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Decision

Matter of: Owens & Minor Distribution, Inc.

File: B-418223.5; B-418223.7; B-418223.9

Date: February 3, 2021

Jonathan D. Shaffer, Esq., and Todd M. Garland, Esq., Smith Pachter McWhorter PLC, for the protester.

Kristen Ittig, Esq., Stuart W. Turner, Esq., Nathaniel E. Castellano, Esq., and James R.S. Mestichelli, Esq., Arnold & Porter LLP, for Medline Industries, Inc.; Merle M. DeLancey, Esq., Dominique L. Casimir, Esq., Carolyn Cody-Jones, Esq., and Michael Montalbano, Esq., Blank Rome LLP, for Cardinal Health 200, LLC, the intervenors. Jason M. Fragoso, Esq., Department of Veterans Affairs, for the agency. Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging agency's technical and price evaluations are denied where the evaluations were reasonable and consistent with the solicitation and procurement law and regulation.
 2. Protest challenging the agency's waiver of organizational conflicts of interest is denied where the record shows that the waiver complied with the requirements of the Federal Acquisition Regulation.
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DECISION

Owens & Minor Distribution, Inc., of Mechanicsville, Virginia, protests the award to Medline Industries, Inc., of Northfield, Illinois, and Cardinal Health 200, LLC, of Waukegan, Illinois, of contract line items for veterans integrated service networks (VISNs) 1-2, 4-10, 12, 15-17, 19-23, and 25 under request for proposals (RFP) No. 36C10G19R0050, issued by the Department of Veterans Affairs (VA) for the medical/surgical prime vendor (MSPV) 2.0 program.¹ The protester asserts that the

¹ The VA also awarded a contract for VISN 24, which Owens & Minor is not challenging.

agency unreasonably evaluated technical and price proposals, and that the VA failed to evaluate significant organizational conflicts of interest (OCIs) in the awardees' proposals.

We deny the protest.

BACKGROUND

The VA Veterans Health Administration (VHA) manages the United States' largest integrated healthcare system, providing care at 1,243 health care facilities, including 172 medical centers and 1,062 outpatient sites of care of varying complexity, serving approximately 9 million enrolled Veteran patients each year. The healthcare system receives most of its medical and surgical supply support through the MSPV program. Agency Report (AR), Tab 5, RFP at 177.

The MSPV 2.0 Program--the subject of this procurement--will enable VA to provide medical facilities and VHA clinicians with medical/surgical distribution and supply services. *Id.* The solicitation sought proposals for distribution and supply management services by VISNs. These VISNs are comprised of groups of Veterans Affairs Medical Centers (VAMCs) and Other Government Agencies (OGAs). In total, twenty VISNs were solicited; each of them had a corresponding contract line item number (CLIN). *Id.* at 216.

The RFP contemplated the award of one indefinite-delivery, indefinite-quantity (IDIQ) contract for each VISN, with each VISN to be evaluated independently of other VISNs. *Id.* at 139. The contract recipient would be the prime vendor (PV). The VA would also select an alternate vendor (AV); to be eligible for selection as an AV, an offeror must receive at least one PV contract. *Id.* at 139.

The RFP contained the following four evaluation factors: technical approach, price, past performance, and veterans' involvement. *Id.* at 47. The RFP advised offerors that the agency would conduct a best-value tradeoff analysis of price and non-price factors in accordance with Federal Acquisition Regulation (FAR) section 15.101-1. *Id.* at 45. In that analysis, the technical approach factor was significantly more important than the price factor, which was slightly more important than the past performance factor, which was slightly more important than the veterans' involvement factor. *Id.* When combined, all non-price evaluation factors were significantly more important than price. *Id.*

Under the technical approach factor, the agency would consider the proposal's feasibility of approach, understanding of the requirement, and completeness. *Id.* at 47. Under feasibility of approach, the agency would "determine the extent to which the proposed approach is workable and the end results achievable." *Id.* Under understanding the requirement, the agency would "determine the extent to which [the proposal] demonstrates a clear understanding of all features involved in fulfilling the requirements[.]" *Id.* Under completeness, the agency would "determine whether the

