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**Comptroller General
of the United States**

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

Decision

Matter of: Platinum Business Services, LLC

File: B-413947

Date: December 23, 2016

Jody J. Venkatesan for Platinum Business Services LLC.

John E. Cornell, Esq., and Alissa Schrider, Esq., General Services Administration, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that the agency did not give adequate consideration to a potential organizational conflict of interest is denied where the protester fails to present hard facts indicating the existence of a conflict.
 2. Protest that the ordering contracting officer for a task order issued under a Federal Supply Schedule contract failed to verify the awardee's small business status is dismissed where the Small Business Administration, in ruling on a size status protest, found that the solicitation did not require recertification of size status at the order level.
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DECISION

Platinum Business Services, LLC, a service-disabled veteran-owned small business (SDVOSB) located in Laurel, Maryland, protests the issuance of a task order to Redhorse Corporation of San Diego, California, under request for quotations (RFQ) No. QTA0016ACB3007, issued by the General Services Administration (GSA) for acquisition management and information technology (IT) support services. Platinum contends that GSA did not investigate whether Redhorse had a potentially disqualifying organizational conflict of interest (OCI) and that the agency failed to verify the awardee's small business size status. The protester also challenges the evaluation of Platinum's technical quotation.

We deny the protest in part and dismiss the protest in part.

BACKGROUND

The RFQ, which was set aside for SDVOSB concerns, was issued on June 13, 2016, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding GSA Federal Supply Schedule (FSS) contracts under special item numbers 874 6 (Acquisition Management Support) and C132 51 (IT professional services). RFQ, amend. 1, at 4; §§ 9.1, 13.2, 13.4. The solicitation provided for the issuance of a hybrid task order (fixed-price with labor-hour tasks) for a base period, 4 options years, and a final option period, based on a best-value tradeoff among five evaluation factors (listed in descending order of importance): technical approach, personnel, management approach, past performance, and price. Id. §§ 2.3, 5.1, 13.0, 13.4. The RFQ's statement of work (SOW) requires the vendor to provide transition ordering assistance (TOA) to GSA's Office of Network Services Program (NSP) and its federal agency customers, as they transition from GSA's expiring government-wide telecommunications and network services contracts to the replacement Enterprise Infrastructure Solutions contracts. See id. §§ 3.1-3.4.

Offerors were to submit separate technical and price quotations. Id. § 12.1. With respect to the technical approach evaluation factor, offerors were to propose a methodology for accomplishing all SOW requirements. Id. § 12.1.5. The RFQ stated that the agency would evaluate the offeror's understanding of the technical requirements and the extent to which the offeror demonstrated a realistic methodology for: (1) providing technical advice on transitioning to new technologies to improve operational capabilities, future capacity, and modernization; (2) providing timely, accurate, and complete analysis of telecommunications labor, services, equipment, solutions, and their associated price points in the federal market; and (3) minimizing potential problems and risks, including how well the offeror addressed the government-wide scope, dealing with the diverse needs of agencies, and meeting the aggressive schedule. See id. § 13.1. Offerors were advised that any quotation found unacceptable under a non-price evaluation factor would be found unacceptable overall and not considered for award. Id. § 13.0.

In their price quotations, offerors were to submit, among other things, a copy of their current active registration in the System for Award Management (SAM). Id. § 12.1.2.d. The RFQ incorporated a number of standard FAR clauses in this regard, including 52.204-8, which requires an offeror to verify that its annual SAM representations and certifications are current, accurate, complete, and applicable to the solicitation, including, as relevant here, the small business size standard for the specified NAICS code.¹ Id. § 9.1; FAR § 52.204-8, Annual Representations and

¹ That is, the North American Industry Classification System (NAICS) code, which the RFQ identified here as 541611, Administrative Management and General Management Consulting Services, with a corresponding small business size standard of \$15 million. RFQ, amend. 1, § 9.1; see § 10.1.

Certifications (Apr. 2016). The RFQ stated that representations and certifications would be reviewed before award. RFQ, amend. 1, § 10.2.

GSA received quotations from three FSS vendors by the July 5 deadline, including from Platinum and Redhorse, which were evaluated by separate technical and price evaluators. See Agency Report (AR), Exh. 6, Source Selection Decision (SSD), at 6.² Platinum's quotation was rated unacceptable under the technical approach evaluation factor, because the technical evaluation panel (TEP) found that Platinum did not submit a well written and organized quotation, which demonstrated a very high risk of unsuccessful performance.³ AR, Exh. 5, TEP Consensus Rep., at 4. Therefore, consistent with the terms of the solicitation, Platinum received an unacceptable rating for its overall technical quotation. Id.

The contracting officer (who was the source selection authority for the procurement) reviewed the evaluators' findings and conducted a cost/technical tradeoff. See AR, Exh. 6, SSD, at 6-8. The contracting officer determined that Redhorse offered the best value to the government and on September 29, the agency issued the task order to Redhorse for \$92,961,454. Id.; Contracting Officer's Statement (COS) at 1. This protest followed.

