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Decision

Matter of: Deloitte Consulting, LLP; Booz Allen Hamilton, Inc.; CALIBRE Systems, Inc.

File: B-411884; B-411884.2; B-411884.3; B-411884.4; B-411884.5; B-411884.6

Date: November 16, 2015

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DIGEST

1. Protest challenging the evaluation of the awardee's corporate experience is sustained where the record does not reasonably explain why the agency credited the awardee with the experience of its corporate parent.
2. Protest that the awardee's quotation took exception to the solicitation's data rights clause is sustained where the quotation clearly limited the government rights in a manner contrary to the solicitation.
3. Protests challenging the evaluation of the awardee's labor mix are sustained where the agency made unsupported assumptions regarding the labor mix.
4. Protests that agency evaluated quotations unequally is sustained where the record does not reasonably show the agency's basis for distinguishing between the protesters' and the awardee's quotations.

5. Protest that award to the successful vendor was tainted by an unequal access to information organizational conflict of interest is denied where the agency gave meaningful consideration to the protester's allegations and reasonably concluded that no conflict exists.

DECISION

Deloitte Consulting, LLP, of Arlington, Virginia, Booz Allen Hamilton, Inc., of McClean, Virginia, and CALIBRE Systems, Inc.,¹ of Alexandria, Virginia, protest the award of a task order to PricewaterhouseCoopers Public Sector LLP (PwC), by the Defense Health Agency (DHA) under request for quotations (RFQ) No. HT0011-15-T-0022, for services to transform the Military Health System (MHS) into a High Reliability Organization (HRO).² Deloitte, Booz Allen, and CALIBRE each challenges the agency's evaluation of the vendors' quotations and the award decision.

We sustain the protests in part and deny them in part.

¹ CALIBRE participates in a contract teaming arrangement (CTA) with Ernst & Young LLP (E&Y), of McClean, Virginia. Under a CTA, two or more General Services Administration (GSA) Federal Supply Schedule (FSS) vendors may work together to fulfill an ordering agency's requirements. Although CALIBRE is the CTA leader, E&Y was the FSS vendor for this RFQ. See CALIBRE Protest at 1, 4, 6. CALIBRE and E&Y jointly filed this protest; for purposes of our decision, we refer to CALIBRE as the protester.

² The RFQ states that the successful vendor will be required to use the "high reliability principles as described by The Joint Commission." RFQ at 7. The Joint Commission is an independent not-for-profit organization founded in 1951 that accredits and certifies health care organizations and programs in the United States. The organization seeks to improve health care for the public, in collaboration with other stakeholders by evaluating health care organizations and inspiring them to excel in providing safe and effective care of the highest quality and value. See History of the Joint Commission, http://www.jointcommission.org/about_us/history.aspx (last visited Nov. 13, 2015). With regard to HRO health care organizations, the Joint Commission has identified five traits of these organizations: (1) sensitivity to operations, (2) reluctance to accept simple explanations for problems, (3) preoccupation with failure, (4) deference to expertise, and (5) resilience. See High-Reliability Healthcare: Getting There from Here, http://www.jointcommission.org/assets/1/6/Chassin_and_Loeb_0913_final.pdf (last visited Nov. 13, 2015).

BACKGROUND

DHA issued the RFQ on May 29, 2015, pursuant to Federal Supply Schedule (FSS) procedures as set forth at Federal Acquisition Regulation (FAR) subpart 8.4, to vendors holding performance management/continuous process improvement (PM/CPI) blanket purchase agreements (BPAs).³ Agency Report (AR) at 7. The RFQ contemplated the award of a fixed-price task order, for a base year and four 1-year options, for services to transform the MHS into an HRO. The RFQ will require the successful vendor to provide personnel, materials, facilities, and other services to assist the Assistant Secretary of Defense (Health Affairs), the DHA's Healthcare Operations Directorate, and all its Divisions with implementing several action plans that were the result of an MHS review. Id. The contractor was required to support the DHA's ability to provide robust performance management and continuous process improvement through a comprehensive Program Integration Office (PIO), which would improve safety, access, and healthcare quality throughout the MHS. Id. at 21-22.

The relevant services necessary to support this action included: (1) program management and program integration; (2) strategic planning and performance management; (3) process improvement; (4) change management and organizational development; (5) strategic business analysis; (6) communications and education; (7) training development and support; (8) reporting and documentation; (9) administrative support; (10) healthcare subject matter expertise, analysis, and support; (11) business process reengineering; (12) information and knowledge management; (13) robust healthcare analysis support; (14) program execution support; (15) program evaluation; (16) business case analysis support; and (17) process and system development. Id. at 22.

