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Decision

Matter of: Federal Missions Solutions, LLC

File: B-423584; B-423584.2

Date: September 4, 2025

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DIGEST

Protest alleging the agency insufficiently mitigated the competitive harm flowing from the release of the protester's incumbent pricing is denied where the agency's implementation of remedial measures to neutralize the prospect of an unfair competitive advantage was reasonable.

DECISION

Federal Missions Solutions, LLC (FMS), a small business of Luray, Virginia, protests the terms of request for quotations (RFQ) No. 70B01C24Q00000150, issued by the Department of Homeland Security, U.S. Customs and Border Protection (CBP), for program, project, and mission support services. The protester argues the agency's investigation into CBP's release of FMS's incumbent pricing data was unreasonable, and that the agency's remedial measures fail to adequately address the risk of competitive harm.

We deny the protest.

BACKGROUND

The agency issued the solicitation on April 1, 2024, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 12 (Acquisition of Commercial Products and Commercial Services) and subpart 16.5 (Indefinite-Delivery Contracts), to small businesses holding the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) multiple-award task order contract (MATOC).

Agency Report (AR), Tab 5, Prior RFQ at 1.¹ The RFQ contemplated the issuance of a single, fixed-price order, with a 1-year base period of performance and three, 1-year option periods. AR, Tab 6, Prior RFQ Instructions at 1. Through this procurement, CBP sought program and project management support to plan, evaluate, construct, sustain, maintain, and dispose of projects and real property. AR, Tab 7, Prior RFQ Statement of Work (SOW) at 1.

The solicitation advised that award would be made on a best-value tradeoff basis, considering three factors: (1) prior experience; (2) technical and management approach (via oral presentation); and (3) price. AR, Tab 6, Prior RFQ instructions at 11. The RFQ provided that the non-price factors were of equal importance and, when combined, were approximately equal to price. *Id.* The competition was to be conducted in two phases. In phase one, the agency would evaluate vendors' quotations under the prior experience factor and would then provide an advisory notification to each vendor explaining whether that company should proceed to phase two of the competition. AR, *Id.* at 3-4. For those vendors participating in phase two, the agency would evaluate quotations under the remaining two factors. *Id.*

Multiple firms submitted quotations for consideration in phase one, and three firms--FMS, Cherokee Nation Strategic Programs, LLC (CNSP), and Aver, LLC--submitted quotations for consideration in phase two. Memorandum of Law (MOL) at 3. On September 4, CBP made award to CNSP. Contracting Officer's Statement (COS) at 2. On September 9, FMS filed a protest with our Office, challenging the agency's evaluation of quotations and best-value determination. Our Office dismissed the protest as academic, based on the agency's proposed corrective action, which included reassessing its evaluation and issuing a new source selection decision. *Federal Missions Solutions, LLC*, B-422915; B-422915.2, Oct. 4, 2024 (unpublished decision).

Following the implementation of its corrective action, CBP again selected CNSP for award. COS at 4. On December 2, FMS filed a second protest with our Office, challenging the agency's evaluation of quotations and best-value decision. On December 19, the agency found that FMS's incumbent contract pricing data had been disclosed to the phase two vendors. AR, Tab 18, CBP Email, Dec. 19, 2024. On January 2, 2025, our Office dismissed FMS's protest as academic, based on the agency's proposed corrective action. *Federal Missions Solutions, LLC*, B-422915.3, Jan. 2, 2025 (unpublished decision). The agency represented that it would:

[U]ndertake [corrective action] based on the revelation that proprietary data for the incumbent contractor and protester, [FMS], was spilled during the solicitation stage of this task order competition. CBP intends to cancel the award to [CNSP] and conduct an investigation into the spillage of this data and what remedial efforts are appropriate in response to this spillage. Thereafter, CBP will notify quoters of the new source selection decision and issue post-award notifications.

¹ All citations to the agency's report are to the corresponding electronic page numbers.

Id. at 1.

As part of its corrective action, CBP investigated the agency's release of FMS's incumbent pricing data to the other phase two vendors. *See generally*, AR, Tab 3, Procurement Integrity Act (PIA) and Organizational Conflict of Interest (OCI) Report. This information had been included on a pricing worksheet on April 30, 2024. The worksheet was provided to firms in phase two of the procurement for them to input their labor rates. This worksheet included "hidden" tabs with, among other things, FMS's contract pricing for the incumbent contract. AR, Tab 3, PIA and OCI Report at 2.

