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Decision

Matter of: American Systems Corporation

File: B-415361; B-415361.2; B-415361.3

Date: January 4, 2018

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Katherine I. Riback, Esq., and Amy B. Pereira, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals is denied where the record demonstrates that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 2. The agency reasonably considered the potential for organizational conflicts of interest related to the awardee's proposal.
 3. Protest challenging the agency's selection decision is denied where the record shows that the agency's best-value decision was reasonable, and the protest amounts to no more than disagreement with the agency's judgments.
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DECISION

American Systems Corporation (ASC) of Chantilly, Virginia, protests the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract by the Department of Defense, Defense Information Systems Agency (DISA), to Jacobs Technology, Inc., under request for proposals (RFP) No. HC1028-16-R-0007 for test, evaluation and certification services. The protester argues that the agency improperly evaluated the proposals and unreasonably made a single award. ASC also contends that the agency did not adequately consider the organizational conflicts of interest presented by the award to Jacobs.

We deny in part and dismiss in part the protest.

BACKGROUND

On September 29, 2016, DISA issued the RFP pursuant to the procedures of Federal Acquisition Regulation (FAR) part 15 for test and evaluation services, which include support for test and evaluation planning, test conduct, data collection and analysis, and results reporting that are provided to federal and state agencies, coalition partners, and commercial entities to aid in the design, development, acquisition, integration, deployment, operational use, and sustainment of new and enhanced information technology/national security system capabilities. AR, Tab 10A, RFP at 2, 13.¹ The RFP anticipated a single-award IDIQ contract with fixed-priced and cost-reimbursement type task orders for a 2-year base period, followed by three 1-year option periods, and one 6-month option period.² RFP at 2, 64.

During acquisition planning, on August 31, DISA's, Joint Interoperability Test Command (JITC) approved a determinations and findings (D&F) document supporting its decision to use a single award IDIQ contract exceeding \$112 million.³ Agency Report (AR), Tab 4A, D&F for Single Award. The D&F stated that “[h]istorically, a multiple award contract” for test, evaluation and certification services has not “been in the best interest of the [g]overnment,” and has resulted in “(a) increased levels of personnel turnover and (b) inefficient testbed operations with multiple contractors performing concurrent testbed operations and maintenance.”⁴ Id. at 2. The D&F further stated that the agency concluded, after a “detailed analysis” of the RFP’s performance work statement (PWS), that “the projected orders [were] so integrally related that only a single contractor [could] reasonably perform the work.” Id. at 3.

¹ All citations to the RFP are to the conformed RFP provided by the agency.

² The RFP provided that the agency “intends to award a single contract . . . however, the [g]overnment reserves the right to make no award.” RFP at 170.

³ JITC is the Department of Defense’s sole joint interoperability certifier and only non-service operational test agency for informational technology/national security systems. RFP at 12. JITC test and evaluation services “help to ensure that joint warfighting IT capabilities are interoperable and support mission needs.” Id.

⁴ For IDIQ contracts valued in excess of \$112 million, including all options, agencies are required to award multiple contracts, unless the head of the agency contracting activity executes a written D&F supporting the conclusion that award of a single contract is appropriate. 10 U.S.C. § 2304a(d)(3)(A) (2006); FAR § 16.504(c)(1)(ii)(D)(1).

The solicitation provided for award on a best-value tradeoff basis, based on the following four evaluation factors of equal importance: technical/management, past performance, cost/price, and small business participation.⁵ Id. at 169-170.

As relevant to this protest, the solicitation advised that the agency would evaluate the technical/management factor in two phases. In phase one the agency would, on a pass/fail basis, determine if the offeror satisfied seven phase one technical/management subfactors.⁶ Id. at 171-173. The RFP stated that only offerors that received an overall phase one rating of “pass” would advance to phase two of the evaluation. Id. at 171. The RFP provided that the “results of the [p]hase [o]ne evaluation rating of [p]ass [would] have no impact on the [p]hase [t]wo evaluation, or on the best value tradeoff determination.” Id.