For purposes of award, the RFQ stated that quotations would be "rated from highest to lowest" based upon an evaluation of two factors: (1) "technical approach to include corporate experience and corporate capability," and (2) "management approach to include program management and key personnel and staffing." Id.⁴ The RFQ also provided for considering labor mix relative to the required effort and price. Id. at 7. The RFQ identified "SELECTION PROCEDURES" the agency

³ The PM/CPI BPA is a multiple-award BPA which was issued to vendors under the Management, Organization and Business Improvement Services (MOBIS) schedule contract. The purpose of the PM/CPI BPA is to provide performance management and continuous process improvement services through a pool of highly-qualified contractors. See Agency Report at 7; id., exh. 5, PM/CPI BPA Statement of Work.

⁴ As discussed below, the RFQ did not specifically identify these two areas as evaluation factors. Nonetheless, we view the solicitation's designation of these two primary areas of evaluation as, effectively, evaluation factors.

would use to select the vendor to be issued the order. See id. at 7. The RFQ stated that “[t]he contracting officer will award a BPA call to the contractor submitting the highest rated quote proposing an appropriate mix of labor for the required level of effort at a fair and reasonable price.” Id. at 7. The RFQ further explained as follows:

[I]f the contractor submitting the highest rated quote does not propose an appropriate mix of labor for the required effort at a fair and reasonable price, the contracting officer may obtain additional information from, and negotiate with, that contractor to improve the terms of the deal reflected in its quote. If the contracting officer is unable to negotiate a favorable deal with the contractor [the contracting officer] reserves the right to negotiate and reach agreement with the firm submitting the next highest rated quote. This process will continue until a contract has been reached or until all those firms submitting a quote have been considered.

Id.

For the technical approach factor, the RFQ required vendors to address corporate experience and corporate capability. Id. at 5. As relevant to the protest issues here, for corporate experience, vendors were required to identify relevant experience providing a clear, understandable, feasible, and complete technical solution to meet the requirements of the tasks in the performance work statement (PWS). Id. For the management approach factor, the RFQ required vendors to address (1) program management, and (2) key personnel and staffing. Id. at 6-7. Finally, to evaluate price, the RFQ required vendors to provide a price breakdown addressing their labor categories and rates, as well as any projected other direct costs (ODC). Id. at 7.

Five vendors, including CALIBRE, Booz Allen, Deloitte, and PwC, responded to the RFQ by the closing date of June 22. A technical evaluation board (TEB), which was composed of one member, evaluated each vendor’s quote under the technical approach and management approach factors; a price evaluator performed an analysis of each vendor’s price. See AR, Tab 9, Award Decision Memorandum, at 2-3. The agency then ranked the vendors’ quotations in the order set forth below based on their evaluations under the technical approach and management approach evaluation factors:

Vendor	Price
PwC	\$58,234,952
CALIBRE	\$76,721,607
Booz Allen	\$51,891,325
Deloitte	\$51,514,877

See AR, Tab 9, Award Decision Memorandum, at 3-5.⁵ Although the agency ranked the vendors' quotations, the agency did not assign adjectival or numerical ratings to the quotations. See id. Additionally, although price is listed in the above chart for informational purposes, the vendors' relative prices were not a factor in this ranking or in the award decision. See id.

In selecting PwC for award of the order, the contracting officer (CO), who also was the selection official, concurred with the TEB evaluator's ranking of quotations. Id. at 3-4. The CO found that PwC's quotation offered "the most innovative, comprehensive, and compelling technical and management approach." Id. at 3. The CO further noted that PwC's quotation provided superior corporate experience, corporate capability, and was "consistently superior throughout their proposal for articulating not only what they would do, but . . . how they would execute those support functions." Id. By contrast, the CO found that CALIBRE's quotation presented a "good and sometimes outstanding technical approach," but that its management approach posed too much risk due to the mix and balance of its key personnel. Id. at 3-4. With regard to Booz Allen, the CO found that its quotation demonstrated a "good understanding of the requirements" but did not "sufficiently describe [its] technical approach [or] closely match the Government's requirements." Id. at 4. With regard to Deloitte, the CO found that its quotation "failed to demonstrate a good understanding of the full requirements of the PWS," and did not adequately describe its capability to support the requirements. Id. Based on PwC's technical approach, management approach and price, which the agency determined to be fair and reasonable, the CO selected PwC to receive the order on August 3. Id. at 5. These protests followed.

