



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Starry Associates, Inc.

File: B-410968.2

Date: August 11, 2015

Lars E. Anderson, Esq., James Y. Boland, Esq., Christina K. Scopin, Esq., and Nathaniel S. Canfield, Esq., Venable LLP, for the protester.

Brian L. Whisler, Esq., Jacob I. Chervinsky, Esq., and Jennifer A. Semko, Esq., Baker & McKenzie, LLP, for Intellizant, LLC, an intervenor.

Brian E. Hildebrandt, Esq., Department of Health and Human Services, for the agency.

Young S. Lee, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where the contracting officer did not evaluate the awardee's quotation in accordance with solicitation's evaluation criteria.
 2. Protest that award decision was influenced by bias and undue influence is denied where allegations are not supported by clear and convincing evidence.
-

DECISION

Starry Associates, Inc., a small business, of Annapolis, Maryland, protests the issuance of a task order to Intellizant, LLC, of Herndon, Virginia, by the Department of Health and Human Services (HHS) under request for quotations (RFQ) No. 15-233-SOL-00023 for information technology (IT) business operations support services. Starry alleges that the agency unreasonably evaluated Intellizant's quotation and asserts that the agency's award decision was the result of improper influence and bias on behalf of agency officials.

We sustain the protest in part and deny it in part.

BACKGROUND

The RFQ was posted to the General Services Administration (GSA) e-Buy portal on November 13, 2014. Contracting Officer (CO) Statement at 0003.¹ The solicitation was issued in accordance with Federal Acquisition Regulation (FAR) subpart 8.4 procedures, and set aside exclusively for small businesses. Id.; RFQ at 0074. Only qualified small business vendors holding contracts under GSA schedule 70 special item number (SIN) 132-51 (IT Professional Services) were permitted to submit a quotation in response to the RFQ. CO Statement at 0003. The solicitation contemplated the issuance of a labor-hour task order with a 1-year base period and four 1-year options. RFQ at 0074. The RFQ informed vendors that the awardee would be responsible for providing business operations support and maintaining HHS's unified financial management system (UFMS), which is a system used by HHS's program support center (PSC) along with other HHS operating divisions. RFQ amend. 002, at 0163. The intended goal of the RFQ was to deliver business operations support to the PSC and its customer agencies. Id. The agency informed vendors that they would be required to provide "immediate site level support at the PSC." Id.

The solicitation notified vendors that award would be made on a lowest-priced, technically acceptable (LPTA) basis and that quotations would be evaluated under the following three evaluation factors: technical acceptability, past performance, and section 508 compliance. Id. at 0196. Technical evaluations were to be conducted in the order of lowest to highest priced quotation. Id. The solicitation stated that "[i]f [a] quoter's technical, past performance and section 508 compliance quotes are found acceptable, the Government may award to that quoter without evaluating the technical, past performance and section 508 quotes of any other quoter." Id. In this regard, non-price evaluations of higher priced quotations were not required if a lower priced quotation was determined to be technically acceptable. Id.

The RFQ required all vendors to submit a technical volume as a part of their quotation. Id. at 0192. Vendors were instructed not to include references to price information in their technical volume submissions, but were required to include "resource information, such as data concerning labor hours and categories, materials, subcontracts, etc.," so that the agency would be able to evaluate a vendor's understanding of the RFQ's scope of work. Id. The solicitation's instructions also required vendors to disclose their technical approach in sufficient detail to address the "requirements of the technical volume instructions." Id. The agency asked vendors to "provide clear responses, including objectives and outcomes, to each Task addressing the work to be performed in the Performance

¹ HHS generally used a Bates numbering system in preparing the agency report; citations in this decision use the Bates numbers assigned by the agency.

Work Statement section.” Id. The RFQ also stated that the technical submissions provided in a vendor’s quotation “must reflect a clear understanding of the nature of the work being undertaken.” Id. Quotations that “merely offer[ed] to conduct a project in accordance with the [solicitation’s] requirements” would be deemed ineligible for award. Id. Furthermore, the RFQ required submission of a technical appendix that had to include “all attachments, such as transcripts, resumes, letters of commitment and the HHS [s]ection 508 [a]ssessment [t]emplate.” Id. at 0192-0193.

