



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Halfaker and Associates, LLC

File: B-420279.2; B-420279.4; B-420279.5

Date: January 19, 2022

James J. McCullough, Esq., Michael J. Anstett, Esq., and Anayansi Rodriguez, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
Kara M. Sacilotto, Esq., Sarah B. Hansen, Esq., Nicole E. Giles, Esq., and W. Benjamin Phillips, III, Esq., Wiley Rein LLP, for Liberty IT Solutions, LLC, the intervenor.
Frank V. DiNicola, Esq., E. Pamela McArthur, Esq., and Mellany Alio, Esq., Department of Veterans Affairs, for the agency.
Alexander O. Levine, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's technical evaluation is denied where the record shows that the evaluation was consistent with the contents of the offerors' proposals and the terms of the solicitation.
 2. Protest challenging agency's failure to disqualify awardee due to alleged organizational conflicts of interest is denied where the protester does not identify hard facts supporting the alleged conflicts of interest.
 3. Protest challenging agency's best-value tradeoff determination is denied where agency adequately documented its reason for issuing a task order to the higher-priced, technically superior offeror.
-

DECISION

Halfaker and Associates, LLC, located in Arlington, Virginia, protests the issuance of a task order to Liberty IT Solutions, LLC, located in Herndon, Virginia, under request for task execution plan (RTEP) No. T4NG-0613, issued by the Department of Veterans Affairs (VA) for health services development, security and operations (DevSecOps) support. The protester contends that the agency unreasonably and unequally evaluated Halfaker and Liberty's technical approaches, failed to disqualify the awardee despite its organizational conflicts of interest (OCIs), and conducted a flawed best-value tradeoff determination.

We deny the protest.

BACKGROUND

On August 31, 2021, the agency issued the RTEP as a task order solicitation under the agency's Transformation Twenty-One Total Technology-Next Generation multiple-award indefinite-delivery, indefinite-quantity contract. The solicitation sought health services DevSecOps support for the VA's Office of Information and Technology (OIT), Development, Security and Operations, Enterprise Program Management Office (EPMO), Health Services Portfolio Operations. The support to be provided includes shippable products, operations support, and security compliance for the Health Services Portfolio.¹ Contracting Officer's Statement at 1. The solicitation contemplated a 12-month, fixed-price task order with a cost-reimbursable line item for travel and four 12-month option periods.

The RTEP provided for award on a best-value tradeoff basis considering the following three evaluation factors: technical, past performance, and price. RTEP at 4.² The technical factor was significantly more important than the past performance factor, which was significantly more important than price. *Id.* To receive consideration for award, a rating of no less than acceptable was required for the technical factor. *Id.*

For the evaluation of the technical factor, the solicitation required offerors to propose a detailed technical approach that provides, among other elements, an approach that addresses the criteria for current VistA and Non-VistA legacy products referenced in the base year potential product list.³ *Id.* at 3.

The solicitation contemplated that the evaluation of the technical factor would consider two criteria: understanding of the problem and feasibility of approach. *Id.* at 5. For "understanding of the problem," the technical volume would be evaluated "to determine the extent to which it demonstrates a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the task and the extent to which uncertainties are identified and resolutions proposed." *Id.* at 5. For "feasibility of approach," the technical volume would be evaluated "to determine the extent to which the proposed approach is workable and the end results achievable . . . to determine the level of confidence provided the [g]overnment with

¹ The Health Services Portfolio is currently composed of 11 product lines within three sub-portfolios: Health Next Generation, Legacy and Electronic Health Record Modernization, and Major Initiatives. Agency Report (AR), Tab 6, RTEP at 14.

² The versions of the RTEP (Tab 6) and the evaluation report (Tab 8) provided in the agency report did not include page numbers. Citations to page numbers in these documents refer to the page number in the electronic Adobe pdf document.

³ VistA is an acronym referring to the Veterans Health Information System Technology Architecture, one of the product lines within the Health Services Portfolio. RTEP at 172.

respect to the [o]fferor's methods and approach in successfully meeting and/or exceeding the requirements in a timely manner." *Id.*

The agency received eight task execution plans (TEPs) in response to the solicitation. The VA evaluated the TEPs of Halfaker and Liberty as follows:

	Technical	Past Performance	Price
Halfaker	Acceptable	18.2	\$499,971,748
Liberty	Outstanding	17	\$734,949,800

AR, Tab 10, Source Selection Decision Document (SSDD) at 2.

Halfaker's TEP was rated acceptable under the technical factor with one weakness and no strengths or significant strengths. Liberty's TEP was rated outstanding under the technical factor with two significant strengths and two strengths. The source selection authority (SSA) compared the two proposals and concluded that "the technical benefits that VA will receive [from Liberty's TEP] outweigh and justify paying the price premium of \$234,978,051.85 to receive those benefits when compared to [Halfaker's TEP]." *Id.* at 15-16.

