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Decision

Matter of: Armedia, LLC

File: B-415525; B-415525.2; B-415525.3

Date: January 10, 2018

William M. Weisberg, Esq., Law Offices of William Weisberg, PLLC, for the protester. Samuel B. Knowles, Esq., and Ethan M. Brown, Esq., DLA Piper LLP- US, for Vexterra Group, the intervenor.

Gregory A. Moritz, Esq., Lieutenant Colonel Gregory J. Fike, Max D. Houtz, Esq., Jessica A. Easton, Esq., and Douglas Francken, Esq., Defense Intelligence Agency, for the agency.

Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the protester's technical proposal and the awardee's past performance is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest alleging agency failed to provide the protester an opportunity to address a potential organizational conflict of interest is denied where the record shows that the protester was not the apparent successful offeror, and the solicitation stated that award would be made without discussions.
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DECISION

Armedia, LLC, a small business of Vienna, Virginia, protests the award of a contract to Vexterra Group, a small business of Alexandria, Virginia, under request for proposals (RFP) No. HHM402-17-R-0045, issued by the Defense Intelligence Agency (DIA) for support services in digital forensics for the National Media Exploitation Center (NMEC) Science and Technology Integration Lab (STIL). The protester challenges the agency's evaluation of its technical proposal and the awardee's past performance, and the source selection decision. The protester also contends that the agency improperly failed to provide it with the opportunity to address a potential organizational conflict of interest (OCI) identified by the evaluators during the evaluation of its proposal.

We deny the protest.

BACKGROUND

The RFP, issued on July 27, 2017, was set aside for competition among small businesses using Federal Acquisition Regulation (FAR) part 12 (Acquisition of Commercial Items) and part 15 (Contracting by Negotiation) procedures, and contemplated award of a time-and-materials contract consisting of a 12-month base period and four 12-month option periods.¹ Agency Report (AR), Tab 3.2, RFP at 3, 51-63, and 168. Regarding proposal preparation, the RFP advised:

The Offeror shall assume that the Government has no prior knowledge of the Offeror's experience and will base its evaluation only on the information presented in the Offeror's proposal. The proposal shall be clear, concise, and include sufficient detail for evaluation and validity of stated claims. The proposal shall not simply rephrase or restate [the] Government's requirements but, rather, shall provide convincing rationale to address how the Offeror intends to meet the functional areas in the Statement of Work (SOW).

Id. at 171; see also id. at 169.

The RFP included the following three non-price factors, in descending order of importance: (1) security; (2) technical expertise and management approach; and (3) past performance.² RFP at 183. The RFP also stated that the "technical expertise and management approach and past performance factors, when combined, are significantly more important than price," and that the agency would "perform a trade-off analysis of the technical factors against the stated price to determine the best value to the Government." Id. at 182.

As relevant to this protest, the technical expertise and management approach factor required offerors to provide a technical approach that "demonstrates a clear understanding and in-depth knowledge of the technical requirements, demonstrates a proposed approach that is technically feasible to successfully meet the stated requirement, and proposes a technical approach containing evidence of development and maintenance structures and processes that are optimized to support the Document and Media Exploitation (DOMEX) and STIL mission." Id. at 184. The SOW sections to be evaluated were as follows:

- 4.1 - Technology Research, Development, Test, Evaluation and Integration

¹ The RFP was amended four times. Unless otherwise noted, citations to the RFP are to the initial version issued by the agency.

² The RFP advised that the security factor would be rated on a pass/fail basis and would not be considered in the price/non-price factor tradeoff analysis; an offeror that did not receive a pass rating for the security factor would be ineligible for award. RFP at 183.

- Computer Vision
- Signals Processing
- Human Language Technologies
- Big Data Analysis
- Forensic Artifact Analysis
- 4.2 - Lab and Facilities Management and Maintenance

Id.

Offerors were also required to provide a program management approach describing their proposed management structure, tools, and procedures that would be used to manage contract performance, to include a work plan, quality control plan, transition plan, and property management plan. RFP at 184-185. The RFP provided the following combined technical/risk ratings for the technical expertise and management approach factor: blue/outstanding; purple/good; green/acceptable; yellow/marginal; and red/unacceptable. Id. at 185.

