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# Decision

**Matter of:** Steel Point Solutions, LLC

**File:** B-419709.3

**Date:** December 21, 2021

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Mark Grebel, Esq., and Anthony Lascola, Esq., National Geospatial-Intelligence Agency, for the agency.  
Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest alleging that agency failed to effectively waive an organizational conflict of interest (OCI) for the awardee is denied where record shows agency's actions were legally sufficient to waive an OCI on the part of the awardee.
2. Allegation that agency improperly attributed one past performance example to the awardee is denied where record shows that the past performance example was performed by the same exact entity that was proposed to perform the solicited requirement.

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## DECISION

Steel Point Solutions, LLC, of Calverton, Maryland, protests the award of a contract to Deloitte Consulting, LLP, of Arlington, Virginia, under request for proposals (RFP) No. HM047620R0039, issued by the National Geospatial-Intelligence Agency (NGA) to design, build and operate a corporate automation implementation center (CAIC). Steel Point argues that the agency failed to effectively waive an organizational conflict of interest (OCI) on the part of Deloitte that makes award to the firm improper, and also argues that the agency failed to take into consideration the OCI in evaluating Deloitte's past performance.

We deny the protest.

## BACKGROUND

This is Steel Point's second protest filed in connection with this acquisition. In its earlier protest, Steel Point argued that Deloitte had various OCIs arising from the award of the subject contract because of other contracts between Deloitte and the agency, and also that the agency misevaluated proposals in various ways. We agreed with Steel Point as to the OCI question, and found that the agency had failed adequately to consider whether Deloitte had an impaired objectivity OCI in connection with performing the CAIC contract in light of another contract referred to as the cybersecurity risk management and assessment (CRMA) contract that Deloitte was performing.<sup>1</sup> *Steel Point Solutions, LLC*, B-419709, B-419709.2, July 7, 2021, 2021 CPD ¶ 254. We recommended that the agency reconsider the extent of Deloitte's actual or potential OCIs, determine whether those could be mitigated, and decide whether it would be appropriate to make award to Deloitte based on that reconsideration. *Id.* at 10.

In the wake of our earlier decision, the agency obtained revised OCI mitigation plans from Deloitte for both the CAIC contract and the CRMA contract. Agency Report (AR), exhs. I.2.a, CAIC OCI Mitigation Plan, J.8.a, CRMA OCI Mitigation Plan. The contracting officer for the CAIC contract reviewed the CAIC mitigation plan and advised Deloitte that it was acceptable and would be incorporated into the CAIC contract should Deloitte remain the awardee. AR, exh. I.4, Message to Deloitte from the CAIC Contracting Officer. Similarly, the contracting office for the CRMA contract reviewed the mitigation plan submitted for that contract, concluded that it would be effective, and incorporated it into the CRMA contract. AR, exh. J.8.b, CRMA Contract Modification.

In addition, in what the agency describes as an abundance of caution, it also executed a waiver of any residual OCIs that may not have been considered and addressed in its investigation of any potential OCIs and its assessment of Deloitte's OCI mitigation plans. AR, exh. K.2, OCI Waiver Determination. The agency then affirmed its award to Deloitte and advised the remaining offerors, including Steel Point, of its actions. After being advised of the agency's actions, Steel Point filed its current protest.

## DISCUSSION

Steel Point argues that the agency has not effectively waived all actual or potential OCIs on the part of Deloitte. We point out in this connection that, ordinarily, our Office's review of an agency's waiver of an actual or potential OCI is confined to consideration of the procedural adequacy of the agency's waiver. Specifically, our review is confined to determining whether the waiver complies with the requirements of Federal Acquisition

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<sup>1</sup> We also found that Deloitte had another, separate OCI--one that put it in the position of making recommendations to the agency about the purchase of products Deloitte would be offering under the CAIC contract--arising out of Deloitte's performance as a subcontractor under the EMERALD task order. That OCI is no longer at issue because Deloitte advised the agency that it is no longer performing as a subcontractor on the EMERALD task order.

Regulation (FAR) section 9.503, namely, that the waiver be in writing, that it set forth the extent of the conflict, and that it be approved by the appropriate individual within the agency. *Dell Services Federal Government, Inc.*, B-414461.6, Oct. 12, 2018, 2018 CPD ¶ 374 at 6.

Steel Point does not allege that the agency's waiver fails to comply with the requirements of FAR section 9.503. Instead, Steel Point argues that the RFP imposed a separate, additional requirement on the agency to successfully waive any actual or potential OCI on the part of Deloitte. Steel Point directs our attention to the following solicitation language:

The Government has the unilateral right to waive one or more of the provisions of FAR Subpart 9.5 and this template, on a case-by-case basis, if it is determined by the Contracting Officer that a waiver is in the best interest of the Government. The Contractor must demonstrate to the Contracting Officer in writing that the Contractor can neutralize, mitigate or eliminate potential conflicts of interest.

RFP at 19. According to Steel Point, this language requires Deloitte to demonstrate that it has successfully neutralized, mitigated or eliminated any actual or potential OCI as a precondition of the agency being able to execute an effective waiver.

We find no merit to Steel Point's position for two reasons. First, Steel Point's position does not withstand logical scrutiny. If Deloitte were able to conclusively demonstrate that it has successfully neutralized, mitigated or eliminated any actual or potential OCI, there would be no need for the agency to execute a waiver. It necessarily follows that the contractor's successfully neutralizing, mitigating or eliminating any actual or potential OCI cannot be a prerequisite to the agency's ability to effectively execute a waiver.

Second, even if we were to agree with the protester's reading of the quoted provision (which we do not), the clause itself provides the agency with unilateral authority: "to waive one or more of the provisions of FAR Subpart 9.5 *and this template.*" RFP at 19 (emphasis supplied). Thus, even if the clause imposed a requirement for Deloitte to show that it has successfully neutralized, mitigated, or eliminated any actual or potential OCI, the agency could unilaterally waive that requirement as well. Accordingly, we have no basis to object to the agency's OCI waiver for the reason advanced by Steel Point. We therefore deny this aspect of its protest.

Steel Point also argues that the NGA's evaluation of Deloitte's past performance--specifically its evaluation of Deloitte's performance of the CRMA contract--should have been negatively affected by Deloitte's OCI mitigation strategy for the CRMA contract. The record shows that, as part of its mitigation strategy for the CRMA contract, Deloitte agreed to restrict the transfer of resources used to perform the CRMA contract to perform other NGA contracts in those instances where personnel with a possible OCI under the CRMA contract have been identified. AR, exh. J.8.a, CRMA Mitigation Plan,

at 13. According to Steel Point, Deloitte should not have been given past performance credit for the CRMA contract because the resources used to perform the CRMA contract (specifically, personnel that have performed the CRMA contract that would be subject to Deloitte's restrictions on transfers of resources from the CRMA contract to other NGA contracts) will not be available to perform on the CAIC contract.

We find no merit to this aspect of Steel Point's protest. It is generally true that agency may only consider the past performance examples for the entity offering to perform the requirement, and may not consider the past performance of an affiliate or parent company unless the resources of the parent or affiliate are committed to performance of the solicited requirement. See, e.g. *IAP-Hill, LLC, B-406289 et al.*, Apr. 4, 2012, 2012 CPD ¶ 151 at 3-4. However, there is no basis to distinguish between the contractor performing the CRMA contract--Deloitte Consulting, LLP--and the offeror/contractor for the CAIC contract--Deloitte Consulting, LLP; both companies have the same taxpayer identification number. Compare AR, exh. J.8.b, CRMA Contract Modification, at 1 with AR, exh. E.1, the CAIC Contract, at 2.

We also point out that Deloitte did not identify any particular employees to perform the CAIC contract, AR, exh. B.2.i, Deloitte Technical Proposal, Appendix 2-B, at 26-27, and there is nothing in the record before our Office to suggest that Deloitte intends to utilize all of the same exact employees that performed the CRMA contract to perform the CAIC contract. Absent some demonstrable nexus between the staff performing the CRMA contract and the availability (or more precisely, the unavailability) of staff proposed to perform the CAIC contract, we have no basis to object to the agency's evaluation of Deloitte's past performance.<sup>2</sup> The agency reasonably relied on the CRMA past performance example in evaluating Deloitte's past performance. We therefore deny this aspect of its protest.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel

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<sup>2</sup> Steel Point has not even shown that that the smaller subset of CRMA employees that might potentially be subject to Deloitte's plan to restrict the transfer of such employees were proposed to perform the CAIC contract.