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Decision

Matter of: Visual Connections, LLC

File: B-416759

Date: December 4, 2018

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Mary G. Curcio, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is denied where the contracting officer gave meaningful consideration to whether awardee had an impaired objectivity organizational conflict of interest and there is no clear evidence in the record that the agency's conclusion was unreasonable.
 2. Protest challenging agency's evaluation of protester's proposal is denied where evaluation was reasonable and consistent with the evaluation criteria.
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DECISION

Visual Connections, LLC, of Milford Mill, Maryland, protests the issuance of a task order to CollabraLink Technologies, Inc., of McLean, Virginia, under request for proposals (RFP) No. CMS-18-181403, issued by the Department of Health and Human Services (HHS) for support services for the Centers for Medicare and Medicaid Services (CMS). Visual Connections contends that the awardee has organizational conflicts of interest (OCI) that HHS failed to recognize and consider in evaluating proposals. Visual Connections also challenges the agency's evaluation of its proposal.

We deny the protest.

BACKGROUND

CMS' Medicaid program and Children's Health Insurance Program (CHIP) have engaged in an enterprise-wide initiative, referred to as the Medicaid and CHIP Business Information Solutions (MACBIS), to update the agency's infrastructure and technology and ensure it is commensurate with the programs' roles in the evolving health care delivery marketplace. Agency Report (AR), Tab 4c, MACPro ConOps, §3.1 at 5. MACBIS is comprised of four business areas called pillars, each of which is covered by a separate award--Medicaid and CHIP System Program (MACPro); operational; financial; and pharmacy. Id. There is an overall systems integrator for the four MACBIS pillars. The current systems integrator is New Wave Telecom and Technologies (New Wave).

The solicitation here was issued under CMS' Strategic Partners Acquisition Readiness multiple-award indefinite-delivery, indefinite quantity (IDIQ) contract for the issuance of a task order to assist the agency with the design, development, implementation, and operation and maintenance of MACPro. AR, Tab 4b, RFP, amend. 2, att. J-3, at 2, 4. MACPro is a system of records that contains the agreements between CMS and the States for operation of the Medicaid and CHIP programs. AR, Tab 4b, Statement of Objectives (SOO), app. 1 at 5. The States submit proposals to amend their programs through MACPro. AR, Tab 4c, MACPro Concept of Operations (ConOps), §3.2(1) at 5. The Center for Medicaid and CHIP Services (CMCS) and the regional CMS officer adjudicate the proposals within MACPro, and the resulting amended plans or waivers are the public record of the currently approved State programs. Id.

The purpose of the current procurement is to streamline the State proposed amendment (SPA) process in partnership with the States by accelerating the development of SPA functionality within MACPro. AR, Tab 4b, SOO, at 1. Among other things, the agency seeks to make the approval process less burdensome for States; improve the process to fast track waivers and demonstrations already approved in another State; increase the velocity of development deliverable output by up to three times the standard development life cycle; and accelerate development to allow CMS to expedite the transition of legacy systems. Id. at 2.

The solicitation, a small business set-aside, contemplated the issuance of a fixed-price and time-and-materials task order with a 1-year based period and up to three 1-year option periods using a two phase award process. During phase 1, the agency evaluated offerors' technical solutions, process maturity, socioeconomic status, and business proposals, and selected five offerors to submit phase 2 proposals. RFP, amend. 2, att. J-3 at 3-6. During phase 2, the agency evaluated offerors' proposals on the following factors: technical merit (with subfactors for performance work statement, product roadmap, and quality control plan), staffing approach (with subfactors for key personnel, staffing plan, and staffing rationale), past performance, section 508

compliance,¹ and price.² Id. at 6-9. Award was to be made on a best-value tradeoff basis where the technical factors were significantly more important than price. Id. at 10.

The solicitation also contemplated the possibility that, as a result of an award on another MACBIS pillar task order or contract, offerors could have conflicts of interest. The solicitation required offerors and their subcontractors to submit attachment J-7, Contractor Business Ethics, Conflicts of Interest and Compliance Program Requirements, with their proposals. RFP, amend. 2, att. J-3 at 10-11. The solicitation advised offerors that the agency would not enter into a task order with an entity that has, or has the potential for, an unresolved conflict of interest unless the agency concludes that it is in the government's best interest to waive the conflict. Id.

