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Decision

Matter of: MCR Federal, LLC

File: B-401954.2

Date: August 17, 2010

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Jon D. Levin, Esq., and Arthur L. Passar, Esq., Central Intelligence Agency, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's decision to waive organizational conflict of interest (OCI) is denied where--in accordance with requirements of Federal Acquisition Regulation--waiver request detailing why application of OCI rules would not be in government's interest was approved by appropriate agency official.
2. Evaluation of protester's proposal was unobjectionable where agency reasonably determined that, under technical approach subfactor, proposal lacked detail as to how protester would accomplish three required subtasks, and demonstrated only a limited depth of experience in cost analysis in several required areas, and, under transition plan subfactor, lacked strategy to mitigate risk to ongoing operations if grants of security access were delayed.
3. Protest that agency improperly evaluated awardee's proposal under past performance factor is denied, where agency considered relevance of awardee's and subcontractor's prior contracts, in accordance with solicitation, and reasonably determined that majority of past work was similar to solicitation requirements in size, scope, and complexity.
4. Cost-technical tradeoff was reasonable where source selection official identified technical distinctions between competing proposals and specifically determined that higher-rated proposal represented best value despite higher cost.

DECISION

MCR Federal, LLC, of McLean, Virginia, protests the award of a contract to Scitor Corporation, of Herndon, Virginia, under request for proposals (RFP) No. 2009-G00018, issued by the Central Intelligence Agency (CIA) for cost analysis and research support services for the Office of the Director of National Intelligence (ODNI) Cost Analysis Improvement Group (CAIG). MCR challenges the CIA's waiver of organizational conflicts of interest (OCI) and the evaluation of proposals.

We deny the protest.

BACKGROUND

The ODNI CAIG's mission is to improve the confidence in cost-related information across the intelligence community (IC) by performing independent cost and technical analyses and promoting advancement of cost analysis capabilities of the IC at large. The CAIG performs independent cost estimates (ICE) of IC major system programs (in excess of \$500 million); prepares ICEs for programs identified by the ODNI to be of "special interest"; pursues cost analysis research; and is responsible for providing the ODNI's chief financial officer an authoritative position on a program's estimated life-cycle cost in support of funding decisions on programs.

The statement of work (SOW) encompassed three tasks--cost analysis production support, cost research support, and independent technical assessment support. The level-of-effort was estimated at 12 to 14 full-time equivalent (FTE) personnel plus a reach-back capability for subject matter experts of 1 FTE in each contract year. All personnel were expected to have appropriate security clearances. The RFP contemplated the award--on a "best value" basis--of a cost-plus-fixed-fee, level-of-effort contract for a base period, with four options.

With regard to OCIs, the RFP advised prospective offerors that the successful contractor would be ineligible to participate as either a prime or subcontractor on any major system acquisition by any IC agency, including ODNI, over the life of the contract. RFP § I.6. In response to offerors' questions, CIA explained that offerors currently providing systems engineering and technical assistance (SETA) support to prime or subcontractors responsible for major systems development at IC agencies had an OCI and could not participate in this competition. Response to Question 2. However, if an offeror currently was providing SETA support to a government program office, "there [was] no OCI." Id. Offerors providing cost estimation work for other IC agencies were also eligible to compete. Response to Question 67. Offerors (prime and subcontractors and some experts) with OCIs were prohibited from competing. Response to Question Nos. 23, 37, 94, and 95. Offerors were required to include OCI mitigation plans as part of their proposals.

Written proposals and oral presentations were to be evaluated under five factors (with subfactors)—technical approach (50% weight) (with subfactors for soundness of technical approach and personnel qualifications); management factor (30%) (program management plan, staffing/availability, transition plan, and OCI plan); past performance (20%) (technical, management, cost control, and communication and responsiveness to customer); security; and cost. Proposals were evaluated under the OCI plan subfactor and security factor on a pass/fail basis; proposals were rated under the remaining non-cost factors and subfactors on an adjectival basis.¹ Cost was evaluated for realism, reasonableness, and completeness. The non-cost factors were weighted approximately equal to cost.