On September 29, the VA notified Halfaker of the award to Liberty. This protest followed.⁴

DISCUSSION

The protester challenges numerous aspects of the agency's evaluation and argues that the awardee has disqualifying OCIs. As an initial matter, the protester argues that the agency unreasonably assessed a weakness in Halfaker's TEP while improperly failing to credit its approach with 15 strengths. Halfaker further asserts that the agency's evaluation of Liberty's TEP was unequal and unreasonable. In addition, the protester argues that the agency should have disqualified Liberty based on two OCIs arising from the acquisition of Liberty by Booz Allen Hamilton (BAH), a contractor providing program management support for the VA's Electronic Health Record Modernization (EHRM) project. Last, the protester contends that the agency's best-value tradeoff was inadequately documented and unreasonable.

⁴ Because the value of the task order is in excess of \$10 million, this protest is within our jurisdiction to consider protests regarding task orders placed under civilian agency indefinite-delivery, indefinite-quantity contracts. See 41 U.S.C. § 4106(f)(1)(B); *Alliant Sols., LLC*, B-415994, B-415994.2, May 14, 2018, 2018 CPD ¶ 173 at 4 n.8.

While we do not address every argument raised by the protester, we have reviewed each argument and find no basis to sustain the protest.

Technical Evaluation

The protester argues that the agency's assessment of a weakness in Halfaker's TEP was unsupported. The VA found a weakness in Halfaker's approach to addressing the sustainment of VistA and Non-VistA products, which "annotat[ed] the use of technologies that are no longer in use at the Health Portfolio." AR, Tab 8, Halfaker Evaluation Report at 2. The agency elaborated on this weakness as follows:

Specifically, the Offeror referenced the usage of Intersystems Cache, which is no longer in use as this has been replaced by the Inquiry Routing and Information System. Also, the Offeror referenced the utilization of Rational Team Concert, which was decommissioned in second quarter of fiscal year 2021 and replaced with the use of Jira within the Health Portfolio.

Id. at 2. The agency found that these references demonstrated "a lack of understanding of the current environment required to successfully maintain the products within the health portfolio, which increases the likelihood of delays in defect management, thereby increasing the likelihood of unsuccessful task order performance." *Id.*

The protester argues that the references were taken out of context by the agency. In this respect, Halfaker contends that its reference to Rational Team Concert was made only once, whereas "every other reference to the same type of technology in its proposal was to the technology currently in use, Jira." Comments & Supp. Protest at 3. For the references to Intersystems Cache, the protester contends that these were made because the transition from Intersystems Cache has not yet been completed, and also because the references were discussing the historical technology used as part of VistA.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. *Wyle Labs., Inc.*, B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 6. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *MicroTechnologies, LLC*, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Moreover, it is an offeror's responsibility to submit a well-written proposal that clearly demonstrates the merits of its proposal, and an offeror that fails in this responsibility runs the risk that the agency will unfavorably evaluate its proposal. See, e.g., *Enterprise Servs., LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 7.

Here, we find the assessed weakness to be reasonable in light of the language used in Halfaker's TEP. As the protester concedes, the reference to Rational Team Concert refers to an outdated technology. In addition, while the protester contends that its two references to InterSystems Cache were meant to discuss the historical technology used, we note that this is not entirely clear from the references, particularly the second reference where Halfaker's TEP states "[t]he systems use technology ranging from legacy to modern, including IBM Mainframe Z/OS, COBOL, Cache, MUMPS, and Oracle." AR, Tab 7, Halfaker TEP at 35. Further, neither reference discusses the agency's replacement for InterSystems Cache, the Inquiry Routing and Information System.⁵ Ultimately, we conclude that the weakness is reasonable in light of the uncertainty created by these outdated references.⁶

The protester also argues that the VA unequally and unreasonably evaluated Liberty's TEP. In this respect, the protester argues that the agency unreasonably assigned strengths and significant strengths for Liberty's technical features when these features merely met RTEP requirements and did not enhance the merit of Liberty's TEP relative to the stated evaluation criteria. In addition, the protester contends that this evaluation treatment was unequal because the portions of its proposal that merely met requirements were not accorded strengths.

We have reviewed these arguments and see no basis to question the strengths and significant strengths credited to Liberty's TEP. In this respect, the evaluation record supports the agency's contention that these features were recognized as strengths because they exceeded the agency's requirements. For example, Liberty was credited with a significant strength for its approach to implementing and operating product line management and DevSecOps practices "to which it proposed to utilize [DELETED]."