Offeror’s methods and approach have adequately and completely considered, defined, and satisfied the requirements specified in the solicitation.” *Id.*

Under the price factor, the VA would evaluate all unit prices to determine whether the proposed fixed prices for each sub-CLIN were fair and reasonable in accordance with FAR section 15.404-1(b). *Id.* at 48. Lower distribution fees and value-added service fees would be evaluated more favorably, as would lower total evaluated prices. *Id.* If proposing on a VISN, the RFP required that offerors propose on all required sub-CLINs within that VISN. *Id.* at 48-49. The RFP advised offerors that if they failed to propose on all sub-CLINs, the offeror would not be considered for award of that VISN. *Id.* at 49.

Under the veterans’ involvement factor, the VA would assign a proposal full, partial, or no evaluation credit. Proposals would receive full credit if the prime contractor was a Center for Verification and Evaluation registered and verified service-disabled veteran-owned small business (SDVOSB), and partial credit if the prime contractor was a verified veteran-owned small business (VOSB). *Id.* The RFP advised offerors that “Non-SDVOSB/VOSB Contractors proposing to subcontract five percent or more of the value to a verified SDVOSB concern or seven percent or more of the value to a verified VOSB concern will receive partial evaluation credit.” *Id.* The RFP further advised that “[s]ubcontracting percentages shall be calculated based on the percent of total contract dollars for distribution services only, excluding supplies.” *Id.*

The agency received several proposals and established a competitive range of five offerors, which included Owens & Minor, Medline, and Cardinal. AR, Tab 9, Source Selection Decision Document (SSDD) at 14. The agency held discussions with all competitive range offerors. *See id.* at 15.

The table below summarizes the agency’s evaluation of Medline’s, Owens & Minor’s, and Cardinal’s proposals under the non-price factors:

Factor	Medline	Owens & Minor	Cardinal
Technical Approach	Outstanding	Acceptable	Good
Past Performance	Low Risk	Low Risk	Low Risk
Veterans’ Involvement	Partial Credit	No Credit	No Credit

Id. at 171-172, 203-205.

With one exception, for each of the contested CLINs/VISNs, Owens & Minor’s proposed price was higher than the price proposed by the offeror awarded the PV contract. *See id.* at 141-150. For CLIN/VISN 2, Medline proposed a price of \$28,011,539, and Owens & Minor proposed a price of \$25,733,110. *Id.* at 141. The agency determined that Medline’s proposal, with an outstanding rating under the most important factor--technical approach--was worth the 8.85 percent price premium over Owens & Minor’s proposal which was rated acceptable under that factor. *Id.* at 185. For all other CLINs/VISNs, Owens & Minor’s proposal was higher priced and lower rated than the awardees’ under the technical approach factor.

After completing the best-value tradeoff analyses, the VA awarded Cardinal the PV IDIQ contract for CLINs (or VISNs) 5, 6, 7, 8, 16, 17, and 22. Cardinal Health was also awarded the AV IDIQ contract for CLINs (VISNs) 1, 2, 4, 9, 12, 15, 19, 20, 21, and 23. Medline was awarded the PV IDIQ contract for CLINs (VISNs) 1, 2, 4, 9, 10, 12, 15, 19, 20, 21, 23, and 25. Medline was also awarded the AV IDIQ contract for CLINs (VISNs) 5, 6, 7, 8, 16, 17, 22, and 24.²

The agency provided Owens & Minor a debriefing on October 23, 2020, AR, Tab 12, Debriefing, and this protest followed on October 28.³