DISCUSSION

Platinum contends that the contracting officer did not investigate whether Redhorse had a potentially disqualifying OCI, and that she failed to verify Redhorse's representations regarding its small business size status. The protester also challenges the evaluation of Platinum's technical approach. Although our decision does not specifically address each of the protester's arguments, we have considered all of its assertions and find none furnishes a basis for sustaining its protest.⁴

² Platinum was not represented by counsel who could obtain access to non-public information (such as an un-redacted version of the SSD) pursuant to the terms of a protective order. Accordingly, our discussion of some aspects of the procurement record is necessarily general in nature in order to avoid reference to non-public information. Our conclusions, however, are based on our review of the entire record, including the non-public information.

³ Platinum's quotation was rated acceptable under the personnel and management approach evaluation factors, and rated neutral under the past performance evaluation factor. AR, Exh. 5, TEP Consensus Rep., at 4. GSA, in its agency report, did not disclose Platinum's total evaluated price or Redhorse's evaluation ratings.

⁴ For example, in its protest, Platinum asserted that its quotation was improperly assigned a neutral past performance rating. Protest at 5. We consider Platinum to
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Organizational Conflict of Interest

Platinum alleges that Redhorse has an actual or potential OCI that should have disqualified the firm from the competition, because Redhorse was issued a task order in 2014 to develop (according to Platinum) the SOW for the instant solicitation and “prepared or provided material to the SOW[.]”⁵ See Protest at 3. Platinum contends that the 2014 task order “potentially afford[s] Redhorse an opportunity to create biased ground rules in future solicitations[.]”⁶ Id. Platinum maintains that “[t]hese hard facts would lead a reasonable Contracting Officer to believe that Redhorse’s award [of the 2014 task order] should have barred Redhorse from being awarded” the instant task order. Id. at 4.

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, contrary to Platinum’s belief, it has not identified hard facts to support its OCI allegations; instead, the protester offers little more than inference and suspicion (and inaccurate facts) in support of its allegations. See, e.g., Valor Constr. Mgmt., LLC, supra, at n.1, citing Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011).

Contrary to Platinum’s mistaken assertion, Redhorse was not “tasked with drafting the SOW” for the current solicitation. See Protest at 3. GSA states that the SOW was developed entirely by government employees without assistance from Redhorse or any other contractor, and the agency submitted a declaration in this respect from the transition manager for the EIS acquisition. COS at 1; AR, Exh. 3,

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have abandoned this argument, since GSA’s agency report provided a detailed response to the protester’s assertions, but the protester did not reply to the agency’s response in its comments. Compare COS at 3-4 with Comments; see IntelliDyne, LLC, B-409107 et al., Jan. 16, 2014, 2014 CPD ¶ 34 at 3 n.3; see also infra at n.7; discussion at 7.

⁵ GSA issued a task order to Redhorse in 2014 to provide business operations support for NSP for up to 3 years. See COS at 1; Protest, Exh. 3, RFQ No. QTA0014PS3001, § 5.1.

⁶ A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the SOW or providing materials upon which a SOW was based. FAR §§ 9.505-1, 9.505-2. The primary concern in these cases is that the firm could skew the competition, whether intentionally or not, in favor of itself. Valor Constr. Mgmt., LLC, B-405306, Oct. 17, 2011, 2011 CPD ¶ 221 at 4.

EIS Transition Manager's Declaration (Declaration), at 1-2. The manager states that she was the principal author of the SOW, that defining the TOA requirement and drafting its SOW was done by government employees (whom she identified by name), and that Redhorse's 2014 task order was not used in any way for drafting the SOW or any other task related to the TOA acquisition. AR, Exh. 3, Declaration, at 1-2.

Platinum does not dispute GSA's assertions or its manager's declaration that Redhorse had no involvement with this acquisition. See Comments at 2. Moreover, Platinum does not assert that Redhorse did not comply with the RFQ's requirement to submit an OCI certification and, if necessary, an OCI mitigation plan. See Protest; Comments; RFQ, amend. 1, §§ 8.1, 12.1.2e; attach. B, OCI Certification.

Here, Platinum has failed to satisfy the standard required to support an allegation regarding the existence of an OCI, because the protester does not identify hard (or accurate) facts in support of its allegation. Accordingly, we deny this aspect of its protest. See DGC Int'l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 7; ViON Corp.; EMC Corp., B-409985.4 et al., Apr. 3, 2015, 2015 CPD ¶ 141 at 11-12 (protest denied where protester does not provide hard facts indicating that IT consulting firm was involved in crafting the performance work statement or any solicitation provisions).⁷

Awardee's Size Status

Platinum contends that the contracting officer failed to verify Redhorse's SAM representations regarding its current small business size status, consistent with the solicitation. Protest at 4. Platinum argues that by incorporating FAR clause 52.204-8, and stating that SAM representations and certifications would be reviewed before award, the RFQ specifically required the contracting officer to verify