With regard to the technical acceptability factor, the RFQ stated that “[q]uotes will be evaluated and rated as acceptable or unacceptable based on the quoter’s ability to meet the requirements in Section 2--Performance Work Statement (PWS).” Id. at 0196. A vendor was “responsible for making sufficient representations to demonstrate that it c[ould] meet the requirements in the PWS.” Id.

The RFQ’s PWS, at section 2.4, identified seven different tasks the awardee would be required to perform. Id. at 0165-0168. For each of these tasks, contractors were required to “provide on-site support staff dedicated to transferring Oracle U.S. Federal Financials functional knowledge to HHS personnel at PSC.” Id. at 0165. Additionally, the solicitation stated that “[o]n-site functional support staff must have an in-depth knowledge of HHS and HHS’s UFMS implementation of Oracle U.S. Federal Financials.” Id.

As relevant here, the first task in the PWS was identified as a “[f]unctional knowledge transfer and training” requirement. Id. According to the RFQ:

Functional knowledge transfer and training are critical to PSC; therefore, it is important that the Contractor supply personnel with an in-depth knowledge of PSC’s implementation of Oracle Federal Financials. The Contractor’s functional knowledge transfer and training staff should also have an in-depth knowledge of federal accounting and PSC’s specific accounting needs For the Contractor to be considered successful, PSC personnel must be able to demonstrate that they can perform the UFMS business processes without the assistance of the Contractor.

Id. The solicitation’s PWS, at section 2.5 also contained resource requirements identifying four separate positions. Id. at 0168-0169. The four positions contained minimum experience requirements for a vendor’s proposed personnel. The first position was identified as a “Project Manager (Task Manager).” Id. at 0168. The three other positions were identified as “Senior Functional/Technical Analyst[s]” but listed different experience requirements for each position. Id. at 0169. For example, as relevant to this protest, at least one of the vendor’s “Senior Functional/Technical Analyst[s]” had to have experience with the HHS Managing

Accounting and Credit Card System (MACCS) interface, and the agency's "[purchase order] mass cancel and requisition cancellation program." Id.

In response to the RFQ, the agency received quotations from three vendors, including Starry and Intellizant. CO Statement at 0003. The agency evaluated Intellizant's quotation under the solicitation's three non-price evaluation factors after it was identified as being the lowest-priced. Id.

On December 18, 2014, HHS issued the task order to Intellizant as the lowest-priced, technically acceptable vendor. Id. at 0004. After being notified of the agency's award decision, Starry filed a protest with our office on December 29. In response to the protest, HHS subsequently took corrective action. Id. Based on the agency's corrective action, our Office dismissed Starry's protest as academic.

HHS's corrective action consisted of a complete reevaluation of Intellizant's quotation, which was conducted by both the agency's technical evaluation panel (TEP) and the CO, who was also the source selection authority (SSA) for this procurement. Id. On April 28, 2015, the agency's three-member TEP completed its reevaluation and issued a final report to the SSA. AR, Tab 5c, TEP Final Evaluation Report, at 0461. The report indicated that the TEP was unable to reach consensus as to whether Intellizant met all the minimum requirements of the RFQ under the technical acceptability evaluation factor. Id. at 0461-0462. Two of the TEP members found that Intellizant's quotation met the RFQ's minimum requirements, while the third TEP member, who was also identified as the TEP chairman, dissented from the majority's findings. Id. at 0462. As is relevant here, the TEP chairman believed Intellizant's quotation was technically unacceptable because it failed to demonstrate the necessary experience required under the RFQ's PWS "[f]unctional knowledge transfer and training" task.² Id. at 0463-0464. The TEP chair also found that Intellizant did not meet the "resource requirements" section of the PWS.³ Id. at 0471.

After receiving the TEP's final evaluation report, the SSA conducted her own review of Intellizant's quotation, along with the TEP's majority and minority findings. AR,

² For example, with regard to "[f]unctional knowledge transfer and training," the TEP chairman found that Intellizant lacked the necessary experience to "sufficiently address the task of maintaining PSC and UFMS in its entirety." AR, Tab 5c, TEP Final Evaluation Report, at 0463-0464.

