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Decision

Matter of: Harmonia Holdings Group, LLC

File: B-410591; B-410591.2

Date: January 14, 2015

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Donald Walsh, Esq., and Edward J. Tolchin, Esq., Offit Kurman, PA, and Paul F. Khoury, Esq., and Laura E. Sherman, Esq., Wiley Rein LLP, for Soliel, LLC, the intervenor.

James E. Durkee, Esq., Defense Information Systems Agency, for the agency.
Paula A. Williams, Esq., Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of quotations is denied where agency's evaluation was reasonable and consistent with the terms of the solicitation.
2. Protest that awardee possessed an unequal access to information or biased ground rules organizational conflict of interest is denied where the protester failed to present hard facts indicating the existence of a conflict.

DECISION

Harmonia Holdings Group, LLC, of Blacksburg, Virginia, protests the award of a contract to Soliel, LLC, of Vienna, Virginia, by the Department of Defense, Defense Information Technology Contracting Organization, under request for quotations (RFQ) No. HC1028-14-F-0515, for information technology (IT) systems support for the Defense Information Systems Agency. Harmonia alleges that the agency applied unstated minimum staffing requirements in evaluating its quotation, that the awardee's quotation failed to comply with required RFQ instructions, and that the awardee possessed an unmitigated organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

The agency issued the RFQ on June 9, 2014, to obtain support for its Service Level Interoperability for Tactical Edge and Core (SLITEC) requirements. The RFQ was posted as a commercial services contract via the General Services Administration's (GSA) eBuy website, for competition among holders of GSA Schedule 70 IT contracts. The RFQ's performance work statement (PWS) described six tasks (PWS sections 6.1 through 6.6), each requiring one or more deliverables.

Award was to be made on a best-value basis considering two non-price factors (technical/management approach and past performance), as well as price. The technical/management approach factor was more important than the past performance factor, and the non-price factors, when combined, were significantly more important than price.

As relevant to the protest allegations, the technical/management approach factor was divided into two subfactors: technical approach and management approach. Under technical approach, vendors were to demonstrate a plan to "provide the optimum mix of labor categories and labor hours to meet the requirements of the PWS." RFQ at 4. Under management approach, vendors were to present a "comprehensive management approach that ensures fully trained, top-quality personnel are provided to meet all requirements of the PWS," and "provide a Work Breakdown Structure (WBS) with optimal skill type and level needed for each work/task fulfilling that WBS task." Id. Under the price factor, the RFQ cautioned that "[s]chedule contractors shall ensure price quotations include detailed information regarding the resources required to accomplish the task (e.g., labor categories, labor hours, number of employees for each labor category, rates, travel, incidental equipment, contract access fees, etc.)." Id. at 5.

Several firms submitted quotations in response to the RFQ, including Harmonia and Soliel. After an initial evaluation, the agency conducted discussions with the vendors to resolve areas of concern with their quotations. As relevant, on September 5, the agency issued Harmonia four evaluation notices (ENs), the third of which reads as follows:

The proposal underestimates the level of effort for the PWS tasks, with only 4.6 FTE, only one FTE may be allocated to the four major technical tasks and 0.6 FTE for management and outreach tasks. The underestimate of level of effort for the PWS tasks will spread the labor hours very thin across the different PWS tasks. Please provide further information addressing issues/concerns.

Agency Report (AR), exh. 5, Harmonia ENs, at 7.

Harmonia and the agency engaged in a series of exchanges clarifying the agency's reasoning for this evaluation notice. Initially, Harmonia expressed confusion concerning the notice, indicating "we have no idea of what the [g]overnment expects the workload to be for the tasks," and "[w]e are struggling to put together a response without knowing the workload requirement." Protest, exh. C, E-mails between Harmonia and Agency, at 3 (September 9-10, 2014). Accordingly, Harmonia requested that the agency provide an estimated level of effort. In response, the agency further explained in part that Harmonia's "proposed labor distribution is not in line with the PWS schedule which requires the completion of more deliverables during the base and first option year." Id. at 2. Harmonia then again sought clarification, stating that the deliverables in the PWS "are recurring deliverables throughout the period of performance [. . .] [d]id I miss something in the solicitation, and what is required in the base/option1 that is not required in later option years?" Id. at 1. The agency replied:

Per PWS, initial deliverables for the main tasks are due within the base and first option year followed by progressive revisions and enhancements in later option years. The government believes more efforts are required to prototype the software system and produce the initial deliverables than refining the system and refreshing the documents.

Id. In response to these exchanges, Harmonia revised its quotation to increase its level of effort to approximately six FTEs for the base year and first option year, and five FTEs for the second and third option years.