⁷ We dismiss as untimely Platinum's assertions--raised for the first time in its comments--that the 2014 task order "afforded Redhorse widespread insider access to sensitive program information" because both task orders support NSP. See Comments at 2; MILVETS Sys. Tech., B-411721.2, B-411721.3, Jan. 14, 2016, 2016 CPD ¶ 42 at 8 (supplemental protest related to earlier OCI protest ground dismissed as untimely where it fails to independently meet GAO timeliness requirements and represents an unwarranted piecemeal development and presentation of arguments.). In any event, these untimely OCI assertions also fail to set forth hard facts to satisfy our standard of review. See Harmonia Holdings Grp., LLC, B-410591, B-410591.2, Jan. 14, 2015, 2015 CPD ¶ 39 at 7-8 (fact that two projects share same agency client does not indicate that awardee's prior work involved establishing the ground rules for the new requirement and protest is denied where protester fails to allege hard facts indicating that awardee was privy to any specific nonpublic competitively useful information.).

an offeror's small business size status. Id.; Comments at 4. Platinum asserts that if the contracting officer had properly reviewed Redhorse's SAM registration, she would have learned that the awardee was listed (according to the protester) as other than a small business and was therefore not eligible for award. See id.

As a preliminary matter, the Small Business Act, 15 U.S.C. § 637(b)(6), gives the Small Business Administration (SBA), not our Office, the conclusive authority to determine matters of small business size status for federal procurements. 4 C.F.R. § 21.5(b)(1); Randolph Eng'g Sunglasses, B-280270, Aug. 10, 1998, 98-2 CPD ¶ 39 at 3. As a general rule, our Office will defer to SBA's judgment in matters such as this, which fall squarely within its responsibility for administering the Small Business Act. CMS Info. Servs., Inc., B-290541, Aug. 7, 2002, 2002 CPD ¶ 132 at 3 n.6.

Here, even if we were to agree with Platinum that the RFQ required the contracting officer to verify Redhorse's small business size status, or that the contracting officer had reason to question Redhorse's size representations, the SBA has already found that offerors were not required to recertify their size status for this task order competition.⁸ Because the SBA has conclusive authority in such matters, Platinum's challenge to the award on this basis is not for review by our Office, and we dismiss this aspect of the protest accordingly.⁹ 4 C.F.R. § 21.5(b)(1); see Software Eng'g Servs. Corp., B-411739, Oct. 8, 2015, 2015 CPD ¶ 315 at 4-5 (denying protest that contracting officer failed to verify awardee's size status where SBA, in dismissing a size status protest as untimely, concluded that the task order solicitation at issue did not require recertification of an offeror's small business status).

⁸ On October 25, Platinum filed a protest at the SBA challenging Redhorse's size status for this acquisition. The SBA dismissed the protest as untimely because SBA regulations only provide for size protests related to long term contracts (like FSS contracts) at three different stages during the life of the contract: (1) at initial contract award, (2) when exercising an option, or (3) in response to a contracting officer's request for size certifications in connection with an individual order. See SBA Size Determination No. 06-2017-006, Oct. 25, 2016, at 1-2, recon. denied Nov. 1, 2016, citing 13 C.F.R. § 121.1004(a)(3). Since a new size certification was not requested in connection with this task order, the SBA considered Platinum's protest untimely because it was otherwise filed more than 5 days after award of the initial contract and more than 5 days after the first option period was exercised. Id. at 2.

⁹ The fact that Platinum has appealed the dismissal of its size protest to SBA's Office of Hearings and Appeals (OHA), see Size Appeal of Platinum Bus. Servs., LLC, SBA No. SIZ-2016-11-09-107 (filed Nov. 9, 2016), does not change our decision to dismiss Platinum's challenge before our Office on this allegation because, regardless of its decision on appeal, OHA is part of SBA, and SBA remains the conclusive authority on this matter.

Platinum's Technical Evaluation

Finally, we dismiss Platinum's challenge to the evaluation of its technical approach. See Protest at 4-5. GSA, in its agency report, provided a detailed response to Platinum's challenge to its technical evaluation; however, in its comments on the agency report, Platinum did not address any of GSA's numerous assertions. Compare COS at 2-3 with Comments at 5. Moreover, despite receiving an unredacted (with respect to the protester's evaluation) copy of the TEP report and the contracting officer's SSD, Platinum identifies no aspect of the record that was allegedly inconsistent with the RFQ's evaluation criteria.¹⁰

Where, as here, an agency provides a detailed response to a protester's allegations and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. See Israel Aircraft Indus., Ltd.--TAMAM Div., B-297691, Mar. 13, 2006, 2006 CPD ¶ 62 at 6-7 (where protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the originally-raised allegation abandoned).

In sum, Platinum's protest reflects little more than disagreement with GSA's evaluation and source selection decision, which does not establish that the agency acted unreasonably or provide a basis to sustain its protest. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10.

The protest is denied in part and dismissed in part.

Susan A. Poling
General Counsel

¹⁰ Indeed, Platinum concedes that there were errors in its technical quotation. See Protest at 5; Comments at 5.