³ For example, with regard to the RFQ's "resource requirements," the TEP chairman found that Intellizant failed to address certain "critical PSC specific resource requirements from the RFQ," which he identified as a lack of "[d]etailed knowledge of the Purchase Order mass cancel and requisition cancellation program" and the absence of any "prior experience with MACCS Credit Card interface." Id. at 0471.

Tab 5d, Source Selection Decision (SSD) at 0477. After reviewing and considering both the majority and minority findings of the TEP, as well as the information contained within Intellizant's quotation, the SSA concluded that Intellizant's quotation was technically acceptable. Id. at 0474-0483. On April 30, 2015, the agency notified unsuccessful vendors that the task order would be issued to Intellizant, as the company that submit the lowest-priced, technically acceptable quotation. CO Statement at 0005. This protest followed.

DISCUSSION

Starry presents two main challenges to the agency's evaluation and award decision.⁴ First, the protester contends that the agency unreasonably evaluated Intellizant's quotation under the RFQ's technical acceptability factor because Intellizant lacks qualified personnel necessary to perform the PWS tasks and because the vendor failed to demonstrate how it would provide the staff necessary to perform the task order. Starry also alleges that the agency's award decision was the result of bias and undue influence on behalf of agency officials. For the reasons discussed below, we find that HHS failed to reasonably evaluate Intellizant's quotation in accordance with the stated RFQ evaluation criteria, and sustain the protest on this basis. We deny the protester's allegations that the award decision was the result of bias and undue influence.

Evaluation of Intellizant's Technical Quotation

Starry challenges HHS's evaluation of Intellizant's quotation under the RFQ's technical acceptability factor. The protester argues that HHS failed to follow the solicitation's evaluation criteria and unreasonably evaluated Intellizant as being technically acceptable because the vendor's quotation does not demonstrate its ability to meet the RFQ's minimum requirements. The protester contends that Intellizant presently lacks the personnel necessary to perform the task order, as evidenced by the fact that only five of the individuals proposed by Intellizant are current employees. Additionally, Starry argues that Intellizant's quotation fails to demonstrate an ability to provide the personnel necessary to meet the solicitation's requirements.⁵ Specifically the protester alleges that Intellizant's quotation is

⁴ Starry's initial protest alleged that HHS engaged in improper discussions with the agency. In response to the protester's allegations, HHS provided a detailed rebuttal in its agency report. Starry's comments on the agency report, however, failed to address the agency's responses. Consequently, we consider the protester to have abandoned these arguments and will not consider them further. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 4 n.3.

⁵ The protester also alleges that Intellizant's quotation contained conditions that were contrary to the RFQ's terms and therefore should have been rejected by the agency. In its agency report, HHS established that the agency reviewed and

(continued...)

unacceptable because it did not include letters of commitment to show that Intellizant can provide the personnel it proposed.

In response, HHS argues that the protester's allegations are mere disagreement with the agency's conclusions and that the evaluation of Intellizant's quotation is a matter within the agency's discretion. The agency also contends that because the RFQ was to be awarded on a LPTA basis, the SSA only needed to determine whether Intellizant's quotation was technically acceptable. In this regard, HHS maintains that the SSA conducted a thorough analysis of Intellizant's quotation, and reasonably concluded that it was technically acceptable.

Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations; our office will not reevaluate the quotations. Carahsoft Tech. Corp., B-401169, B-401169.2, June 29, 2009, 2009 CPD ¶ 134 at 5; OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4.

Here, we find that the agency's evaluation was unreasonable and inconsistent with the terms of the RFQ for two reasons: one, the SSA failed to evaluate whether the personnel proposed by Intellizant were capable of performing the PWS tasks; and two, the agency failed to evaluate whether Intellizant's quotation demonstrated the ability to provide the personnel it proposed. As previously discussed, technical acceptability was one of the RFQ's three non-price evaluation factors. RFQ amend. 002, at 0196. Vendors were to be rated acceptable or unacceptable based on their ability to meet the RFQ's PWS requirements. Id. The solicitation's evaluation criteria stated that a vendor was "responsible for making sufficient representations to demonstrate that it can meet the requirements in the PWS." Id. The PWS required vendors to have the ability to provide on-site support staff with certain qualifications. Id. at 0165. The RFQ's instructions notified vendors that quotations that merely proposed to perform in accordance with the solicitation would be deemed ineligible for award. Id. at 0193. Furthermore, the solicitation's instructions required vendors to submit a technical appendix with attachments such as transcripts or letters of commitment. Id.

