



Decision

Matter of: Seventh Dimension, LLC

File: B-415311.4

Date: November 29, 2018

Jason Clark, Seventh Dimension, LLC, for the protester.
Major Adam Kama and Scott N. Flesch, Esq., Department of the Army, for the agency.
Nora K. Adkins, Esq. and Amy B. Pereira, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of protester's key personnel resumes is denied where the evaluation was reasonable and in accordance with the solicitation criteria.
 2. Protest challenging agency's resolution of potential conflict of interests is denied where the agency adequately mitigated the potential conflict of interests uncovered during the agency's investigation.
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DECISION

Seventh Dimension, LLC, a service-disabled veteran-owned small business (SDVOSB), located in Mocksville, North Carolina, protests the award of a contract to SOLKOA Inc., a SDVOSB located in Colorado Springs, Colorado, issued by the Department of the Army pursuant to request for proposals (RFP) No. W9124G-17-R-0001 for full spectrum survival, evasion, resistance, and escape (SERE) level C instruction and instructional support services. The protester contends the agency failed to reasonably evaluate Seventh Dimension's key personnel resumes and alleges that the agency failed to fully mitigate potential conflict of interests uncovered during the agency's investigation.¹

¹ Because Seventh Dimension proceeded without an attorney, no protective order was issued in this protest. A full version of the agency report was provided to our Office, and a redacted version of the report was furnished to the protester. As much of the information reviewed by our Office is source selection sensitive and/or proprietary in nature, our discussion of some aspects of the agency's evaluation and conflict of interest investigation is necessarily general in nature.

We deny the protest.

BACKGROUND

On June 27, 2017, the Army issued the RFP as a SDVOSB set-aside pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15. RFP at 1, 92, 103. The solicitation contemplated the award of a fixed-price contract on a best-value tradeoff basis considering the following evaluation factors: technical approach (management approach, staffing approach, and subject matter/technical expertise); past performance; and price. Id. at 21, 103-104.

The agency received multiple proposals, including one from Seventh Dimension, by the July 27 closing date. The agency evaluated the proposals and established a competitive range. On September 13, Seventh Dimension received notice of its exclusion from the competitive range. Protest, Exh. 1, Competitive Range Exclusion Notice, at 1. Thereafter, Seventh Dimension filed a bid protest with our Office challenging the agency's evaluation of its proposal and the competitive range determination. Protests, Exh. 2, Seventh Dimension Protest (Sept. 25, 2017), at 1-5. The protest also alleged personal and organizational conflict of interests. Id.

On October 17, the agency informed our Office of its intent to take corrective action. Agency Report (AR), Tab 5, Corrective Action Notice (Oct. 17, 2017), at 1. The agency's notice provided that the agency would investigate the allegations of personal and organizational conflicts of interest, and "[a]fter the conclusion of this investigation, [] re-visit the acquisition and the evaluation and decide if new evaluations or additional action is warranted[, which would include] revisiting which offerors will be allowed into the competitive range." AR, Tab 6, Contracting Officer Corrective Action Statement (Oct. 17, 2017), at 1. Our Office dismissed the protest as academic on October 23. Seventh Dimension, LLC, B-415311.2, B-415311.3, Oct. 23, 2018 (unpublished decision).

On November 6, the agency sent letters to all offerors informing them of the investigation. See AR, Tab 7, Army Investigation, at 105.² The letter asked all offerors to respond if any of their staff, or subcontractors received any sensitive source selection information such as the names of the evaluators, names of other offerors, or other sensitive information about other offerors or evaluations. Id. The letter also requested that the offerors certify whether or not they had actual or potential organizational conflicts of interest concerning the SERE procurement. Id. The contracting officer also requested an Army investigation regarding the potential conflict of interests.

² This document was not provided to the protester but was provided to our Office for our review. While the agency chose to redact the entirety of the document, the information provided herein is necessary for our decision. Moreover, this information was known to the protester (i.e. Seventh Dimension received a letter from the contracting officer and participated in the investigation).

Memorandum of Law (MOL) at 15. As part of the investigation, the investigative officer conducted interviews and received sworn statements from multiple agency officials, interviewed the offerors alleging conflicts of interest, reviewed social media websites and company flyers, and analyzed certain emails, nondisclosure agreements, and financial statements of the source selection evaluation board (SSEB) members. See AR, Tab 7, Army Investigation.

The contracting officer received a copy of the Army investigation, and after analyzing the Army investigation and recommendations, the contracting officer found that the source selection information revealed to offerors--the SSEB member names--had become common knowledge among the offerors. AR, Tab 9, Contracting Officer Conflict of Interest Memorandum, at 2.³ Nevertheless, the contracting officer concluded that she would take the following actions to mitigate any perceived conflicts: send a letter to all offerors containing the names of the SSEB members; nullify the competitive range determination and exclusion of offerors; appoint a new technical evaluation board (TEB)⁴, and send all offerors (including those that were previously excluded) proposal extension letters to notify the offerors of the agency's reevaluation. See AR, Tab 8 Contracting Officer Letter to Seventh Dimension (Mar. 7, 2018), at 1.