Regarding past performance, the RFP stated: “Proposals shall have up to, but no more than, five (5) past performance references per team. The past performance references shall be within the last four (4) years (prior to proposal submission) or work that is on-going and has been performed for at least 12 months (prior to proposal submission) to be [evaluated].” RFP at 173. The RFP further stated that the agency would assess the offeror’s capability to perform the contract by evaluating past performance information of either a prime or subcontractor on previous or ongoing contracts with a similar scope of work to the SOW, and required that a subcontractor’s past performance be similar in scope to the work proposed to be performed by the subcontractor. Id. at 185. The RFP provided that the agency would assess the recency, relevancy, and quality of offerors’ past performance information, and assign the following confidence ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. Id. at 186-187.

The agency timely received seven proposals, including proposals from Armedia and Vexterra. Contracting Officer Statement (COS) at 2. In its evaluation of Armedia’s proposal under the technical expertise and management approach factor, the source selection evaluation board (SSEB) identified 2 significant strengths, 13 strengths, 3 weaknesses, and 2 significant weaknesses. AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 3-11. Overall, the final evaluation results for Armedia’s and Vexterra’s proposals were as follows:

Evaluation Factor	Armedia	Vexterra
Security	Pass	Pass
Technical Expertise and Management Approach	Green/Acceptable	Purple/Good
Past Performance	Substantial Confidence	Satisfactory Confidence
Price	\$22,732,276	\$17,729,905

AR, Tab 9.1, Source Selection Decision, at 3. In her selection decision, the source selection authority (SSA) concurred in the evaluation results reached by the evaluators. Id. at 4. The SSA concluded that despite the higher confidence assessed for Armedia under the past performance factor, Vexterra's proposal represented the best value to the government because the Vexterra proposal was superior to the Armedia proposal under the more heavily weighted technical expertise and management approach factor and is significantly lower in price. Id. at 26.

On September 29, the agency notified Armedia that award had been made to Vexterra. Armedia received a debriefing on October 4, and this protest followed.

DISCUSSION

Armedia argues that the agency's evaluation of its proposal under the technical expertise and management approach factor is unreasonable, and specifically challenges all of the weakness and significant weaknesses identified by the SSEB. Protest at 2-6. Armedia also challenges the agency's evaluation of Vexterra under the past performance factor, and argues Vexterra should have received a limited or no confidence rating. 1st Supp. Protest at 1-3. Armedia additionally alleges that the evaluation of its technical expertise and management approach factor was improperly influenced by a perceived OCI, and the agency unlawfully failed to provide Armedia an opportunity to address the OCI. Comments & 2nd Supp. Protest at 4. Although we do not address in detail all of these protest allegations, we have considered them all and found that none provide a basis to sustain the protest.

Technical Evaluation

Armedia challenges all of the weaknesses and significant weaknesses identified by the SSEB and makes a variety of arguments, such as, the weaknesses are directly contradicted by strengths identified by the SSEB, the weaknesses are internally contradictory, and/or the weaknesses are simply unfounded given the RFP's stated requirements. Protest at 3-6. The agency responds that it reasonably evaluated Armedia's proposal, and identified both strengths and weaknesses in the proposal that do not otherwise conflict but were offsetting such that a rating of green/acceptable was reasonable. COS at 7-8; Memorandum of Law (MOL) at 4-8. We address a representative sample of these allegations below.

The evaluation of proposals is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and identifying the best method for accommodating them. VSE Corp., B-414057.2, Jan. 30, 2017, 2017 CPD ¶ 44 at 8. In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. Id. A protester's disagreement with the agency's judgments, without more, is not sufficient to render the evaluation unreasonable. NCS/EML JV, LLC, B-412277 et al., Jan. 14, 2016, 2016 CPD ¶ 21 at 8.

An offeror is responsible for demonstrating affirmatively the merits of its proposal and risks rejection of its proposal if it fails to do so. Biomass Energy Serv., B-412898, July 1, 2016, 2016 CPD ¶ 165 at 4.

Armedia challenges the significant weakness identified by the SSEB for its failure to provide a specific technical approach for performing each of the five task areas in SOW section 4.1, and argues that this significant weakness is contradicted by several strengths identified by the SSEB. Protest at 3. As noted, the RFP required offerors to provide a technical approach for section 4.1 of the SOW, Technology Research, Development, Test, Evaluation and Integration, which includes five task areas: computer vision; signals processing; human language technologies; big data analysis; and forensic artifact analysis. RFP at 184. The significant weakness identified by the SSEB stated in pertinent part: “While [the] Offeror demonstrated experience working in those respective fields and was able to provide multiple examples of project work for each subtask, [the] Offeror failed to define ‘how’ they will perform the targeted research and development in those areas and what technical approach they would provide for technology Task areas.” AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 6.