The record shows that the agency failed to evaluate whether the awardee proposed personnel who could perform the PWS tasks. The first PWS task, "[f]unctional knowledge transfer and training," required a vendor to demonstrate its ability to

(...continued)

evaluated these conditions, and found that they did not provide a basis to reject Intellizant's quotation. We find nothing unreasonable about the agency's evaluation of the conditions. GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6.

provide “personnel with an in-depth knowledge of PSC’s implementation of Oracle Federal Financials,” who also “have an in-depth knowledge of federal accounting and PSC’s specific accounting needs.” Id. at 0165. Moreover, the PWS stated that it was important for a vendor’s personnel to meet these requirements because of the task’s critical nature, which included 13 “[f]unctional knowledge transfer and training requirements.” Id. at 0165-0166.

Because of uncertainties in the record, our Office conducted a hearing to obtain further information about the agency’s evaluation.⁶ At the hearing, the SSA testified that she believed that a vendor’s ability to perform the task order was “based entirely on the qualifications of the staff” provided by a vendor. Hearing Transcript (Tr.) 49: 20-22; 50:1-2. Nevertheless, she also testified that she concluded that Intellizant met the requirements identified in the functional knowledge transfer and training task without reviewing any of the resumes proposed by Intellizant. Id. 49:15-19; 50:7-22; 51:1-15. Rather, the SSA indicated that her evaluation focused on the vendor’s transition plan Id. at 87:19-21. The SSA explained that she did not believe it was necessary to review individual resumes against specific PWS tasks, because she evaluated the resumes proposed by Intellizant under the “resource requirements” section of the PWS. Id. 50:7-12; 87:19-22; 88:1-10.

On this record, we cannot conclude that the SSA’s evaluation was reasonable. In order to be acceptable, the RFQ required vendors to demonstrate their ability to perform all of the PWS tasks. RFQ amend. 002, at 0196. The SSA testified that she believed that a vendor’s ability to perform the task order was based entirely on the qualifications of the staff provided by a vendor. (Tr.) 49: 20-22; 50:1-2. In spite of her belief, the SSA indicated that she did not evaluate whether the personnel proposed by Intellizant had the qualifications required to perform the PWS tasks but instead focused her evaluation on Intellizant’s transition plan. The SSA failed to address whether the personnel proposed by Intellizant had the experience and qualifications required in the PWS tasks. AR, Tab 5d, SSD, at 0474-0483. Moreover, we find unpersuasive the SSA’s explanation that she did not evaluate Intellizant’s proposed personnel against the minimum requirements of the functional knowledge transfer and training task because she evaluated their resumes under the resource requirements section of the RFQ. In this regard, the SSA testified that she did not know, and had not performed a review to confirm, whether the experience and qualifications identified under the resource requirements section of the PWS were sufficient to demonstrate that a vendor would meet the minimum requirements of the functional knowledge transfer and training task. Tr. 88:11-22; 89:1-10. Thus, the SSA could not have reasonably determined whether Intellizant’s proposed personnel met the minimum requirements of the functional knowledge transfer and training task. Accordingly, because the record does not demonstrate that the SSA properly considered Intellizant’s ability to provide personnel qualified to

⁶ The hearing was conducted on July 15, 2015.

perform the functional knowledge transfer and training task, we find that the SSA's evaluation was not conducted in accordance with the RFQ's evaluation criteria and we sustain the protest.