DISCUSSION

CALIBRE, Booz Allen, and Deloitte each contend that DHA unreasonably evaluated the protesters' and awardee's quotations under the RFQ's technical approach, management approach, and price evaluation factors. CALIBRE argues that DHA unreasonably evaluated PwC's quotation under the corporate experience factor by crediting it with the experience of its parent company. Deloitte argues that PwC's quotation was unacceptable because it took exception to the RFQ's data rights clause. CALIBRE, Booz Allen, and Deloitte each contend that DHA failed to properly consider PwC's labor mix and price. Finally, CALIBRE argues that the award to PwC was tainted by organizational conflicts of interest (OCIs). For the reasons discussed below, we sustain each of these protest arguments, with the exception of CALIBRE's OCI allegations.⁶

⁵ The fifth vendor (not discussed further in this decision) was ranked last.

⁶ Although we do not address every issue raised by the three protesters, we have reviewed them all and conclude that, with the exception of the issues specifically identified below, none provides a basis to sustain the protests. Additionally, Booz
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Where, as here, an agency issues an RFQ to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. See GC Servs. Ltd. P'ship, B-298102, B-298102.3, June 14, 2006, 2006 CPD ¶ 96 at 6; RVJ Int'l, Inc., B-292161, B-292161.2, July 2, 2003, 2003 CPD ¶ 124 at 5. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. Where an agency fails to adequately document its decision it bears the risk that there may not be adequate supporting rationale in the record for our Office to conclude that the agency had a reasonable basis for the award decision. See Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 12.

Corporate Experience

Turning to the protest grounds, CALIBRE argues that DHA unreasonably evaluated PwC under the corporate experience subfactor of the technical approach evaluation factor because the agency failed to consider whether the experience cited by PwC in its quotation related to PwC Public Sector, the firm that currently holds the BPA and submitted the quotation, or PricewaterhouseCoopers LLP US (PwC US), its corporate parent, which formerly held the BPA. For the reasons discussed below, we agree and sustain the protest.

The RFQ required a vendor to provide evidence of relevant corporate experience and to address the following criteria: (a) understanding of the current MHS Governance construct, (b) experience supporting a similarly sized federal healthcare PIO, and (c) ability to transform an enterprise healthcare system into an HRO. RFP at 5. Under criterion (a), vendors were required to address how they will support the various Governance committees and MHS leaders in accomplishing their work in this MHS Governance model, including creative, thorough, and expert understanding of the objectives and specific tasks in the PWS. Id. Under criterion (b), vendors were required to explain their relevant experience supporting a

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Allen argues that (1) CALIBRE's price was unreasonable and reflected that vendor's lack of understanding and experience with the MHS PIO program, and (2) that DHA's evaluation of CALIBRE's technical quotation was flawed. Booz Allen Supp. Protest (Aug. 31, 2015) at 23-27. Because we sustain these protests, including certain Booz Allen protest issues discussed below, and recommend that the agency reevaluate quotations, we need not address Booz Allen's protest allegations concerning CALIBRE's higher-ranked quotation.

very large federal healthcare program integration office that is similar in complexity, size, scope, and visibility to the program here. Id. Under criterion (c), vendors were required to address relevant experience related to improving the safety, access, and quality of a very large healthcare system, in the public or private sector, using high reliability principles as described by the Joint Commission. Id. The RFQ defined a very large healthcare system as one that consists of 20 or more distinct and separate healthcare facilities that are linked together the sharing of resources. Id.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal or quotation demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al., July 10, 2013, 2013 CPD ¶ 171 at 8-9; Perini/Jones, Joint Venture, B-285906, Nov. 1, 2000, 2002 CPD ¶ 68 at 4. The relevant consideration is whether the resources of the parent or affiliated company--e.g., its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. While it is appropriate to consider an affiliate's performance record where the affiliate will be involved in the contract effort, it is inappropriate to consider an affiliate's record where there is no evidence that the affiliate will meaningfully participate in performance of the contract. National City Bank of Indiana, B-287608.3, Aug. 7, 2002, 2002 CPD ¶ 190 at 10.

In the cover letter to its quotation, PwC stated the following:

PwC Public Sector is a subsidiary of PwC US focusing on providing services to government entities. Although a separate legal entity, PwC Public Sector [DELETED], and receives substantial support from its parent. For the purposes of the proposal, we will refer to PwC as inclusive of PwC US and PwC Public Sector.