In phase two, the agency would evaluate the following technical/management subfactors of equal importance: science based test design, automation, and instrumentation support; special operations DNA analysis solutions (SODA) test and evaluation sample task order; unified capabilities (UC) test and evaluation (T&E) services and facility support task order; defense joint finance and accounting system test and evaluation support sample task order; and program management. Id. at 173-174. The RFP stated that the agency would evaluate the “[o]fferor’s responses to particular PWS and TO [task order] requirements,” and assign each subfactor a combined technical/risk rating.⁷ Id. at 171-172.

The RFP also required that offerors submit an organizational and consultant conflict of interest (OCCI) mitigation plan which would be reviewed for the following:

- a) the degree to which the offeror addressed OCCI concerns,
- b) the offeror’s approach for mitigating OCCI issues,

⁵ For the past performance and the small business participation evaluation factors, the RFP stated that the agency would assign ratings of either acceptable or unacceptable. RFP at 175 and 178.

⁶ The seven phase one technical/ management subfactors were: support of interoperability certification; support of standards compliance and conformance verification; support of operational test and evaluation; information technology service management framework; ISO 9001 certification; integrated architecture traceability matrix development; and unified capabilities product test support services. RFP at 172-173. The RFP provided that a proposal must receive a rating of “pass” for every phase one subfactor in order to receive an overall phase one rating of “pass.” Id. at 171.

⁷ For the phase two technical/management factor, the RFP stated that the agency would assign one of the following combined technical/risk ratings: outstanding, good, acceptable, marginal or unacceptable. RFP at 172.

- c) the adequacy of its OCCI training and oversight programs,
- d) the adequacy of its procedures, and
- e) whether or not the offeror's OCCI plan and/or mitigation strategy complies with all regulatory and statutory requirements, including FAR Subpart 9.5

Id. at 178. The OCCI mitigations plans were to be evaluated and rated on an acceptable/unacceptable basis. Id.

The agency received timely proposals from three offerors, including ASC and Jacobs. AR, Tab 21, Source Selection Decision Document at 11. After the initial evaluation of offers, the agency established a competitive range comprised of all three offerors, held discussions, received final proposal revisions, and evaluated final proposals⁸ as follows:

Offerors	ASC	Jacobs
Factor 1: Technical/Management		
<i>Phase One</i>		
Overall Rating for Subfactors 1-7	Pass	Pass
<i>Phase Two</i>		
Subfactor 1: Science Based Test Design, Automation, and Instrumentation Support	Good	Outstanding
Subfactor 2: Special Operations DNA Analysis Solutions Test and Evaluation Sample Task Order	Good	Good
Subfactor 3: Unified Capabilities Test and Evaluation Services and Facility Support and Task Order 0001	Good	Good
Subfactor 4: Defense Joint Finance and Accounting System Test and Evaluation Support Sample Test Order	Acceptable	Outstanding
Subfactor 5: Program Management	Outstanding	Outstanding
Factor 2: Past Performance	Acceptable	Acceptable
Factor 3: Cost/Price	\$480,986,780	\$467,323,896
Factor 4: Small Business Participation	Acceptable	Acceptable

AR, Tab 21, Source Selection Decision Document at 126. The agency rated Jacobs' OCCI mitigation plan as acceptable finding that it included the required information and

⁸ Since the evaluation of the third offeror in the competitive range is not at issue in this protest, we will not discuss the matter further.

adequately mitigated the post award potential conflicts of interest. AR, Tab 17, OCCI Consensus Report for Jacobs at 9. The source selection authority determined that Jacobs' higher-rated, lower-priced proposal offered the best value to the government. AR, Tab 21, Source Selection Decision Document at 138. This protest to our Office followed.