We also agree with the protester's assertion that the agency misevaluated Intellizant's proposal under the resources requirements section of the PWS. The SSA testified that she understood the resource requirements section of the RFQ to establish the "minimum resource requirements needed in order for the vendor to successfully perform the work." Id. at 90:11-15; 92:19-22. The RFQ warned that quotations that "merely offer[ed] to conduct a project in accordance with the [solicitation's] requirements," would be deemed ineligible for award. RFQ amend. 002, at 0192. The RFQ's instructions also required quotations to reflect a clear understanding of the work being undertaken and required vendors to provide a technical appendix with information such as transcripts and letters of commitment. Id. at 0192-0193. The SSA stated that she understood that a vendor would have to meet all the requirements outlined under this section of the PWS in order for it to be technically acceptable.⁷ Id. at 92:19-22; 93:1-4. The SSA also indicated that she interpreted this section of the PWS to require a vendor to provide personnel with the experience necessary to perform the PWS, and that the vendor's corporate experience alone would not be sufficient to demonstrate its ability to meet each of the requirements. Id. at 94:21-22; 95:1-9. Despite this understanding, the SSA testified that even though the solicitation required vendors to provide on-site personnel with very specific qualifications, a vendor could have met these minimum requirements by submitting sample resumes, or alternatively could have met the requirement without identifying any personnel at all. Id. at 100:13-19; 109:14-22; 110:1-22; 111:1-6.

Based on our review of the record, taken in conjunction with the SSA's own testimony, we find that the SSA unreasonably concluded that Intellizant met the resource requirements section of the PWS. The record shows that the SSA's evaluation of Intellizant's resources focused mainly upon the resumes of the seventeen individuals proposed in Intellizant's quotation. Id. at 49:20-22; 50:1-17. Twelve of the seventeen individuals were not current employees of the vendor when its quotation was submitted. AR, Tab 4a, Intellizant Technical Quotation, at 0253-0305. Despite this fact, the SSA stated that she was not concerned that Intellizant had not submitted letters of commitment or in any way demonstrated its ability to provide these personnel upon task order issuance. Tr. 113:13-22; 114:1-11. Moreover, the SSA stated that she understood that if Intellizant failed to produce one of the individuals it proposed, it would have to "bring[] on board

⁷ The SSA indicated she did not interpret the resource requirements section of the PWS to be equivalent to a key personnel requirement. Tr. at 92:12-18.

another individual to meet those resource requirements.”⁸ Id. at 58:2-7. Nevertheless, there was nothing in the SSD to document why the SSA believed that Intellizant had the ability to provide the personnel it proposed in its quotation, or how it planned to deliver staff with the experience necessary to meet the resource requirements section of the PWS. AR, Tab 5d, SSD, at 0474-0483. The RFQ warned vendors that quotations that simply offered to meet solicitation requirements would be deemed ineligible for award. RFQ amend. 002, at 0196. A vendor’s quotation also had to reflect a clear understanding of the work being undertaken. Id. at 0192, 0196. The RFQ’s instructions used letters of commitment as one example of what vendors could submit as a part of their technical appendix to demonstrate an ability to meet PWS requirements. Id. at 0192-0193.

While we do not agree with the protester that Intellizant’s quotation should have been found unacceptable because it failed to provide letters of commitment for individuals who were not employed by the vendor, we find that the SSA failed to reasonably evaluate whether Intellizant demonstrated its ability to provide staff with the experience and qualifications necessary to perform the requirements of the RFQ’s PWS.⁹ Indeed, even if the RFQ did not require vendors to provide letters of commitment, the solicitation’s evaluation terms made it clear that Intellizant was still “responsible for making sufficient representations to demonstrate that it c[ould] meet the requirements in the PWS.” RFQ amend. 002, at 0196. The ability to provide “on-site support staff” and “supply personnel with in-depth knowledge of PSC’s implementation of Oracle Federal Financials” were among the requirements identified in the PWS. Id. at 0165. Additionally, the solicitation instructions prevented vendors from simply proposing back the PWS requirements. Id. at 0192. When the SSA was asked at the hearing whether there was anything in Intellizant’s proposal, other than the resumes that were included, to support a determination that the vendor had the ability to provide the personnel it was proposing, she stated that she could not recall.¹⁰ Tr. 113:13-22; 114:1-11. Because the record demonstrates that the SSA did not review whether Intellizant had the ability to provide the personnel named in the vendor’s quotation or whether Intellizant had the ability to deliver individuals who had similar experience, we find the agency’s evaluation unreasonable.