The new TEB convened to reevaluate technical proposals. Thereafter, the contracting officer opened discussions with all offerors. See, Protest, Exh. 10, Seventh Dimension Evaluation Notice, at 1. On June 20, evaluation notices were sent to all offerors. Id. Final proposal revisions were due by July 3. Agency Dismissal Request at 6. The new TEB reconvened to evaluate the revised technical proposals and evaluation notice responses. The agency assigned the following ratings to Seventh Dimension:

³ This document was not provided to the protester but was provided to our Office for our review. While the agency chose to redact the entirety of the document, the information provided herein is necessary for our decision.

⁴ The record demonstrates that the initial SSEB members evaluated technical proposals, and the new TEB members (who were not members of the initial SSEB) were appointed for the purposes of reevaluating technical proposals. See AR, Tab 8 Contracting Officer Letter to Seventh Dimension (Mar. 7, 2018), at 1.

	Technical Approach	Past Performance	Evaluated Price ⁵
Seventh Dimension	Unacceptable ⁶	Relevant/ Satisfactory	\$61,299,883

AR, Tab 15, Award Notice and Debriefing, at 1-2.

With respect to the protester, the evaluators assessed two deficiencies and assigned an unacceptable rating to Seventh Dimension’s technical approach related to issues with its key personnel resumes. The first deficiency was assigned because Seventh Dimension’s program manager’s resume failed to demonstrate a minimum of 10 years of documented and verifiably successful program management experience of comparable size and scope of the requirements defined in the solicitation. Id. at 3. The second deficiency was assigned because Seventh Dimension’s deputy program manager’s resume failed to demonstrate a minimum of seven years of successful management experience in a Department of Defense (DoD) SERE-related program. Id.

On August 21, the agency awarded the contract to SOLKOA.⁷ Contracting Officer Statement (COS) at 6. On the same day, the agency notified all offerors of its award decision and provided written debriefings. Id. On August 24, Seventh Dimension filed this protest.

DISCUSSION

Seventh Dimension challenges the agency’s evaluation of its key personnel and alleges that the agency failed to fully mitigate the potential conflict of interest uncovered during the agency’s investigation. As explained below, we find that Seventh Dimension’s allegations do not provide a basis to sustain the protest.⁸

⁵ The evaluated price was calculated by the agency to include a six month option to extend services, which was based on the offeror’s pricing for option year four. RFP at 109.

⁶ As relevant here, the RFP defined an unacceptable rating as follows: “[p]roposal does not meet requirements of the solicitation, and thus, contains one of more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.” RFP at 107.

⁷ The award notice provided that SOLKOA’s evaluated price was \$47,672,170. AR, Tab 15, Award Notice and Debriefing, at 1. The notice did not disclose SOLKOA’s ratings for technical approach or past performance. Id.

⁸ Seventh Dimension also argues that the agency unreasonably changed certain price criteria during discussions with offerors. We dismiss this ground because it was not timely filed with our Office. The agency advised Seventh Dimension of the pricing change on July 2, 2018, but Seventh Dimension failed to file a protest challenging the

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Evaluation of Key Personnel

Seventh Dimension challenges the agency's evaluation of its proposed program manager and deputy program manager. The protester alleges that the agency's evaluation was unreasonable because its proposed key personnel met the minimum requirements provided in the RFP. The agency argues that it properly evaluated the protester's key personnel and that the resumes submitted by Seventh Dimension did not demonstrate that its key personnel met the RFP requirements. On the record before us, we find that the agency's evaluation was reasonable and consistent with the RFP evaluation criteria. We address only the protester's allegations with respect to the evaluation of its deputy program manager since any one deficiency would be sufficient to render the proposal unacceptable.⁹

In considering protests challenging an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the stated evaluation factors and applicable procurement laws and regulations. Korea Res. Env't Co., Ltd., B-409996, Oct. 3, 2014, 2014 CPD ¶ 298 at 3. A protester's disagreement with the agency's judgment, without more is not sufficient to establish that an agency acted unreasonably. Id.

The RFP provided specific criteria for each key personnel position, which would be the basis for the agency's evaluation. As relevant here, the RFP criteria for the deputy program manager position provided that the deputy program manager "shall have a minimum of seven (7) years of documented and verifiably successful management experience in a DoD SERE-related program." RFP at 29.

