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Decision

Matter of: The District Communications Group, LLC; CruxDCG LLC

File: B-421581.2; B-421581.3

Date: September 25, 2023

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Danica Hong, Esq., and Aleia Barlow, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

Protests that agency unreasonably excluded the protesters from a competition on the basis of an impaired objectivity organizational conflict of interest arising from an ongoing task order for related services are denied, where the contracting officer meaningfully considered the circumstances and reasonably concluded that possible award of a contract to the protesters presented an impaired objectivity type conflict of interest that could be avoided by exclusion of the firms from the competition.

DECISION

The District Communications Group, LLC (District), of Plantation, Florida, and CruxDCG LLC, of Roseville, California, a small business, protest their exclusion from competition for a contract under request for proposals (RFP) No. 36C10X23R0006, issued by the Department of Veterans Affairs (VA), Strategic Acquisition Center, for commercial support services to assist the VA's efforts to reduce and prevent suicide in military and veteran populations. The protesters contend that the RFP improperly excludes them from the competition to avoid an impaired objectivity type of organizational conflict of interest (OCI) arising from other work being performed by District. The protesters argue that no conflict exists or that any potential conflict could be easily avoided without excluding the protesters from the competition.

We deny the protests.

BACKGROUND

As the protests involve analysis of an OCI that arises from the potential relationship between two contracting vehicles that both relate to a common set of policy goals, we begin with a brief explanation of the procurement's policy goals, the contracting instruments, and their parties.

On November 2, 2021, the president of the United States issued a set of five White House priority goals regarding prevention of suicide among military and veteran populations. The goals are "to help organize a focused set of agency actions that will advance evidence-based approaches to reduce military and veteran suicide." White House, *Reducing Military and Veteran Suicide: Advancing a Comprehensive, Cross-Sector, Evidence-Informed Public Health Strategy*.¹ The first of the five goals is to improve 'lethal means safety' by focusing on ensuring time and space between a person and crisis and their access to lethal means, including firearms and medications. *Id.* The second goal is to enhance crisis care and facilitate care transitions, and it instructed the VA and other agencies to collaborate to create a "Feasibility Analysis and Implementation Plan" for broad implementation of evidence-based suicide risk assessment and safety planning within emergency care settings throughout the United States. *Id.* at 12.

Separate from the procurement at issue in this protest, on April 4, 2023, the VA awarded a task order to a firm named J.R. Reingold & Associates, Inc. to provide commercial general mental health and suicide prevention awareness and education outreach support services for a base year and four option years (*i.e.*, through April 3, 2028). Agency Report (AR) Exh. 3, Reingold Task Order² at 1, 26. The Reingold task order requires the contractor to provide support services to assist the VA in developing public health awareness campaigns on a national level, communicating about sensitive veterans' mental health topics and issues, and reaching veterans primarily, and Americans over age 18 secondarily. *Id.* at 31. Services under the Reingold task order are organized into 11 areas, which include national communication and outreach support; social media maintenance and monitoring support; video and public service announcement (PSA) production, photography, and distribution; and paid media plans and media placement. *Id.* at 6-10. District is a subcontractor under the Reingold task order.

The RFP at issue in this protest was issued on February 9, to obtain proposals from service-disabled veteran-owned small businesses to provide commercial support

¹ See <https://www.whitehouse.gov/wp-content/uploads/2021/11/-Military-and-Veteran-Suicide-Prevention-Strategy.pdf> (last visited Sept. 5, 2023).

² The Reingold task order is commonly identified in the record only by number; that is, as "task order No. 47QRAA21D001F / 36C10X23F0021". *E.g.*, AR, Tab 7, Contracting Officer's OCI Analysis Memorandum at 3. To minimize confusion in this decision, we refer to it as the "Reingold task order."

services to assist the VA's efforts to reduce and prevent suicide in military and veteran populations through an evidence-based approach to an integrated care model that addresses medical, behavior, and social health.³ Under the RFP, the contractor's services, including delivery of the feasibility analysis and implementation plan called for under the White House priority goals shall not exceed 30 months. AR, Exh. 2e, RFP amend. 4, at 8.

The VA received multiple initial proposals in response to the RFP, including one from CruxDCG LLC, a joint venture comprised of The Crux Firm LLC and District. After evaluating the initial proposals, the contracting officer performed an analysis of the potential for an "impaired objectivity" type OCI arising out of existing contracts under which offerors were performing services for the VA.⁴

Upon completing that analysis, on May 26, the VA issued amendment 4 to the RFQ, which listed 13 companies that were "excluded from participation under this solicitation due to an actual and/or potential significant conflict of interest as either the prime or subcontractor for the associated contracts/task orders." AR, Exh. 2e, RFP amend. 4, at 78. The excluded companies included both Reingold and its subcontractor District, *id.*, which, as noted above, is one of the joint venture participants in CruxDCG. The exclusion of District thus effectively excluded CruxDCG from the competition. Upon learning of their exclusion, District and CruxDCG filed these protests, which raise parallel arguments.

DISCUSSION

The protesters challenge their exclusion from the competition and argue that no OCI exists or, alternatively, that the RFP here includes a provision that effectively eliminates the risk of any actual impairment. We note at the outset that our Office will review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *ASM Research*, B-412187, Jan. 7, 2016, 2016 CPD ¶ 38 at 4 (*citing TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4). In reviewing the contracting officer's determination, we recognize that the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD

³ For clarity, we refer to the RFP at issue here, and the expected contract, as the "White House Priority Goal" solicitation and contract, respectively.

⁴ An impaired objectivity OCI exists where a firm's ability to render impartial advice to the government will be undermined by the firm's competing interests such as a relationship to the product or service being evaluated. Federal Acquisition Regulation (FAR) 9.505, 9.505-3; *ORBIS Sibro, Inc.*, B-417406.2, B-417406.3, Nov. 19, 2019, 2019 CPD ¶ 404 at 12.

¶ 166 at 7 (*citing Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009)).

Before turning to the protesters' allegations in detail, we briefly discuss the facts leading to the agency's decision to exclude them from the competition.

The contracting officer documented the agency's OCI analysis. AR, Exh. 7, Contracting Officer's OCI Analysis Memorandum, at 4. In conducting the analysis, the contracting officer explained that she first reviewed and examined contracts that could present an OCI in performing the White House Priority contract. *Id.* at 3. From that list, she excluded from consideration those contracts which expired before the White House Priority Goal contract. *Id.* With the remaining list of contracts, the agency identified six existing contracts or future contracting actions, including the Reingold task order, that presented an OCI. *Id.*

The contracting officer provided her OCI determination to Reingold in a series of communications. *Id.* at 4. The first of those communications was a letter to Reingold explaining why the contracting officer believed there was the potential for an impaired objectivity OCI if Reingold (or its subcontractors, including District) were to be awarded the White House Priority Goal contract. AR, Exh. 4, Initial OCI Letter to Reingold.

Specifically, the letter noted that one goal under the White House Priority Goal contract was for VA to create or obtain mass media campaigns relating to suicide prevention. As part of meeting that objective, the contractor would be providing advice to the agency about creating or obtaining mass media campaigns.⁵

The contracting officer's central concern was that firms already providing mass media campaign services to the agency (such as Reingold) would be unable to provide impartial advice about creating or obtaining these mass media campaign services in the future. In effect, the agency's concern was that, because there existed the possibility that Reingold could advise the agency to obtain the mass media campaign services available under its existing task order, it would be unable to offer impartial advice to the agency.

After receipt of the contracting officer's initial letter, Reingold responded, arguing that there was no OCI risk for various reasons. In a second letter, the contracting officer again informed Reingold that an impaired objectivity OCI potentially was present for the firm. Specifically, the contracting officer stated:

The nature of the support requirements under Reingold's task order involves conducting outreach services which utilize a variety of methods,

⁵ The ultimate deliverable under the White House Priority Goals contract is a "Feasibility Analysis and Implementation Plan." RFP at 24. The plan will be used by the agency in the future to, among other things, make decisions about creating or obtaining mass media campaigns.

to include the use of video, multimedia, social media, website development and support, media planning and buying, and developing metrics for measuring the success of implemented outreach efforts. These provided support services and/or deliverables [under the Reingold task order] are among the types of outreach methodologies for which the VA is seeking advisory/consulting services [under the White House Priority Goal contract]. . . .

* * * *

It is therefore possible that Reingold, were it [to] receive the contract award under [the White House Priority Goal solicitation], would be in a position to potentially advise and/or recommend that VA use/implement the same outreach methodologies and efforts Reingold currently provides to VA under [the Reingold task order].

AR, Exh. 6, OCI Determination Letter to Reingold, at 3. Based on these considerations, the agency advised Reingold that both it, and its subcontractors, would be excluded from competing for the White House Priority Goal contract. *Id.* at 5.

The protesters challenge their elimination from the competition for two reasons. First the protesters claim that the agency already has determined that there is no potential for an OCI during the period of performance when the two contracts run concurrently. Second, the protesters argue more generally that no OCI can arise from their providing advice to the agency under White House Priority Goal contract--notwithstanding that District is a subcontractor under the Reingold task order--because the White House Priority Goal contract will include a clause precluding District from being awarded work if they also are awarded the White House Priority Goal contract. We find no merit to either of the protesters' allegations. We discuss each contention below.

The protesters argue first that District being a subcontractor under the Reingold task order during performance of the White House Priority Goal contract does not present a potential OCI. The protesters point out that the advice provided under the White House Priority Goal contract will only be delivered at the conclusion of that contract, when the feasibility analysis and implementation plan is submitted to the agency. The protesters suggest that, because they will not provide any advice under the White House Priority Goal contract before its conclusion, it necessarily follows that they could not advise the agency during performance of the White House Priority Goal contract to obtain services available under the Reingold task order. In support of their position, the protesters point out that the agency determined it was unnecessary to eliminate competitors other than Reingold, provided that their preexisting contracts would expire by the time the feasibility analysis and implementation plan is to be delivered. See AR, Exh. 7, Contracting Officer's OCI Analysis, at 3.

The protesters' position relies on a faulty premise, namely, that any conflict between the two efforts will not arise until completion of the White House Priority Goal contract, when the feasibility analysis and implementation plan is delivered. Contrary to the protesters'

reasoning, however, any potential conflict would be an ongoing concern throughout the time when the White House Priority Goal contract is being performed, and not simply a concern first arising when the final work product is delivered. That is because the products and services under the Reingold task order would remain available after completion of the White House Priority Goal contract, and it would be possible to recommend those products and services. Because of that possibility, the protesters' ongoing ability to render objective advice under the White House Priority Goal contract could potentially be impaired. In other words, it is the ongoing interrelationship between the two contracts--and not simply the issuance of the final work product--that gives rise to the concern.

In contrast to the protesters, those firms with contracts that do not extend beyond the period of performance of the White House Priority Goal contract have no ability to recommend the products and services available under their contracts. It necessarily follows that the agency made a well-reasoned distinction between those firms with preexisting contracts that will expire before the completion of the White House Priority Goal contract, and those firms (such as Reingold and subcontractor District) that have a preexisting contract with a period of performance exceeding the period of performance of the White House Priority Goal contract. We therefore find no merit to this aspect of the protests.

Next, the protesters argue that the White House Priority Goal contract will preclude an OCI arising from District's continued performance of the Reingold task order after completion of the White House Priority Goal contract. They contend that the White House Priority Goal contract will prohibit District from competing for any related work for 3 years, and that this prohibition eliminates any incentive to make recommendations that work be performed under the Reingold task order. Specifically, the RFP includes the following restriction:

The prime and any/all subcontractor(s) on this contract shall, for the contract's entire period of performance, plus three years after completion of the contract[,], be restricted from participating in any procurements and/or requirements which stem and/or arise from any recommendations developed under this contract.

AR, Tab 2e, RFP amend. 4 at 78.

The protesters argue that this restriction effectively eliminates any potential OCI that could otherwise result, because the restriction precludes them from advising the VA under the White House Priority Goal contract to obtain services available under the Reingold task order.

We find no merit to this aspect of the protests. First, as essentially concluded by the agency, the clause--by its terms--only precludes contractors that have received award of the White House Priority Goal contract from competing for work arising out of the recommendations made under that contract. See AR, Exh. 6, OCI Determination Letter

to Reingold, at 4; Supp AR, at 3-4. Nothing in the language of the clause relied on by the protesters precludes Reingold from being awarded and performing work under its task order, because Reingold will not be awarded the White House Priority Goal contract, having been eliminated from that competition.

There is no evidence in the record to show that Reingold and District have terminated their contractual relationship. There also is no evidence to show that the nature of the work performed by District as a subcontractor to Reingold is, and would continue to be, somehow separate and distinct from the principal work performed by Reingold, namely, providing mass media campaign services to the agency. Finally, there is no evidence in the record to show that Reingold and District have proposed a mitigation strategy (for example, a fire wall between the two firms) that could potentially eliminate the concern arising from the possibility that, ultimately, District could stand to benefit financially from any work awarded to Reingold. It therefore follows that there is a potential incentive for District to favor the interests of Reingold--a firm with whom it has an ongoing contractual relationship to provide mass media campaign services to the agency. This concern gives rise to the reasonable possibility that District's objectivity in making any recommendations under the White House Priority Goal contract could be impaired.⁶

Second, the protesters' position fails to recognize that an impaired objectivity OCI can arise not only in situations where a firm is in a position to recommend its own products or services, but also in circumstances where it can recommend--or not recommend--the products and services of its competitors. In this connection, we have expressly recognized that an impaired objectivity OCI can arise not only from a firm's participation in work that could affect its own business interests, but also the business interests of its competitors. *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 8 (and cases cited therein). The central concern in such circumstances is that the objectivity of a firm's advice could also be impaired because of the potential to adversely impact the interests of competitors. *Id.*

Here, the concern is that the objectivity of the protesters' advice could be impaired by the protesters' potential ability either to positively affect the business interests of District (as the subcontractor under the Reingold task order), or to negatively affect the business interests of its competitors. Accordingly, the RFP's exclusion of the protesters from

⁶ We also note that the agency may want to have the option to continue to use the Reingold contract in furtherance of the results of the White House Priority Goal contract, and by eliminating any potential conflict between the two contracts, the agency would preserve its ability to do so.

receiving work arising out of the recommendations made during performance of the White House Priority Goal contract does not eliminate the possibility of its objectivity being impaired. We therefore find no merit to this aspect of the protests.

The protests are denied.

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