The contracting officer explains that on May 7, 2024, Aver notified CBP that its pricing consultant discovered "potentially sensitive incumbent information" in the solicitation's pricing worksheet but that "no one at [Aver] has looked at this information." AR, Tab 15, Emails with Aver at 2. CBP, seemingly unaware of where FMS's sensitive information was located in the pricing sheet, inquired with Aver as to its location. *Id.* Aver explained that it did not know where the information was, as only its outside pricing consultant had seen it. *Id.* at 1. Aver also stated that the pricing consultant would be recused from further assisting with Aver's quotation. *Id.* CBP, mistakenly believing that the data in question concerned the names of program office individuals that were included with the pricing sheet, removed only that material in an updated pricing worksheet, which was delivered to the three phase two vendors on May 20. Apparently unaware of the "hidden" pages, CBP did not remove them from the updated spreadsheet it provided to vendors. AR, Tab 15, Emails with Aver at 2.

On December 19, after its second award to CNSP, the agency finally realized that both of the pricing worksheets provided to vendors on April 30 and May 20, 2024, included FMS's incumbent contract pricing. AR, Tab 18, CBP Email, Dec. 19, 2024. Shortly thereafter, the contracting officer spoke to both Aver and CNSP about the release of FMS's pricing. The contracting officer explains that Aver confirmed the firm did not look at the data, that it was only notified of the existence of such information through its pricing consultant, and that it did not use the data in its own pricing formulation. AR, Tab 3, PIA and OCI Report at 2. The contracting officer found this information "believable, as [Aver's] pricing was substantially higher than that of FMS" and had Aver used this information, it would "believe good business strategy on its face." *Id.* To this end, the contracting officer concluded that Aver's price quotation, which was approximately 11 percent higher than FMS's quotation, did not reasonably demonstrate Aver utilized FMS's pricing information. *Id.*

CBP also concluded CNSP did not access FMS's pricing data. In support of this conclusion, the contracting officer explains that he met with CNSP on January 10, 2025, and "asked CNSP directly if they were aware of the data that was released, and they seemed genuinely unaware[]" and "stated they did not know what data we (CBP) were referring to." *Id.* at 3. Adding further support, the contracting officer explained:

CNSP's quoted price was significantly lower than FMS's -- \$7,929,992 or 16.9 [percent] lower. With the pricing data from the incumbent in their possession, CNSP could simply have based their pricing in a manner that most likely would have been "just lower" and likely would still have been more than competitive. In other words, if CNSP had used knowledge of FMS's historical pricing to form its own price quote, it would not likely have underbid FMS by such a large amount.

Id.

The contracting officer also gave consideration as to whether he should instruct CNSP to delete the data:

Although it may have made sense to tell CNSP to delete the data under other circumstances, in this case the data was already released and CNSP didn't seem to know where it was or what it actually involved. Telling them to delete something they likely didn't know existed and did not appear to have impacted their pricing submission would simply draw more attention to the proprietary data.

Id.

The contracting officer made several conclusions as part of his investigation. First, he concluded that no violation of the PIA occurred because CBP's release of FMS's pricing data was inadvertent, and not knowingly made.² *Id.* at 3. Second, the contracting officer found that the release of the pricing data did not constitute a violation of the Trade Secrets Act because, in the contracting officer's estimation, FMS's pricing data does not meet the definition of a trade secret, and that the release was not knowingly made.³ *Id.* at 4. Third, the contracting officer determined that the agency's disclosure

² The Office of Federal Procurement Policy Act, 41 U.S.C. §§ 2101-2107 (also known as the Procurement Integrity Act) provides, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1). The Procurement Integrity Act also provides that, "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(b).

³ The Trade Secrets Act, 18 U.S.C. § 1905, states:

[A]n officer or employee of the United States or any department or agency thereof . . . [who] publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties . . . which information

(continued...)

created the potential for an OCI, where Aver and CNSP might have an unfair competitive advantage resulting from their inadvertent access to FMS' proprietary pricing information. *Id.* at 4-5.