Visual Connections and CollabraLink were selected to submit phase 2 proposals, which were evaluated as follows:

Offeror	Technical Merit	Staffing	Past Performance	Price
Visual Connections	Satisfactory	Satisfactory	Satisfactory	\$47,490,999
CollabraLink	Good	Good	Satisfactory	\$45,881,742

Protest, exh. D, Debriefing, at 2; AR, Tab 10, Price Negotiation Memorandum, at 6-7. The agency also evaluated both the protester and awardee as acceptable for the section 508 compliance factor, and conflicts of interest and compliance requirements. See id. The agency determined that CollabraLink's proposal offered the best value to the government, and on August 2, requested that CollabraLink provide an OCI mitigation plan to address a potential impaired objectivity OCI resulting from CollabraLink's proposed subcontractor New Wave's performance as the prime contractor on the MACBIS systems integrator task order. Contracting Officer's Statement (COS) at 4-5; AR, Tab 9b, Email to CollabraLink. The contracting officer reviewed the OCI mitigation plan, which included three strategies for mitigating any potential impaired objectivity OCI, and concluded that no OCI existed that precluded award to CollabraLink.³ AR, Tab 11, OCI Memorandum, at 5.

¹ Section 508 of the Rehabilitation Act of 1973 requires that all electronic and information technology be accessible to people with disabilities. See www.section508.gov/manage/laws-and-policies (last visited November 20, 2018).

² The possible ratings under the technical merit, staffing, and past performance factors were excellent, good, satisfactory, and unacceptable. See AR, Tab 7, Consensus Technical Evaluation Report, at 3. Section 508 compliance and conflicts of interest were rated acceptable or unacceptable. Id. at 7.

³ The agency also concluded that the proposed mitigation plan was sound and did not impact the technical evaluation. AR, Tab 11, OCI Memorandum, at 5; COS at 10.

The agency issued the task order to CollabraLink on August 24, and following a debriefing, Visual Connections submitted this protest.⁴

DISCUSSION

Visual Connections contends that CollabraLink has an impaired objectivity OCI as a result of its subcontractor New Wave's performance as the MACBIS systems integrator. Visual Connections also challenges the reasonableness of the agency's evaluation of its proposal. We have considered all of the protester's arguments and find no basis to sustain the protest. We discuss several examples below.

Organizational Conflicts of Interest

The Federal Acquisition Regulation (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. The situations in which OCIs arise can be broadly categorized into three groups: (1) unequal access to information; (2) impaired objectivity; and (3) biased ground rules. See FAR §§ 9.505, 9.508; Millennium Corp., Inc., B-412866, B-412866.2, June 14, 2016, 2016 CPD ¶ 168 at 8.

An impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505-3; Council for Logistics Research, Inc., B-410089.2, B-410089.3, Feb. 9, 2015, 2015 CPD ¶ 76 at 9. The concern here is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5.

In reviewing protests that challenge an agency's conflict of interest determination, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI 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 Deloitte Consulting, LLP et al., B-411884 et al., Nov. 16, 2015, 2016 CPD ¶ 2 at 17; TISTA Science & Tech. Corp., Inc., B-408175.4, Dec. 30, 2013, 2014 CPD ¶ 17 at 6. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Diversified Collection Servs., Inc., supra, at 6. A protester must identify hard facts that indicate the existence or potential existence of a

⁴ The awarded value of the task order at issue exceeds \$10 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under IDIQ contracts that were awarded under the authority of Title 41 of the U.S. Code. 41 U.S.C. § 4106(f)(1)(B).

conflict; mere inference or suspicion of an actual or potential conflict is not enough. SRM Grp., Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 9.

Visual Connections asserts that CollabraLink has an impaired objectivity OCI because its subcontractor New Wave is the MACBIS systems integrator. As a result, New Wave is responsible for oversight of the MACPro award, and will be judging its own performance as a subcontractor.⁵ Protest at 11; Protester's Comments at 3-5. The agency disagrees that CollabraLink has an impaired objectivity OCI. COS at 5-10.

