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Decision

Matter of: TISTA Science and Technology Corporation, Inc.

File: B-408175.4

Date: December 30, 2013

Albert B. Krachman, Esq., Blank Rome LLP, for the protester.
Lee Dougherty, Esq., Katherine A. Straw, Esq., Fluet Huber & Hoang PLLC, for ADDX Corporation, an intervenor.
Krishon Gill-Edmond, Esq., Department of Veterans Affairs, for the agency.
Frank Maguire, Esq., Sharon L. Larkin, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where the record includes no evidence linking employees of awardee's subcontractor to abuses identified in agency Inspector General report, the agency acted reasonably in not considering the Inspector General report as adverse information in the offeror's evaluation.
 2. Agency reasonably found no "unequal access to information" organizational conflict of interest, despite protester's allegations regarding the self-promotional activities of employees of awardee's subcontractor who previously performed similar requirement, where there was no indication in the record that the awardee gained any competitive advantage from access to information that was not available to all offerors.
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DECISION

TISTA Science and Technology Corporation (TISTA) protests the Department of Veteran Affairs' (VA) award to ADDX Corporation (ADDX) under request for quotations (RFQ) No. VA798-13-Q-0012 for program management support services. The protester challenges the agency's evaluation of its and ADDX's quotations and asserts that ADDX should be ineligible for award due to an organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

The RFQ sought strategic and operations support to assist the VA's Office of Human Resources and Administration (HR&A) in managing its human capital investment plan (HCIP) initiatives. RFQ at 6. The RFQ was issued pursuant to Federal Acquisition Regulation (FAR) Part 8.4 and was set aside for service-disabled, veteran-owned small businesses. Id. at 1. The RFQ contemplated the issuance of a single order to a vendor holding one of three designated federal supply schedule contracts for a 1-year base period with four 1-year options. Id. at 1, 7.

The RFQ provided for evaluation of quotations under three factors, listed in descending order of importance--technical approach/management plan, past performance, and price--with the non-price factors significantly more important than price when combined. RFQ at 47-48. In considering the vendor's technical approach/management plan factor, the RFQ stated that the agency would evaluate understanding of the work, feasibility of approach, completeness, risk, and key personnel. Id. For past performance, the agency was to evaluate quality, timeliness, and relevance of performance based on the vendor's written narrative, past performance questionnaires, and other government sources. Id. at 48.

The VA received six quotations, including quotations from TISTA and ADDX. As relevant, here, both TISTA and ADDX proposed to perform the work with subcontractors. ADDX proposed to team with XO Consultants, LLC (XOC), three principals of which were former key employees of Pathfinder Consultants, LLC, which had performed prior contracts for similar work at the VA. AR, exh. 4.1, ADDX Technical Quotation, at 2; Protest at 3. According to TISTA, at least two of the Pathfinder employees approached TISTA prior to the competition here indicating that they had knowledge of VA's future acquisition plans and could bring the contract to a new team that employed them. Protest, attach. 5, Declaration of TISTA Employee. In April 2013, the agency reviewed Pathfinder's prior work for the VA and conducted an investigation to determine if an OCI existed. The agency determined that Pathfinder and its employees were not involved in creating the "acquisition package" here and did not influence the government's requirements. AR, exh. 8.1, Memo to File, at 1-2.

During the evaluation of quotations, the contracting officer eliminated from consideration four quotations due to unsatisfactory ratings, leaving only TISTA's and ADDX's quotation eligible for award. TISTA's and ADDX's quotations were both rated excellent under the technical approach/management plan factor¹ and good

¹ The evaluators did not separately assign ratings to the five areas to be considered under the technical approach/management plan factor (understanding of the work, feasibility of approach, completeness, risk, and key personnel), but instead noted
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under the past performance factor. ADDX's quoted price was \$34,998,968 while TISTA's was \$37,901,971. AR, exh. 3.1, Best Value Determination, at 29.

The contracting officer's best value analysis notes that ADDX's technical approach and management plan "indicated an exceptional and comprehensive understanding of the program goals, resources, schedules, and other aspects essential to the performance of the program." AR, exh. 3.1, Best Value Determination, at 29. The contracting officer found that ADDX's approach presented a number of strengths, and included a labor mix that consisted of a "strong cadre" of individuals with institutional knowledge of the VA and technical knowledge in federal contracts and acquisitions, project management implementation. Id. at 29-30. This, the contracting officer determined, provided "high confidence" that ADDX would assist the agency in meeting "the complex nature of achieving results." Id. at 30. The contracting officer further noted that ADDX's past performance presented low risk, and that the firm's quoted price was fair and reasonable. Id.