⁵ In addition to the above references, the agency notes that there were further outdated references in Halfaker's description of its VistA sustainment process. In this respect, the VA cited a paragraph discussing Forum ticketing and VA Triad, two outdated processes. See AR, Tab 7, Halfaker TEP at 26-27. While we afford this post-protest explanation lesser weight since the agency has not represented that it was a contemporaneous consideration, we nonetheless note that it provides further support for the agency's cited weakness. See *Global Integrated Sec. (USA) Inc.*, B-408916.3, B-408916.4, Dec. 18, 2014, 2014 CPD ¶ 375 at 11 (noting that post-protest analyses are afforded lesser weight rather than no weight).

⁶ In addition, the protester argues that 15 aspects of its TEP merited strengths. In its agency report, the VA addressed each of these aspects and explained that they merely met requirements and did not increase the probability of successful contract performance. See Memorandum of Law (MOL) at 6-29. In its comments on the agency report, the protester did not substantively address the agency's responses. Where, as here, the agency responds to an allegation in its report but the protester does not rebut the agency's position in its comments, we dismiss the allegation as abandoned because the protester has not provided us with a basis to find the agency's position unreasonable. *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3.

AR, Tab 10, SSDD at 9. The agency noted that the [DELETED] would allow for quick access to key artifacts during the delivery process leading to increased velocity in the delivery of new functionality. *Id.* The [DELETED], in turn, would allow product teams to focus their time on delivering business value and not on administrative tasks, which, among other benefits, would allow for continuous improvement and high-quality implementation in alignment with the objective of standardization across the entirety of the Health Services Portfolio. *Id.* Because these features exceeded the stated requirements for product line management, the agency reasonably recognized Liberty's approach as a significant strength.

Nor do we conclude that the agency treated Liberty unequally. Where a protester alleges that an evaluation is the product of unequal treatment, the protester must show that the difference in the evaluation result was, in fact, the result of unequal treatment, rather than differences in the offerors' proposals. *DataSource, Inc.*, B-412468.9, Apr. 14, 2017, 2017 CPD ¶ 122 at 4. Here, Halfaker failed to establish that its TEP proposed similar technical features to the ones favorably credited in Liberty's TEP. For example, the protester has not alleged that its approach to implementing and operating product line management and DevSecOps practices used a [DELETED] and a [DELETED]. In the absence of any allegation that the two offerors were evaluated unequally for proposing similar approaches, we see no basis to conclude that the agency evaluated the two TEPs unequally.

OCI Assessment

Halfaker contends that the agency conducted an unreasonable and incomplete investigation into Liberty's alleged impaired objectivity OCI arising from its acquisition by BAH, the program management support contractor for the VA's Office of Electronic Health Record Modernization (OEHRM).⁷ An "impaired objectivity" OCI arises when a contractor's judgment and objectivity in performing a contract's 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 Sci. & Tech. Corp.*, B-297022.3, Jan. 9, 2006, 2006 CPD ¶ 2 at 6.

⁷ The protester also argues that a biased ground rules OCI exists for these same reasons. Supp. Protest at 37. A "biased ground rules" OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the statement of work or providing materials upon which a statement of work was based. Federal Acquisition Regulation (FAR) 9.505-1, 9.505-2; *Networking & Eng'g Techs., Inc.*, B-405062.4 *et al.*, Sept. 4, 2013, 2013 CPD ¶ 219 at 10. Here, the protester has failed to support the assertion that BAH influenced the ground rules for the instant task order competition. In addition, the agency's investigation determined that "BAH had absolutely no involvement in, or input to, [or] influence over this acquisition or its requirements." AR, Tab 14, OCI Memorandum at 19. Accordingly, we deny this protest ground.

The protester contends that an impaired objectivity OCI arises here because BAH's affiliate, Legacy, "will be providing development, security, and operations support to products in the VA's Health Services Portfolio, which includes legacy and EHRM product lines and supporting legacy health systems--the same systems for which [BAH] may be asked to provide decommissioning guidance and advisory services." Supp. Protest at 32. The protester further argues that, influenced by BAH, OEHRM can use the DevSecOps contract, via exercise of an option, "to increase, decrease, stop, or start work in the [l]egacy area." Comments & Supp. Protest at 9 (citations omitted). This would lead to changes in the level of work to be performed by Liberty under the instant task order.

The agency conducted an investigation of this claim and concluded that no OCI existed for several reasons. The VA noted, as an initial matter, that under the VA's organizational structure, OEHRM is a separate office from OIT's EPMO, the office being supported by the instant task order, with little overlap between the two. MOL at 32-33; AR, Tab 14, OCI Memo at 15. Specifically, the agency found that:

As a result of where it sits in the VA organization, BAH, the EHRM [program management office] contractor, would generally be privy to high-level EHRM goals, strategies and activities related to the overall progression of the EHRM. In its role at EHRM, as a matter of day-to-day operations, BAH would not have insight into, knowledge of, or oversight of the work performed by Liberty in the Health Services DevSecOps [task order].