MCR and Scitor submitted proposals and both made oral presentations. After conducting discussions, the agency obtained final proposal revisions (FPR) and reached a final evaluation consensus. Scitor proposed a higher cost than MCR and the agency adjusted both offerors' travel costs upward as part of the most probable cost evaluation. Based on his review of the evaluation record, the source selection authority (SSA) concluded that Scitor's technical superiority outweighed its higher cost and made award to Scitor. MCR challenged the award in a protest filed with our Office, questioning the evaluation of proposals and asserting that award to Scitor was precluded by an impaired objectivity OCI. In response to the protest, CIA proposed corrective action, including appointment of a new SSA and contracting officer to re-evaluate the proposals; consideration of whether an impaired objectivity OCI existed for work performed by both offerors; and a new award determination. Based on this proposed action, we dismissed the protest as academic (B-401954, Oct. 16, 2009).

In implementing the corrective action, the agency issued requests to both offerors for additional information concerning their performance under current and recent IC contracts and followed up with clarification requests. After reviewing these responses, the contracting officer conducted interviews with government personnel responsible for administering the prior contracts in order to arrive at an assessment of OCI risk. Based on his review, the contracting officer concluded that MCR had a medium risk OCI under 2 of 7 contracts and that Scitor had a medium risk OCI in 2 of 16. Thereafter, the SSA prepared a seven-page waiver request, which she forwarded to CIA's Chief of Acquisition Services (the official authorized to grant an OCI waiver). The request included a description of the OCI concern and potential effect if not avoided, neutralized, or mitigated, and the government's interest in using the offerors notwithstanding the OCI concerns. Waiver Request at 1-3, 5-6.² The

¹ These ratings included superior (significantly exceeds requirements); very good (exceeds all requirements); good (meets basic requirements); and poor (does not meet requirements).

² Synopses of the offerors' contracts and interviews with contracting officials, along with offerors' OCI responses and mitigation plans, also were attached to the request.

SSA explained that Scitor's and MCR's roles under existing and past contracts presented conflicting interests that theoretically might bias their judgment in performing the RFP work. Id. at 2. The agency's market research indicated that the pool of properly cleared cost estimators with sufficient experience was narrow and that, if MCR and Scitor were precluded from competing, it was "highly doubtful" that cleared personnel could be located who did not also have comparable OCI issues. Id. at 5. Given the limited number of cleared estimators and the lack of competition that would result from eliminating Scitor from the procurement, the SSA reasoned that, even if MCR were deemed not to have an OCI similar to Scitor's, it was in the government's interest to acquire the services competitively in order to obtain the best value, and that waiver of the OCIs therefore was justified. Id. at 5, 7. Accordingly, the designated official approved the waiver.

In making the best value determination, the SSA reviewed the prior evaluation reports, raised MCR's transition plan rating from poor to good, and otherwise agreed with the ratings, which were as follows:

	MCR	Scitor
Technical Factor		
Soundness of Approach	Good	Superior
Personnel Qualifications	Good	Very Good
Management Factor		
Program Management Plan	Good	Very Good
Staffing/Availability	Very Good	Very Good
Transition Plan	Good	Very Good
OCI Plan	Waived	Waived
Past Performance Factor		
Technical Area	Very Good	Very Good
Management Area	Good	Very Good
Cost Control	Very Good	Very Good
Communications/ Responsiveness	Very Good	Very Good
Security Factor	Pass	Pass
Most Probable Cost	\$17,548,404	\$20,227,658

The SSA concluded that the superiority of Scitor's technical proposal was worth its additional cost and selected Scitor for the award. After receiving notice of the award and a debriefing, MCR filed this protest.