The agency evaluated the resume of the proposed deputy program manager and concluded the resume did not demonstrate the required years of experience. The agency issued an evaluation notice to Seventh Dimension informing the protester of the deficiency as follows: "[t]he Deputy Program Manager[s] resume did not demonstrate 7 years relevant management experience." AR, Tab 10, Evaluation Notice with Response, at 1. In response to the evaluation notice, Seventh Dimension provided that it had updated the resume to highlight the management experience and key responsibilities for each position, including eight years of relevant management

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revised terms of the RFP prior to the next closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Additionally, to the extent Seventh Dimension challenges the agency's decision to increase the past performance recency criteria from three to five years, this challenge is also not timely, as explained above, and we also dismiss this aspect of Seventh Dimension's protest.

⁹ While we do not address the protester's challenge to the agency's evaluation of its program manager, we find that the protester's disagreement with the agency's reasonable evaluation does not provide a basis to sustain the protest.

experience, seven of which involve providing direct DoD support to SERE programs and one year involving support for the Department of State. Id.

The agency evaluated Seventh Dimension's final proposal revision and again concluded that the deputy program manager's resume did not demonstrate seven years of management experience in a DoD SERE-related program. See AR, Tab 15, Award Notice and Debriefing at 3. In reaching this conclusion, the evaluators found that the proposed deputy program manager's resume demonstrated six years of relevant experience with DoD SERE-related program, not seven. COS at 7.

We find no basis to question the agency's evaluation. Based on the information provided in the deputy program manager's resume, the agency reasonably concluded that the individual possessed only six years of relevant experience with DoD SERE-related experience. In this regard, we note that while Seventh Dimension's evaluation notice response states that the proposed deputy program manager's current position was related to a DoD SERE-related program, the resume made no mention of DoD with regard to this position. Compare AR, Tab 10, Evaluation Notice and Response, at 2 with Tab 11, Seventh Dimension Final Proposal, at 44-45. While the protester disagrees with the agency's assessment, we find the agency's evaluation reasonable. It is an offeror's responsibility to submit an adequately written proposal that demonstrates the merits of its approach; an offeror runs the risk of having its proposal downgraded or rejected if the proposal is inadequately written. Korea Resources Environment Co., Ltd., supra. Accordingly, we find the agency's evaluation reasonable.

Conflict of Interest Mitigation

Seventh Dimension also alleges that the agency failed to fully mitigate the conflict of interests uncovered in the agency's investigation after the initial protest. The protester contends that the agency's mitigation removed the SSEB members but failed to remove the companies that received an unfair competitive advantage from the competition. With respect to the awardee, Seventh Dimension argues that Evaluator A's spouse's employment with SOLKOA provided the awardee a competitive advantage that should have resulted in removal from the competition. We find that the agency properly investigated and mitigated the potential conflict of interests with respect to SOLKOA.¹⁰

The FAR requires that contracting officers identify and evaluate potential organizational conflicts of interest (OCI), and directs contracting officers to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage. FAR §§ 9.504(a), 9.505. In considering whether there is an actual or

¹⁰ The protester makes multiple conflict of interest allegations with respect to another contractor, Evaluator B's relationship with that firm, and Evaluator A's prior employers. These allegations do not provide a valid basis of protest because the protester has not alleged any relationship between SOLKOA and that firm or Evaluator B, and has not alleged that SOLKOA was the prior employer of Evaluator A.

potential OCI, the FAR advises contracting officers to examine the particular facts of the contracting situation and the nature of the proposed contract, and to exercise common sense, good judgment, and sound discretion in deciding whether a significant OCI exists, and in determining the appropriate means for resolving any significant OCI that has been identified. FAR § 9.505. 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 an unfair competitive advantage in a later competition for a government contract. FAR § 9.505(b); Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6.

As stated above, the contracting officer reviewed the results and recommendations of the Army investigation. To mitigate any potential conflicts, the contracting officer sent a letter to all offerors disclosing the names of the SSEB members; nullified the competitive range determination and exclusion of offerors; and appointed new evaluators to reevaluate technical proposals. The protester alleges that removal of the SSEB members was insufficient.

On the record, we see no basis to question the contracting officer's response to the investigation. Our Office reviews an agency's investigation for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Social Impact, Inc., B-412941, B-412941.2, July 8, 2016, 2016 CPD ¶ 203 at 5. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. Seventh Dimension argues, with respect to a conflict with SOLKOA, that Evaluator A's spouse works at SOLKOA, which gave the company a competitive advantage. Based on the results of the Army investigation and her own review, the contracting officer concluded that these allegations are factually incorrect and that there was no conflict with respect to SOLKOA. MOL at 18-19. We find that the contracting officer's conclusions in this regard are reasonable and supported by the record. Accordingly, we find that the contracting officer's removal of Evaluator A adequately mitigated any potential conflicts with respect to SOLKOA.

The protest is denied.

Thomas H. Armstrong
General Counsel