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Decision

Matter of: AbacusSecure, LLC

File: B-415175; B-415175.2; B-415175.3; B-415175.4

Date: December 6, 2017

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Victoria H. Kauffman, Esq., Ken M. Kanzawa, Esq., Steven G. Horn, Esq., and Adhana M. Davis, Esq., National Aeronautics and Space Administration, for the agency. Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably considered the potential for organizational conflicts of interest related to the awardee's proposal.
 2. Agency reasonably determined that neither protester's nor awardee's price was unrealistically low.
 3. In evaluating the joint venture protester's past performance, agency reasonably considered the individual past performance of each team member in the context of the work that each team member was proposed to perform under the competed contract.
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DECISION

AbacusSecure, LLC,¹ of Reston, Virginia, protests the National Aeronautics and Space Administration's (NASA) award of a contract to ASRC Federal Data Solutions, LLC (AFDS), of Beltsville, Maryland, pursuant to request for proposals (RFP)

¹ AbacusSecure states that it is a mentor-protégé joint venture comprised of the incumbent contractor, Abacus Technology Corporation (mentor), and Sure Secure Solutions (protégé). Protest, Aug. 28, 2017, at 4.

No. NNK17592924R to provide various information technology (IT) services for the John F. Kennedy Space Center (KSC) in Florida.² AbacusSecure challenges various aspects of the agency's evaluation and source selection process, including alleged evaluation flaws regarding organizational conflicts of interest (OCIs), price realism, and past performance.

We deny the protest.

BACKGROUND

On October 31, 2016, the agency issued RFP No. NNK17592924R, seeking proposals for a fixed-price contract³ with a 2-year base performance period, one 2-year option period, and one 1-year option period. RFP at 453. The solicitation provided for award on the basis of a best-value tradeoff and established the following evaluation factors, listed in descending order of importance: price,⁴ mission suitability,⁵ and past performance.⁶ RFP at 1,901-08.

² The contract, referred to as the "Kennedy Infrastructure, Applications and Communications (KIAC)" contract, provides for the following products and services: application operations/software development; data center operations; voice, imaging, and data communications; multimedia services support; documentation and reproduction; and research/library management. Agency Report (AR), Tab 4, RFP Performance Work Statement (PWS), at 602. (The documents provided with the AR were Bates numbered; our page citations in this decision refer to that numbering.)

³ The solicitation states that the agency contemplated "award of a single firm-fixed-price contract with fixed-price IDIQ [indefinite-delivery, indefinite-quantity] and labor hour components." Id. at 564.

⁴ The solicitation provided that the agency would perform a price analysis "in accordance with FAR [Federal Acquisition Regulation] 15.404-1(b)," which provides for evaluation of price "without evaluating its separate cost elements." RFP at 1,907; FAR § 15.404-1(b). The solicitation further provided that "[r]elatively low prices will be evaluated to determine whether there is a risk of default," and warned that "[i]f the Government determines that there is a high risk of default, such a determination may serve as the basis for non-selection." AR, Tab 5, RFP at 1,907.

⁵ The solicitation provided that proposals would be point-scored under the mission suitability factor, with a maximum total score of 1000 points. Id. at 1,901-02.

⁶ The solicitation provided that evaluation of past performance would be conducted in accordance with NASA FAR Supplement (NFS) § 1815.305(a)(2). Id. at 1,907. More specifically, the RFP and the referenced NFS section advised offerors that the past performance evaluation would consider work "similar in size, content, and complexity to the requirements of this solicitation" and that the evaluation "may be limited to specific areas of past performance considered most germane for the instant acquisition." RFP at 1,907-08; NFS § 1815.305(a)(2). Finally, the solicitation provided that the

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On or before the January 5, 2017 closing date, proposals were submitted by five offerors, including AbacusSecure and AFDS. Thereafter, proposals were evaluated; the agency established a competitive range consisting of AbacusSecure and AFDS; and discussions were conducted with those two offerors. On or before July 26, final proposal revisions (FPRs) were submitted; thereafter, the FPRs were evaluated as follows:

	AbacusSecure	AFDS
Mission Suitability (max. 1000)	648	684
Past Performance	Moderate ⁷	Low ⁸
Price	\$203,148,429	\$185,641,772

Contracting Officer’s Statement, Oct. 5, 2017, at 21-22.