OCI WAIVER

MCR asserts that it was unreasonable for CIA to waive Scitor's OCI for a number of reasons. For example, it maintains that the agency unreasonably considered the offerors' OCIs as equivalent because MCR's OCI allegedly could be easily mitigated,

while Scitor's could not be mitigated at all; that the agency's waiver was inconsistent with CIA's earlier guidance on which OCIs precluded an offeror's participation; and that the waiver lacked a sufficient basis. We have considered all of MCR's assertions and find that none has merit.

Under the Federal Acquisition Regulation (FAR) subpart 9.5, when the facts of a procurement raise a concern that a potential awardee might have an OCI, the agency must determine whether an actual or apparent OCI will arise, and whether the firm should be excluded from the competition. The specific responsibility to avoid, neutralize or mitigate a potential significant conflict of interest lies with the cognizant contracting officer. Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 10-11; see FAR § 9.504. As an alternative, the agency head or a designee may

waive any general rule or procedure of [FAR subpart 9.5] by determining that its application in a particular situation would not be in the Government's interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee.

FAR § 9.504. Where a procurement decision—such as whether an OCI should be waived—is committed by statute or regulation to the discretion of agency officials, our Office will not make an independent determination of the matter. Knights' Piping, Inc.; World Wide Marine & Indus. Servs., B-280398.2, B-280398.3, Oct. 9, 1998, 98-2 CPD ¶ 91 at 6.

Here, as outlined above, the SSA made a written request for a waiver from CIA's Chief of Acquisition Services, describing the OCI concern with both offerors; the potential effect if not avoided, neutralized, or mitigated; and, the government's interest in allowing the offerors to compete for the award notwithstanding the OCI concerns. After reviewing the request, the designated official approved the waiver. On this record, we find that CIA has met the requirements of FAR § 9.504; MCR's assertions to the contrary provide no basis to object to that waiver. See Knights' Piping, Inc.; World Wide Marine & Indus. Servs., supra.

EVALUATION OF MCR'S PROPOSAL

MCR asserts that the evaluation of its technical proposal under each factor was unreasonable. Specifically, MCR maintains that the assigned weaknesses were inconsistent with the contents of its proposal; its strengths should have been rated as major rather than minor; and a proper evaluation would have resulted in higher technical ratings under most factors and subfactors. MCR concludes that, if these evaluation errors were corrected, its lower-cost proposal would have been in line for award.

In considering a protest of an agency's proposal evaluation, our review is confined to determining whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. United Def. LP, B-286925.3 et al., Apr. 9, 2001, 2001 CPD ¶ 75 at 10-11. We have considered all of MCR's arguments and find that they provide no basis to object to the evaluation or award. We address MCR's most significant arguments below.

Soundness of Technical Approach Subfactor³

Evaluation under the technical factor included review of the soundness of technical approach--the extent to which an offeror's proposal satisfied all of the technical tasks and subtasks under the SOW, including a sound, feasible approach to support cost estimating. RFP at 73. SOW tasks included assessing risks based on a program's technical baseline and acquisition strategy; provision of experts to evaluate and recommend modification to agency developed cost estimates; and monitoring programs of interest to CAIG. SOW at 5-6. In the original evaluation, the agency assigned a major weakness to MCR's proposal based on a lack of detail in some eight areas of its approach to meeting task 1 and its subtasks, all of which were addressed with MCR during discussions. After reviewing MCR's discussion responses, the evaluators found that three concerns remained--a lack of detail on how MCR would assess a program's technical baseline or acquisition strategy; a lack of detail describing MCR's approach for experts to make technical adjustments to account for risk, uncertainty, and growth; and a lack of approaches for monitoring programs of interest to CAIG. As a result, the evaluators assigned a minor weakness.

MCR asserts that its FPR fully addressed all three areas and that its proposal should have been evaluated as very good instead of good. In this regard, it quotes sections of its FPR that ostensibly respond to each of three remaining areas of concern.

The evaluation in this area was unobjectionable. For example, the FPR stated that MCR was [deleted], indicating as an example its experience with adjusting estimates

³ The technical factor evaluation also included a review of the extent to which the offeror proposed individuals with personnel qualifications and specific skills required to fulfill identified SOW tasks. RFP at 73. MCR asserts that its proposal should have been rated superior instead of good under this subfactor. This assertion is without merit. While MCR's personnel received a major strength and four minor strengths, these strengths related to less than one-third of MCR's 14 proposed personnel. Since the balance of its personnel only met the RFP's requirements, the agency reasonably evaluated its proposal as good--defined as meeting basic requirements--instead of superior--defined as significantly exceeding requirements. MCR's mere disagreement with the agency's judgment is not sufficient to bring it into question. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

to reflect the fee concept in an acquisition strategy; that, as [deleted], indicating as an example its use of technical readiness levels; and that it would select from its list of experts the [deleted]. MCR's FPR at 6, 17A. The agency found that these and other FPR responses represented only a high-level overview, with no details on how the plan would be implemented. Supplemental Agency Report (SAR) at 11. In this regard, for example, while MCR cited its [deleted], it provided no concrete, meaningful examples of those strategies beyond the fees example, which the agency viewed as insufficient to address its concern because fees are only a minor and fixed portion of any costs. Id. MCR's proposal to independently assess [deleted] likewise failed to provide specific ways to review different types of baselines, and its plan to select [deleted] experts from its list failed to recognize that any offeror would be required to take that step. Id. Since this aspect of the technical approach subfactor involved the extent to which a proposal satisfied all SOW tasks and subtasks, and MCR's proposal failed to provide sufficient detail as to how it would meet three of those subtasks, the agency's assignment of a minor weakness was reasonable.

MCR also challenges the agency's evaluation of its proposal with regard to experience and expertise under the soundness of technical approach subfactor. Specifically, MCR asserts that it was unreasonable for the agency to assign a minor strength (defined as slightly above RFP standards), because the aspects of its proposal praised by the evaluators--demonstrated experience and expertise in conducting cost analyses across various commodities and five IC agencies that were beneficial to the agency--evidenced that MCR had been found to moderately exceed the requirements (consistent with the definition of a major strength). Protest at 31. MCR also asserts that the assignment of a minor weakness based on the amount of experience in each area (as expressed in FTEs) was unreasonable because the RFP did not require a particular level of experience and MCR's proposal showed some experience in all areas. Protest at 32-33.

The evaluation was unobjectionable. This aspect of the evaluation involved a review of the extent to which an offeror's proposal demonstrated experience and expertise in conducting complex cost analyses of space, intelligence, and national programs, as well as the successful implementation of sound analytical practices. RFP at 73. The agency explains that it did not view MCR's experience as a major strength because IC agency experience was only one aspect of the experience necessary to perform. Contracting Officer's Statement at 14. MCR's proposal was assigned a minor weakness due to a lack of depth in other necessary experience; the evaluators found that the proposal presented only limited experience (two or fewer FTEs per area) in the areas of facilities cost estimating, data storage and archiving, analysis of alternatives, and congressionally directed actions. MCR Final Technical Evaluation at 2. The agency thus concluded that MCR's experience was shallow and could limit its ability to respond to agency analysis needs. Id. While the RFP did not require any particular amount of experience, since the extent of MCR's experience was part of the evaluation criteria, it was reasonable for the agency to evaluate both the areas

and depth of MCR's experience as represented by the number of FTEs possessing that experience.⁴

Transition Plan Subfactor

Under the management factor, each offeror's transition plan was evaluated on the basis of its approach for phasing into the RFP requirement in a manner that would mitigate the impact on ongoing operations. RFP at 74. MCR asserts that the agency unreasonably assigned its proposal a weakness for failing to "identify any strategy that will mitigate risk to ongoing operations." Protest at 36. MCR claims that its transition plan, as supplemented in its FPR, provided various mitigation strategies, id. at 37-38, and concludes that its proposal should have been rated very good instead of good.