DISCUSSION

Owens & Minor challenges the VA's evaluation of proposals under both the non-price and price factors. With regard to the non-price factors, the protester argues that the VA unreasonably failed to assign three additional strengths to Owens & Minor's proposal under the technical approach factor. The protester also argues that the VA failed to evaluate the protester's proposal under the veterans' involvement factor consistent with the RFP's stated evaluation criteria. Under the price factor, Owens & Minor challenges the VA's evaluation of Medline's price, asserting that, because Medline qualified its price for certain sub-CLINs, Medline was ineligible for award of the corresponding contracts. The protester also alleges that the agency failed to evaluate significant OCIs in the awardees' proposals. As explained below, we find that these arguments are without merit.⁴

Challenges to Evaluation of Protester's Technical Proposal

As noted above, Owens & Minor challenges the agency's evaluation of the protester's proposal under the technical approach factor, contending that the VA unreasonably failed to assign it three strengths under the factor.

In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria

² The AV contract was optional, and the agency did not award an AV contract for VISNs 10 and 25.

³ The procurement was also the subject of two pre-award protests. See *Academy Med., LLC*, B-418223, B-418223.2, Jan. 31, 2020, 2020 CPD ¶ 44 (sustaining protest challenging agency's failure to set aside any portion of the requirement); and *Academy Med., LLC*, B-418223.3, Oct. 7, 2020, 2020 CPD ¶ 324 (denying protest that the agency improperly excluded protester from competitive range).

⁴ Owens & Minor raised other arguments that our decision does not address, although we have considered all of them and find that none provides a basis to sustain the protest.

and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3. A protester's disagreement with the agency's evaluation conclusions does not render the evaluation unreasonable. *Access Interpreting, Inc.*, B-413990, Jan. 17, 2017, 2017 CPD ¶ 24 at 3.

First, Owens & Minor argues that the VA's evaluation under the technical approach factor unreasonably failed to recognize the protester's years of experience supporting the Defense Logistics Agency's Medical Surgical Prime Vendor Program. Comments and Supp. Protest at 27. The protester contends that "[t]he VA's unduly restrictive interpretation ignores that, in evaluating proposals, 'an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria.'" *Id.*, quoting *Sparkle Warner Joint Venture, LLC*, B-405240, Sept. 27, 2011, 2011 CPD ¶ 198 at 2 (citations omitted).

The VA argues that it would have been inappropriate for VA to do so because neither experience nor corporate experience was an evaluation subfactor under the technical approach factor. Memorandum of Law (MOL) at 36. The agency argues that the RFP advised offerors that, under the technical approach factor, the evaluation would consider feasibility of approach, understanding of the requirement, and completeness. *Id.*, citing RFP at 140. The VA argues that it properly considered the protester's experience under the past performance factor, where the agency assigned the protester's proposal the highest possible rating of low risk. *Id.* at 37, citing AR, Tab 9, SSDD at 151.

We disagree with the protester that experience or corporate experience is logically encompassed in a technical approach factor. See *Symtech Corp.*, B-289332, Feb. 19, 2002, 2002 CPD ¶ 43 at 4 (noting that corporate experience was not logically encompassed within technical approach factor). Consequently, we agree with the agency that it would have been improper for the VA to consider Owens & Minor's experience in the evaluation of technical approach. As a result, this allegation is without merit.

Second, Owens & Minor alleges that the VA unreasonably failed to assign a strength to the protester's proposal for the protester's use of business intelligence and data analytics. Comments and Supp. Protest at 28. The protester argues that its proposal includes 20 discussions of how its business intelligence and data analytics capabilities exceed the agency's needs, thereby warranting at least one additional strength. *Id.* Owens & Minor contends that its proposed business intelligence and data analytics capabilities met or exceeded "specified performance or capability requirements in a way that will be advantageous to the government[.]" which is the solicitation's definition of a strength. *Id.* at 30, quoting AR, Tab 9, SSDD at 23.