Following the contracting officer's investigation, the agency, on May 22, 2025, issued a new solicitation, which includes three material modifications from the prior RFQ. First, because the ordering period under GSA's OASIS MATOC expired on December 19, 2024, CBP issued the instant RFQ under GSA's newly established OASIS-plus governmentwide acquisition contract (GWAC). AR, Tab 28, Current RFQ Instructions at 1-4. Second, CBP, to mitigate the potential for an unfair competitive advantage, included a clause in this RFQ requiring vendors that participated in phase two of the prior competition to submit an affidavit confirming, under penalty of perjury, that any employees or individuals preparing the price quote for the instant solicitation had not seen FMS's information included in the pricing worksheet. AR, Tab 27, Current RFQ at 23-24; see *also* Supp. COS at 1 (explaining that the agency would further require any affiliates of CNSP to similarly certify). Third, CBP modified the weight of the evaluation factors. In this regard, while under the prior solicitation, the non-price factors, combined, were of equal importance to price, the current solicitation weighs all factors equally, meaning price is significantly less important than the non-price factors, when combined. AR, Tab 28, Current RFQ Instructions at 11.

FMS filed the instant protest on June 2, 2025.⁴

DISCUSSION

FMS raises several allegations of protest concerning the agency's conduct. The protester argues the contracting officer's investigation into the disclosure of FMS's incumbent pricing information was not thorough and failed to reach reasonable conclusions. Additionally, FMS avers that CBP's mitigation efforts fail to adequately limit the risk of competitive harm associated with the agency's prior release of FMS's pricing information. Protest at 6-7; Comments and Supp. Protest at 2-10; Supp. Comments at 1-6. In response, the agency contends its investigation and remedial measures are reasonable. For the reasons that follow, we find no basis to sustain the protest.⁵

concerns or relates to the trade secrets, processes, operations, style of work, or apparatus . . . of any person, firm, partnership, corporation, or association . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

⁴ As the anticipated value of the task order here exceeds \$10 million, this protest is within our Office's task order jurisdiction to resolve protests involving task orders issued under civilian agency contracts. 41 U.S.C. § 4106(f)(1)(B).

⁵ FMS raises other collateral allegations, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provides a basis on which to sustain the protest.

An agency's disclosure of another contractor's proprietary or confidential information may create an unfair advantage affecting the integrity of a competition. See FAR 3.104-7(a). The disclosure of proprietary or source selection information to an unauthorized person during the course of a procurement is improper. 41 U.S.C. § 2102; FAR 3.104; *S&K Aerospace, LLC*, B-411648, Sept. 18, 2015, 2015 CPD ¶ 336 at 8. Where an agency inadvertently discloses an offeror's proprietary information or source selection information, the agency may choose to cancel the procurement if it reasonably determines that the disclosure harmed the integrity of the procurement process. See *Kemron Env't. Servs., Inc.*, B-299880, Sept. 7, 2007, 2007 CPD ¶ 176 at 2. Where an agency chooses not to cancel the procurement after such a disclosure, we will sustain a protest based on the improper disclosure only where the protester demonstrates that the recipient of the information received an unfair advantage, or that it was otherwise competitively prejudiced by the disclosure. *Gentex Corp.--Western Operations*, B-291793 *et al.*, Mar. 25, 2003, 2003 CPD ¶ 66 at 9-10.

As an initial matter, we agree with the protester that the agency's response to the disclosure of FMS's incumbent pricing was remiss in several fundamental respects. For example, when, on May 7, 2024, Aver alerted CBP that the firm's pricing consultant discovered potentially sensitive incumbent pricing information on the pricing worksheet, CBP conducted only a minimal inquiry. AR, Tab 15, Emails with Aver at 2. We are at a loss to understand why the agency never contacted Aver's pricing consult to determine what the "potentially sensitive incumbent information" was, or why the agency did not undertake steps to prevent further improper disclosure. Indeed, the agency merely guessed what the "potentially sensitive incumbent information" was--the agency assumed that information was the names of CBP program office points of contact listed in the spreadsheet. *Id.* at 1. The agency's failure to reasonably pinpoint the sensitive information resulted in a second disclosure of FMS's incumbent pricing data on May 20, 2024, when the agency again sent the pricing worksheet with hidden material to the vendors (though now stripped of the names of agency points of contact). Moreover, CBP did not ask the parties to confirm deletion of the initial pricing worksheet, which would seem to be a basic, reasonable mitigation measure following the improper release of sensitive information.⁶

