



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: Cybermedia Technologies, Inc.

File: B-420881; B-420881.2

Date: October 14, 2022

John E. Jensen, Esq., Meghan D. Doherty, Esq., Robert C. Starling, Esq., and Ariella M. Cassell, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester. Thomas K. David, Esq., Kenneth Brody, Esq., and Katherine David, Esq., David, Brody & Dondershine, LLP, for The Prospective Group, Inc., the intervenor. Matthew Donohue, Esq., Katie Oyler, Esq., and Tiffany Williams, Esq., Department of Defense, for the agency. Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency misevaluated awardee's price and pricing risk is denied where the record shows the evaluation was reasonable and consistent with solicitation criteria.
2. Protest that awardee had an organizational conflict of interest resulting from its subcontractor's hiring of five former agency officials is denied where the record shows that four departed the agency before procurement planning began, and that the fifth was not involved in solicitation preparation before departing the agency.

DECISION

Cybermedia Technologies, Inc., of Reston, Virginia, a small business, protests the issuance of a task order to The Prospective Group, Inc., of Fairfax, Virginia, also a small business, under request for proposals (RFP) No. HS002122R0005, issued by the Department of Defense (DOD), Defense Counterintelligence and Security Agency (DCSA), for industrial security support services at Quantico, Virginia and at agency regional and field offices nationwide. Cybermedia argues that DOD misevaluated Prospective's price, and failed to properly assess and remedy the awardee's alleged conflict of interest.

We deny the protest.

BACKGROUND

Initial planning and preparation for the procurement at issue began in November 2020. Agency Report (AR), Tab 8, Declaration at 2. The RFP, issued on February 23, 2022, initiated a competition under the General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity (IDIQ) contracts for a fixed-price order for a base year and four option years. The RFP was posted on the GSA e-Buy portal for competition among OASIS vendors in small business pool 1. Contracting Officer's Statement (COS) at 1. Additionally, the RFP specified a tiered evaluation of offers in accordance with Defense Federal Acquisition Regulation Supplement section 215.203-70, in which proposals from women-owned small businesses would be evaluated first, followed if needed by lower tiers that added other small business subcategories. AR, Tab 6, RFP at 133-34.

The RFP included a performance work statement (PWS) that described the scope of work as including program management, resource development, technical support, research, analysis, communication, and task management; identifying risks to cleared facilities; collating data sets; furnishing increased oversight of the facility clearance process/foreign ownership control or influence mitigation, and supporting senior agency leadership. AR, Tab 4, RFP amend. 2 at 2-3. Part 5 of the PWS described the work in greater detail in 10 task areas. For example, as relevant to the protest, task area No. 8 specified services for maintaining critical technology protection industrial security oversight support, and indicated that the task area No. 8 requirement was expected to grow over the course of performance. *Id.* at 38-39.

The proposals were to be evaluated under four factors: technical approach, management approach, past performance, and price.¹ RFP at 128. The task order would be issued to the firm whose proposal provided the best value, where the technical approach factor was significantly more important than the management approach factor, which was significantly more important than the past performance factor. *Id.* When combined, the three non-price factors were significantly more important than the price factor. *Id.*

The RFP provided that under the price factor, the agency would analyze prices under Federal Acquisition Regulation (FAR) section 15.404-1(b), and would consider both the "fairness and reasonableness," of the pricing submission, as well as the "reasonableness and completeness," of the price proposal and supporting documentation. RFP at 131. The agency stated that it would assess whether the price proposal "accurately reflect[ed] the Offeror's technical understanding and proposed work effort." *Id.* Additionally, the RFP stated that "a determination will be made if there is any significant performance risk to the Government because of unrealistically low or

¹ We omit details of subfactors under the technical and management approach factors because they are not relevant to our resolution of the protest.

high prices,” and noted that the agency “reserves the right, but is not obligated, to conduct a realism analysis.” *Id.* at 127.

On March 24, DOD received two proposals: one from Cybermedia, whose team included two of the incumbent service providers, and one from Prospective. Both firms were eligible for award in the first tier of the evaluation based on their status as woman-owned small businesses. The agency evaluated both proposals, after which it held discussions in May and requested revised proposals from both firms. AR, Tab 63 at 1-2.

On June 1, after receiving revised proposals, the agency amended the PWS to further clarify the work required under task area No. 8, the industrial security oversight support services requirement, and directed offerors to submit final proposal revisions by June 3. *Id.* at 2; AR, Tab 5, RFP amend. 3 at 1, 39. Cybermedia confirmed its proposal without changes, and Prospective made revisions to its pricing narrative. AR, Tab 63 at 2. Specifically, Prospective acknowledged amendment 3 and revised a paragraph to state that the firm recognized that the support requirement would grow by an estimated 20 percent each year over the first two years of the contract. The firm further explained that it had included “additional support resources” and it had “take[n] into account the efficiencies that we will introduce to improve productivity associated with the [task area No. 8] deliverables.” AR, Tab 76, Prospective Final Proposal Revision Pricing Volume at 4.

DOD then evaluated the final proposal revisions from both firms. The evaluation rated both the technical and management approach factors adjectivally using three levels of confidence (*i.e.*, high, some, or low confidence). The past performance factor was rated adjectivally using five levels of confidence (*i.e.*, substantial, satisfactory, neutral, limited, or no confidence). The final evaluation resulted in the following factor ratings:

	Technical Approach	Management Approach	Past Performance	Price
Cybermedia	Some Confidence	High Confidence	Satisfactory Confidence	\$77.9 million
Prospective	High Confidence	High Confidence	Satisfactory Confidence	\$59.4 million

AR, Tab 28, Award Decision Document at 9-10.

The contracting officer reviewed the results of the evaluation and determined that Prospective’s proposal represented the best value because it was higher-rated under the technical approach factor and offered a lower price. On June 30, the agency

notified Cybermedia of the award and provided a debriefing, after which the firm filed this protest.²

DISCUSSION

Cybermedia raises three challenges to the selection of Prospective regarding the awardee's pricing and an alleged organizational conflict of interest. We review each of Cybermedia's grounds of protest and conclude that none provide a basis to sustain the protest, as discussed below.

Pricing Evaluation Challenges

Cybermedia raises two challenges to DOD's evaluation of Prospective's pricing. The protester argues both that Prospective's final proposal revision contained a discrepancy that should have rendered the proposal unacceptable, and, separately, that DOD failed to assess the risk of Prospective's significantly lower price. We address each argument in turn.

First, Cybermedia contends that the price evaluation identified material errors in Prospective's final pricing that showed the firm's proposal did not meet RFP requirements and should have rendered the proposal unacceptable. Comments at 6. Specifically, the protester argues that even though Prospective responded to amendment 3 by revising its pricing narrative to acknowledge that the agency anticipated growth in work under task area No. 8 by 20 percent in each of the first two years of performance, the pricing evaluation noted that the firm's pricing workbook showed a much lower increase in pricing for that work. *Id.* Cybermedia argues that the contracting officer could not rely on Prospective's stated approach of including additional resources and obtaining greater efficiencies because the proposal lacked further details. *Id.* at 7. Instead, the difference represented an apparent mistake by Prospective that amounted to a discrepancy that should have rendered its price unacceptable, Cybermedia argues. *Id.* at 8.

In a task order competition, our Office will review a challenge to the evaluation but will not question the agency's reasonable evaluation judgments. Accordingly, we will examine the record to determine whether the agency's judgment was reasonable and in

² The applicable statutory jurisdiction to hear protests challenging the issuance of a task or delivery order depends on the agency that awarded the underlying IDIQ contract, rather than the agency placing the order. *Vysnova Partners, Inc.*, B-420654 *et al.*, July 7, 2022, 2022 CPD ¶ 177 at 3 n.2. This protest falls within our statutory jurisdiction to hear protests in connection with task and delivery orders valued in excess of \$10 million that are issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f); 4 C.F.R. § 21.5(l). The OASIS IDIQ contracts were issued by the General Services Administration and the value of the task order at issue here exceeds \$10 million.

accord with the stated evaluation criteria and applicable procurement laws and regulations. *IBM Corp.*, B-417664, Sept. 18, 2019, 2019 CPD ¶ 327 at 8.