DISCUSSION

ASC protests numerous issues regarding the agency's evaluation and resulting award decision. For example, ASC alleges that the agency's assignment of strengths was unequal between the offerors under various technical/management subfactors. ASC also argues that the agency did not adequately consider the organizational conflicts of interest presented by the award to Jacobs. ASC contends, as well, that the agency unreasonably made a single award under the solicitation instead of awarding multiple contracts. Finally, the protester also alleges that the agency failed to meaningfully consider the differences between ASC's and Jacob's proposals in making its award decision, and particularly, ASC's superiority with regard to past performance. We have considered all of the issues and arguments raised by ASC's protests and, although we do not address them all, find they provide no basis on which to sustain the protest.⁹

The evaluation of offerors' technical proposals, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 12. In reviewing and agency's evaluation, we will not reevaluate the proposals, but will examine the record to ensure that the evaluation was reasonable and consistent with the stated evaluation criteria as well as with procurement law and regulation. Id. A protester's disagreement with a procuring agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Id.

Unequal Treatment

The protester argues that the agency's assignment of strengths to the offerors was unequal. In this regard, ASC alleges that Jacobs was awarded strengths for features of its proposal that were also included in ASC's proposal; but, for which, it was not awarded strengths.

⁹ ASC also contends that the agency "failed to properly consider Jacobs' inherent performance risk" under phase two, subfactor 5, which resulted in the agency's improper assignment of a rating of "outstanding" to Jacobs, rather than a rating, at best, of "acceptable." Protest at 20-21. It is clear from the record that the agency considered the performance risk associated with Jacobs' proposed approach and reasonably concluded it was low. AR, Tab 21, Source Selection Decision Document at 53-56; AR at 43.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. ADNET Sys, Inc.; North Star Group, LLC; et al., B-408685.3 et al., June 9, 2014, 2014 CPD ¶ 173 at 16. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. ASRC Comms., Ltd., B-414319.2 et al., May 9, 2017, 2017 CPD ¶ 167 at 7. ASC has not made this showing.

For example, the protester argues that the agency's evaluation was unequal under the technical/management factor, phase 2, under subfactor 2, special operations DNA analysis solutions test and evaluation sample task order. Second Supp. Protest at 27. ASC contends that the agency awarded Jacobs a strength for its [DELETED] but failed to award ASC a strength for its similar approach. Id. Jacobs proposed a [DELETED] approach in its proposal which it claimed was analogous to JITC's [DELETED], and was an overarching roadmap for shaping future infrastructure. The protester maintains that it also proposed a [DELETED] approach with its [DELETED] that served as an overarching roadmap that ASC uses for its management and technical activities. Id.

The agency argues that while both offerors proposed "[DELETED] approaches" for addressing the instrumentation and automation requirements under this subfactor, the agency did not consider the use of a [DELETED] to be a strength "in and of itself," for either offeror. AR, Tab 27, Decl. of Technical/Management Evaluation Team Lead at 3. Rather, the agency notes that what distinguished Jacobs' instrumentation and automation approach was the emphasis on its [DELETED] approach which was "central to Jacobs' proposed solution" to this subfactor. Id. For example, Jacobs explains in its proposal that by having an "evolving [DELETED]" it is able to "respond to the challenges of unique test and customer needs while progressing continually towards [DELETED]." AR, Tab 13B, Jacobs Final Proposal Revision, Volume III, Part E, at 105. Regarding ASC's proposal, the agency states that while aspects of ASC's proposed [DELETED] addressed [DELETED], these considerations were "never fully explained" by ASC in its proposed approach under this subfactor. AR, Tab 27, Decl. of Technical/Management Evaluation Team Lead at 3.

We find the agency's evaluation to be reasonable and equal. The agency has explained in this instance that it was not a specific feature in Jacobs' proposal that merited the strength, rather it was how this feature was integrated into its overall approach. Therefore to the extent that the agency evaluated the proposals of Jacobs and ACS differently under this subfactor, the different evaluation results were based on the contents of the offerors' proposals.

The protester also argues that the agency's evaluation was unequal under the technical/management factor, phase 2, subfactor 1, science based test design (SBTD), automation, and instrumentation support. Comments at 54. ASC argues that the agency assigned Jacobs' proposal a strength for its "[DELETED] [that] would provide a

direct [DELETED]” for “increased technical expertise” in the application of SBTD methods, instrumentation, and automation.” AR, Tab 15, Technical/Management Consensus Report-Jacobs at 13. The protester argues that it also proposed “nearly identical capabilities” regarding [DELETED] capabilities across academia, industry, and government.¹⁰ Comments at 56. ASC contends that it specifically stated in its proposal that it would leverage these relationships to maintain and improve its SBTD Implementation Framework. Id.