See AR, Tab 13, PwC Quotation, Vol. I, at 2. Aside from this explanation, PwC's quotation did not specifically explain or differentiate throughout its quotation as to whether particular resources or experiences related to PwC Public Sector as opposed to PwC US.

As CALIBRE notes, while PwC Public Sector's quotation states that its focus is "providing services to government entities," PwC US's website states that its focus is providing services to private sector clients. See PwC US Website, <http://www.pwc.com/us/en/health-industries.html> (last visited Nov. 13, 2015). In response to the protest, PwC Public Sector confirms that it provides work to the public sector, including the US federal government, while its corporate parent, PwC US, focuses on the commercial sector. See Decl. of PwC Principal (Sept. 23, 2015), at 1.

The TEB evaluator explained that: “PwC offered [DELETED] examples of their experience supporting large healthcare systems improve their quality, showing clear evidence of what they did, how they did it, and the impact that they had on these systems.” AR, Tab 10, Technical Evaluation Report, at 3. The TEB evaluator concluded that “PwC exceeded the expectations and requirements of the PWS and clearly have the experience necessary to support the MHS’s improvement goals.” Id. The CO’s selection decision concluded that PwC “provided clear evidence of superior, current, and relevant corporate experience.” AR, Tab 9, Award Decision Memorandum, at 3.

CALIBRE argues that the reference to “substantial support” from PwC US in the PwC Public Sector’s quotation did not permit the agency to meaningfully assess whether PwC Public Sector should be credited with the corporate experience listed in the quotation. See AR, Tab 13, PwC Quotation, Vol. I, at 2. We agree. Although the agency and intervenor cite general references to PwC’s relationship to other PwC corporate relatives, we agree that the awardee’s quotation did not specifically explain how PwC Public Sector would work with PwC US during the performance of the contract in a way that demonstrated that the experience of the latter should be credited to the former. See e.g., AR, Tab 14, PwC Quotation, Vol. II, at 12 (“PwC is a part of the global PwC network of firms, and we will use the firm’s full capabilities, as well as the capabilities of our teaming partners, to address DHA’s requirements for flexibility and adaptability”).

More importantly, none of the evaluation documents in the contemporaneous record show that the agency considered any of the issues relating to the distinction between PwC Public Sector and PwC US. See AR, Tab 9, Award Decision Memorandum, at 1-5; Tab 10, Technical Evaluation Report at 1-13; Tab 11, Price Analysis Report, at 1-7. Moreover, DHA’s response does not state that the agency in fact considered these issues; rather the agency merely contends that information in PwC’s quotation suggests that PwC’s quotation could be interpreted to demonstrate reliance.⁷ See AR at 33-34.

⁷ PwC also provided a detailed declaration addressing the relationship between PwC Public Sector and PwC US. See Decl. of PwC Principal (Sept. 23, 2015), at 1-3. This declaration, along with the intervenor’s comments on the agency report, however, do not show that the awardee’s quotation clearly explained the manner in which PwC US would support PwC Public Sector’s performance of the contract in a manner that merited crediting the former with the latter’s experience. Moreover, these post-protest explanations do not show that the agency in fact considered the relationship between PwC Public Sector and PwC US in a manner that merited crediting the awardee with the experience of its corporate parent.

DHA nonetheless argues that its evaluation crediting PwC Public Sector for the experience of PwC US was reasonable because the former is the successor in interest to the MOBIS FSS contract and BPA initially held by PwC US, as a result of a novation. AR at 32. We disagree, as the novation of a contract interest does not demonstrate that the successor in interest to the contract has the resources or experience of its predecessor, in a manner that merits credit in the evaluation of proposals or quotation. Although our Office has recognized that an agency may consider a successor in interest to merit credit for the experience of its predecessor, those cases expressly found that the successor retained or received the resources and personnel associated with the experience to be credited to the successor. See Harbor Servs., Inc., B-408325, Aug. 23, 2013, 2013 CPD ¶ 214 at 4; Trailboss Enters., Inc., B-297742, Mar. 20, 2006, 2006 CPD ¶ 64 at 4.

In sum, we agree with CALIBRE that the record does not reasonably explain why DHA credited PwC Public Sector with the experience of PwC US. We therefore sustain the protest on this basis.

Exception to Data Rights Clause

Next, Deloitte contends that PwC's quotation was unacceptable because it took exception to the RFQ's data rights clause. We agree.