Our review of the record confirms that the SSEB identified two significant strengths in the Armedia proposal for demonstrating “an exceptional understanding and knowledge of the technical requirements and provid[ing] a thorough technical approach that is technically feasible,” as well as several other strengths that cite a variety of the “Offeror’s in-depth experience” performing the SOW task areas. See AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 3-5. The SSEB chairperson explains that the Armedia proposal provided an initial [DELETED] that was sufficient to merit the significant strengths the SSEB identified, and that the SSEB further identified strengths in Armedia’s proposal that credit Armedia for prior experience performing the SOW task areas. Decl. of SSEB Chairperson at 3-5; see also AR, Tab 12.1, Armedia Technical Expertise and Management Approach Proposal, at 2-9.

However, the SSEB also concluded that the experience demonstrated in Armedia’s proposal did not otherwise satisfy the need to identify a specific approach for how the offeror would perform the SOW task areas at the STIL.³ Specifically, the SSEB chairperson states: “Consistent with the solicitation’s evaluation criteria, the SSEB properly identified the merit of Armedia’s experience as evidence of in-depth knowledge of the technical requirements, but the SSEB did not see clear, convincing rationale on a proposed approach that is feasible to successfully meet the stated requirements.” Decl. of SSEB Chairperson at 5. On this record, we have no basis to question the agency’s evaluation of Armedia’s proposal.

³ We note that in the section of Armedia’s proposal where it addressed the SOW section 4.1 task areas, Armedia provided numerous examples of performance of the various tasks by itself and its team members, but did not state prospectively how it would perform the RFP requirements at the STIL. See generally AR, Tab 12.1, Armedia Technical Expertise and Management Approach Proposal, at 10-21.

Armedia also challenges the significant weakness identified by the SSEB that Armedia's proposal failed to provide in its proposed work plan how it would staff personnel from its proposed teaming partners. Specifically, Armedia argues that this significant weakness is contradicted by a strength identified by the SSEB, and that the RFP did not require offerors "to list current or planned staff affiliation or provide a workshare breakdown among partners." Protest at 6. As noted, the RFP required offerors to describe their proposed management structure, tools, and procedures that would be used to manage contract performance, and specifically directed offerors to include a work plan in accordance with SOW 4.3.1. RFP at 184-185. Further, section 4.3.1 of the SOW stated that the work plan "shall" include, among other things, "proposed staffing."⁴ Id. at 141. The significant weakness identified by the SSEB stated:

Offeror proposes [DELETED]; however, there is no indication that existing FTEs currently on staff reflect proposed team members [DELETED]. The teaming partners are cited as a significant portion of in-depth experience and knowledge established as a foundation for completing [SOW] 4.1 Technology Research, Development, Test, Evaluation and Integration in support of the STIL. This omission in the staffing plan presents risk to the Government, significantly increases performance risk and delays in adequate deliverables, and limits confidence in [the] feasibility of the overall technical approach.

AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 10-11; see also Tab 12.1, Armedia Technical Expertise and Management Approach Proposal, at 28 ("[DELETED]").

Our review of the record confirms that the SSEB identified as a strength Armedia's proposal to [DELETED] because it would exceed the RFP requirement to achieve full transition of the contract within 60 days of award. AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 9. However, the SSEB chairperson explains that, consistent with the significant weakness discussed above, the technical approach provided by Armedia relied heavily on its own experience and the experience of its proposed team members, but does not indicate how its teaming partners will be used during performance. Decl. of SSEB Chairperson at 14. Specifically, the SSEB chairperson states:

[Armedia's] "experience-based" technical approach lacked a respective explanation in the work plan as to how the individuals or team behind these projects would be brought to bear (i.e., staffed) against STIL

⁴ The agency also amended the RFP to provide responses to offerors' questions, and included the following question and answer: "[Question:] Does the Government want a full staffing plan in addition to the one page Key Personnel Summaries? [Answer:] Yes." RFP amend. 1, at 10.

requirements. As such, the SSEB concluded there was significant risk that the Government would not benefit from the experience identified by Armedia in its proposal.

Id. Here, the protester's proposed staffing plan did not include personnel from its proposed team members upon whom Armedia relied for their experience when presenting its technical approach. On this record, we have no basis to question the reasonableness of the agency's conclusions.

Past Performance

Armedia also argues that Vexterra should have received no higher than a neutral confidence rating, and more appropriately a limited or no confidence rating, for its past performance. Specifically, the protester contends that a search of public contracting databases reveals that Vexterra has performed only one contract relevant to the RFP requirements, and the period of performance for that contract does not satisfy the requirement that the contract be performed for at least one year prior to the proposal submission due date. 1st Supp. Protest at 2-3. The agency responds that it properly evaluated Vexterra's past performance and reasonably assigned a satisfactory confidence rating. The agency argues that a neutral rating would have been inappropriate, because it reasonably determined that Vexterra and its subcontractors demonstrated that they had relevant past performance, precluding such a rating. COS at 9; MOL at 10-11. In addition, the agency argues that a rating of low confidence or no confidence would have been inappropriate given the high ratings and laudatory comments included in the past performance questionnaires submitted in support of the Vexterra proposal. COS at 9-10; MOL at 11-13.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. MFM Lamey Group, LLC, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10. Where a solicitation calls for the evaluation of past performance, we will examine the record to ensure that the evaluation was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. Divakar Techs., Inc., B-402026, Dec. 2, 2009, 2009 CPD ¶ 247 at 5. The relative merits of an offeror's past performance information is generally within the broad discretion of the contracting agency. See Paragon Tech. Group, Inc., B-407331, Dec. 18, 2012, 2013 CPD ¶ 11 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

The record here shows that five past performance questionnaires (PPQs) were submitted to support the Vexterra proposal, none of which were for the contract referenced by the protester in its supplemental protest. One of the reference contracts was performed by Vexterra and the other four contracts were performed by its proposed subcontractors. AR, Tab 13.2, Vexterra PPQs. In its evaluation, the agency determined that two of the contract references were relevant and adequately covered all

task areas in the SOW, the other three contract references were somewhat relevant, and the performance on all of the contracts had received primarily excellent quality ratings, and concluded that “this proposal is on the higher end of Satisfactory Confidence.” AR, Tab 8.3, Vexterra Consensus Past Performance Evaluation, at 1. We agree with the agency that a neutral rating would not have been appropriate, since the RFP defined a neutral confidence rating as “no recent/relevant performance record or the offeror’s performance record is so sparse that no meaningful confidence assessment rating can reasonably be assigned.” RFP at 187. Accordingly, we have no basis to question the agency’s rating of satisfactory confidence given the positive feedback on the relevant and somewhat relevant past performance provided in the PPQs.

In its comments, the protester further contends that Vexterra’s past performance proposal relies significantly upon its subcontractors, and a neutral rating is appropriate because Vexterra as the prime contractor did not demonstrate relevant past performance. Comments & 2nd Supp. Protest at 5. However, as noted, the RFP specifically advised offerors that the agency would “assess the Offeror’s capability to perform the contract by evaluating the past performance information, of either a prime contractor or a subcontractor, on previous or ongoing contracts with similar scope to the SOW.” RFP at 185. We have previously explained that the past performance of a proposed subcontractor properly may be considered in evaluating an offeror’s past performance where it is not expressly prohibited by the solicitation. GiaCare and MedTrust JV, LLC, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321 at 17-18; AMTIS-Advantage, LLC, B-411623, B-411623.2, Sept. 16, 2015, 2015 CPD ¶ 360 at 8; Hughes Grp. Solutions, B-408781.2, Mar. 5, 2014, 2014 CPD ¶ 91 at 7. Thus, we find nothing improper in the agency’s reliance upon the past performance of Vexterra’s subcontractors. On this record, we find the agency’s past performance evaluation judgments are reasonable.

Organizational Conflict of Interest

Finally, the protester alleges that the agency’s evaluation of its technical proposal was improperly influenced by a perceived OCI, and that the agency was required, but failed, to give Armedia the opportunity to address it. Comments & 2nd Supp. Protest at 4. Armedia further requests that our Office “direct the Agency to conduct discussions with Armedia, or provide some other notification of the potential OCI, and allow Armedia to submit a revised proposal, which would give Armedia the opportunity to avoid or mitigate the potential OCI.” Id.

The agency responds that since Armedia was not the apparent successful offeror, the contracting officer did not determine whether a potential or actual OCI existed, and was not required to provide Armedia with an opportunity to address the OCI concerns. Supp. COS at 3. The agency further argues that the record clearly demonstrates that the potential OCI was not considered by the SSEB and SSA when making their respective evaluation conclusions and selection decision, and this allegation fails to state a valid legal and factual ground of protest. Supp. MOL at 4-8.

Regarding conflicts of interest, the RFP directed offerors to FAR subpart 9.5, and required each offeror to submit one of the following statements:

- a statement certifying that, to the best of its knowledge, it is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract; or
- a statement that describes concisely all relevant facts concerning any past, present, or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the Offeror has a possible organizational conflict of interest.

RFP at 175. In its proposal, Armedia stated: “Armedia does not have any current commitments with the Government or private entities that create a conflict of interest or that will impede our ability to deliver services under the contract. If [a] potential [OCI] arises, we will notify the Government of the OCI and our strategy to mitigate the conflict.” AR, Tab 12.4, Armedia Volume 3 Proposal, at 51. The Armedia proposal also included two proposed subcontractors, [DELETED]. See AR, Tab 12.1, Armedia Technical Proposal, at 36. The record reveals that the evaluators identified a “potential risk” in their evaluation of Armedia’s proposal, which stated, in pertinent part:

Offeror indicates many examples of evaluating, assessing and implementing [DELETED] product offerings as end-solutions to NMEC mission areas. This demonstrates a significant risk in [the] Offeror[’s] ability to objectively perform technology evaluations and assessments of academic, Government, open source, and commercial platforms related to this task. Offeror does not discuss any mitigation strategies to this potential conflict of interest of evaluating [its] own team’s product offerings, and as such [is] disadvantageous to the Government in receiving objective evaluations and assessments of technology solutions.

AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 6.

The regulatory guidance governing OCIs that may arise in the performance of government contracts is set forth in FAR subpart 9.5. One of the situations that creates a potential OCI is where a firm’s work under a government contract entails evaluating itself or its own products. FAR §§ 9.505, 9.508; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. The concern in such situations is that a firm’s ability to render impartial advice to the government will be undermined, or impaired, by its relationship to the product or services being evaluated; as a result, such situations are often referred to as “impaired objectivity” conflicts of interest. Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 13. In short, an impaired objectivity OCI is created whenever a contractor’s judgment and objectivity in performing contract requirements may be

impaired due to the fact that the substance of the contractor's performance has the potential to affect other interests of the contractor. Alion Science & Tech. Corp., B-297342, Jan. 9, 2006, 2006 CPD ¶ 1 at 6; PURVIS Sys., Inc., *supra*; Science Applications Int'l Corp., B-293601 *et al.*, May 3, 2004, 2004 CPD ¶ 96 at 4; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., *supra*.

Based on our review of the record, although the SSEB identified the "potential risk" in its evaluation of Armedia's proposal, it is not apparent that the potential OCI was given any consideration by the SSEB when it assigned a rating of acceptable to Armedia under the technical expertise and management approach factor. *See* AR, Tab 8.1, Armedia Consensus Technical Evaluation, at 2-3. Likewise, no consideration was given to the potential OCI by the SSA when selecting the Vexterra proposal for award. *See generally* AR, Tab 9.1, Source Selection Decision; Decl. of SSA at 2 ("I did not consider this potential risk when determining the ratings for Armedia's proposal or in determining that the Armedia proposal did not represent the best value in accordance with the solicitation's evaluation scheme.").

We also find no merit to Armedia's argument that the agency should have afforded it an opportunity to revise its proposal. The FAR does not require a contracting officer to provide any competitor other than the apparent successful offeror an opportunity to respond to an OCI concern. *See* FAR § 9.504(e) ("The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond."). Further, the solicitation expressly advised that the agency contemplated making award without discussions. RFP at 168 ("The Government intends to award without discussions, but reserve[s] the right to hold discussions if it is in the Government's best interest."); *see also id.* at 182. In general, an agency is under no obligation to conduct discussions where a solicitation includes this type of instruction. *See* FAR § 15.306(a)(3). Further, a contracting officer has broad discretion in deciding whether to hold discussions and an agency's decision not to initiate discussions is a matter we generally will not review. Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 6. Accordingly, we find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong
General Counsel