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## Decision

**Matter of:** Signature Performance, Inc.

**File:** B-411762

**Date:** October 19, 2015

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Devon E. Hewitt, Esq., Protorae Law PLLC, for the protester.  
Maj. David H. Stem, and Scott N. Flesch, Esq., Department of the Army, for the agency.  
Paula J. Haurilesko, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the developer of billing and collections software is ineligible for award of a contract to provide billing and collections services using the software is denied, where the agency conducted a review and reasonably concluded that no organizational conflict of interest existed.

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### DECISION

Signature Performance, Inc., of Omaha, Nebraska, protests the Department of the Army's award of a contract to Benefit Recovery Specialists LP, of Houston, Texas, under request for proposals (RFP) No. W91YTZ-15-R-0068, for third party collection services. Signature Performance primarily argues that the agency failed to consider the awardee's organizational conflict of interest (OCI).

We deny the protest.

### BACKGROUND

The Department of Defense (DOD) provides medical services through military treatment facilities for active duty service members, their families, military retirees, and their eligible family members and survivors. Where these authorized DOD beneficiaries have other health insurance coverage, DOD policy requires military treatment facilities to collect payment from the other health insurance providers for medical services rendered at the facilities. RFP, Performance Work Statement (PWS), at 29.

As background for the instant protest, in January 2014, the Army issued a task order under another contract to General Dynamics One Source LLC to develop, implement, and provide incidental support for the Armed Forces Billing and Collections Utilization Solution (ABACUS), a software-as-a-service solution based on pre-existing, proven commercial software, to replace legacy systems (Composite Health Care System and Third Party Outpatient Collection System) for medical billing and collections. Agency Report (AR), Tab 20, ABACUS Task Order, at 2, 23, 24. ABACUS was to have the ability to produce bills, claims, and invoices; assign, track, and report on the status of claims; include disputed claims for further review and processing; and provide for automated and manual posting to accounts. Id. at 25. General Dynamics subcontracted with Benefit Recovery to use its commercial billing and collection software. AR, Tab 28, Contracting Officer's (CO) OCI Memorandum, Exh. 5, Teaming Agreement.

As relevant here, in preparation for the changeover from legacy systems to ABACUS, the Army directed General Dynamics and its subcontractor, Benefit Recovery, to provide training on the new system to incumbent contractors, including Signature Performance. Benefit Recovery provided the training to Signature Performance personnel on September 23-27, 2014. AR, Tab 22, Training Synopsis Memo, at 1.

With respect to the procurement at issue here, on June 19, 2015, the Army issued the RFP via the General Service Administration's e-Buy system under Federal Acquisition Regulation (FAR) subpart 8.4, Federal Supply Schedules, procedures. The RFP provided for the issuance of a fixed-price task order for third party collection services that transition current de-centralized inpatient and outpatient billing operations into a centralized regional concept for the Army's Northern Regional Medical Command.<sup>1</sup> PWS at 29. The period of performance included a base year and one option year. Id. at 35.

The RFP generally stated that the contractor is to provide all personnel, supervision, training, and services necessary to perform automated billing and collection for outpatient, inpatient, and ancillary services (e.g., pharmacy, laboratory, radiology, and ambulance services), and other health insurance management, for the Third Party Collections Program within the Northern Regional Medical Command. The RFP specifically identified the following contractor tasks:

Gathering relevant information about other health insurance from DOD beneficiaries and non-active duty dependents, using personal interviews, electronic discovery, and mailings;

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<sup>1</sup> The Northern Regional Medical Command is comprised of military treatment facilities along the East Coast from North Carolina to New York. See RFP at 35.

Verifying the other health insurance information provided by DOD beneficiaries and non-active duty dependents;

Entering the verified information into the Composite Health Care System;

Preparing inpatient, outpatient, ancillary, and pharmacy claims, and submitting the claims either electronically or in hard copy to insurance and pharmacy payers;

Posting all payments for outpatient and ancillary claims within the Third Party Outpatient Collection System;

Following up on outpatient, inpatient, and ancillary claims, and managing denial of claims;

Posting write-offs of outpatient, inpatient, and ancillary claims;

Processing appeals of outpatient, inpatient, and ancillary claims.

PWS at 30-31, 34.

The RFP informed offerors that the task order would be issued to the lowest-priced, technically-acceptable offeror that has an acceptable record of past performance. RFP at 79. The RFP stated that the contractor would be paid for all work performed under the contract using a performance-based percentage--that is, a percentage of the amount of third party collections posted in the system used by the military treatment facility. The RFP required offerors to propose a performance-based percentage for each sub-contract line item number (CLIN) of the RFP.<sup>2</sup> Id. at 33. The RFP informed offerors that price would be evaluated inclusive of the percentage rate per transaction and total contract price, including option years. Id. at 82.

The Army received three offers in response to the solicitation; only the proposals of Signature Performance and Benefit Recovery were found to be technically acceptable. Signature Performance proposed a total price of [Deleted]; Benefit Recovery proposed a total price of [Deleted]. The source selection official, who was also the contracting officer, selected Benefit Recovery as the lowest-priced, technically acceptable offeror. AR, Tab 27, Source Selection Decision Document, at 16.

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<sup>2</sup> Each sub-CLIN represented a military treatment facility and subordinate clinics. See RFP at 3-5.

Upon notification of the selection of Benefit Recovery, Signature Performance requested a debriefing, and transmitted questions for the debriefing. As relevant here, in advance of the debriefing, Signature Performance raised the issue of a possible OCI based on the awardee's performance as the software developer for ABACUS. Army Dismissal Request, Exh. 5, Debriefing Questions, at 3.

In response to Signature Performance's OCI concerns, the contracting officer initiated an investigation. AR, Tab 28, OCI Memorandum, Exh. 1, Investigation Initiation Memorandum, July 3, 2015. After reviewing the results of the investigation, the contracting officer concluded that no OCI existed as a result of Benefit Recovery's involvement in developing ABACUS, based on the following:

- Signature Performance, as an incumbent contractor, received training on ABACUS, and was provided "unfettered access" to Benefit Recovery's information technology experts and was permitted to ask questions about the system's functionality.
- FAR § 9.505-2(a)(3) states that while a "development contractor" may have a competitive advantage, it is unavoidable and is not considered unfair.
- Benefit Recovery stated that any competitive advantage with ABACUS has been offset by years of sharing access to the commercial version's architectural design with other companies, including Signature Performance.
- Signature Performance's proposal demonstrated sufficient familiarity with ABACUS to offer innovative solutions to limitations of the software system. For example, Signature Performance recognized that neither ABACUS nor the legacy system allow for [Deleted], and addressed the problem by [Deleted].

AR, Tab 28, OCI Memorandum, at 2-5.

After receiving a debriefing, Signature Performance filed this protest with our Office.

## DISCUSSION

Signature Performance argues that Benefit Recovery is ineligible for award because its role as the developer of the ABACUS medical billing software created an unequal access to information OCI. In this regard, Signature Performance argues that Benefit Recovery's knowledge of ABACUS gives it greater insight into the

functionality of the software and the amount of labor required to complete tasks using the system.<sup>3</sup> Protest at 4-5.

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); CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25. It is well settled, however, 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; further, 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. CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10. Likewise, the advantage of an original equipment manufacturer is one that the government is not required to mitigate. See Northrop Grumman Tech. Servs., Inc., B-406523, June 22, 2012, 2012 CPD ¶ 197 at 17-18.

Here, Signature Performance has not established the existence of an unequal access to information OCI. Signature Performance in essence complains that Benefit Recovery gained a competitive advantage as a result of its knowledge and experience as the owner of the commercial software upon which ABACUS is based and its experience customizing the software for DOD. Signature Performance, however, has not presented any evidence of preferential treatment or other improper action on the part of the Army that would create an OCI under such circumstances. The advantage of which Signature Performance complains is akin to that of an original equipment manufacturer or incumbent contractor. See Northrop Grumman Tech. Servs., Inc., *supra*; Halifax Eng'g, Inc., B-219178.2, Sept. 30, 1985, 85-2 CPD ¶ 559 at 3 (development of diagnostic software for equipment is similar to incumbents advantage and does not create preferential treatment or other unfair action). Moreover, while Benefit Recovery no doubt retains some advantage as a result of its experience, we note that Signature

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<sup>3</sup> Signature Performance also raises multiple challenges to the conclusions drawn by the Army in its OCI memorandum. In light of our conclusion that Signature Performance has not established the existence of an OCI, we will not address all of those arguments here. However, we have considered all of Signature Performance's arguments and find that none provide a basis to sustain the protest.

Performance also had experience with the underlying commercial software and received some training on the use of ABACUS.

Signature Performance also argues that Benefit Recovery obtained greater insight into DOD's needs as a result of its experience with the ABACUS development contract. Comments at 7. In this regard, however, we note that Signature Performance arguably obtained its own competitive advantage based on its experience as the incumbent contractor for the Army's third party billing and collection program. Signature Performance fails to explain how the software developer could have greater insight into the Army's needs than an offeror that has direct, day-to-day experience with the Army's billing and collection requirements.

Signature Performance also challenges the Army's conclusion in its OCI memorandum that Signature Performance's proposal demonstrated sufficient familiarity with ABACUS. Comments at 4-5. In this regard, Signature Performance argues that it may have unnecessarily included technology and other related operating expenses in developing its price because of its unfamiliarity with the features of ABACUS. Protest at 5. However, the record indicates that Signature Performance had some familiarity with ABACUS. In this regard, the protester received training on ABACUS and identified weaknesses in ABACUS and suggested innovative solutions. For example, as noted above, Signature Performance's proposal stated that neither ABACUS nor the legacy system allow for [Deleted], and created [Deleted] in order to address the problem. AR, Tab 26, Signature Performance's Technical Proposal, at 20. In our view, the agency reasonably concluded that Signature Performance's identification in its proposal of three instances in which ABACUS and the legacy system shared limitations, and proposed approaches to overcoming these limitations, demonstrated Signature Performance's own high level of knowledge of ABACUS.

The protest is denied.

Susan A. Poling  
General Counsel