In evaluating price, the agency considered whether the proposed prices were unrealistically low. In performing that assessment, the agency recognized that both prices were lower than the government’s estimate, but noted that there was only an 8.6 percent price difference between the offerors’ prices. Accordingly, based on the agency’s comparison of prices and the presence of adequate price competition, the agency concluded that neither price was unreasonably low. AR, Tab 44, Price Analysis Memorandum, at 18,490-91; AR, Tab 45, Source Selection Statement, at 18,708.

In evaluating past performance, the agency considered which member of an offeror’s team was proposed to perform various tasks, and gave past performance credit that was commensurate with the extent of the team member’s proposed involvement in performing similar tasks under the KIAC contract. Contracting Officer’s Statement, Oct. 5, 2017, at 25-27.

On July 31, AFDS’s proposal was selected for award on the basis of its superior mission suitability approach and its lower price.⁹ Source Selection Statement, at 18,710.

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agency would assign confidence ratings of very high, high, moderate, low, very low, and neutral.

⁷ In defining a moderate confidence rating, the solicitation provided, among other things, that the proposal “demonstrates effective performance” that is “fully responsive to contract requirements.” NFS § 1815.305(a)(2).

⁸ In defining a low confidence rating, the solicitation stated, among other things, that the proposal reflects past performance that “meets or slightly exceeds minimum acceptable standards” and “achieved adequate results.” Id.

AbacusSecure was subsequently notified of the agency's source selection decision; this protest followed.¹⁰

DISCUSSION

AbacusSecure protests that the source selection decision was flawed with regard to the agency's evaluation of OCIs, price realism, and past performance. As discussed below, none of AbacusSecure's allegations provides a basis for sustaining its protest.¹¹

Evaluation of OCIs

First, AbacusSecure complains that AFDS's proposal should have been disqualified on the basis of alleged OCIs. In this regard, AbacusSecure asserts that NASA failed to properly consider an alleged OCI created by the work being performed by Science Applications International Corporation (SAIC), an AFDS subcontractor, under a previously-awarded contract (referred to as the Enterprise Applications Service Technologies contract or "EAST 2"). Specifically, AbacusSecure asserts that, as the prime contractor under the EAST 2 contract, SAIC will be responsible for evaluating IT applications that are developed under the KIAC contract, and will also be responsible for monitoring IT security compliance under the KIAC contract. Protest, Aug. 8, 2017, at 1, 12-18.

AbacusSecure notes that, pursuant to the PWS for the EAST 2 contract, the contractor is "charged with providing comprehensive IT services to support the NASA Enterprise Applications Competency Center (NEACC)";¹² that the NEACC "provides services to operate, maintain, and enhance key Business and Mission-Supporting platforms, applications and infrastructure used across [NASA]"; and that the EAST 2 contract

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⁹ The source selection authority (SSA) recognized that AbacusSecure had "a clear advantage" under the past performance evaluation factor, but also noted that past performance was the least important factor. Source Selection Statement, at 18,710.

¹⁰ AbacusSecure filed its initial protest on August 28, and filed supplemental protests on September 1, October 10, and October 16.

¹¹ In its multiple protest submissions, AbacusSecure has raised arguments that are in addition to, or variations of, those specifically discussed in this decision, including assertions that: AbacusSecure's proposal should have been rated higher under the mission suitability factor; the agency failed to properly determine the extent to which AFDS intends to retain the incumbent workforce; and the agency's best-value determination was unreasonable. We have considered all of AbacusSecure's assertions and find no basis to sustain its protest.

¹² The NEACC is now referred to as the Agency Applications Office (AAO). AR, Tab 50, Contracting Officer's Memorandum for the Record, Oct. 3, 2017, at 2, 17-18.

“provide[s] a contractual vehicle for other NASA Centers to optionally utilize support in the future for their Center’s unique applications as required.” Id. at 12-18. Accordingly, AbacusSecure argues that, because Kennedy Space Center (KSC) is one of the “other NASA Centers” that may “optionally utilize support” under the agency-wide EAST 2 contract, this creates a “non-mitigatable ‘impaired objectivity’ OCI” that renders AFDS’s proposal “ineligible for award.”¹³ Id.; Supp. Protest, Sept. 1, 2017, at 13-20.