We find that the agency reasonably concluded that CollabraLink does not have an impaired objectivity OCI. According to the statement of work for New Wave's systems integrator task order, the systems integrator will "monitor and oversee the work of all MACBIS contractors, specifically the pillar systems and data warehouse." AR, Tab 12b, Systems Integrator Statement of Work, at 7. In addition, the statement of work explains that the systems integrator will "execute MACBIS Lean agile portfolio management," "conduct analysis," and "provide recommendations" to CMCS. Id. However, the statement of work also explains the agency's role as follows:

CMCS/[Data Systems Group (DSG)] is ultimately responsible for the MACBIS program and shall make all decisions regarding MACBIS program direction, focus, issue resolution, architecture, funding, etc. The [systems integrator] in this role shall keep CMCS/DSG informed at all times on all aspects of program execution. Early identification of risks and opportunities, data informed recommendations, providing CMCS/DSG with

⁵ In its protest, Visual Connections asserted that CollabraLink also had biased ground rules and unequal access to information OCIs as a result of work New Wave performed as the MACBIS systems integrator vendor, and as a prior contractor for the MACBIS project management office award. Protest at 9-11. In its report responding to the protest, the agency explained why CollabraLink did not have a biased ground rule or unequal access to information OCI. COS at 5-8. In its comments responding to the agency report, Visual Connections did not substantively refute the agency's position, but only argued that there was nothing in the contemporaneous evaluation supporting the agency's position that these OCIs did not exist. Protester's Comments at 5-6. Specifically, the protester argued that in addressing these OCI issues, the agency cites to documents that were submitted by CollabraLink after the protest was filed. Id. However, an agency may provide information and analysis regarding the existence of a conflict of interest at any time during the course of a protest, and we will consider such information in determining whether the agency's determinations are reasonable. IBM Corp., B-415575, Jan. 19, 2018, 2018 CPD ¶ 61 at 8 n.19; see also Deloitte Consulting, LLP et al., supra. Since CollabraLink did not otherwise substantively respond to the agency report on these issues, we consider them abandoned. Bannum, Inc., B-411586.2, Jan. 6, 2016, 2016 CPD ¶ 13 at 4.

alternatives, facilitating efficient and effective program decision making are key to the success of the [systems integrator] in this role and ultimately the success of the MACBIS program.

Id.

The agency explains that as the MACBIS systems integrator, New Wave monitors and oversees the work of all MACBIS task order holders, including the MACPro task order holder. Supp. COS at 1. New Wave is also required to keep CMCS/DSG informed with respect to general software development status, such as whether project deliverables are progressing on schedule so an integrated project plan and schedule can be developed, and to provide alerts on any slippage in project schedules or potential schedule conflicts between the MACBIS task orders. AR, Tab 15, Decl. of MACBIS System Architect, at 1. New Wave does not evaluate or otherwise rate the performance of the MACPro task order holder. Id. at 1. Rather, CMS determines how well the MACBIS task order holders are meeting their requirements, and rates them. Id. Nor does New Wave direct the MACPro task order holder with respect to issues that arise during performance. Id. Again, if New Wave becomes aware of a slip in schedule, or an issue with the project, it reports such information to CMCS as part of its normal reporting activities, and CMCS determines how to address the issue with the holder of the task order. Id. In addition, the systems integrator does not report on whether the MACPro awardee meets its deliverables requirements. Id.; Supp. COS at 3.

Further, according to the agency, there is no incentive for New Wave to provide less than objective advice to CMS regarding the MACPro task order. In this regard, while the systems integrator reports schedule slippage, this is an objective assessment, not a subjective one. As the agency points out, failure to accurately report a slippage in schedule would reflect poorly on New Wave's performance and could result in a negative assessment or other action. Supp. COS at 3. Given the considerable discretion afforded contracting officers, and the absence of any facts to the contrary, we have no basis on which to find unreasonable the contracting officer's determination that an impaired objectivity OCI does not arise from New Wave's performance as the systems integrator. See Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 16.

Technical Merit

Visual Connections also protests that the agency unreasonably evaluated its proposal under the technical merit and staffing approach factors.⁶ Protest at 11-13; Comments at

⁶ During the debriefing, the items discussed here were listed as significant weaknesses, rather than weaknesses. Protest, exh. D, Debriefing, at 1-2. The agency explains that it used a template with significant weaknesses and deficiencies listed and failed to remove the word significant when preparing Visual Connections' debriefing. AR, Tab 2, Decl. of Technical Evaluation Panel Chair, at 3.