⁸ As previously stated, the SSA testified that she thought that a vendor could demonstrate its ability to meet the RFQ’s resource requirements by submitting sample resumes. Tr. at 100:13-19.

⁹ We accept the agency’s interpretation that the solicitation did not require letters of commitment because the RFQ did not contain a key personnel requirement.

¹⁰ The SSA later testified that she factored in Intellizant’s past performance ratings when considering its ability to deliver the personnel it proposed. Tr. at 114:12-20. This finding was not documented in the contemporaneous SSD. AR, Tab 5d, SSD, at 0474-0483.

We also find unreasonable the agency's evaluation of Intellizant's proposal with regard to the resource requirements section of the PWS, which called for vendors to propose at least one individual with MACCS interface experience.¹¹ At the hearing, the SSA was asked whether it would have been possible to find a vendor technically acceptable for the resource requirements section of the PWS based solely on its corporate experience. Tr. 95:6-8. She confirmed that a vendor's corporate experience, by itself, would not have been sufficient to meet the resource requirements section of the PWS. Id. 95:9.

Nevertheless, none of the resumes included in Intellizant's quotation listed any experience with the MACCS interface. AR, Tab 4a, Intellizant Technical Quotation, at 0253-0305. In this regard, the contemporaneous record shows that all of the members of the TEP recognized this issue. The TEP's chairman's minority finding determined that Intellizant's quotation lacked "prior experience with [the] MACCS Credit Card interface." AR, Tab 5d, SSD, at 0480-81. The remaining two members of the TEP determined that because the MACCS interface was a proprietary product of Starry, the "requirement that one of the minimum resource[s] must have prior experience with MACCS [is] invalid." Id. at 0481. Thus, none of the TEP members found that Intellizant proposed personnel with MACCS interface experience.

In rebutting the TEP chairman's minority view--and to reach the conclusion that Intellizant proposed an individual with MACCS interface experience--the SSA in her SSD relied on the vendor's corporate representation that it had "worked with the existing PSC Systems Accounting Branch in developing the PRICES¹² to MACCS interface." Id. at 0481. This conclusion is inconsistent with the SSA's testimony that corporate experience alone would be insufficient to demonstrate that a vendor proposed an individual with MACCS interface experience. At the hearing, the SSA attempted to resolve this discrepancy; she testified that she concluded that at least one individual had this experience because this individual's resume identified her as one of the key employees (and as a manager) under the PRICES contract. AR, Tab 4a, Intellizant Technical Quotation, at 0253-0305; Tr. 65:2-16; 66:22; 671-15; 106:4-21. As a result, although Intellizant's quotation did not specifically identify an individual with MACCS interface experience, the SSA testified that Intellizant

¹¹ MACCS, a product of Starry Associates, stands for "Managing Accounting and Credit Card System" and is used by PSC to properly record and account for all credit card purchases made by government card holders in the process of fulfilling their job assignments. RFQ amend. 002, at 0162.

¹² Intellizant is the incumbent contractor on PSC's Revenue Invoicing and Cost Estimation System (PRICES) task order. AR, Tab 4a, Intellizant's Technical Proposal, at 0229.

proposed an individual who had such experience because the individual was identified as a key person under the PRICES contract, and “key personnel. . . . should know what’s being performed. . . .”¹³ Id. 67:5-15. We find the agency’s evaluation here to be unreasonable.¹⁴

In sum, while we recognize that this procurement was conducted under FAR subpart 8.4, and contemplated award to the lowest-priced technically acceptable quotation, the solicitation specifically required the agency to evaluate quotations based upon the vendor’s ability to meet the requirements of the PWS, which included requirements under both the functional knowledge transfer and training task and the PWS’s resource requirements section. Because the SSA failed to evaluate whether the personnel proposed by Intellizant were capable of performing the PWS tasks, and because she failed to evaluate whether Intellizant could provide the personnel necessary to meet the solicitation’s requirements, we find the agency’s evaluation was unreasonable. We also find that the record does not demonstrate that the SSA properly evaluated the solicitation requirement for an individual with MACCS interface experience. Accordingly, we sustain the protest.