The evaluation was unobjectionable. MCR's challenge is based on a misreading of the evaluation record. While its debriefing broadly referred to MCR's failure to provide "any" mitigation strategy, it is clear from the evaluation itself that the assigned weakness was based on the lack of any strategy to mitigate the specific "risk to ongoing operations that is likely to result from delays in granting security access to proposed personnel." MCR's Final Management Evaluation at 3. In this regard, only [deleted] of MCR's proposed personnel currently have ODNI security access, and the evaluators were concerned that the remaining [deleted] would likely be unavailable for work on the first day. Id. MCR's plan stated that [deleted] for non-ODNI-badged individuals and ensure that MCR personnel would be in place, and that no tasks would be left unperformed. MCR Initial Comments at 47; MCR FPR Text supporting slide 37. However, again, the agency viewed MCR's plan as outlining top-level processes, without details as to how the processes would be applied. SAR at 13. Since MCR's proposal lacked any specific mitigation strategies in the event its personnel were not ready on the first day of contract performance, the agency

⁴ In a related argument, MCR asserts that the agency failed to make clear--through meaningful discussions--that it would evaluate the extent of its experience. Protest at 33. This argument is without merit. The evaluation criterion itself made clear that the agency would evaluate the extent of an offeror's experience and--in discussions--the agency specifically advised MCR of the areas (and each evaluated FTE) where MCR was lacking requisite experience, and expressed the view that this shallow experience could limit MCR's ability to meet the agency's needs. MCR Discussion Items at 1.1.2. This information clearly led MCR into this area of its proposal requiring correction or amplification and thus, constituted meaningful discussions. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8.

reasonably assigned a weakness, and in view of that weakness, reasonably did not evaluate this subfactor any higher than good.⁵

EVALUATION OF SCITOR'S PAST PERFORMANCE

Offerors were required to include references for each of the last five on-going federal, state, or local government, or commercial contacts, or contracts completed within the last 3 years. RFP at 60. References could be for the prime offeror or proposed major subcontractor(s), but no more than two references could be submitted for subcontractors. *Id.* Past performance was to be evaluated for demonstrated experience and past performance on similar work in the areas of technical, management, cost control, and communication/responsiveness to customers. RFP at 74. Scitor's past performance was rated very good in all areas.

MCR asserts that the agency unreasonably evaluated Scitor's past performance as very good because it lacked sufficient past performance as a prime contractor in the areas of cost analysis and estimation. Protest at 43. MCR argues that Scitor's limited experience was evidenced by its proposal of subcontractor personnel for its program manager and other key personnel, and by the limited relevance of two of its three references, which concerned limited cost estimation functions. *Id.* at 44; MCR Initial Comments at 54-56.

The evaluation of Scitor's past performance was reasonable. The RFP specifically provided for consideration of subcontractor past performance, and did not prohibit an offeror from proposing subcontractor personnel for key positions. Thus, the agency properly considered Scitor's proposed subcontractor's relevant past performance. See Roca Mgmt. Educ. & Training, Inc., B-293067, Jan. 15, 2004, 2004 CPD ¶ 28 at 5; The Paintworks, Inc., B-292982, B-292982.2, Dec. 23, 2003, 2003 CPD ¶ 234 at 3. In its evaluation, the agency found that the subcontractor's work on two cost estimating and analysis support contracts involved work similar in nature and scope to the RFP. Past Performance Assessment Report ¶ 2.b., c.

The agency also reviewed Scitor's three past performance references and found each to be similar in nature and scope to the RFP. In this regard, Scitor's [deleted] contract was evaluated as similar in nature and scope because it involved cost estimating and analysis, contracts, and financial, budgetary, earned value, and schedule analysis. Past Performance Assessment Report ¶ 2.a. MCR does not challenge this finding.

⁵ In fact, the evaluators rated this aspect of MCR's proposal as poor. While the source selection authority disagreed—finding the plan acceptable overall—and raised the score to good, she specifically acknowledged the weakness concerning security access delays. Source Selection Decision at 3, 6.

While Scitor's other contracts involved more limited cost estimation work, the agency found that they also were relevant. For example, Scitor's [deleted] contract was evaluated as demonstrating the firm's ability to provide costing experts who directly supported government cost organizations and performed cost estimating, and its [deleted] contract was evaluated as demonstrating the ability to perform as a prime contractor managing a team of subcontractors and addressing highly complex program and system issues on contracts equivalent to and more complex than the RFP. *Id.* ¶ 2.d., e. MCR asserts that these latter two contracts demonstrate very limited cost estimation work (only one FTE estimator and only one cost estimating subcontractor) and are indicative of general support. However, the RFP did not require that all contracts reviewed be equally relevant or identical to the RFP work; to the contrary, the RFP defined relevance as similar to the size, complexity, and scope of the requirements in the RFP. RFP at 60. Considering Scitor's record of past performance under all five contracts--the majority (prime and subcontractor) clearly involved relevant work comparable in size, scope, and complexity, and the others, though not involving identical work, were otherwise relevant in size and complexity--we conclude that MCR's challenges do not provide a basis for questioning the rating of Scitor's past performance as very good.

TRADEOFF

MCR asserts that the cost-technical tradeoff decision was neither reasonable nor adequately thorough. In the protester's view, the SSA did not adequately take into account the individual factors that would justify paying Scitor's (15.3%) higher evaluated cost and failed to address the increased performance risk in Scitor's OCI.⁶

Where, as here, the RFP allows for a cost-technical tradeoff, the agency has discretion to select a higher-cost, technically higher-rated proposal if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. See University of Kansas Med. Ctr., B-278400, Jan. 26, 1998, 98-1 CPD ¶ 120 at 6. The agency's judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. Chemical Demilitarization Assocs., B-277700, Nov. 13, 1997, 98-1 CPD ¶ 171 at 6.

The tradeoff and source selection were reasonable. The RFP made non-cost factors approximately equal to cost. RFP at 76. Here, the evaluation record makes clear the superiority of Scitor's proposal. In making her source selection, the SSA prepared a detailed decision document comparing the proposals and specifically identified the advantages she found in Scitor's proposal. For example, she discussed each of her findings that Scitor had a stronger understanding of the work to be performed than

⁶ MCR also challenged the tradeoff on the basis of the technical evaluation errors it asserted in its protest. Since--as discussed above--none of the asserted errors had merit, there was no reason for the SSA to consider them in the tradeoff decision.

MCR, higher quality of personnel, and a significantly lower performance risk during the transition phase. Source Selection Decision at 2-6. Her selection decision expressly addressed the potential OCIs for both offerors and, while it did not discuss the risks in detail, it specifically referred to the SSA's own waiver request discussing the offerors' relative OCIs in detail. Id. at 6. The SSA acknowledged MCR's lower cost, but specifically found that Scitor's higher proposal cost was justified by its technical superiority, which, she concluded, ensured less risk to the government in view of the importance of "top notch" services. Id. at 6. Contrary to MCR's assertion, there was no requirement that the SSA provide an exact quantification of the dollar value to the agency of Scitor's proposal's technical superiority. Structural Pres. Sys., Inc., B-285085, July 14, 2000, 2000 CPD ¶ 131 at 7. MCR's belief that the cost premium is too great constitutes no more than disagreement with the agency's judgment, and is not sufficient to establish that the tradeoff was unreasonable. See General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 11 (tradeoff reasonable where agency determined that technical superiority of awardee's proposal was sufficient to offset 125% higher cost).

The protest is denied.

Lynn H. Gibson
Acting General Counsel