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# Decision

**Matter of:** University Radiotherapy Associates, P.S.C.

**File:** B-408246

**Date:** August 9, 2013

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George Jackson III, Esq., Polsinelli PC, for the protester.

Tracy Downing, Esq., Department of Veterans Affairs, for the agency.

Noah B. Bleicher, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that an awardee had an organizational conflict of interest based on a spousal relationship is denied where there are no hard facts in the record to support the existence of a conflict.
  2. Protest that agency improperly considered the proposal of an offeror that did not have accreditation at the time it submitted its proposal is denied where the solicitation did not require accreditation prior to award.
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## DECISION

University Radiotherapy Associates, P.S.C. (URS), of Campbellsville, Kentucky, protests the Department of Veterans Affairs' (VA) award of a contract to Norton Healthcare, Inc., of Louisville, Kentucky, under request for proposals (RFP) No. VA-249-12-R-0255, which was issued for radiation oncology services at the Robley Rex VA Medical Center in Louisville, Kentucky.

We deny the protest.

The VA issued the RFP for the radiology services on August 7, 2012. The RFP provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity (IDIQ) contract with a 1-year base period of performance and four 1-year option periods. RFP §§ B.2.6, E.3. Award was to be made following a best value trade-off analysis

considering price and five non-price factors.<sup>1</sup> Id. § E.10. Under the RFP, the non-price factors, when combined, were significantly more important than price. Id.

The VA received offers from URS and Norton prior to the RFP's September 6, 2012, deadline for the receipt of proposals. After conducting discussions, the agency evaluated final proposal revisions. On April 9, 2013, the VA awarded the contract to Norton for \$7,655,461.90.<sup>2</sup> Agency Report (AR), exh. A, Award Notice, at 1. The next day, URS received a written debriefing, and this protest followed.

In its protest, URS contends that the award to Norton was improper due to an organizational conflict of interest (OCI) and because Norton lacked accreditation at the time it submitted its offer. The protester also complains that Norton's proposal was non-responsive because Norton's prices are "well below market." Protest at 2.

With regard to the protester's OCI allegation, URS complains that the chief of staff of the VA Medical Center in Louisville is married to a cardiologist employed by the Norton Commonwealth Cardiologist Group. Id. at 1. This, URS argues, shows that Norton received an "unfair competitive advantage." Id.

The Federal Acquisition Regulation (FAR) requires that contracting officials avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency.

Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). A familial relationship in and of itself is not a sufficient basis to find either an actual conflict of interest or an impermissible appearance of a conflict. H H & K Builders, Inc., B-238095, Feb. 23, 1990, 90-1 CPD ¶ 219 at 3.

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<sup>1</sup> The non-price evaluation factors, in descending order of importance, were: personnel qualifications, understanding of the requirement, technical ability to provide the services, past performance, and socio-economic consideration. RFP § E.10.

<sup>2</sup> URS proposed a price of \$10,504,641.10. AR, exh. F, Debriefing Letter, at 2.

Here, URS's allegation of an impermissible OCI based on the spousal relationship of the medical center's chief of staff and a cardiologist with an entity that is not the awardee does not provide a basis to sustain the protest. In this regard, URS has not alleged hard facts to demonstrate that the spousal relationship resulted in the awardee receiving an unfair competitive advantage. Moreover, URS fails to even explain the relationship between the cited cardiology practice that employs the spouse (Norton Commonwealth Cardiologist Group) and the awardee here (Norton Healthcare, Inc.). Additionally, in response to the protest allegation, the agency explained that the chief of staff of the medical center was not involved in the evaluation of proposals. See AR at 8. In sum, URS has not provided the facts that would be needed to show that the award of the contract to Norton Healthcare was tainted by an unmitigated OCI. URS's mere suspicion that the spousal relationship it describes resulted in an unfair competitive advantage is not enough to sustain the protest.

Next, URS maintains that Norton was not a responsible offeror because it lacked accreditation at the time it submitted its offer in September 2012. Comments at 7. In this respect, URS complains that Norton was not accredited until December 14. Id. As relevant to URS's contention, the solicitation provided that the “[c]ontractor will either be accredited by the American College of Radiology (ACR) or a NCI comprehensive cancer center or designated cancer center.”<sup>3</sup> RFP § B.2.g. The solicitation did not require offerors to submit any proof of accreditation with their proposals.

Provisions such as these that require the “contractor” to obtain all necessary permits, licenses, certifications or accreditation, establish performance requirements that must be satisfied by the successful offeror during contract performance; as such, offerors are not required to satisfy the requirements prior to award, and they do not come into play in the award decision, except as a general responsibility matter. See Chem-Spray-South, Inc., B-400928.2, June 25, 2009, 2009 CPD ¶ 144 at 5; United Segurança, Ltda., B-294388, Oct. 21, 2004, 2004 CPD ¶ 207 at 4. Our Bid Protest Regulations, 4 C.F.R. § 21.5(c) (2013), generally preclude our review of a contracting officer's affirmative determination of an offeror's responsibility, except in circumstances not alleged or demonstrated here. Here, as noted above, the solicitation did not require proof of accreditation at the time of proposal submission. URS's contention therefore provides no basis to sustain the protest.<sup>4</sup> See LORS

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<sup>3</sup> An amendment to the solicitation added an option for a contractor to “demonstrate [that] their practice follows ACR Guidelines for Radiation Oncology, or similar guidelines from a clinical trial group, such as Radiation Therapy Oncology Group.” RFP, amend. 2, at 2.

<sup>4</sup> In a related argument, URS speculates that the VA “impermissibly . . . extended the contract award date” to allow Norton to obtain accreditation. Protest at 2.

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Medical Corp., B-259829, B-259829.2, Apr. 25, 1995, 95-1 CPD ¶ 222 at 4 (solicitation's accreditation requirement is a definitive responsibility criterion which may be satisfied at any time prior to award).

Finally, URS argues that Norton's offer was non-responsive because the firm's proposed prices were "well below market" and less than the prices the VA has paid for the past 3 years. Protest at 2.

Under a solicitation for a fixed-priced contract, such as here, there is no prohibition against the procuring agency's acceptance of a low or below-cost offer. See Wright Tool Co., B-276416, June 10, 1997, 97-1 CPD ¶ 210 at 3; SAIC Computer Sys., B-258431.2, Mar. 13, 1995, 95-1 CPD ¶ 156 at 2, 11-13 (where solicitation contemplates award of fixed-price contract without evaluation of price realism or offeror's understanding of requirements, protester's claim that another offeror submitted unreasonably low price is not valid basis for protest). The mere fact that a company offers a low price does not establish that the company's proposal fails to meet the solicitation specifications or is otherwise non-responsive, and allegations to this affect fail to state a valid basis of protest. See Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. Accordingly, this aspect of URS's protest does not establish a basis to challenge the agency's actions.<sup>5</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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However, the protester has not shown that the agency acted impermissibly or otherwise violated any procurement law or regulation.

<sup>5</sup> In its protest submissions, URS has raised other arguments that are in addition to, or variations of, the complaints discussed above. We have considered all of URS's arguments and find no basis to sustain its protest.