The agency responds that Jacobs’ proposal contained extensive discussion regarding how it would utilize its [DELETED] capabilities through its proposed [DELETED], described the benefits of [DELETED], and explained how [DELETED] directly applied to the subfactor 1 requirements. AR, Tab 27, Decl. of Technical/Management Evaluation Team Lead at 3; Supp. AR at 31. The agency argues that ASC “merely referenced in passing in its overall approach” that “Team ASC brings notable experience in the domain of SBTD,” (Id. quoting AR, Tab 14C, ASC Proposal, Vol. III at 8.) but ASC did not detail or explain how it would utilize these resources as a [DELETED] capability. Supp. AR at 31.

Again, we find the agency’s evaluation to be reasonable and equal and that the agency has reasonably explained why Jacobs’ proposal merited a strength. As stated above Jacobs’ proposal not only described its [DELETED] capability, as did ASC’s proposal, but it went the additional step and laid out how it intended to utilize its [DELETED] capability in reference to the subfactor 1 requirements. On this record we find no merit in ASC’s allegations of disparate treatment as ASC has not established that the differences in awarded strengths were not based on differences between the offerors’ proposals.

Organizational Conflict of Interest (OCOI)

ASC further contends that the agency did not adequately consider the organizational conflicts of interest presented by the single award to Jacobs. The protester maintains that Jacobs “has served or serves as a prime contractor on numerous contracts for the development, production, or improvement of numerous goods, services, and technologies that Jacobs [would] be evaluating under the IDIQ Contract,” and has a “significant financial incentive” to favorably evaluate itself. First Supp. Protest at 18. The protester contends that Jacobs holds significant actual impaired objectivity OCIs that were “apparently not identified or not considered” by the agency. Id. at 20. The protester, in its second supplemental protest, argued that the agency “conspicuously avoid[ed] any discussion of interoperability certification with respect to the numerous OCOI’s Jacobs disclosed after award.” Second Supp. Protest at 20. ASC also contends that Jacobs made “numerous material misrepresentations and omissions” regarding its actual and potential OCIs. Id. at 10. The protester maintains that if the

¹⁰ ASC states that some of the information regarding its [DELETED] capability was in section C of volume III. Supp. Comments at 37.

agency had conducted a “proper OCI analysis,” that the agency would have determined that these OCI’s could not be mitigated or neutralized. Id. at 25.

The agency responds that it considered whether Jacobs’ performance of the test and evaluation contract created a potential OCI that should preclude award, and concluded that it did not. The agency maintains that it first considered this issue when it reviewed Jacobs’ OCCI mitigation plan included in its proposal. The agency further considered whether the single award to Jacobs presented any significant conflicts of interest when it prepared its responses to ASC’s supplemental protests.

As a general matter, the FAR requires that contracting officers avoid, neutralize or mitigate potential significant OCIs. FAR § 9.504(a). With respect to impaired objectivity OCIs, the FAR advises that “[c]ontracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government’s interest.” Id. at § 9.505-3, Providing Evaluation Services. The FAR advises contracting officers to examine each situation individually and to exercise common sense, good judgment, and sound discretion in assessing whether a significant potential conflict exists and in developing an appropriate way to resolve it. Id. at § 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.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12.

An impaired objectivity OCI, as addressed in FAR subpart 9.5 and the decisions of our Office, arises where a firm’s ability to render impartial advice to the government would be undermined by the firm’s competing interests. FAR § 9.505-3; Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra, at 13. The concern in such impaired objectivity situations is that a firm’s ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. Social Impact, Inc., B-412941, B-412941.2, July 8, 2016, 2016 CPD ¶ 203 at 4.

