compliance requirements necessary when developing product descriptions. Id.

Further, the awardee proposed to implement a unified enterprise resource planning system in support of acquisition management reporting to “provide visibility into the entire PD [product development] enterprise,” which the agency found would increase the probability of successful contract performance. AR, Tab 11, SSDD, at 4-5; Tab 10, Systek Technical Evaluation, at 1-2. Although the RFQ did not specifically require an offeror to propose an enterprise resource planning system to support acquisition management reporting, it did not preclude an offeror from proposing one either. In fact, as noted above, the RFQ specifically stated that offerors would be evaluated on their technical approach, to include their understanding of the problem, their approach to accomplishing the work outlined in the solicitation, and the feasibility of the approach, to include whether the proposed approach is workable. RFQ at 85-86. Here, part of the awardee’s proposed

approach was a system that would unify and aggregate the various elements of the VA's current acquisition management systems, and the VA considered this approach a strength. We find that these conclusions are both reasonable and sufficiently documented.

Thus, contrary to the protester's arguments, the agency's source selection documents provide sufficient explanations to support assigning the protester a technical rating of acceptable, and the awardee a technical rating of good. The record also demonstrates that the agency's evaluation was consistent with the RFQ. Therefore, we find no basis to sustain Millennium's challenges to the VA's technical evaluation.<sup>6</sup>

With respect to the VA's award decision, where an acquisition conducted pursuant to FAR subpart 8.4 provides for award on a "best value" basis, it is the function of the source selection authority to perform a price/technical tradeoff to determine whether a quotation's technical superiority is worth its higher price. SoBran, Inc., B-408420, B-408420.2, Sept. 10, 2013, 2013 CPD ¶ 221 at 4; InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6. For FAR subpart 8.4 acquisitions that require a statement of work, such as this one, FAR § 8.405-2(f) specifically requires documentation of the rationale for any tradeoffs made in the selection. This rationale, or source selection decision documentation, must be in sufficient detail to show that it is reasonable. See Amyx, Inc., B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 6.

Here, the RFQ stated that the technical factor is significantly more important than the past performance factor and that the non-price factors combined are significantly more important than the price factor. RFQ at 85. Further, the agency cautioned offerors that it may not necessarily issue an award to the lowest-priced or most highly-rated technical proposal. Id.

The SSA conducted a tradeoff between System and Millennium and concluded that System's proposal represented the best value because its two significant strengths provide substantially more value to the VA than the proposal from Millennium, which simply met the Government's requirements. AR, Tab 11, SSDD, at 6-7. The SSA stated that System demonstrated a thorough understanding of how to develop acquisition packages that considered all elements of each requirement throughout its lifecycle and proposed to implement a system to support acquisition

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<sup>6</sup> The protester believes that System should not have received a strength for the ERP because it was mentioned in only two sentences in the proposal. Comments at 4. The VA explains, however, that the awardee's proposal received a strength for proposing the ERP because it showed the awardee recognized a need and proposed a way for the VA to increase the probability of successful contract performance. Supplemental AR at 7.

management reporting, while Millennium proposed to use the same methods currently used. Id. As a result, the SSA concluded that the technical benefits of Systek's proposal "clearly outweigh the 20% price premium (the third most important factor) and marginally lower Veterans Involvement rating (the least important factor)," and that Systek's proposal provided the best value to the government. Id. at 7.

On this record, there is no basis to conclude that the SSA failed to analyze the qualitative differences between the proposals, failed to adequately document the record, or unreasonably concluded that the higher-rated, higher-priced proposal was the best value to the government. Therefore, we deny these protest allegations.

#### Organizational Conflict of Interest

The protester also argues that Systek's work as a subcontractor for acquisition support to the VA's program office created an unequal access to information OCI. Millennium relies on the following language from Systek's proposal as support for its allegation:

Based on our experience providing the identical support to PD ACA [Product Development Acquisition and Contracting Administration] for the past two years, [we] possess[] a comprehensive understanding of [the] current and planned VA business processes, tools, and reporting systems and the ability to access and integrate these assets to help PD ACA achieve its objectives.

Comments at 2, 6, quoting AR, Tab 19, Awardee Proposal, at 2 (emphasis omitted).

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: (1) unequal access to information; (2) impaired objectivity; and (3) biased ground rules. See FAR §§ 9.505, 9.508; Acquisition Servs. Corp., B-409570.2, June 18, 2014, 2014 CPD ¶ 197 at 15.

An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505(b); Acquisition Servs. Corp., supra. 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. Acquisition Servs. Corp., supra. Examples of such unequal access to information

resulting in a competitive advantage include situations where a contractor competing for an award possesses “[p]roprietary information that was obtained from a Government official without proper authorization” or “[s]ource selection information . . . that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.” FAR § 9.505(b).

Here, the agency determined, prior to issuing the RFQ for this procurement, that contractors or subcontractors performing acquisition support services for the government under the prior task order could potentially encounter OCIs for future acquisitions, such as the one at issue here. Supplemental CO Statement at 2. As a result, the agency ensured from the beginning of the acquisition process for this procurement that only government personnel worked on the acquisition. Id. Specifically, the contracting officer explained that the agency’s program manager handled all acquisition planning work for this procurement herself and did not allow contractors or subcontractors to participate in this procurement. Id. The agency also ensured that only government personnel, and not contractor staff, were involved in the evaluation here. Id. Further, the contracting officer reviewed a contract log for the previous task order, which identified every acquisition package on which Systek worked as a subcontractor. Id. at 2-3. This contract log confirmed that Systek did not perform any work related to this acquisition. Id. at 3. The contracting officer also noted that Systek was an off-site contractor (not located in the program office’s building) so its employees would not have overheard conversations relating to the acquisition. Id.

The VA also attempted to mitigate any potential incumbency advantage by providing the following to all offerors: Q&As, the level of work effort based on expected acquisition packages, the Business Tracking Tool User Guide, and the Acquisition Package Development Guide. Supplemental CO Statement at 3; Supplemental AR, Tabs 5b-e, RFQ Attachments. Further, the RFQ described the VA’s acquisition processes and systems<sup>7</sup> and incorporated VAAR clause 852.209-70, which required offerors provide a statement describing all facts concerning OCIs relating to the services to be provided under the solicitation. RFQ at 15-23, 62. Systek did not indicate any OCIs. Supplemental CO Statement at 3; AR, Tab 19, Systek Technical Proposal at 2. After analyzing the above information, including the VA’s proactive attempt to mitigate any incumbency advantage, the CO concluded that no OCIs existed. Supplemental CO Statement at 3.

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<sup>7</sup> For example, the RFQ stated that the contractor “shall apply knowledge and understanding of relationships between systems (such as the Budget Tracking Tool (BTT) and VOA [Virtual Office of Acquisition] and the impact they have on requirements in order to provide recommendations for acquisition packages.” RFQ at 19.

Millennium maintains that there is nevertheless an OCI because Systek, “as the incumbent [knows] of the future plans of [the program office] and they are able to propose an ERP system.” Supplemental Comments at 3. However, the protester has failed to present any “hard facts” indicating that Systek was privy to specific, nonpublic, competitively useful information such as proprietary, sensitive, or source selection information that would create an OCI. Specifically, Millennium fails to explain how Systek’s proposal to utilize an electronic system that would unify VA’s data collection tools (e.g., Excel, SharePoint, BTT) implicates nonpublic information or reflected an improper competitive advantage in the competition especially where the VA provided offerors with information and documents in the RFQ about its acquisition systems and processes.

It is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract—either as an incumbent contractor or otherwise and the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); Lovelace Sci. & Tech. Servs., B-412345, Jan. 19, 2016, 2016 CPD ¶ 23 at 12; Signature Performance, Inc., B-411762, Oct. 19, 2015, 2015 CPD ¶ 321 at 5. The existence of an incumbent advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Lovelace Sci. & Tech. Servs., supra; Signature Performance, Inc., supra.

Based on the record presented here, we have no basis to conclude that the awardee had an unequal access to information OCI; that Systek had anything other than a normally occurring incumbent advantage as a result of its prior performance as a subcontractor; or that the agency provided Systek preferential treatment. This protest allegation is denied.

The protest is denied.

Susan A. Poling  
General Counsel