Undue Influence and Bias

In addition to its challenge of the agency’s technical acceptability evaluation of Intellizant’s quotation, Starry alleges that the HHS director of accounting services for the PSC exercised undue influence on the agency’s award decision, and was biased in favor of Intellizant. Starry contends that he was biased because he was a former employee of Intellizant. Starry also contends that this individual exercised undue influence on the procurement by appointing a TEP member who improperly used her position to influence the selection decision.

As a general matter, government officials are presumed to act in good faith, and a protester’s contention that procurement officials were motivated by bias or bad faith

¹³ At the hearing, the SSA acknowledged that she did not award the PRICES contract, was not the administrative CO for that contract, and was never formally assigned to perform any activities related to the PRICES contract. Id. 67:18-22; 68:1-2; 68:8-12. The SSA testified that she had “heard of the PRICES contract while working at PSC” but that she “d[idn’t] know anything else about the PRICES contract.” Id. 68:3-7.

¹⁴ The SSA also testified that she did not rely on the experience from personnel identified in Intellizant’s quotation as non-billable in determining whether Intellizant’s quotation was technically acceptable. Tr. at 97:7-10. This testimony conflicts with the finding, set out in the SSD, that one of the non-billable personnel proposed in Intellizant’s quotation demonstrated experience with purchase orders. Id. at 111:19-22; 112:1-15; AR, Tab 5d, SSD, at 0481.

must be supported by clear and convincing evidence. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-9. Where a protester alleges bias, it must not only provide credible evidence clearly demonstrating bias against the protester or in favor of the awardee, but must also show that this bias translated into action that unfairly affected the protester's competitive position. Global Integrated Sec. (USA) Inc., B-408916.3 et al., Dec. 18, 2014, 2014 CPD ¶ 375 at 14. See also Marinette Marine Corp., B-400697 et al., Jan. 12, 2009, 2009 CPD ¶ 16 at 28-29.

We find these protest allegations to be without merit. The agency explains that the HHS director, identified by Starry, recused himself from the procurement. AR, Tab 2f, HHS Director Statement, at 0017. Additionally, HHS submitted a statement from the director to show that he was not directly responsible for choosing the individuals who were selected to serve on the agency's TEP. Id. The agency also provided evidence indicating that he suggested the names of individuals who might be good candidates for the TEP to a HHS project officer, but that the project officer had the ultimate authority over selecting the TEP for this procurement. Id.; AR Tab 2g, Project Officer Statement, at 0027-0028. Furthermore, the agency submitted e-mails to support that the HHS director only provided his suggestions to the project officer after the project officer requested the director's input. AR, Tab 2g, Project Officer Statement, at 0028. In this regard, Starry fails to provide the clear and convincing evidence necessary to support its allegations of bias and undue influence.¹⁵

RECOMMENDATION

We recommend that HHS evaluate Intellizant's quotation in accordance with the stated RFQ evaluation criteria to determine whether the individuals proposed by the vendor have the experience and qualifications necessary to perform the RFQ's PWS tasks and to evaluate whether Intellizant has the ability to supply personnel with the qualifications required by the RFQ. We also recommend that the agency adequately document its evaluation. Should HHS conclude that Intellizant's quotation is unacceptable under the technical acceptability evaluation factor, we recommend the agency terminate the order issued to Intellizant, and evaluate the

¹⁵ The protester also contends that the CO was motivated by bias. For example, Starry alleges that the CO withheld portions of Intellizant's quotation from the TEP, wherein Intellizant took exception to the RFQ's requirements. In a subsequent briefing, HHS provided affidavits from the TEP members refuting the allegations. AR, Tab 11b, TEP Member 1 Supplemental Statement, at 1129; Tab 11c, TEP Member 2 Supplemental Statement, at 1130; Tab 11e, TEP Chairman Supplemental Statement, at 1131. The protester failed to provide any clear and convincing evidence, beyond allegations and innuendo, to establish that the CO's award decision was motivated by bias or undue influence.

next lowest-priced quotation to determine whether it is in line for award. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. Id. at §21.8(f).

The protest is sustained in part and denied in part.

Susan A. Poling
General Counsel