The agency responds that it considered whether SAIC’s performance of the EAST 2 contract created a potential OCI that should preclude award to AFDS, and concluded that it did not. AR, Tab 50, Contracting Officer’s Memorandum for the Record, at 19,403-07. More specifically, the agency states that the performance requirements under the EAST 2 contract do not overlap with the performance requirements of the KIAC contract, explaining that the IT systems under the purview of each contract are “separate and distinct.” Contracting Officer’s Statement, Oct. 5, 2017, at 38-39; AR, Tab 50, Contracting Officer’s Memorandum for the Record, at 19,403-05. The agency elaborates that the services performed under the EAST 2 contract extend only to: (1) Enterprise applications¹⁴ (2) applications specific to the Marshall Space Flight Center,¹⁵ and (3) optional support for other NASA Centers, if requested.¹⁶ AR, Tab 50, Contracting Officer’s Memorandum for the Record, at 19,403.

¹³ AbacusSecure also asserts that SAIC’s participation in performing the two contracts creates “financial incentives” for SAIC to “influence NASA to host and maintain applications at the location most favorable to SAIC, not [most favorable to] NASA.” Supp. Protest, Sept. 1, 2017, at 2, 17-18.

¹⁴ Enterprise applications are those that “span across the Agency and support all Centers because all NASA Employees use these Enterprise applications.” AR, Tab 50, Contracting Officer’s Memorandum for the Record, at 19,404. For example, EAST 2 supports the NASA “Web-based Time and Attendance Distribution System (WebTADS) that employees at every NASA Center, including KSC, use for recording time worked in support of Agency payroll functions.” Id. In contrast, the KIAC contract involves KSC-specific applications and “do[es] not include support for NASA Enterprise functions.” Id.

¹⁵ The agency states that support for applications that are specific to the Marshall Space Flight Center is “separate and distinct” from support for the KSC-specific applications and systems serviced under the KIAC contract. Id.

¹⁶ The agency states that, before this solicitation was issued, a KIAC procurement development team considered whether to procure services from existing contracts or to conduct a separate procurement. Id. at 19,403. Although KSC, as a NASA Center, could have chosen to obtain support through the EAST 2 contract, the agency states that “KSC specifically decided not to use EAST 2 for KSC-specific applications” and adds that “KSC has not and does not currently plan to order any EAST 2 support for the duration of . . . the KIAC contract.” Id.

Accordingly, the agency asserts that the requirements of the EAST 2 contract do not affect the requirements under the KIAC contract and, similarly, services provided under the KIAC contract do not support NASA Enterprise functions. Id. The contracting officer states that in considering this matter, she contacted the EAST 2 contracting officer and other NASA personnel involved with performance of the EAST 2 contract and confirmed that, under the EAST 2 contract, SAIC is not, and will not be responsible for assessments of KSC-specific applications or for monitoring IT security compliance under the KIAC contract. Id. at 19,404-05; Declaration of KIAC Procurement Development Team and Source Evaluation Board Chair, Oct. 5, 2017, at 1-2. In short, the agency maintains that, contrary to AbacusSecure's allegations, SAIC is not in a position to monitor, evaluate, and/or direct work to, the KIAC contractor.

The FAR requires that contracting officers avoid, neutralize or mitigate potential significant OCIs so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity.¹⁷ FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12.

To demonstrate that an agency's OCI determination is arbitrary or capricious, 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. PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). The Court of Appeals for the Federal Circuit has noted that "the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion." Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1382 (Fed. Cir. 2009). The standard of review employed by this Office in reviewing a contracting officer's OCI determination mirrors the standard required by Axiom. In this regard, when an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See Enterprise Info. Servs., Inc., B-405152 et al., Sept. 2, 2011, 2011 CPD ¶ 174 at 8.

Here, we reject AbacusSecure's assertion that the agency's consideration of, and determinations regarding, the alleged OCIs were unreasonable. As noted above, the agency considered the scope of activities to be performed under both the EAST 2 and KIAC contracts, concluding that the activities do not overlap, and specifically considered

¹⁷ The situations in which OCIs can arise, as described in FAR subpart 9.5, can be broadly categorized into three groups: impaired objectivity, unequal access to information, and biased ground rules. See McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13.

the particular tasks to be performed under the EAST 2 contract.¹⁸ Upon determining that SAIC's activities under the EAST 2 contract are, and will be, only those that do not impact performance of the KIAC contract, the agency concluded that SAIC's performance of the EAST 2 contract did not preclude its objective subcontractor performance of the KIAC contract and, similarly, that performance of the KIAC contract did not preclude SAIC's objective performance of the EAST 2 contract.¹⁹ Although AbacusSecure may disagree with the agency's assessments and conclusions, it has failed to present the hard facts and clear evidence necessary to demonstrate that those assessments and conclusions were unreasonable. In our view, the record reflects the agency's meaningful consideration of the issues raised; accordingly, we decline to substitute our judgment for that of the agency. AbacusSecure's various protest assertions regarding alleged OCIs are denied.²⁰

¹⁸ One of AbacusSecure's primary contentions is that SAIC's objectivity will be impaired in performing its responsibilities under the previously-awarded EAST 2 contract.