To demonstrate that an agency’s determination that there is no OCI is arbitrary and capricious, 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. PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). The identification of conflicts of interest are fact-specific inquiries that require the exercise of considerable discretion. Axiom Res. Mgmt., Inc., 564 F.3d at 1382. The standard of review employed by this Office in reviewing a contracting offer’s OCI determination mirrors the standard required by Axiom. In this regard, when an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. Social Impact, Inc., supra at 5.

As stated above, the RFP required that offerors submit an organizational and consultant conflict of interest (OCCI) mitigation plan that was to meet five criteria explained above and would be evaluated on an acceptable/unacceptable basis. In this regard, prior to the award of this contract, the agency evaluated Jacobs' 19-page OCI mitigation plan, that addressed each of the five elements listed under the RFP, and confirmed that neither Jacobs nor any of its teammates were providing or conducting Operational Test and Evaluation Support to a Major Defense Acquisition Program. The agency also concluded that Jacobs had not participated in the development, production, or operational testing of a system for a Combatant Command/Service/Agency, and is not involved in the establishment of criteria for data collection, performance assessment, or evaluation activities for the OT&E of the system. AR, Tab 17, Jacobs OCCI Consensus Report; AR, Tab 24A, Jacobs OCCI Mitigation Plan. In addition, Jacobs, in its mitigation plan, identified effective procedures for identifying potential OCIs at the task order level, which also included identifying if a subcontractor presented an OCI. Id. at 16-20. Jacobs' OCCI mitigation plan also identified potential OCI issues associated with other work and the specific steps Jacobs would take to mitigate those potential issues. Id. at 20. The agency determined that Jacobs' plan adequately provided for procedures to mitigate any actual or potential OCI concerns. AR, Tab 17, Jacobs OCCI Consensus Report at 8-9.

In its first supplemental protest ASC argued that Jacobs, as the sole awardee, had OCIs due to a number of Jacobs' other government contracts. ASC argued that Jacobs "(a) would be performing interoperability testing and evaluating the risks of its own performance of systems development of weapons systems for the DoD, and (b) would be supporting the U.S. Missile Defense Agency with integrations which conflict with its ability to perform interoperability testing on U.S Missile Defense Agency systems." Supp. Protest at 20.

The agency states, and the record shows, that in response to ASC's supplemental protest the contracting officer reviewed the referenced contracts, contacted the program offices for many of the contracts, and reviewed applicable regulations. AR, Tab 24, Contracting Officer's Analysis of ASC's OCCI Protest Allegation at 1; AR at 64. The contracting officer also requested that the JITC program respond to the allegations raised by ASC in its supplemental protest. Id. JITC, in turn, conducted an analysis of the referenced contracts and provided its assessment as to whether they created any OCIs. AR, Tab 24D, JITC's Response to OCCI Allegations. The contracting officer also questioned Jacobs about the OCI allegations raised by ASC, which provided the requested information. All of this information was reviewed by the contracting officer. AR, Tab 24C, Letter to Jacobs about ASC's OCI Allegations.

Based on his consideration of this additional information, the contracting officer re-confirmed that Jacobs' work on its other contracts would not impair its ability to objectively perform the JITC TEC services contract. AR, Tab 24, Contracting Officer's Analysis of ASC's OCCI Protest Allegation at 11. In this regard, the contracting officer stated the following regarding any potential impaired objectivity on the part of Jacobs:

Considerable analysis was undertaken to determine if Jacobs has any ties, contractual or otherwise, that would prohibit the firm from being objective in its duties. Based on my review of the information summarized above and my review of the information contained in the below enclosures, I reaffirm that Jacobs' work on its other contracts will not impair its ability to be objective in performing the JITC TEC Services contract. I was unable to identify an instance where Jacobs would be testing its own work under the TEC Services Contract or where Jacobs' performance of any other contract would impair its objectivity under the TEC Services Contract.