On September 17, the agency issued a second set of ENs, informing Harmonia that three of the initial ENs remained unresolved. Specifically, the agency informed Harmonia that its quotation still contained a significant weakness because "[Harmonia] continues to underestimate the amount and level of effort required to execute the PWS tasks." AR, exh. 8, at 7. In response to these ENs, Harmonia again increased its level of effort to 7.8 FTEs in the base year and option year 1, and 6.8 FTEs in option years 2 and 3. Harmonia also added the following statement to its quotation:

We note that the effort we estimate is based on our current but incomplete understanding of what work the client is trying to accomplish. Obtaining a complete understanding of the work would have require[ed] a detailed conversation between bidders and the customer as a part of the information exchange. We proposed fewer hours in our last quote because we believed the work may require less people, depending on the current condition of the SLITEC project, what is required in the final specifications and architecture documents, and the exact scope of prototyping (which is a

level of detail beyond what is provided in the [s]olicitation); however, we have increased our estimate in response to this EN.

Harmonia Protest at 7.

The agency rated the protester's and the awardee's final revised quotations as follows:

	Harmonia	Soliel
Technical/Management	--	--
Technical Approach	Acceptable	Outstanding
Management Approach	Acceptable	Acceptable
Past Performance Confidence	Satisfactory	Substantial
Price	\$5,923,787.95	\$5,488,898.00

Source Selection Decision (SSD) at 3, 24.

In the SSD, the source selection authority (SSA), concluded that Soliel provided the best value to the government based on its superior technical quotation, highest-rated past performance, and its price--the lowest of the price quotations received. Harmonia was informed of the award to Soliel on September 25. This protest followed.¹

¹ During the development of this protest, Harmonia presented allegations concerning the evaluation of Soliel's personnel. Our Office dismissed these allegations for failing to state valid bases of protest where the allegations were based on unreasonable speculation concerning the qualifications of Soliel's proposed personnel. To the extent Harmonia subsequently asked our Office to reconsider our ruling in this regard, we did, and have no basis to conclude that it was improper.

Additionally, Harmonia presents various allegations in its protest and supplemental protest that we do not address in this decision, but which we have reviewed and conclude that the allegations do not present a basis to sustain the protest. For example, Harmonia contends that its technical quotation should have been rated higher than acceptable on the basis of Harmonia's success in similar prior efforts, and its various awards for technology transition work. Harmonia, however, fails to demonstrate that its prior successful performance or awards are relevant to any stated evaluation criteria under the technical approach subfactor. We see no error in the agency's consideration of Harmonia's quotation.

DISCUSSION

Harmonia first alleges that the agency applied unstated criteria in the evaluation of its quotation. Specifically, Harmonia contends that the agency applied an unstated minimum staffing requirement that was inconsistent with the performance-based nature of the RFQ. We disagree.

In reviewing challenges to the agency's evaluation of proposals, we do not reevaluate proposals, but, rather, review the agency's evaluation to ensure that it was reasonable, consistent with the terms of the solicitation, and consistent with applicable statutes and regulations. Philips Med. Sys. N. Am. Co., B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. Here, our review of the record shows that the agency evaluated quotations in accordance with the terms of the technical/management approach factor, which advised that the agency would evaluate the vendors' ability to provide labor categories and labor hours to meet the requirements of the PWS. See RFQ at 3-4. Specifically, we see no evidence in the evaluation record, or record of discussions, to indicate that the agency's criticisms of Harmonia's quotation were based on an unstated minimum staffing requirement. Instead, the record indicates that the agency considered Harmonia's initial allocation of 4.6 FTEs against the PWS tasks, and concluded that Harmonia had underestimated the level of effort that the PWS tasks would require.

We also note that the agency did not directly instruct Harmonia to increase its staffing during discussions, but requested that Harmonia "provide further information addressing [the agency's] issues/concerns." AR, exh. 5, Harmonia ENs, at 7. Additionally, the agency advised Harmonia of its view that the base and option years required more effort since they involved production of initial deliverables rather than refining and refreshing the deliverables in the out years. In response to the agency's ENs, Harmonia made the decision to increase its staffing rather than explain or justify the staffing level set forth in its initial quotation. Ultimately, Harmonia conceded in its final revised quotation that it had an "incomplete understanding of what work the client is trying to accomplish." Protest at 7.

Nothing in this record supports the allegation that the agency evaluated Harmonia's quotation against an unstated minimum staffing requirement. Rather, the record demonstrates that the agency concluded that Harmonia's proposed staffing would spread the labor hours very thin across the multiple PWS tasks for at least the base and first option period. This finding was consistent with the RFQ's guidance that the agency would evaluate the vendors' plans to provide "labor categories and labor hours," as well as other direct costs to meet the requirements of the PWS. RFQ at 4.

Next, Harmonia alleges that the agency improperly relaxed the requirements of the RFQ in the evaluation of Soliel's quotation. Specifically, Harmonia cites the SSA's observation that Soliel's WBS "did not show labor categories/hours allocation to the

different PWS tasks,” but that the allocations were addressed in Soliel’s price quotation. SSD at 11. Harmonia contends that this citation demonstrates that Soliel failed to meet the RFQ requirement that vendors “include labor categories and hours allocated to the different PWS tasks in the WBS contained in their Technical proposals.” Harmonia Comments at 19.

Our review of the RFQ, however, reveals no requirement that vendors set forth the labor hours allocated to each PWS task in their technical quotations. Rather, the RFQ required the technical quotations to “provide a Work Breakdown Structure (WBS) with optimal skill type and level needed for each work/task fulfilling that WBS task.” RFQ at 4. The SSD confirms that Soliel’s technical quotation provided a table of labor categories, and a WBS that showed the “activities breakdown and deliverables for all the PWS Tasks.” SSD at 11. To the extent that a proposed labor hour allocation was required, it was required in the price quotation, for which the RFQ required vendors to “include detailed information regarding the resources required to accomplish the task (e.g., labor categories, labor hours, number of employees for each labor category, rates, travel, incidental equipment, contract access fees, etc.).” *Id.* at 5. As reflected in the SSD statement cited by Harmonia, the awardee provided labor hours allocation information in its price quotation, as required. Accordingly, we conclude that Harmonia’s allegation is inconsistent with the actual terms of the RFQ, and that the agency did not improperly relax the RFQ requirements in its evaluation of Soliel’s quotation.

Finally, Harmonia alleges that Soliel has an unmitigated OCI, which was not considered by the agency prior to the award. In this regard, Harmonia contends that, although the agency presented the RFQ as a new requirement, there was a predecessor contract for the requirement, which was held by Soliel. Harmonia asserts that Soliel’s work on the prior effort granted it unequal access to nonpublic information about the requirement under this RFQ, or allowed Soliel to influence the ground rules of the competition.

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 situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5.

As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505(b); CapRock Gov’t Solutions, Inc., et al., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25. A

biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the statement of work or providing materials upon which a statement of work was based. FAR §§ 9.505-1, 9.505-2; Networking & Eng'g Techs., Inc., B-405062.4 et al., Sept. 4, 2013, 2013 CPD ¶ 219 at 10. 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 3-4.

Here, Harmonia fails to satisfy the standard required to support an allegation regarding the existence of an OCI because it does not identify hard facts in support of its allegations. Specifically, Harmonia fails to allege hard facts indicating that Soliel was privy to any specific nonpublic competitively useful information, such as proprietary, sensitive, or source selection information, or that Soliel was involved in crafting the PWS or any other provisions of the RFQ.

In its protest, Harmonia asserts that Soliel's prior contract has a high degree of overlap with the current PWS, and that Soliel designed many of the elements used in the current work. For example, Harmonia asserts that:

Soliel had a significant role in developing the specifications and design for the Content Discovery and Retrieval (CD&R) Integrated Project Team ("IPT"), including 'author[ing] and coauthor[ing] REST and SOAP Describe Brokered Search, CDR Manage, Query Management and Deliver Specifications for the CD&R IPT.'

Harmonia Comments at 22. Harmonia argues that these same CD&R elements form the CD&R IPT support requirement for PWS task four of this RFQ, "such as REST and SOAP Search Results Management Specs, [and] REST and SOAP Catalog Replication and Synchronization specs." Id.

As explained by the agency and intervenor, however, Harmonia's allegations in this area are premised on a misunderstanding of Soliel's prior contract, and the work to be accomplished under the current RFQ. While both Soliel's prior effort and the current work involve "REST" and "SOAP," the agency and intervenor explain that REST (Representational State Transfer) and SOAP (Simple Object Access Protocol) are not work products, but program interfaces that are widely used by software developers. Next, while both the prior effort and current RFP are for the agency's CD&R IPT, the fact that two projects share the same client does not indicate that the current RFQ is a follow-on effort, or that Soliel's prior work involved establishing the ground rules for the new requirement.

To the extent the two contracts share software tools and involve work for the same client, the agency and the intervenor further explain that the actual requirements of the contracts are not the same. Specifically, Soliel's prior effort involved using REST and SOAP to author or coauthor software functions including "Describe Brokered Search," "CDR Manage," and "Query Management" and "Deliver Specifications." In contrast, the functions to be delivered under the current RFQ involve "Search Results Management Specs," "Catalog Replication," and "Synchronization."

In sum, we see nothing to indicate that Soliel's prior contract with the agency involved establishing the specifications or PWS for the current RFQ, or provided Soliel with access to nonpublic information concerning the current requirement. In this case, Harmonia has simply not provided sufficient facts to indicate the existence or potential existence of an OCI. See TeleCommunication Sys. Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel