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Decision

Matter of: Zolon Tech, Inc.

File: B-419280.4

Date: March 18, 2021

Thomas K. David, Esq., and Kenneth D. Brody, Esq., David, Brody & Dondershine, LLP, for the protester.

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Emily Vartanian, Esq., Library of Congress, for the agency.

Lois Hanshaw, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation is denied where the record reflects that the evaluation was reasonable and consistent with the solicitation's terms and applicable procurement statutes and regulations.
 2. Protest that award was tainted by an organizational conflict of interest is denied where the record does not support allegations that the awardee had access to non-public information that would have provided a competitive advantage.
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DECISION

Zolon Tech, Inc. (Zolon), of Herndon, Virginia, protests the award of seven indefinite-delivery, indefinite-quantity (IDIQ) contracts and the issuance of a task order to Artemis Consulting, Inc. (Artemis), of McLean, Virginia, under request for proposals (RFP) 030ADV20R0100, issued by the Library of Congress (LOC) for agile development and system integration services. Zolon challenges the agency's evaluation of its technical proposal and contends that Artemis possesses an organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

On June 26, 2020, the LOC issued the solicitation seeking a contractor to provide services to support the planning, design, development, integration and maintenance of

LOC information technology (IT) systems and software applications. Agency Report (AR), Tab 2, RFP at 1, 6. The agency contemplated the award of multiple IDIQ contracts with a 5-year ordering period. *Id.* at 5, 31. The RFP stated that orders may be issued on a fixed-price, time-and-materials, or labor-hour basis. *Id.* at 5.

The RFP, issued under the procedures of Federal Acquisition Regulation (FAR) part 15, contemplated award on a best-value tradeoff basis considering four evaluation factors, listed in descending order of importance: corporate capability; past performance; technical approach; and price. *Id.* at 31. Additionally, under section 4.1.4, User Experience and Interface Design Services, the statement of work (SOW) stated that the contractor would provide user experience support including information architecture; visual design for web, mobile, and other platforms; interaction design; content strategy; front end development; and user research including usability and accessibility studies. *Id.* at 8.

As relevant here, the corporate capability factor required offerors to address the management structure for meeting the RFP’s requirements, by addressing authority and responsibility, management team experience, staffing numbers, and key personnel qualifications. *Id.* at 29. Under this factor, the agency would evaluate an offeror’s corporate experience and program management capabilities relative to the requirements of the SOW and determine the likelihood of successful performance. *Id.* at 31.

With respect to the technical approach factor, the RFP required offerors to provide a project plan for fulfilling the requirements of the SOW, including a description of areas such as the offeror’s unique approach, objectives, and roles and responsibilities. *Id.* The agency would assess the degree to which an offeror’s technical approach fulfilled all task areas in the IDIQ SOW as well as the requirements of each task order SOW at minimal risk to the government. *Id.*

Thirty firms responded to the solicitation, including the awardees and Zolon. AR, Tab 12, Source Selection Decision Document (SSDD) at 2. Twenty-seven firms were found to be compliant with the solicitation’s instructions and were evaluated for award. *Id.* After evaluating proposals, final ratings were as follows:

	Corporate Capability	Past Performance	Technical Approach	Total Price
Artemis	Good	Low Risk	Outstanding	\$2,097,192
Accenture	Good	Low Risk	Good	\$2,253,557
Ad Hoc	Good	Low Risk	Good	\$2,160,615
ClearAvenue	Good	Low Risk	Good	\$2,016,252
Deloitte	Good	Low Risk	Good	\$2,387,401
Slalom	Good	Low Risk	Good	\$2,445,775
NIC Federal	Good	Low Risk	Good	\$2,349,328
Zolon	Acceptable	Low Risk	Acceptable	\$1,897,106

AR, Tab 14, Zolon Debriefing at 10. The agency awarded IDIQ contracts to seven offerors, including Artemis. *Id.* Additionally, Artemis was awarded a task order under the IDIQ contract. *Id.*

The agency initially made award on September 29. On October 7, Zolon protested to our Office challenging the agency's evaluation and alleging that Artemis possessed an OCI. The agency subsequently informed our Office of its intent to take corrective action by reevaluating Zolon's proposal and making a new source selection decision. Based on the agency's proposed corrective action, we dismissed that protest as academic. *Zolon Tech., Inc.*, B-419280, Oct. 29, 2020 (unpublished decision).

After completing its corrective action and reevaluating Zolon's proposal, the source selection evaluation board (SSEB) assigned Zolon's proposal 13 strengths and 2 weaknesses related to user experience and lack of clarity under the corporate capability factor, and 12 strengths and 2 weaknesses related to user-centered design and lack of detail under the technical approach factor. AR, Tab 11, SSEB Report at 1-2. Additionally, the SSEB assigned Zolon's proposal a rating of moderate risk for past performance. *Id.* at 1. In explaining the justification for its ratings, the SSEB stated that Zolon's proposal was rated acceptable because it was generic and did not present information that warranted a higher rating. *Id.*

The contracting officer, acting as the source selection authority (SSA), stated that award would be based on a comparative assessment of proposals against the source selection criteria in the solicitation. AR, Tab 12, SSDD at 1. While the SSA generally agreed and relied on the SSEB consensus ratings for the corporate capabilities and technical approach factors, the SSA changed Zolon's past performance risk rating from moderate to low. *Id.* at 14. In selecting the awardees, the SSA determined and explained how each awardee's corporate capabilities and technical approach proposals were more detailed and creative than Zolon's. *Id.* at 15-17. The SSA found that Zolon's lower proposed price for the IDIQ and task order was not substantial enough to offset its lower technical ratings when compared to the higher technically rated awardees, and concluded that Zolon's proposal did not represent the best value for the government. *Id.* at 14.

On December 2, the agency notified Zolon of award. After requesting and receiving a debriefing, Zolon protested to our Office.

DISCUSSION

The protester challenges the agency's evaluation of Zolon's proposal under the corporate capability and technical approach factors. The protester also alleges that one of the awardees, Artemis, has an OCI that renders the firm ineligible for award.

Although we do not discuss all of Zolon's arguments here, we have reviewed them all and find that none provide a basis to sustain the protest.¹

Zolon's Technical Proposal

Zolon raises numerous arguments challenging the agency's evaluation of the firm's technical proposal. For example, the protester contends that the agency erred in assessing weaknesses under the corporate capability and technical approach factors. Protest at 11-18, 30-38. The protester also asserts that the agency failed to credit Zolon's proposal with nearly 24 strengths between the corporate capability and technical approach factors. *Id.* at 18-29; 38-52. Additionally, the protester raises various contentions that its proposal should have been rated higher under the corporate capability and technical approach factors based on the strengths and weaknesses assessed to its proposal. Comments at 4-17.

In a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals but we will review the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Artek Constr. Co.*, B-418657, B-418657.2, July 17, 2020, 2020 CPD ¶ 285 at 8. The protester's disagreement with the agency's conclusions, without more, does not show that the agency's conclusions were unreasonable. *Raytheon Co.*, B-417935 *et al.*, Dec. 13, 2019, 2020 CPD ¶ 6 at 5.

We find no basis to conclude that the protester's arguments here provide a basis to sustain the protest, and discuss illustrative examples below.

For example, the protester challenges the user-centered design weaknesses assessed to its proposal under the technical approach factor. In this regard, Zolon contends that the agency's determination that its proposal failed to clearly articulate how user-centered design fit into the Scaled Agile Framework (SAFe) approach and the software life development cycle (SDLC) was improper and based on unstated evaluation criteria. Protest at 30. In addition, Zolon asserts that its proposal, specifically exhibit 3, Team Zolon's Approach to User Experience and Interface Design Services, addressed the information identified in the weakness. *Id.* at 30-31.

The record shows that the agency assessed a weakness to Zolon's description of user-centered design and accessibility because the proposal did not explain how these two

¹ For example, the protester argued that the evaluation was irregular because rating criteria was not defined in the solicitation. Protest at 54. This allegation is an untimely challenge to an alleged impropriety in the solicitation that was apparent prior to the closing time for receipt of proposals. The protester's failure to raise this argument until after award renders this protest allegation untimely. 4 C.F.R. 21.2(a)(1); *Strategic Resources, Inc.*, B-419151, Dec. 11, 2020, 2020 CPD ¶ 399 at 11 (challenge to terms of solicitation must be filed before closing date of solicitation). Accordingly, we dismiss this protest ground.

functions fit within SAFe and the SDLC. AR, Tab 12, SSDD at 14. In this regard, the agency found that Zolon's proposal identified processes and deliverables that were in addition to, and independent of, the SAFe and SDLC lifecycles. The agency also found that the proposal did not address how user-centered design and accessibility were integrated with other roles and the overall framework. *Id.* The agency's contemporaneous evaluation record contains an explanation that the weakness was assessed because a vendor versed in SAFe should know that these elements are integrated parts of the overall framework chosen for custom development. *Id.* Moreover, in response to the protest, the agency explains that exhibit 3 failed to show an understanding that user experience design is part of the entire SDLC, not a discrete separate aspect of the SDLC. Decl. of Deputy Director, IT Design and Development, Office of Chief Information Officer at 3. On this point, the agency further states that Zolon's proposal was viewed as being outdated with respect to user experience and accessibility issues. *Id.*

In our view, the agency's evaluation is reasonable and consistent with the solicitation. Here, the RFP stated that the agency would evaluate the degree to which an offeror's technical approach fulfilled the SOW areas. RFP at 31. The SOW required offerors to address various aspects of user experience support, including accessibility. *Id.* at 8. The agency evaluated information in Zolon's proposal related to user experience and interface design, including exhibit 3, and found that the information therein failed to adequately explain how the user design elements were connected, and did not demonstrate a current understanding of user experience and accessibility. As we have recognized, it is an offeror's obligation to submit an adequately-written proposal for the agency to evaluate, and a proposal that fails to address the solicitation requirements may reasonably be downgraded for lacking sufficient detail. *See Undercover Training, LLC*, B-418170, Jan. 9, 2020, 2020 CPD ¶ 25 at 3-4. While the protester generally disagrees with the agency regarding the evaluation of its response, Zolon has not demonstrated that the agency's findings were unreasonable. Thus, on these facts, we find the agency's evaluation unobjectionable.

As another example, Zolon essentially contends that its proposal should have been higher rated based on the 25 strengths and 3 weaknesses assessed between the corporate capabilities and technical approach factors. Comments at 4-17. We find no basis to sustain this argument.

The record demonstrates that the SSEB and SSA considered the strengths and weaknesses assessed to the protester's proposal when assigning ratings under these factors. *See* AR, Tab 11, SSEB Evaluation at 1; Tab 12, SSDD at 4. For example, with regard to Zolon's proposal under the technical approach factor, the SSEB stated that nothing about the approach warranted a rating higher or lower than acceptable. AR, Tab 11, SSEB Evaluation at 4. Similarly, the SSEB also generally stated "[Zolon's] proposal is acceptable, but fairly generic and does not present any differentiating capabilities or factors that would warrant a higher rating." *Id.* In addition, for the corporate capabilities factor, the SSA specifically states, "[t]here is no justification in the record to rate the vendor above acceptable." AR, Tab 12, SSDD at 13. Although the

protester disagrees with the agency's ratings, it has not shown that the agency's conclusions were unreasonable. See, e.g., *OGSystems, LLC*, B-417026.5, B-417026.6, July 16, 2019, 2019 CPD ¶ 273 at 7 (no basis to sustain protester's challenge to agency's evaluation completed after corrective action where reevaluation was not based on the agency's initial evaluation assessments and was adequately documented). Therefore, we deny Zolon's challenges to the agency's evaluation of its technical proposal.

Unequal Access to Information OCI

Finally, Zolon contends that Artemis has an unequal access to information OCI that renders Artemis ineligible for award. In essence, Zolon alleges that Artemis has access to sensitive procurement-related information, including non-public information, based on Artemis's level of access to two LOC systems, JIRA and Confluence, and its president's placement in the Office of the Chief Information Officer. Protest at 57-58. In support of this argument, Zolon contends that Artemis's access to JIRA and Confluence allows Artemis to create projects that are awarded to competitors and address technical issues that arise throughout a project's lifecycle. *Id.* at 57. Additionally, Zolon asserts that the company's president is employed as a LOC contract employee and has the ability to access sensitive procurement information, including information related to this procurement and the resulting task orders. *Id.*

In response, the agency explains that it conducted a thorough investigation of Zolon's allegations and found that no OCI exists. Memorandum of Law at 9. The agency also states that information in these two project management systems is available to both Zolon and Artemis as incumbent contractors. *Id.* at 10-11. In addition, the agency avers that Zolon's allegations do not show how information in these two systems gives Artemis any specific or unfair advantage regarding this IDIQ and task orders. *Id.* at 10.

Subpart 9.5 of the FAR, and decisions of our Office, broadly identify three categories of OCIs: biased ground rules, unequal access to information, and impaired objectivity. *Technology, Automation & Mgmt., Inc.*, B-418063.3, B-418063.4, Oct. 2, 2020, 2020 CPD ¶ 343 at 16. As relevant here, an unequal access to information OCI exists where a firm has access to non-public information as part of its performance of a government contract, and where that information may provide the firm with an unfair competitive advantage in a later competition for a government contract. *Mortgage Contracting Servs., LLC*, B-418483.2, B-418483.3, Sept. 10, 2020, 2020 CPD ¶ 340 at 5. We review the reasonableness of a contracting officer's OCI investigation and, where 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. *Id.*

Here, we find that the agency meaningfully investigated the alleged OCI and, based on that investigation, reasonably concluded that Artemis did not have an unequal access to information OCI. In this regard, the contracting officer confirmed that neither Artemis's president, nor its employees have access to sensitive procurement-related information.

AR, Tab 16, OCI Report at 2. Additionally, the contracting officer determined that contractors, including Artemis's president and its employees, were neither permitted, nor involved in procurement planning or development for this IDIQ. *Id.* The contracting officer's investigation also determined that Artemis's president is a program manager under the Systems Development Lifecycle Support Services IDIQ contract, and does not hold a contract position with the LOC. AR, Tab 16, OCI Report at 2; Tab 17, Supp. OCI Memorandum (Memo) at 3.

In addition, the record establishes that the two project management systems referenced by Zolon do not contain proprietary or source-selection information as defined in FAR section 2.101. AR, Tab 17, Supp. OCI Memo at 3; Decl. of Chief of Office of the Software Engineering Division, Office of Chief Information Officer at 2. In this regard, one system, JIRA, is a collaborative administrative tracking system used to support the software development process that tracks progress on project tasks such as fixing software bugs. *Id.* at 1. Additionally, the other system, Confluence, is a website/document repository that contains project information about the team, requirements, and schedule. *Id.* at 2. The record also shows that the contracting officer determined that as the current Library IT contractor, Zolon can see the same information in these systems as Artemis. AR, Tab 17, Supp. OCI Memo at 3.

Based on our review of the record, Artemis's access to the information in JIRA and Confluence do not provide it with an unfair competitive advantage, where the record shows that Zolon and Artemis can access the same information, and Zolon has not identified particular information that would have given Artemis an advantage.² Moreover, the agency's investigation gave meaningful consideration to whether an OCI existed, particularly in the context of this procurement, and reasonably concluded that it did not. As a result, we deny this protest allegation.

The protest is denied.

Thomas H. Armstrong
General Counsel

² In its comments, Zolon identifies, for the first time, information from JIRA and Confluence--such as release notes, internal communications, and acceptance criteria--that it alleges will allow Artemis to prepare a proposal with complete knowledge of the incumbent contractor's technical approach. Comments at 21. The protester presented this information based on Zolon's access to these systems, rather than any information presented in the agency report. Accordingly, because this allegation is based on information that was available to Zolon at the time its initial protest was filed, we find this argument to be piecemeal presentation of information, and dismiss it as untimely. See, e.g., *XTec, Inc., B-418619 et al.*, July 2, 2020, 2020 CPD ¶ 253 at 24-25 (dismissing allegations related to purportedly proprietary documents produced for the first time in comments on the agency report to impeach the agency's OCI investigation).