AR, Tab 14, OCI Memorandum at 5.

The agency further notes that the DevSecOps task order is specifically tasked for supporting the Health Services Portfolio, *i.e.*, sustaining health legacy products under OIT--not for supporting EHRM in its work. *Id.* at 15. Accordingly, the VA represents that the sole connection between this task order and OEHRM is via the decommissioning or sustainment of the 11 Health Services Portfolio legacy products. *Id.* The agency contends that no OCI exists with respect to these legacy products, however, because the agency has already committed to sustaining these legacy products until 2028. MOL at 33. As a result, the agency represents, BAH, whose contract expires in 2022, will be unable to influence the work being performed by Liberty under the DevSecOpps task order.⁸

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the

⁸ Additionally, the agency represents that before it exercises an optional task under the DevSecOpps task order relating to the EHRM product line or decides to realign any products managed by OEHRM to the legacy and EHRM sub-portfolio, it will first analyze whether an OCI exists. MOL at 34; AR, Tab 14, OCI Memorandum at 2; OCI Addendum Memorandum at 2.

existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. When asserting an OCI, 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. *Arrington Dixon & Assocs., Inc.*, B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 5 n.4.

Here, we find that the protester has not identified hard facts supporting the existence or potential existence of a conflict of interest. As detailed above, the agency demonstrated that BAH would be unable to influence the decommissioning of the legacy products since the agency has committed to sustaining these products until 2028, at which time the BAH contract will have long expired. See AR, Tab 14, OCI Memorandum at 15. While the protester asserts that BAH might nevertheless be able to influence the level of sustainment for these products, the agency explained that BAH would have no role in making recommendations "on the how, or if, the health legacy products are sustained," because that job will be performed by another contractor, GovernmentCIO, the program management office contractor for the Health Services Portfolio. OCI Addendum Memorandum at 2; see *also* Supp. MOL at 24. Although the protester questions these assertions, it fails to provide hard facts contradicting them or otherwise supporting the existence of a potential conflict of interest. As a result, we deny this ground of protest.

Best-Value Tradeoff

Finally, the protester argues that the agency conducted a flawed best-value tradeoff. In this regard, Halfaker asserts that the source selection determination did not meaningfully compare the attributes of Halfaker's and Liberty's TEPs to justify paying a price premium of nearly \$235 million. The protester contends that the VA instead engaged in circular and conclusory reasoning, ultimately failing to conduct a substantive analysis of the merits of the competing TEPs. Halfaker further asserts that the decision itself was "irrational" because the agency "improperly elevated the one makeweight weakness assigned to Halfaker's [TEP] to justify a \$235 million price premium." Supp. MOL at 14.

In the context of a best-value tradeoff competition for a task order, the agency's rationale for any price/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. See *Science Applications Int'l Corp.*, B-416780, Dec. 17, 2018, 2019 CPD ¶ 44 at 3. The documentation of the tradeoff only needs to be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 24. A protester's disagreement with the agency's determination, without more, does not establish that the evaluation or source selection was unreasonable. *Id.* at 16.

Here, we find that the agency reasonably documented its tradeoff determination. In this respect, the agency specifically discussed Halfaker's weakness in relation to Liberty's two significant strengths and two strengths. See AR, Tab 10, SSDD at 14. For example, the VA noted that while Halfaker received a weakness for its proposed

approach to the sustainment of VistA and non-VistA Products, Liberty “received a [s]ignificant [s]trength in that same area.” *Id.* at 15. Following its side-by-side comparison of these discriminators, the agency concluded that Liberty’s technical approach was “significantly superior.” *Id.*

In addition, the SSA noted that under the evaluation criteria, the technical factor was significantly more important than past performance, which was significantly more important than price. *Id.* Based on the application of this evaluation scheme, and the significantly superior technical benefits offered by Liberty’s TEP, the SSA concluded that “the technical benefits that VA will receive outweigh and justify paying the price premium of \$234,978,051.85 to receive those benefits.” *Id.*

In sum, the SSA weighed the two offerors’ weaknesses, strengths, and significant strengths, and meaningfully compared the technical disparity in relation to the price difference, ultimately concluding that Liberty’s technical superiority warranted its higher price. We conclude that this tradeoff adequately documented that the agency was aware of the relative merits and costs of the two TEPs and meaningfully took them into consideration. While the protester disagrees with the agency’s ultimate conclusion, this disagreement, by itself, is not sufficient to demonstrate that the agency’s judgment was unreasonable.

The protest is denied.

Edda Emmanuelli Perez
General Counsel