Nonetheless, based on the totality of the circumstances, we cannot conclude that the agency's remedial measures to mitigate the risk of competitive harm flowing from the agency's release of FMS's incumbent pricing data are unreasonable. As noted above, CBP's remedies are three-fold. First, the agency, in the current solicitation, has included a requirement that vendors who competed in phase two of the prior

⁶ The contracting officer's argument--that asking CNSP to delete the spreadsheet would "draw more attention to the proprietary data"--is not compelling. AR, Tab 3, PIA and OCI Report at 3. Simply asking to confirm that CNSP deleted the two pricing worksheets would not, in our view, "draw[] their attention" to the material in question, any more than would alerting CNSP to its existence in the first place, and would have ensured that the improperly disclosed information was reasonably deleted.

competition provide a “signed affidavit confirming, under penalty of perjury, that none of their employees or other individuals involved in preparing the price quote for the present requirement viewed the hidden tabs from the 2024 pricing sheet.” AR, Tab 27, Current RFQ at 24. Second, the agency has also issued the instant solicitation under a different contract vehicle, GSA’s OASIS-plus MATOC, which includes different pricing than the predecessor OASIS MATOC. And third, the agency has reduced the importance of price as an evaluation factor. AR, Tab 28, Current RFQ Instructions at 11.

Concerning CNSP, we conclude the risk of competitive harm resulting from CBP’s disclosure of FMS’s incumbent pricing is minimal. First, CNSP is not eligible to compete for award under the current solicitation, as it is not a holder under the OASIS-plus GWAC. Nonetheless, FMS argues the risk of competitive harm still exists, as other firms loosely affiliated (though separate business entities) with CNSP are holders under OASIS-plus. Comments and Supp. Protest at 4 (explaining that “sister companies of CNSP can compete under the current procurement, including Cherokee Nation Defense Solutions, LLC [(CNDS)], and Preting, LLC” and that “[w]hile these are different companies on paper, it is widely understood in the federal marketplace that many of these organizations are newly formed and borrow employees from other Cherokee Nation companies as needed.”).

However, if CNDS or Preting compete for award under the instant RFQ, the agency has provided that it will request that those firms submit the same certification concerning receipt of FMS’s pricing as Aver. Supp. COS at 1. FMS’s concerns about competitive harm are thus premised on these firms (a) receiving information from a separate--though perhaps loosely-affiliated--company under a different competition, and (b) falsely certifying that they did not view FMS’s data disclosed in a separate procurement. The protester’s assertion regarding the likelihood of competitive harm is too attenuated to render objectionable CBP’s remedial measures.

Regarding Aver, several facts in the record support the reasonableness of the agency’s actions. As identified above, Aver voluntarily disclosed that its outside pricing consultant discovered potentially sensitive pricing information from FMS, that no one at Aver had seen the data, and Aver would recuse the consultant from further preparation in its quotation. The record also supports the inference made by the contracting officer that Aver did not use this information in its quotation under the prior RFQ, as its pricing was significantly higher than that offered by FMS. See COS at 2. And, under the current solicitation, Aver will be required to certify it did not view FMS’s incumbent pricing data. Moreover, even assuming, for the sake of argument, that Aver did in fact view FMS’s incumbent pricing data, but falsely certifies that it did not, we still conclude the possibility of competitive harm is minimal. As noted above, CBP has reduced the importance of price as an evaluation factor; price is now of equal importance to the other two non-price factors individually, meaning that price is less important than the non-price factors when combined. AR, Tab 28, Current RFQ Instructions at 11.

Based upon our review of the record, we conclude that FMS has failed to demonstrate that vendors competing under the instant solicitation are likely to obtain an unfair competitive advantage from the prior release of FMS's incumbent pricing, given the agency's proposed remedial measures. *Gentex Corp.--Western Operations, supra* at 10.

The protest is denied.

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