AR, Tab 24, Contracting Officer's Analysis of ASC's OCCI Protest Allegation at 11. The contracting officer also stated the following regarding the mitigation strategies that would be in place should an OCI arise during contract performance:

Thus, during administration of the TEC Services contract, the Government will carefully evaluate whether a particular task order creates an OCCI. In the event it does, the KO will implement proper safeguards to ensure objectivity to protect the Government's interest. The Government has three options for avoiding the OCCI. First, JITC has Government personnel who can perform the required test. Second, JITC can request that another testing activity perform the test. Third, DISA can obtain the testing services of another contractor under a different contract vehicle.

Id. at 13.

ASC filed a second supplemental protest in which it argued that the contracting officer failed to consider certain aspects of Jacobs' other work. The protester contends that Jacobs is "extensively involved in systems integration, systems architecture, systems engineering, systems development, design, configuration, program management for development projects, and maintenance work on numerous government programs that are subject to testing, evaluation, or at a minimum interoperability by JITC." Second Supp. Protest at 20. The protester also alleged that Jacobs made numerous material misrepresentations and omissions regarding its actual and potential OCIs both pre-award and post-award. Id. at 10.

In response to ASC's second supplemental protest that Jacobs made "material misrepresentations" that it failed to disclose in its OCCI mitigation plan, the contracting officer again supplemented his OCI memorandum. ASC Second Supp. Protest at 10; AR, Tab 33A, Second OCCI Memorandum for the Record (MFR). And again, the contracting officer sought additional input from the technical experts at JITC about ASC's allegations (AR, Tab 33E, Declaration of Senior Test and Evaluation Engineer for JITC), and re-assessed whether Jacobs would be testing, evaluating, or certifying its own work or the work of its subcontractors under the TEC services contracts. AR, Tab 33A, Second OCCI MFR at 14. The contracting officer expressly considered each of the contracts cited by ASC and considered whether they presented an OCI. The contracting officer also re-considered whether Jacobs has participated, or is

participating, in the development, production, or testing of a system for a combatant command/service/agency or for another contractor of the DoD, and whether Jacobs has been involved in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation of the same system. The contracting officer concluded, after performing his second re-evaluation, that Jacobs did not present such an OCI. Id. Therefore, the contracting officer concluded that Jacobs had not mischaracterized, materially misrepresented or omitted information about whether it had any OCIs. Id.

Here, we reject ASC's argument that the agency's consideration of, and determinations regarding, the alleged OCCIs were unreasonable. As noted above, the contracting officer considered this issue three times, the first was pre-award, when he reviewed Jacobs' OCCI mitigation plan and the agency determined that Jacobs OCI plan adequately provided for procedures to mitigate any actual or potential OCI concerns. As explained above the agency further considered the matter of whether Jacobs' work on its other contracts would impair its ability to objectively perform the JITC TEC services contract in the agency's response to ASC's first supplemental protest, and ASC's second supplemental protest. Although ASC may disagree with the agency's assessments and conclusions in these determinations, it has failed to present the hard facts and clear evidence necessary to demonstrate that those assessments and conclusions were unreasonable. See Diversified Collection Servs., Inc., B-406958.3, B 406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 (denying protest that awardee had an impaired objectivity OCI where protester presented no hard facts demonstrating the existence of a potential OCI that could not be mitigated). In our view, the record reflects the agency's meaningful consideration of the issues raised; accordingly, we decline to substitute our judgment for that of the agency. ASC's protest assertions regarding alleged OCIs are denied.

Single Award

ASC also alleges that the agency acted unreasonably by awarding a single IDIQ contract to Jacobs. Protest at 16. The protester contends that while the solicitation announced that the agency "might make" a single award, the agency "specifically indicated it could make multiple awards" by virtue of the fact that FAR clause 52.216-27 "Single or Multiple Awards OCT 1995," was incorporated by reference into the RFP. Id. The protester further contends that to the extent that there was an ambiguity in the RFP regarding whether the agency would award single or multiple awards, that the ambiguity was latent. Comments at 11.

The agency responds that its intent to award a single IDIQ contract was "readily apparent" from the solicitation. AR at 19. The solicitation stated, in Section M, the following regarding the agency's intent to award a single contract:

Number of Contracts to be Awarded

The Government intends to award a single contract for the Test, Evaluation, and Certification Services Program; however, the Government reserves the right to make no award.

RFP at 170. The agency also stated its intention to award only one IDIQ contract in another section of the RFP. RFP at 2. The agency's intention to make a single award was also apparent from the RFP's description of the basis for contract award which provided that a contract would be awarded to a single "offeror" using a best-value tradeoff. Id. at 169.

According to the agency FAR clause 52.216-27 is not inconsistent with the rest of the RFP. The agency maintains that reading the clause in conjunction with the rest of the RFP, the only reasonable interpretation is that DISA had elected to award a single contract. FAR clause 52.216-27 provides that the government "may elect" to award a single contract or multiple contracts. The clause does not state that the government intends to or must award multiple contracts. AR at 22. The agency maintains that to the extent that the protester argues that the incorporation by reference of FAR clause 52.216-27 introduced some ambiguity regarding the number of awards that the agency intended to make, such ambiguity was readily apparent from the face of the solicitation and, thus, had to be protested before the receipt of proposals.¹¹

We find that the agency clearly stated in multiple places in the solicitation its intention to make only one IDIQ award. Further, to the extent that the introduction of FAR clause 52.216-27 created an ambiguity regarding whether the agency intended to make a single or multiple awards, any such ambiguity was apparent from the face of the solicitation and, thus, would not provide a basis to sustain the protest. Therefore, any such ambiguity was patent and ASC would be required to protest this alleged ambiguity prior to the submission of proposals--which it failed to do. In our view, an offeror who chooses to compete under a patently ambiguous solicitation does so at its own peril, and where a protester fails to challenge an obviously flawed statement of objectives prior to the time for receipt of proposal, we will dismiss a post-award challenge to the solicitation language as untimely. 4 C.F.R. § 21.2(a)(1); PricewaterhouseCoopers Public Sector, LLP, B-413316.2, B-413316.3, Dec. 27, 2016, 2017 CPD ¶ 12 at 9; Ball

¹¹ The agency notes as well that it held a pre-solicitation conference which included one-on-one meetings with each of the contractors, including ASC, the purpose of which was to notify the firms that the agency intended the JITC TEC services contract to be a single-award IDIQ contract. Indeed, ASC even told the agency during this meeting that it was "confident" that it could perform a single award IDIQ contract. AR, Tab 7, Declaration of Program Analyst (Oct. 2, 2017); Tab 8 Declaration of Acting Chief (Oct. 2, 2017). In this regard, ASC stated in the narrative summary of its proposal that ASC "recognize[d] JITC's migration to a single award contract as a unique opportunity for JITC." AR, Tab 14A, ASC Proposal, Vol I at 1.

Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 5. Consequently, we find untimely ASC's assertion that the introduction of FAR clause 52.216-27 created an ambiguity regarding whether the agency intended to make a single or multiple awards.

Best-Value Tradeoff Decision

Finally, ASC contends that the agency failed to meaningfully consider the differences between ASC's and Jacobs' proposals, particularly the "relative superiority" of ASC's past performance in making its award decision. Protest at 23.

Where, as here, a solicitation provides for award on a best-value basis, the decision as to the relative technical merit of the offers must be based upon a comparative consideration of the technical differences of the proposals. See Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24. A protester's disagreement with the agency's determination as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency does not establish that the source selection decision was unreasonable. King Farm Assocs., LLC; One Largo Metro LLC; Metroview Dev. Holdings, LLC, B-404896.10 et al., Dec. 5, 2011, 2012 CPD ¶ 6 at 17.

The record here shows that the agency's source selection was reasonable. The 139-page source selection decision document included a comparative analysis of all three offerors' proposals. AR, Tab 21, Source Selection Decision Document. In addition, the agency's evaluation of the offerors' past performance in the source selection decision document went beyond simply acknowledging that both Jacobs and ASC received "acceptable" ratings for this factor, and included a review of each offeror's past performance. AR, Tab 21, Source Selection Decision Document at 57-97. Although the protester disagrees with the agency's judgment, this does not demonstrate that the agency's selection decision was unreasonable.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel