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**Comptroller General
of the United States**

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

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Decision

Matter of: Phacil Inc.

File: B-406628

Date: July 5, 2012

Lee Dougherty, Esq., and Katherine A. Straw, Esq., General Counsel PC, for the protester.

Devon E. Hewitt, Esq., Anna K. Dvorchik, Esq., and Leigh N. Sprowls, Esq., Protorae Law PLLC, for the intervenor.

Antonio Robinson, Esq., Department of Agriculture, for the agency.

Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging an agency's evaluation of quotations and selection decision is denied where the record shows that the agency's evaluation and issuance of a task order was reasonable and consistent with the terms of the solicitation.

DECISION

Phacil Inc., of Arlington, Virginia, protests the issuance of a task order to Vistrionix, Inc., of Reston, Virginia, under request for quotations (RFQ) No. AG-3144-S-12-0003, issued by the Department of Agriculture for information technology support services.¹ Phacil challenges the agency's evaluation of quotations and source selection decision.

We deny the protest.

¹ The RFQ was issued under the General Services Administration's Alliant Government-Wide Acquisition Contract and was limited to small business contract holders under that program. As a result this protest arises under our jurisdiction to hear protests of the award of task orders placed under multiple-award contracts created by civilian agencies, provided the value of the task order exceeds \$10 million. Kevcon, Inc., B-406418, Mar. 7, 2012, 2012 CPD ¶ 108 at 3.

BACKGROUND

The RFQ, issued on February 6, 2012, sought quotations for information technology (IT) support services for the agency's Natural Resources Conservation Service. These services were divided into five functional areas: software/database development, integration, and maintenance (Area 1); application and production support testing (Area 2); production application and database operations support (Area 3); help desk support (Area 4); and cloud hosting (Area 5). RFQ at 13. Firms were requested to provide fixed-price labor hours for Area 1 (software/database development, integration, and maintenance), and fixed-prices without labor hours for the remaining four areas. RFQ at 10.

The RFQ provided for the issuance of the task order on a best value basis, considering the following three equally weighted factors: management approach, past performance, and price. RFQ at 13. Under the management approach factor, firms were to explain how they intended to meet the performance objectives in each functional area. RFQ at 14. In its review, the agency intended to assess the responses under this factor as exceptional, acceptable, marginal, or unacceptable.² Under the past performance factor, the agency intended to assess past performance as providing substantial confidence, satisfactory confidence, or limited confidence.³ Under the price factor, firms were advised that the agency would assess the realism and reasonableness of the firms' quoted prices. Id. The RFQ instructed that quotations should be submitted in three separate volumes, one for each evaluation factor. RFQ at 10.

The agency received 12 quotations, including Phacil's and Vistronix's (the incumbent contractor), which were evaluated by the agency's technical evaluation board (TEB). Phacil's and Vistronix's quotations were evaluated as follows:

² An exceptional rating reflected a proposal that exceeds specified performance or capabilities in a beneficial way to NRCS and has no significant inadequacy. An acceptable rating reflected a proposal that meets evaluation standards and any inadequacies are readily correctable. A marginal rating reflected a proposal that fails to meet minimum standards and any significant failure is correctable. An unacceptable rating reflected a proposal that fails to meet the minimum requirements of the RFQ and the failure is uncorrectable without major revision. AR, Tab 5, Evaluation Plan, at 4.

³ A substantial confidence rating reflected an offeror with a performance record such that the government has a high expectation the offeror will successfully perform. A satisfactory confidence rating reflected an offeror with a performance record such that the government has a satisfactory expectation that the offeror will successfully perform. A limited confidence rating reflected a low expectation that the offeror will successfully perform. AR, Tab 5, Evaluation Plan, at 4.

		Phacil	Vistronix
Management Approach		Acceptable	Exceptional
	Area 1	Unacceptable	Acceptable
	Area 2	Marginal	Exceptional
	Area 3	Acceptable	Exceptional
	Area 4	Acceptable	Acceptable
	Area 5	Marginal	Exceptional
Past Performance		Limited	Substantial
Price		\$79,169,961	\$72,048,441

Agency Report (AR), Tab 12, Quotation Evaluation, at 1.⁴

Vistronix’s quotation indicated that the firm intended to perform the Area 1 work with [DELETED] annual labor hours. AR, Tab 7, Vistronix Price Volume, at 65. In contrast, the government’s estimate for this work was 245,760 annual labor hours. RFQ at 90. Because Vistronix identified significantly fewer hours for Area 1 than were estimated by the agency, Agriculture asked Vistronix to clarify the methodology that the firm had used to calculate its annual labor hours for this area. See AR, Tab 13, Vistronix Clarification Response. Vistronix responded by providing a 2-page explanation of the methodology it used to determine its proposed level of staffing, and stating that its proposed staffing level represented its best estimate “based on first-hand experience--to accomplish the specified work with no risk to the Government.” Id. at 2. The company’s quotation also explained that its low labor hour estimate reflected the firm’s subject matter expertise and economies of scale that allowed the firm to [DELETED]. See AR, Tab 7, Vistronix Price Volume at 71.

With respect to Vistronix’s quotation, the TEB concluded that the firm had submitted a “feasible” response to the agency’s clarification request, and determined that Vistronix’s proposed staffing level and approach was realistic. AR, Tab 14, TEB Best Value Recommendation, at 5-6. The contracting officer (who was the source selection authority for this procurement) determined that Vistronix’s approach used “innovation, experience, and reach back capability to industry partners that was an added value to the Government.” AR, Tab 15, Source Selection Decision, at 24. With respect to Phacil’s quotation, the TEB found that the protester had failed to address requirements under a number of functional areas, including not addressing

⁴ The record does not show, nor does the agency explain, why Phacil’s quotation was determined to be acceptable overall under the management approach factor, even though its quotation was found to be unacceptable under one functional area and marginal under two other areas.

enterprise scalability software development. AR, Tab 14, TEB Best Value Recommendation, at 19. Ultimately the contracting officer concluded that Vistronix's quotation, which was the highest-rated and lowest-priced, offered the best value, and the task order was issued to Vistronix.

This protest followed.

DISCUSSION

Phacil challenges the agency's determination that Vistronix's price was realistic. Specifically, Phacil contends that Vistronix did not sufficiently clarify how it could perform Area 1 with the annual labor hours identified.⁵ In this regard, Phacil argues that the contracting officer unreasonably concluded that Vistronix's approach under this area was innovative and efficient.

Where the award of a fixed-price contract or task order is contemplated, price realism is not ordinarily considered, since a fixed-priced contract or task order places the risk and responsibility for costs and resulting profit or loss on the contractor. However, an agency may, as it did here, provide in the solicitation for a price realism analysis for such purposes as measuring a firm's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide goods or services at little or no profit. See STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 10. The depth of an agency's price realism is a matter within the sound exercise of the agency's discretion. Grove Resource Solutions, Inc., B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4-5. In reviewing protests challenging price realism evaluations, our focus is whether the agency acted reasonably and in a manner consistent with the terms of the solicitation.

Here, the record provides no basis to question the agency's price realism analysis. As explained above, the agency obtained clarification from Vistronix with respect to how the firm had calculated its price for Area 1. Vistronix explained its five-step methodology for calculating its annual labor hours for this area. Specifically, Vistronix provided a detailed explanation of how it analyzed the RFQ's requirements, developed a "bottom up" level-of-effort using its own experience and performance productivity metrics (including explaining specific instances where Vistronix was able to reduce the number of proposed labor hours), created staffing plans, compared the plans to the current arrangement, and reviewed the staffing plans. See AR, Tab 13, Vistronix Clarification Response. The agency concluded from Vistronix's quotation and the firm's clarification response that the firm's price reflected a realistic approach

⁵ Phacil does not contend that the agency's clarifications with Vistronix constituted discussions.

to performing the work. Although Phacil disagrees with the agency's judgment in this regard, this does not demonstrate that the agency unreasonably found the firm's price realistic.

The protester also complains that one of the two agency evaluators on the agency's TEB is a former employee of Vistrionix, and argues that the agency's evaluation was therefore flawed due to this individual's "personal conflict of interest." Protest at 8.

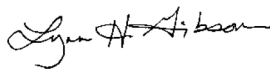
Contracting agencies, as a general matter, are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure impartiality in the evaluation and to preserve the integrity of the procurement process. Laerdal Med. Corp., B-297321, B-297321.2, Dec. 23, 2005, 2006 CPD ¶ 12 at 6-7; DRI/McGraw-Hill, B-261181, B-261181.2, Aug. 21, 1995, 95-2 CPD ¶ 76 at 3. Where, as here, a protester infers that agency officials are biased because of their past experiences or relationships, we focus on whether the individuals involved exerted improper influence in the procurement on behalf of the awardee, or against the protester. See George A. Fuller Co., B-247171.2, May 11, 1992, 92-1 CPD ¶ 433; Advanced Sys. Tech., Inc.; Eng'g and Prof'l Servs., Inc., B-241530, B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153 (no evidence of bias by evaluation panel member who was formerly employed by the awardee's subcontractor).

The record shows that the evaluator was employed by Vistrionix for only 6 months, and he was employed by the agency beginning in October, 2010. Contracting Officer's Supplemental Statement at 2. The RFQ here was issued on February 6, 2012, more than a year later. Furthermore, the evaluator in question signed a conflict of interest statement in March 2012, in which he stated that he would not participate in the evaluation in the event that he had any financial interest in any of the firms competing here. See AR, Tab 18, Conflict of Interest and Non-Disclosure Statement. There is no evidence in the record to support the protester's attribution of unfair or prejudicial motives to the evaluator's review. A protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Shinwha Elecs., B-290603 et al., Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6.

Phacil also complains that the solicitation contained a latent ambiguity that caused the firm to submit a higher price than it would have and may have resulted in the awardee submitting a lower price than it would have. Specifically, Phacil argues that the RFQ identified certain tasks as "new" that led the protester to provide a quotation for these tasks, even though the agency allegedly now views those tasks as not "new" and will procure those tasks through another contract vehicle. The agency disputes that there is any ambiguity in the RFQ and that the RFQ includes work that the agency intended to procure under another contract.

We do not specifically address this dispute because Phacil does not show that it was prejudiced in any event. Competitive prejudice is an essential element of a viable protest, and where the protester fails to demonstrate prejudice, our Office will not sustain a protest. See Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 9-10; McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. The protester, whose quotation was lower-rated and higher-priced, does not allege that, if its allegations are true, that it would have provided a lower price than Vistronix. Indeed, Phacil provides no explanation as to how its price would change in the event that we sustained this protest ground.

The protest is denied.⁶



Lynn H. Gibson
General Counsel

⁶ Although the protester did not challenge the technical evaluation of its quotation in its protest, Phacil, in its comments, disputed the agency's assessment of two weaknesses in the firm's past performance. The agency disputes Phacil's arguments in this regard. We do not resolve this dispute because the record does not show that either weakness had any material impact on the agency's selection decision. Furthermore, while we have addressed only the protester's principal arguments above, we have considered all of Phacil's arguments and find they provide no basis to sustain the protest.