The agency argues that the information contained in Owens & Minor's proposal was "too general, with insufficient detail regarding how [the protester] would actually use these processes in a way that would benefit VA or exceed VA's requirements." MOL at 37, citing Contracting Officer's Statement (COS) at 75-78. The VA contends that

Owens & Minor's proposal "did not describe the specific methods on how data would be analyzed, and subsequent business intelligence reported within their technical proposal." COS at 76. The contracting officer explains that he agreed with the technical evaluation team (TET) that these aspects of the protester's proposal did not merit the assignment of a strength because they did not exceed the requirements; in fact, the contracting officer asserts, the proposal failed to adequately describe how the methodologies would be employed and transformed into useful information. *Id.* at 76-77. The contracting officer contends that, "[o]f the fourteen instances of data analytics and six instances of business intelligence, none provide adequate detail surrounding the specific 'analytics and intelligence' being referred to." *Id.* at 76. "Plain and simple," the contracting officer argues, Owens & Minor's proposal "did not describe the specific methods on how data would be analyzed, and subsequent business intelligence reported within their technical proposal." *Id.* at 77.

The record reflects that the agency reasonably evaluated Owens & Minor's proposal and, in its discretion, did not assign a strength for this aspect of the protester's technical approach. An agency's judgment that the features identified in the proposal did not significantly exceed the requirements of the RFP, and thus did not warrant the assessment of unique strengths, is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4. Owens & Minor disagrees with the agency's conclusion that the data analytics portion of the protester's proposal fails to exceed the requirements of the solicitation in a way that will be beneficial to the government. See Comments and Supp. Protest at 28-30. Yet, the protester fails to demonstrate that the agency's failure to assign this strength was unreasonable, and, thus, this allegation is without merit.

Owens & Minor's third and final challenge to the agency's failure to assign strengths to the protester's proposal concerns Owens & Minor's Government Enterprise Group. Comments and Supp. Protest at 31-33. The protester's Government Enterprise Group "provides dedicated operational and customer service support" to government clients. AR, Tab 7, Owens & Minor Technical Proposal at 10-11.

The contracting officer notes that the TET determined Owens & Minor's proposed customer service approach did not exceed the requirement of the solicitation because the protester's proposal "did not adequately describe how their Government Enterprise Group or Client Engagement Teams would 'manage customer service support and operational support through a collaborative effort[.]'" COS at 80, *quoting* AR, Tab 7, Owens & Minor Proposal at 11. The contracting officer states that he agreed with the TET. *Id.* at 80. Specifically, the contracting officer asserts that Owens & Minor's technical proposal did not warrant a strength under the feasibility of approach portion of the technical approach factor because the proposal did not contain enough detail to provide the agency confidence that Owens & Minor's methods would exceed the solicitation's requirements. *Id.* The solicitation required the offeror to "clearly demonstrate the extent to which the proposed approach is workable and the end results achievable" and to "demonstrate the Offeror's methods and approach to successfully

meeting and/or exceeding the requirements in a timely manner[.]” *Id.*, quoting AR, Tab 5, RFP at 132. In the contracting officer’s view, Owens & Minor’s proposal did not clearly demonstrate how the Government Enterprise Group and Client Engagement Teams would “manage customer service support and operational support through detailed methods to ensure their approach was workable and the ends results achievable and exceeded the requirement.” COS at 81. The contracting officer contends that the VA might have assigned Owens & Minor’s proposal a strength if it had “provided details on areas such as, but not limited to, how the Client Engagement Teams would handle and resolve common Prime Vendor issues revolving around backorders, invoice resolution, and drop shipments[.]” *Id.*

The protester argues that its proposal “provided sufficient information” to demonstrate that Owens & Minor “would exceed performance or capability requirements in a manner advantageous to the VA[.]” Comments and Supp. Protest at 31. In support of its claim, the protester cites to numerous sections of its proposal. See *id.* at 31-33, citing AR, Tab 7, Owens & Minor Technical Proposal at 5-7, 10-11. None of those proposal excerpts provides the kind of detail that the agency contends is lacking--for example, information on how the Client Engagement Team would resolve issues around backorders, invoice resolution, and drop shipments. See AR, Tab 7, Owens & Minor Technical Proposal at 5-7, 10-11. Again, the assignment of proposal strengths is a matter within the agency’s discretion; we will not disturb the evaluation where the protester has failed to demonstrate that it was unreasonable. *Protection Strategies, Inc.*, *supra*. On this record, the protester has failed to demonstrate the unreasonableness of the agency’s failure to assign this strength, and the allegation has no merit.

Allegations Regarding Evaluation of Veterans’ Involvement Factor

As previously noted, the RFP advised offerors that “Non-SDVOSB/VOSB Contractors proposing to subcontract five percent or more of the value to a verified SDVOSB concern or seven percent or more of the value to a verified VOSB concern will receive partial evaluation credit.” RFP at 49. The RFP further advised that “[s]ubcontracting percentages shall be calculated based on the percent of total contract dollars for distribution services only, excluding supplies.” *Id.*

The VA evaluated Owens & Minor’s proposal under the factor as no credit, Medline’s proposal as partial credit, and Cardinal’s proposal as no credit. AR, Tab 9, SSDD at 152-153. The agency calculated that the protester proposed to subcontract 4.4 percent and 5 percent of the total contract value to SDVOSBs and VOSBs, respectively. *Id.* at 153. Both of those percentages were below the threshold to obtain partial credit. See RFP at 49.

Owens & Minor alleges that the “VA erred in determining that [the protester’s] subcontracting plan failed to meet the VA’s goal of 5% for SDVOSBs or 7% for VOSBs.” Protest at 24. The protester asserts that it “calculated the total contract service value at \$413,785,249,” and that “[o]f that value, [the protester] identified \$124,135,575 in

possible subcontracted services.” *Id.* Of the \$124,135,575 in possible subcontracted services, the protester explains that it identified \$122,480,434, or 29.6% of total contract service value, that would be possible to subcontract to small business concerns. *Id.* Thus, the protester asserts, the agency unreasonably evaluated the protester’s proposal as “no credit” under the veterans’ involvement factor. *Id.*

The RFP provides that offerors that propose to subcontract more than a certain percentage of the total contract service value to SDVOSBs or VOSBs--not simply small businesses--would receive partial credit under the veterans’ involvement factor. Because the calculation of the percentage of contract value that could possibly be subcontracted to small businesses is irrelevant to the evaluation of the veterans’ involvement factor, this allegation--which is based on just such an irrelevant calculation--fails to state a valid basis of protest and is without merit. See 4 C.F.R. § 21.5(f).

Owens & Minor further asserts “that the agency decision to assign [the protester’s proposal] a rating of “No Credit” under the Veterans’ Involvement evaluation factor was the result of misleading and unreasonable discussions.” Comments and Supp. Protest at 33. The protester argues that, “[b]ased on the VA’s understanding of the RFP, [Owens & Minor’s] initial proposal on its face did not meet the RFP requirement.” Post-Teleconference Comments at 13. The VA knew that, Owens & Minor argues, “but failed to raise the issue with [the protester] during discussions, contrary to FAR 15.306 and GAO discussions case law.” *Id.*

This allegation is untimely. Owens & Minor knew at the time of its debriefing that the agency awarded its proposal no credit under the veterans’ involvement factor. See AR, Tab 12, Debriefing at 1. The protester participated in the discussions, and thus knew what areas of its proposal the agency included in discussions. Owens & Minor’s contention that the agency’s discussions were misleading--asserted for the first time in its December 18 comments on the agency report--is thus untimely. To be timely, Owens & Minor was required to raise this allegation when it filed its initial protest, which it failed to do. 4 C.F.R. § 21.2(a)(2); see Comments and Supp. Protest at 33-34 (stating that the protester “now know[s]” that the discussions were misleading, while citing to the language in the RFP regarding the calculation to determine credit under the veterans’ involvement factor, and citing to an exchange between the protester and the agency during the course of discussions). Because the protester did not raise this argument in a timely manner, the argument is dismissed.⁵

⁵ We also note that both the proposals of Medline and Cardinal were more highly rated than the protester’s under the technical approach factor, which was the most heavily weighted evaluation factor and significantly more important than all other factors. Medline and Cardinal also proposed a lower price than the protester for all but one of the challenged CLINs/VISNs. We thus agree with Medline that Owens & Minor could not establish competitive prejudice, even if the agency’s discussions had been misleading. Medline Comments at 33; see *Leisure-Lift, Inc.*, B-291878.3, B-292448.2,

Challenge to the Evaluation of Medline's Price

Owens & Minor asserts that the VA was required to find Medline's proposal ineligible for award because it failed to comply with a material solicitation requirement to provide a fixed-price for the [DELETED] sub-CLIN. Comments and Supp. Protest at 4. Owens & Minor argues that Medline's price of zero dollars for the [DELETED] sub-CLIN⁶ "relies on contingencies, meaning Medline's proposed \$0 price is not fixed." *Id.* at 5. The protester contends those contingencies are evident in the following language in Medline's proposal:

[DELETED]

Id., quoting AR, Tab 10.1, VA OCI and PCI (Personal Conflict of Interest) Investigation Addendum (Medline Price Proposal) (emphasis in Comments and Supp. Protest).

In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Wolverine Servs. LLC, supra* at 3-4. Material terms of a solicitation are those that affect price, quality, quantity, or delivery of the goods or services being procured. *BluePath Labs, LLC, B-417960.7, Oct. 26, 2020, 2020 CPD ¶ 352 at 4.*

In the agency's view, Medline's proposal did not qualify the offeror's price, but, rather, provided an "explanation [that] demonstrated Medline's understanding of the requirement and recognition of the Government's expected usage of the [DELETED], as provided in Attachment G of the Solicitation[.]"⁷ *Id.* at 5. Such an explanation of an offeror's pricing strategy, without language that qualifies its fixed price, may not be inconsistent with the terms of the solicitation. See *BluePath Labs, LLC, supra* (finding reasonable an offeror's explanation of the basis of its price where the offeror "neither conditions performance at a fixed price on terms inconsistent with the terms of the solicitation, nor suggests that the protester will not provide the required" performance at the offered price). In contrast, an offer is qualified and therefore unacceptable when it states that a price does not include certain requirements. See *W. Gohman Construction*

Sept. 25, 2003, 2003 CPD ¶ 189 at 10 (noting that competitive prejudice is necessary before we will sustain a protest; moreover, where the record does not demonstrate that the protester would have had a reasonable chance of receiving award but for the agency's actions, we will not sustain a protest, even if deficiencies in the procurement process are found).

⁶ CLINs were comprised of numerous sub-CLINs, and those sub-CLINs set forth for the specific contract performance requirements. See AR, Tab 5.1, RFP attach. A, CLIN Pricing Structure Sheet.

⁷ The contracting officer asserts that RFP attachment G "made very clear that VA only expected [DELETED] and that, as a result, this sub-CLIN would have a "miniscule impact" on Medline's total evaluated price. Supp. COS at 5 n.6.

Co., B-401877, Dec. 2, 2009, 2010 CPD ¶ 11 at 3 (finding an offer qualified where a price did not include required fees).

We agree with the agency that the language in Medline's proposal did not qualify Medline's price in a way that took exception to a material requirement of the RFP. Medline's proposal explained that it was not its usual practice to [DELETED]. Given the infrequency with which the VA said that [DELETED] in performance of this contract, Medline saw no reason to depart from its usual practice. We thus find without merit Owens & Minor's assertion that the VA should have found Medline's proposal unacceptable for failure to conform to the solicitation's requirements.

Challenge to the Agency's Waiver and the Awardees' Mitigation Plans

Owens & Minor also asserts that the VA failed to evaluate significant organizational conflicts of interest (OCIs) in the awardees' proposals, based on the awardees' dual roles as both the provider of products and the product distributor. Protest at 13. Owens & Minor further asserts that the procurement structure created a personal conflict of interest (PCI), because employees of the awardees would benefit financially from increasing the sales and profits of their own firms. *Id.* at 17.

The contracting officer provided a lengthy, detailed response to these allegations, which noted, among other things, that the VA had issued a waiver of the OCIs and PCIs. See AR, Tab 10.2, Waiver--Organizational and Personal Conflicts of Interest. Waivers of OCIs must be consistent with the provisions of FAR section 9.503 and reasonably supported by the record. *Perspecta Enter. Solutions, LLC*, B-418533.2, B-418533.3, June 17, 2020, 2020 CPD ¶ 213 at 10; *Concurrent Techs. Corp.*, B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 at 8.

While our Office will review an agency's execution of an OCI waiver, our review is limited to consideration of whether the waiver complies with the requirements of FAR section 9.503, that is, whether it is in writing, sets forth the extent of the conflict, and is approved by the appropriate individual within the agency.⁸ *Perspecta Enter. Solutions, LLC, supra*; *Dell Servs. Fed. Gov't, Inc.*, B-414461.6, Oct. 12, 2018, 2018 CPD ¶ 374 at 6; see *CIGNA Gov't Servs., LLC*, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 14 (holding that our review of an agency's discretion to waive an organizational

⁸ With regard to PCIs, the FAR provides that, "[i]f the head of the contracting activity determines in writing that such action[s] are] in the best interest of the Government, the head of the contracting activity may impose conditions that provide mitigation of a personal conflict of interest or grant a waiver." FAR 3.1104(b). In this respect, the agency executed a written waiver indicating that waiver of the PCIs was in the government's best interest. AR, Tab 10.2, Waiver--Organizational and Personal Conflicts of Interest at 17 (noting that "it is in the best interest of the Government" to waive any potential PCI).

conflict of interest was confined to whether the waiver outlined the extent of the conflict and was executed by a duly-authorized agency official).

In a lengthy discussion of the waiver, the protester does not assert that the waiver failed to comply with any of the three FAR section 9.503 requirements: that it be in writing; that it set forth the extent of the conflict; and that it be approved by the appropriate agency official.⁹ See Comments and Supp. Protest at 18-22. In fact, the waiver was in writing, signed by the head of the contracting activity, and identified the potential conflict of interest being waived. AR, Tab 10.2, Waiver--Organizational and Personal Conflicts of Interest at 3 (noting that the protester “allege[s] that PVs operating in a dual distributor and supplier/manufacturer role . . . had the ability to ‘buy-in’ to the contracts by proposing low prices in order to game the procurement, in hopes of recouping their losses through increased sales of their respective supplies”). The record demonstrates that the agency’s waiver complied with the requirements of the FAR, and thus Owens & Minor’s challenges to the waiver are without merit.

The protest is denied.

Thomas H. Armstrong
General Counsel

⁹ The protester alleges that the waiver fails to comply with the VA Acquisition Manual. Comments and Supp. Protest at 20. Failure to comply with an agency’s internal guidance does not provide a basis of protest to parties; it is the solicitation’s evaluation scheme, not internal agency documents, to which an agency is required to adhere in evaluating proposals and making the award selection. See *King Farm Assocs., LLC et al.*, B-404896.10 *et al.*, Dec. 5, 2011, 2012 CPD ¶ 6 at 11 n.11. Any failure to follow the VA Acquisition Manual--which the agency contests--would not provide a basis to sustain the protest. See Supp. COS at 11-12. In addition to its challenges to the waiver, the protester raises numerous challenges to the awardees’ plans to mitigate possible OCIs. The FAR provides waiver of an OCI as an alternative to mitigating it. See FAR 9.503; *CIGNA Gov’t Servs., LLC, supra* at 14. Because the agency has waived possible OCIs, the issue of the sufficiency of the mitigation plans is not for our consideration.