In comparison, the contracting officer found that TISTA's quotation included "many strengths that are comparable in value to those offered by ADDX"; that the vendor's past performance also presented a low risk of unsuccessful performance; and that the firm's quoted price was reasonable. Id. However, the contracting officer determined that there was "no benefit" that would justify paying a price premium of \$2,903,002.59 by selecting TISTA for award, given that both TISTA's and ADDX's quotations were "essentially equal" under the non-price factors. Id. The contracting officer selected ADDX for award and this protest followed.

DISCUSSION

TISTA challenges the agency's evaluation of quotations under the technical approach/management plan and past performance factors. Further, TISTA asserts that ADDX was ineligible for award due to an organizational conflict of interest.²

In reviewing an agency's evaluation in an FSS competitive acquisition, we will not reevaluate quotations, but will examine the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

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numerous strengths and no deficiencies or weaknesses for each vendor. AR, exhs. 3.2, 3.3, TISTA and ADDX Evaluations.

² TISTA's protest also included several grounds relating to ADDX's small business size status, which our Office dismissed. On September 9, 2013, the SBA issued a size determination, finding ADDX to be a small business under the applicable size standard. ADDX Corporation, Size Determination No. 2-2013-118, September 9, 2013.

Beckman Coulter, Inc., B-405452, Nov. 4, 2011, 2011 CPD ¶ 231 at 5. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Teknion LLC, B-407989, B-407989.2, May 8, 2013, 2013 CPD ¶ 209 at 3. We have considered all of TISTA's arguments and find that none provides a basis for questioning the agency's evaluation. We address TISTA's most significant arguments below.

The protester contends that ADDX should have received lower ratings than TISTA under both the technical approach/management plan and past performance factors.³ This argument is based substantially on the findings of a VA Inspector General (IG) investigation with regard to allegations of wasteful expenditures related to two human resource conferences held in Orlando, Florida, in July and August 2011. The IG Report found, *inter alia*, that VA's HR&A senior leadership failed to provide proper oversight in the planning and execution of the two conferences which led to mismanagement and wasteful spending, and that HR&A employees improperly accepted gifts. VA IG Report No. 12-02525-291, "Administrative Investigation of the FY 2011 Human Resources Conferences in Orlando, Florida," September 30, 2012 ("IG Report"), Executive Summary.

TISTA associates the VA's mismanagement found in the IG Report with the performance of the three former employees of Pathfinder, which has provided program management support services to the VA since 2005. Since these employees now work for ADDX's team member, XOC, TISTA contends that their involvement in the VA's mismanagement should have resulted in lower evaluation ratings for ADDX under the technical approach/management plan and past performance factors.

We find no basis to conclude that the evaluation of ADDX's quotation was unreasonable here. Nothing in the IG report suggests that the financial abuses and wasteful expenditures were due to poor performance by Pathfinder or its former employees. Neither Pathfinder nor its employees are even mentioned in the report; the several individuals who are named in the report are VA officials, not contractors. Furthermore, the protester has not shown that Pathfinder was involved in any decision-making regarding the unnecessary and unsupported expenditures that are the core of the abuses identified in the IG report. Under these circumstances, with no evidence linking the former Pathfinder employees to the mismanagement

³ TISTA raised additional challenges to the agency's best value decision, citing several "missed benefits" that the agency failed to recognize in its quotation. However, these allegations were raised for the first time in the protester's comments, which were filed more than 10 calendar days after the agency's document production that gave rise to these protest grounds. Accordingly, these protest allegations are dismissed as untimely. 4 C.F.R. § 21.2(a)(2) (2013).

identified in the IG Report, and no indication that the responsibilities of Pathfinder would have put its employees in a relevant decision-making position at VA, we are not persuaded that the evaluators were unreasonable in not considering the IG Report as adverse information in ADDX's technical or past performance evaluation.

TISTA asserts that VA did not treat ADDX and TISTA equally because it credited ADDX for its subcontractor's minimal past performance while discounting the relevant performance of TISTA's subcontractors. Specifically, TISTA complains that the agency ignored relevant experience of its subcontractor, Definitive Logic, under a VA contract.

The record shows that the contracting officer did consider the past performance of Definitive Logic, but found that the firm's VA contract was not relevant because the total value of Definitive Logic's effort ([deleted]) would not likely impact the performance risk of the effort here, which is estimated at \$43 million. Supp. Contracting Officer's Statement, May 22, 2013, at 3; see also AR 3.2, TISTA Past Performance Evaluation, at 9-10. Since the RFQ contemplated that relevance would be determined based on experience providing services "similar in size, scope, and complexity" to the requirements set forth in the RFQ, we cannot find unreasonable the agency's determination that Definitive Logic's work was too small in size to be relevant, especially since TISTA admits that the work was only for one specific task (Sharepoint site development) of the several to be performed under the RFQ here. In any case, even if the agency should have considered the firm's performance, the protester has not shown that it would have had any appreciable impact on the overall past performance evaluation given the small size and limited scope of the work of Definitive Logic's effort. Accordingly, we find no basis to sustain the protest on this ground.

Finally, TISTA protests that ADDX should have been determined ineligible for award due to an "unequal access to information" OCI.⁴ In this regard, TISTA asserts that one of the three Pathfinder employees now working for XOC contacted a TISTA employee in April, 2012 to discuss his plan to leave Pathfinder. Protest attach. 5, Declaration of TISTA Employee, Apr. 4, 2013. According to the TISTA employee's declaration, the Pathfinder employee told him that "he had knowledge of the VA's future acquisition plans for the work being done by Pathfinder, and that he could bring that contract to a new team that employed him." Id. Further, the TISTA employee's declaration indicates that the Pathfinder employee "said that he had

⁴ As relevant here, 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. FAR §§ 9.505(b), 9.505-4; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8.

inside knowledge that the VA would not be exercising options on the Pathfinder contract and changing the scope of the new contract. He also indicated he knew how the task order structure in the new contract would be configured.” Id. The declaration also indicates that the TISTA employee attended a meeting on September 12 with TISTA management, which was also attended by two of the Pathfinder employees, where they provided information “about their knowledge and their certainty of capturing the upcoming contract.” Id.⁵

TISTA asserts that these alleged self-promotional activities of the Pathfinder employees demonstrate that they had “competitively useful and non-public information several months prior to the release of the instant RFQ,” which constituted an unequal access to information OCI. Accordingly, TISTA argues, ADDX should have been disqualified from award. The agency responds that the contracting officer conducted an investigation of potential OCIs once becoming aware of the relevant facts and reasonably concluded that an OCI did not exist.

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. We review an OCI investigation for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, even when this consideration is given after award, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. See Oklahoma State Univ., B406865, Sept. 12, 2012, 2012 CPD ¶ 276 at 9-10; TeleCommunication Sys., Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). 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. TeleCommunication Sys. Inc., supra, at 3.

Here, the record shows that the contracting officer became aware, prior to the award of the contract, that three of the identified key personnel for ADDX had previously worked with the VA as Pathfinder employees on a prior contract, and two of the

⁵ TISTA contends that another of the former Pathfinder employees made similar statements to a Pathfinder executive. In a declaration, the executive states that the Pathfinder employee told him “that he [the employee] had pertinent information regarding ... the recompetes and that he would have to conflict himself out and would not be able to provide any assistance in writing for the Pathfinder proposal.” Comments, attach. 1, Declaration of Pathfinder Executive, May 14, 2013.

proposed key personnel for TISTA had also previously worked with the VA on a prior contract, one as a Government employee and the other as a contractor with Pathfinder. Contracting Officer's Statement, Apr. 26, 2013, at 4. The contracting officer contacted the relevant office within the VA and was informed that Pathfinder was not involved in developing the requirement or creating the "acquisition package" for the RFQ here. AR, exh. 8.1, Memo to File, at 1-2; Contracting Officer's Statement, Apr. 26, 2013, at 4. The contracting officer also contacted ADDX and was advised that the former Pathfinder employees "did not define requirements or have access to procurement sensitive data that would give them a competitive advantage." Contracting Officer's Statement, Apr. 26, 2013, at 4. The contracting officer concluded as follows:

During the investigation of potential conflicts of interest, it became clear that previous Pathfinder and Government employees, including those proposed by both ADDX and TISTA, may have had knowledge of the embedded PMO [Project Management Office] to the extent that they knew how it would be structured, but they did not develop the requirement, nor did they shape the embedded PMO requirement. The structure and requirements for the embedded PMO were included in the RFQ for the consideration of all vendors and the release of the solicitation itself would indicate to all vendors that an option was not exercised under the previous contract. I could not find that this gave an unfair competitive advantage to ADDX or caused a conflict of interest.

Id. at 4.

The protester has not shown the contracting officer's OCI investigation conclusions to be unreasonable. Despite the protester's allegations regarding the self-promotional activities of the former Pathfinder employees, there is no indication in the record that, in fact, ADDX had any knowledge of the acquisition not included in the RFQ itself. The alleged braggadocio and self-promotion of the former Pathfinder employees does not constitute the "hard facts" required by our decisions, especially in the absence of evidence in the record that the access to information claimed by the Pathfinder employees resulted in a competitive advantage for ADDX.

The protest is denied.

Susan A. Poling
General Counsel