¹⁹ AbacusSecure complains that the agency's OCI analysis responding to the specific protest allegations was performed after submission of AbacusSecure's protest. However, an agency may provide information and analysis regarding the existence of an OCI at any time during the course of a protest, and we will consider such information in determining whether the agency's OCI determination is reasonable. See, e.g., McTech Corp., B-406100, B-406100.2, Feb. 8, 2012, 2012 CPD ¶ 97 at 7; Lucent Techs. World Servs. Inc., B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 at 6 n.3; see also Turner Constr. Co., Inc. v. United States, 645 F.3d at 1377, 1386-87 (Fed. Cir. 2011) (GAO, in resolving a protest, should consider agency's post-protest investigation and analysis of an OCI).

²⁰ In addition to the alleged impaired objectivity OCI discussed above, AbacusSecure also asserts that: (1) SAIC's performance of the EAST 2 contract created an unequal access to information OCI; (2) performance of another contract (the Kennedy Environmental and Medical contract or "KEMCON") by another company ([redacted]) that was identified as a preferred vendor in AFDS's proposal created another impaired objectivity OCI; and (3) the agency engaged in unequal treatment by requiring that AbacusSecure remove [redacted] from its proposal due to OCI concerns. Supp. Protest, Sept. 1, 2017, at 20-24.

The agency responds that: (1) prior to preparing its proposal, SAIC sought and received approval from the agency, pursuant to the Limitations on Future Contracting clause of the EAST 2 contract, for the actions purporting to create an unequal access OCI; (2) [redacted] is not a proposed subcontractor under AFDS's proposal and, further, AFDS's proposal does not suggest [redacted] involvement in performing any activities under the KIAC contract that conflict with [redacted] performance of the KEMCON contract; and (3) the facts with which the agency dealt in addressing an OCI related to AbacusSecure's proposal were different than those related to AFDS's proposal. AR, Tab 50, Contracting Officer's Memorandum for the Record, at 19,405-07.

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Price Realism Evaluation

Next, AbacusSecure protests that the agency failed to perform an appropriate price realism analysis as part of its source selection process. Among other things, AbacusSecure asserts that the agency was required to assess the realism of the awardee's labor rates, arguing that they were "too low to recruit the incumbent workforce." Supp. Protest, Sept. 1, 2017, at 24.

The agency responds that its price evaluation was consistent with the terms of the solicitation. Specifically, the agency points out that the solicitation expressly put offerors on notice that price would be evaluated without evaluating separate cost elements, see FAR § 15.404-1(b), and further, that the solicitation did not require submission of labor rates for the contract line item numbers (CLINs) that constituted over 90 percent of both offerors' total evaluated prices. RFP at 1,912-33; Memorandum of Law, Oct. 16, 2017, at 17. The agency further states that it considered the offerors' total proposed prices as compared to one another, found that there was an 8.6 percent price difference between the two offerors' prices, and concluded on the basis of this comparison that AFDS's price was not unrealistically low. AR, Tab 44, Price Analysis Memorandum, at 18,489-91.

In general, there is no requirement that a price realism analysis be performed when award of a fixed-price contract is contemplated; this is because a fixed-price contract places the risk and responsibility for contract costs and ensuing profit or loss on the contractor. Star Contract Servs., LLC, B-409424, Apr. 23, 2014, 2014 CPD ¶ 133; Phoebe Putney Mem'l Hosp., B-311385, June 19, 2008, 2008 CPD ¶ 128 at 2. Nonetheless, a solicitation for a fixed-price contract may, as here, provide for a price realism analysis to assess the offerors' understanding of the solicitation requirements and potential risks. PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381 at 5. The FAR provides a number of price analysis techniques that may be used to determine whether prices are reasonable and realistic, specifically including a comparison of proposed prices. FAR § 15.404-1(b)(2); see also General Dynamics-- Ordnance & Tactical Systems, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 3; Burns and Roe Servs. Corp., B-296355, July 27, 2005, 2005 CPD ¶ 150 at 7. Finally, the nature and extent of a price realism analysis ultimately are matters within the exercise of the agency's discretion, and our review of such an evaluation is limited to determining whether it was reasonable and consistent with the terms of the

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We have reviewed the record regarding all of AbacusSecure's various OCI allegations and conclude that the agency specifically considered and addressed each of the issues raised by AbacusSecure in its protest and that, in pursuing this protest none of AbacusSecure's complaints are accompanied by the requisite hard facts and clear evidence to demonstrate that the agency's consideration of, and conclusions regarding, AbacusSecure's complaints are unreasonable.

solicitation. Northrop Grumman Info. Tech., Inc., et al., B-295526 et al., Mar. 16, 2005, 2005 CPD ¶ 45 at 19.