DOD argues that this ground of protest should be denied because the evaluation of Prospective's final pricing was reasonable and consistent with the RFP requirements. The agency contends that while the RFP was clarified to state that growth under task area No. 8 was expected to be 20 percent in each of the first two years, the clarification did not require offerors to respond with a precisely equal increase in labor and pricing. Resp. to Comments at 4-5. Rather, the agency contends that the contracting officer reviewing the statements in Prospective's proposal reasonably determined that the agency could be confident that the firm understood the agency's requirement and that the lower increase in the pricing workbook represented the firm's approach, which had been favorably evaluated. *Id.* at 5.

Our review of the record supports the reasonableness of DOD's evaluation of Prospective's pricing. The record shows that the contract specialist who reviewed the offerors' final pricing stated that Prospective's revised narrative acknowledged the RFP's anticipated growth in task area No. 8, but viewed that narrative as "inconsistent" with the firm's pricing workbook, which had not been revised in response to RFP amendment 3. AR, Tab 27, Price Analysis Report at 6. Thus, while Prospective's narrative recognized the growth in task area No. 8 as clarified in RFP amendment 3, the evaluation noted that its pricing for that work increased by 15.9 percent after the first year, and by 9.5 percent for the following year. *Id.* at 8.

However, the record also shows that in reviewing the evaluation record, the contracting officer appropriately recognized that Prospective had proposed to increase labor under task area No. 8 in the first two option periods, albeit by amounts lower than the 20 percent per year growth in the first two years that the firm acknowledged in its pricing narrative. AR, Tab 28, Award Decision Document at 10; *see also id.* at 6. The contracting officer explained that a review of the statements in the firm's pricing narrative regarding the increase in task area No. 8 work showed that Prospective understood the requirement and was expressly taking into account efficiencies that the firm would introduce to increase the efficiency of work in that task area. *Id.* at 10. Those statements in Prospective's proposal gave the contracting officer confidence that Prospective understood the growth in task area No. 8 work and the firm's intention to achieve efficiencies that would support its proposed price. *Id.* The determination that Prospective's proposal was accurate was based on information in the firm's proposal, and reflects a reasonable evaluation judgment that the contracting officer had the discretion to make.³ We will not question the contracting officer's reasonable evaluation judgment, so we deny this ground of protest.

³ To the extent that Cybermedia's argument includes the assertion that Prospective's price was mistaken or erroneous, we have stated that an agency's price reasonableness evaluation is not required to consider whether the awardee's pricing has an error or other discrepancy. We dismiss such allegations as lacking a valid basis

As a second challenge to the pricing evaluation, the protester argues that DOD failed to make a determination whether Prospective's low price posed significant performance risk, which Cybermedia argues the RFP required the agency to assess. Specifically, Cybermedia notes that in addition to providing for an assessment of price reasonableness, the RFP specified that "a determination will be made if there is any significant performance risk to the [g]overnment because of unrealistically low or high prices." Supp. Protest at 11 (citing RFP at 127). Cybermedia acknowledges that the RFP "did not require a cost realism analysis," but nevertheless argues that Prospective's price was unrealistically low; that is, it was allegedly so much lower than the agency's estimate and Cybermedia's price that the RFP required DOD to make an analysis and a determination "regarding [Prospective]'s unrealistic price." Supp. Protest at 11. Cybermedia argues that the required analysis would have revealed significant risk to the government caused by what the protester contends are Prospective's significantly lower staffing levels and pay. *Id.*

DOD argues that the RFP provided for price to be analyzed under the requirements of FAR section 15.404-1(b). Consistent with that requirement, the agency assessed prices by comparing the offerors' prices to each other, and to their OASIS contract rates, and determined that both firms had offered prices that were accurate and supported their approach to the PWS. Memorandum of Law (MOL) at 23. The agency notes that this included the identification and resolution of the price discrepancy (discussed above) and resulted in a reasonable judgment that both offerors' prices were fair, reasonable, and did not pose any significant performance risk that would have justified further discussion. *Id.* at 24. Furthermore, the agency argues that the RFP clearly informed offerors that the agency reserved the option to conduct a price realism analysis, but was not obligated to do so. *Id.* at 22-23.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. Thus, a valid interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *TGC, Inc.*, B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 5; *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4.

Accordingly, our review of this aspect of the price evaluation must consider not just the sentence highlighted by Cybermedia, but also its context in the RFP. While the RFP stated that a determination would be made if there were any significant performance risk to the agency, that was closely followed by the direct statement that the agency retained a right to conduct a realism analysis, but was not obligated to do so. A reasonable interpretation of the RFP here requires that our Office read the price evaluation language as a whole and give effect to each of the provisions. *BICALLIS, LLC*, B-415639, Feb. 1, 2018, 2018 CPD ¶ 90 at 4.

of protest. *Wolverine Tube Inc.*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 7.

In reading both provisions together--first, that a determination of performance risk would be made because of unrealistically low or high pricing, and second, that the agency was not obligated to assess price realism--we think that where, as here, the agency did not assess price realism it would, consequently, not be required to assess performance risk. Such an assessment was to be made "because of" "unrealistically low or high prices," and no price realism analysis was conducted.

The record shows that the price evaluation was consistent with the RFP by utilizing price analysis under FAR section 15.404-1(b). The agency compared Prospective's pricing to both the agency estimate and the Cybermedia's price. In doing so, the contracting officer noted that Prospective's price was 71 percent lower than the government estimate, and 26 percent lower than Cybermedia's price. AR, Tab 28, Award Decision Document at 6, 12. The record supports the contracting officer's reasonable determination that Prospective's low price was thus fair and reasonable, and that it was consistent with the firm's proposed level of staffing. Accordingly we deny Cybermedia's challenges to the pricing evaluation.

Conflict of Interest

Cybermedia's third challenge argues that DOD failed to assess and mitigate an organizational conflict of interest arising from the awardee's principal subcontractor having hired five former agency officials, including the DCSA deputy director and the chief of staff at the threat directorate. Supp. Protest at 4. The protester contends that the roles of those five individuals provided Prospective access to sensitive source selection information or other competitively-useful information. As a result, Cybermedia contends that Prospective gained an unfair competitive advantage in preparing and submitting its proposal, and the presence of the former agency employees influenced the agency's evaluation of the proposal and the source selection decision. *Id.* at 4-5. Cybermedia argues that the circumstances here raise at least the appearance of serious conflicts of interest that DOD failed to investigate and address, which should have included assessing whether to exclude Prospective from the competition. *Id.* at 3.

DOD argues that Cybermedia has failed to show that any of the five individuals had competitively useful information, and none were identified as part of its contract workforce in Prospective's proposal. Additionally, the agency argues that the PWS required any organizational conflict of interest to be disclosed promptly to the contracting officer's representative, but Prospective did not identify any potential conflict of interest in its proposal. As a result, the agency argues that it had no basis to inquire further. MOL at 2-3 (citing RFP PWS ¶ 1.6.14).

DOD also notes that, of the five former agency employees challenged by Cybermedia, four had departed the agency by June 2020, which was before the agency began preparation for the RFP in November 2020. The fifth person was the agency's chief of staff for the counterintelligence directorate, but that person had been detailed to another DOD agency until sometime in 2021. AR, Tab 8, Decl. of DCSA Associate Deputy Assistant Director of Counterintelligence Directorate, at 1. More importantly, during the

drafting of acquisition-related documentation for this procurement (specifically the PWS, acquisition strategy, evaluation factors, and supporting documentation), the former chief of staff did not “read, contribute to, or have access to any acquisition documentation related to the competitive procurement for these services.” *Id.* at 2. The contracting officer asserts that the circumstances around Cybermedia’s challenge show that there is no possibility of a potential organizational conflict of interest and neither an appearance of nor an actual impropriety in Prospective’s proposal or the agency’s decision to award the contract. COS at 11-13.

Cybermedia counters that even though four of the individuals departed the agency before the RFP planning process had begun, during their employment, each of them could still have acquired competitively useful information about the incumbent contractors--information that would have been useful to Prospective. 2d Supp. Comments at 7-8. Additionally, the firm argues that it is sufficient for our Office to sustain the protest that Cybermedia informed the contracting officer that by virtue of their leadership positions within DCSA and the broad scope of their duties, the individuals would have had access to nonpublic information about the performance of the incumbent contract. Supp. Comments at 10.

For its part, Progressive denies that any of the challenged individuals worked on Prospective’s proposal for this RFP “for the simple reason that they are not in line to work on the current contract.” Intervenor’s Supp. Comments at 5.

We have cautioned that contracting agencies must avoid even the appearance of impropriety in government procurements, and that a firm competing for a contracting opportunity may gain an unfair advantage through its hiring of a former government official, which can therefore be a basis to disqualify the firm from the competition. However, we have noted that non-speculative “hard facts” must be present to show there was an unfair advantage, even if they do not show an actual impropriety. These would include whether the individual had access to non-public information that was not otherwise available to other firms, or to non-public proprietary information about other firms, and whether that non-public information was competitively useful. *VSE Corp.*, B-404833.4, Nov. 21, 2011, 2011 CPD ¶ 268 at 7.

As noted above, DOD contends that there is no basis to justify investigation into a potential conflict of interest posed by the employment of five senior agency officials by Prospective’s subcontractor because neither the circumstances nor Cybermedia’s allegations indicated the existence of hard facts that could show that Prospective had access to competitively useful nonpublic information, or that a conflict otherwise existed. To the contrary, the agency notes that four of the five left the agency before November 2020,⁴ when the initial planning began regarding this RFP, while the remaining person (the agency’s former chief of staff) was hired by Prospective’s

⁴ Cybermedia acknowledges that four left between November 2019 and June 2020. Supp. Protest at 4.

subcontractor in April 2022, which was after Prospective and Cybermedia had submitted their proposals.⁵ The agency acknowledges that discussions were held after the fifth individual had been employed by Prospective's subcontractor, but the agency argues that the circumstances show both that there was no risk that the individual had any competitively useful information, and that the discussions provided to Prospective and its response provided no opportunity to engage in unfair competition.

In contrast, despite Cybermedia's belief that "it is extremely likely that [former agency officials] had access to information regarding the performance of the incumbent contracts that is proprietary to [Cybermedia's subcontractors] and that could shed light" on Cybermedia's likely approach to this RFP, or "other non-public information that is directly relevant to the current procurement," the protester has furnished only unfounded suspicions about unspecified proprietary and "other" information.⁶ Comments at 12-13; Supp. Comments at 12-13. We see no error in the contracting officer's decision not to investigate the alleged organizational conflict of interest based on Cybermedia's suspicions, particularly where the individuals had not been involved in any aspect of this procurement.

Finally, Cybermedia contends that the employment by a competitor of five former senior agency staff over a three year period was a threat to procurement integrity "simply too much for any reasonable contracting officer" to permit, and that the evaluation and source selection were "unduly influenced by the sheer number and seniority of the former DCSA official slate" working for Prospective's subcontractor. Supp. Protest at 4. To the contrary, the fact that a competitor employs multiple former agency officials does not show unfair competitive advantage by itself, nor is the fact that those individuals possessed familiarity with the type of work reflects evidence of an unfair competitive

⁵ The agency also explains that the former chief of staff had been detailed to another DOD office at a different location during the planning of this RFP, and after returning to DCSA in 2021 had no role in or access to any acquisition documentation regarding the RFP. AR, Tab 8, Decl. of DCSA Associate Deputy Assistant Director of Counterintelligence Directorate at 2.

⁶ As one example, Cybermedia points to one of the former agency employees whose résumé lists a role planning for transfer of new mission areas including background investigations while at DCSA, which the protester contends is evidence of an unfair competitive advantage for Prospective because the scope of the RFP includes support for the directorate handling background investigations. Comments at 10. In another, the protester argues that another former agency employee was the second-highest person in DCSA and led the agency's implementation of "a risk-based continuous vetting model" for clearances and personnel vetting thereby had access to nonpublic information about the requirement and the incumbent contractors that would benefit Prospective because the RFP required support for DCSA management of both facility and personnel security clearances. *Id.* at 11. In no case does Cybermedia identify specific information that an individual could have known that could credibly provide any unfair competitive advantage.

advantage. *Health Net Fed. Servs., LLC*, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 29; *Dewberry Crawford Grp.; Partner 4 Recovery*, B-415940.11 *et al.*, July 2, 2018, 2018 CPD ¶ 298 at 24-25. In sum, Cybermedia has not provided a basis to question the agency's conduct of the procurement because it has not shown that any of the individuals could have had competitively useful information. Lacking any facts to support the assertion of a conflict of interest, we see no basis to question DOD's conduct of the procurement.

The protest is denied.

Edda Emmanuelli Perez
General Counsel