6-8. The agency disagrees and contends that its evaluation was reasonable and consistent with the terms of the solicitation. COS at 10-13.

In reviewing protests challenging an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Trandes Corp., B-411742 et al., Oct. 13, 2015, 2015 CPD ¶ 317 at 6. An offeror's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 7.

With respect to the technical merit factor, offerors were instructed to provide a performance work statement (PWS) describing how the offeror intends to oversee the multiple complex and overlapping components of the project. RFP, amend. 2, att. J-3 at 6. Offerors were cautioned that the PWS should be specific to the project and demonstrate an understanding of and planning for the project's unique management challenges. Id. The solicitation advised offerors that the government would evaluate the viability of the offeror's proposed PWS to meet or exceed the objectives of the agency, as described in the SOO and ConOps documents. Id. at 12.

The SOO advised offerors that the agency sought to provide continuously improving support for the processing of SPA submissions by, among other things, increasing the velocity of development deliverable output by up to three times the standard development life cycle. AR, Tab 4b, SOO, at 1,2. Offerors were instructed to use development and operations (devops) methodologies to deliver the described outcomes. Id. at 2. In describing one devops practice, the ConOps document provided that offerors should move to using continuous integration (CI) and continuous deployment (CD) best practices and methodologies.⁷ AR, Tab 4c, MACPro ConOps, at § 5.5.5(5) at 39.

Visual Connections proposal was assigned a weakness under the technical merit factor because the proposal did not sufficiently focus on CI/CD tasks. AR, Tab 7, Consensus Technical Evaluation Report, at 4. As a result, the agency could not determine if the protester would be able to achieve the desired increased velocity and process

⁷ CI is a way to merge all developers' copies of code into a code base. AR, Tab 19, Supp. Decl. of Technical Evaluation Panel Chair, at 2. Each integration is verified by automatic build of some sort allowing teams to detect problems early. Id. This saves time and helps to increase velocity (how frequently new features can be released to production) and enable more frequent deployments. Id. CD is the ability to get changes of all types, including new features, configuration changes, and bug fixes into production safely and quickly in a sustainable way. Id. The goal is to make all deployments, including a large-scale distributed system, a complex production environment, or an application, predictable, routine affairs that can be performed on demand. Id.

efficiencies. Id. In this regard, the agency acknowledges that with respect to CI/CD, the proposal discussed testing automation and testing tools. Id. However, the agency was looking for a more elaborate approach, such as, in addition to automated testing, an automated release process that could deploy an application at any time by clicking on a button. AR, Tab 2, Decl. of Technical Evaluation Panel Chair, at 3.

The agency further notes that its primary concern was with the lack of detail regarding CI/CD in Visual Connections' proposal. AR, Tab 19, Supp. Decl. of Technical Evaluation Panel Chair, at 2. In this regard, the agency explains that testing is only one part of the systems development where CI/CD is applied. Id. Specifically, the agency states that there are multiple aspects across all phases of the development life cycle that contribute to and impact the velocity of development deliverable output, including requirements gathering, development, testing and deployment phases; practices around CI/CD will spread across each of them. Id. Therefore, the agency was looking to see how CI/CD would be applied to meet the objectives across the entire development lifecycle. Id. Among other things, the agency wanted to see how codes would be merged given the multiple streams of development going on, and the limitation of Appian software with respect to merging codes with multiple streams; the thought process to logically group items within each of the development streams into small chunks so they are ready for deployment sooner instead of waiting for one large deployment, and the steps to reduce the time it takes to deploy Appian code. Id. at 2-3; see also AR, Tab 2, Decl. of Technical Evaluation Panel Chair, at 3. According to the agency, collaboration, feedback, and iterative development, as discussed in Visual Connections' proposal, are already part of the current MACPro engagement. AR, Tab 19, Supp. Decl. of Technical Evaluation Panel Chair, at 3.

Visual Connections complains that the agency used unstated evaluation criteria because it assessed the weakness for failure to include a one-button approach, which was not part of the criteria. Protester's Comments at 6. We disagree. First, as discussed above, the weakness was not assigned simply because Visual Connections did not propose a one button approach for CI/CD.

Second, while solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation; agencies are not required to specifically list every area that may be taken into account, provided such areas are reasonably related to or encompassed by the stated criteria. AIA-Todini-Lotos, B-294337, Oct. 15, 2004, 2004 CPD ¶ 211 at 8. Here, the solicitation specifically advised offerors that the government would evaluate the viability of the offeror's proposed PWS to meet or exceed the objectives of the agency, as described in the SOO and ConOps documents. One of these objectives was an increase in the velocity of development deliverable output by up to three times the standard development life cycle. AR, Tab 4b, SOO, at 2. Offerors were instructed to use CI/CD to meet this goal. AR, Tab 4c, MACPro ConOps, § 5.5.5(5) at 39. We view the use of a one button approach as reasonably related to CI/CD and the agency's objective to increase velocity.

Visual Connections also asserts that it addressed how CI/CD would be used throughout the development lifecycle and not just in testing. Visual Connections argues that CI/CD is also addressed in the training/customer feedback and program/project management sections of its proposal. Protester's Comments at 6.

In the training/customer feedback section of its proposal, Visual Connections states it will **[DELETED]** and **[DELETED]**. AR, Tab 6, Visual Connections Proposal, at 16. In the program management section, Visual Connections states it will **[DELETED]** which will address the significant challenges of developing and delivering multiple streams of work for MACPro with an increased velocity. Id. at 20.

Neither of these, however, address the agency's concern that the proposal did not indicate how, with multiple streams of development going on, code merges will be handled given Appian's limitations; the thought process to logically group items within development streams into smaller chunks so they are ready for deployment sooner instead of waiting for one large deployment; or the steps to reduce the time it takes to deploy Appian code. Accordingly, we find the agency's evaluation reasonable and consistent with the terms of the solicitation.

Staffing Approach

For the staffing approach, offerors were to provide a staffing plan, which included the proposed positions, roles, experience, and number of hours for each proposed position by task. RFP, amend. 2, att. J-3 at 8. The solicitation advised offerors that the government would evaluate the proposed staffing plan to determine, among other things, how well the offeror's proposed labor mix is an accurate reflection of the technical understanding of the ConOps/SOO. Id. at 12.

Visual Connections protests that it was assigned a weakness under the staffing plan because it only allocated one full-time equivalent (FTE) to training. Protest at 12-13. The protester asserts that the assignment of the weakness was unreasonable because it allocated **[DELETED]** FTEs, not one FTE, to the trainer and help desk positions. Id. Visual Connections further asserts that it allocated **[DELETED]** FTE's for the education, training, and assistance (ETA) task. Id.

The agency acknowledges that the protester proposed **[DELETED]** FTE as a trainer and **[DELETED]** FTEs for the helpdesk. According to the agency, there was a typographical error in the technical evaluation document where it stated that Visual Connections only allocated one FTE for training and help desk. AR, Tab 2, Decl. of Technical Evaluation Chair, at 5. The agency asserts that the evaluation should have read only **[DELETED]** FTE allocated to trainer and **[DELETED]** to help desk. Id. The agency further asserts that it was aware of the correct number of people that Visual Connections proposed. Id.

The agency notes that in any case, the assignment of the weakness was not solely based on the number of personnel that the protester assigned to the trainer and help

desk positions. Rather, the agency was also concerned that Visual Connections allocated between **[DELETED]** percent of the time of senior subject matter experts to the education and training team. AR, Tab 7, Consensus Technical Evaluation Panel Report, at 5. The agency believed that with their business experience, the senior subject matter experts would have been better placed in other development streams. Id. The agency was also concerned that the protester proposed fewer than **[DELETED]** FTEs for the ETA which was currently staffed with **[DELETED]** FTE's for training alone, with more needed. AR, Tab 2, Decl. of Technical Evaluation Chair, at 5. The agency was concerned that Visual Connections failure to properly staff the task order showed a lack of understanding of the agency's requirements.

Visual Connections continues to complain that the weakness was based on the agency's erroneous conclusion that it proposed only **[DELETED]** FTE for the help desk and as a trainer. In this regard, the protester argues that there is no documentation in the record that demonstrates that the agency was aware that the protester proposed three FTEs for the trainer and help desk position. However, even if Visual Connections is correct that this was not a typographical error, Visual Connections has not responded to the agency's concern that the protester did not offer sufficient personnel to perform the ETA task and otherwise misaligned its subject matter experts. Given these factors, we find that the assignment of a weakness was reasonable.

The protest is denied.

Thomas H. Armstrong
General Counsel