Here, as discussed above, the solicitation specifically stated that the agency would perform a price analysis “in accordance with FAR § 15.404-1(b)”--which provides for evaluation of price “without evaluating its separate cost elements.” RFP at 1,907; FAR § 15.404-1(b). Accordingly, AbacusSecure’s assertion that the agency was obligated to evaluate the realism of individual cost elements, including labor rates, is contrary to the express terms of the solicitation. As also discussed above, the record further establishes that the agency recognized that the offerors’ prices were lower than the government’s estimate, but noted that there was only an 8.6 percent price difference between them and concluded, based on the existence of adequate price competition, that neither offeror’s price was unreasonably low. On this record, we find no basis to question the reasonableness of the agency’s price realism analysis, and AbacusSecure’s protest challenging that aspect of the procurement is denied.

Evaluation of Past Performance

Finally, AbacusSecure protests that the agency’s assessment of only a “moderate” confidence rating for its proposal under the past performance factor was unreasonable. AbacusSecure asserts that it should have received a higher rating and complains that it was improper for the agency to “conduct[] a separate analysis with respect to each section of the PWS,” then give past performance credit that reflected the extent to which a team member was proposed to perform similar work under the KIAC contract. Supp. Protest, Sept. 1, 2017, at 24-27. AbacusSecure asserts that the solicitation did not specifically advise the offerors of the agency’s approach and complains that, had it known of this approach, it could have “easily” altered its allocation of personnel in order to “maximize its Past Performance evaluation.” Supp. Protest, Sept. 1, 2017, at 26.

The agency responds that the solicitation advised offerors that NASA would assess past performance of work similar in size, content and complexity to the KIAC requirements and further, incorporated NFS § 1815.305(a)(2), which advised offerors that the past performance evaluation “may be limited to specific areas of past performance considered most germane for the instant acquisition.” NFS § 1815.305(a)(2). The agency further notes that the purpose of any past performance evaluation is to assess the government’s confidence in the offeror’s ability to perform the specific solicitation requirements at issue.

An agency’s evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror’s performance history, is a matter of discretion which we will not disturb unless the agency’s assessment is unreasonable or inconsistent with the solicitation criteria. Metropolitan Life Ins. Co., B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14; Cajun Constructors, Inc., B-409685, July 15, 2014, 2014 CPD ¶ 212 at 8. Where a protester challenges an agency’s past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation’s evaluation criteria and procurement statutes and

regulations and to ensure that the agency's rationale is adequately documented. DynCorp Int'l, LLC, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14; Falcon Envtl. Servs., Inc., B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Beretta USA Corp., B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Finally, while it is axiomatic that an agency must evaluate past performance consistent with the terms of the solicitation, an agency may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. Independence Constr., Inc., B-292052, May 19, 2003, 2003 CPD ¶ 105 at 4.

Here, we find nothing unreasonable, nor inconsistent with the terms of the solicitation, in the agency's determination that it would give credit for past performance information of an individual team member only to the extent the team member was proposed to perform similar tasks under the competed effort. As the agency points out, the solicitation specifically stated that the agency would assess past performance that was similar to the size, content, and complexity of the KIAC requirements, and further advised offerors that the evaluation could be limited to specific areas the agency considered most germane to this acquisition. On this record, we decline to find unreasonable the agency's approach which attempted to maximize the agency's confidence regarding the ability of an offeror to successfully complete performance of the specific solicitation requirements.²¹ On the record here, we reject AbacusSecure's protest challenging the agency's past performance evaluation.

The protest is denied.

Thomas H. Armstrong
General Counsel

²¹ AbacusSecure asserts that Small Business Administration (SBA) regulations require procuring agencies, when performing past performance evaluations, to consider all work done individually by each partner to a joint venture. Supp. Protest, Sept. 1, 2017, at 26; 13 C.F.R § 124.513. We do not view the SBA regulations as precluding an agency from giving past performance credit for a joint venture partner's individual past performance only to the extent it is relevant to the proposal under consideration.