In negotiated procurements, clearly stated solicitation requirements are considered material to the needs of the government, and a quotation that fails to conform to material terms and conditions of the solicitation is unacceptable and cannot form the basis for award. Carahsoft Tech. Corp., B-401169, B-401169, June 29, 2009, 2009 CPD ¶ 134 at 5; CAMS Inc., B-292546, Oct. 14, 2003, 2003 CPD ¶ 191 at 3.

The RFQ contained the following provision regarding data rights:

The Government has unlimited rights to all documents/material produced under this contract. All documents and materials, to include the source codes of any software, produced under this contract shall be Government owned and are the property of the Government with all rights and privileges of ownership/copyright belonging exclusively to the Government. These documents and materials may not be used or sold by the contractor without written permission from the Contracting Officer. All materials supplied to the Government shall be the sole property of the Government and may not be used for any other purpose. This right does not abrogate any other Government rights.

See RFQ, PWS, at 13 (emphasis added).

PwC's quotation included the following statement:

[DELETED]. Unless required by [DELETED], neither the contract deliverables nor their content may be distributed to, discussed with, or otherwise disclosed to any Third Party without PwC's prior written consent. [DELETED].

AR, Tab 15, PwC Quotation, Vol. III, at 10 (emphasis added).

We agree with Deloitte that the above language in PwC's quotation takes exception to the RFQ's data rights clause. Whereas the solicitation clause gives the government unlimited and exclusive property rights to all documents produced under the task order, PwC's quotation limits the government's right to distribute contract deliverables to third parties without the awardee's "prior written consent." Id. In this regard, Deloitte argues that the government requires exclusive rights to the documents in order to disclose the deliverables under the order to nationally recognized experts, consultants, and other contractors. See Deloitte Supp. Protest (Aug. 31, 2015) at 6. The agency does not dispute this contention.

Despite the clear exception to the solicitation terms in PwC's quotation, DHA argues that the above language did not make PwC's quotation unacceptable for three reasons. First the agency contends that it did not view the data rights clause to be a material term. AR at 54. As discussed above, however the solicitation reflects a clearly-stated requirement that the government be provided unlimited rights to all documents and materials produced under the task order. RFQ at 13. As the protester also notes, the provision that DHA inserted concerning data rights was tailored for use with this specific task order, as it is more restrictive, and provides the government with more rights, than the standard clauses. See Deloitte Comments at 11-12; RFQ at 13; Defense FAR Supplement §§ 252.227-7013(c), 252.227-7014(b). Although the agency argues that it does not view the provision to be material, this argument is not consistent with the plain language of the data rights clause that the agency elected to tailor and insert into the solicitation. Moreover, nothing in the contemporaneous record shows that the agency viewed this clause as non-material, or otherwise demonstrates that the agency considers taking exception to the clause to be non-material.

Second, the agency contends that it did not view PwC's assumption as taking exception to the Government's unlimited rights in the documents/materials produced under the order because the underlying BPA's data rights clause, which grants the government unlimited rights, takes precedence over any exception in PwC's quotation, and that the agency will therefore incorporate the RFQ's data rights clause notwithstanding PwC's exception. AR at 54-55. We think the agency's second argument also fails because if a vendor takes exception to a material solicitation requirement, the agency may not merely ignore the exception by including the same solicitation requirement in the resulting contract, as a

quotation that fails to conform to such material terms is technically unacceptable and may not form the basis for award. See Carahsoft Tech. Corp., supra.

Third, DHA argues that it considers the government's unlimited rights in documents or materials produced under the contract to be separate and distinct from the government's obligations to release such documents or materials to third parties under the Freedom of Information Act (FOIA). See AR at 55. For this reason, the agency contends, PwC's clause should not be interpreted as limiting the government's data rights, as the clause concerns limitations on the rights of third parties under FOIA. Id. We are not persuaded by the agency's argument, because a third party's right to seek documents under FOIA is a wholly separate issue from the government's otherwise unlimited rights to use the data created under the task order for the government's own needs, per the terms of the RFQ's data rights clause. As discussed above, these needs include disclosure of contract documents and materials to third parties, such as nationally recognized experts, consultants, and other contractors. The agency's argument does not resolve PwC's express limitation set forth in its quotation on the rights of the government to distribute, discuss, or disclose documents or materials produced under the contract to third parties "without PwC's prior written consent." AR, Tab 15, PwC Quotation, Vol. III, at 10.

In sum, we conclude that PwC's quotation was unacceptable because it took exception to the RFQ's data rights clause.⁸ We therefore sustain this basis of protest.

Price and Labor Mix

Next, CALIBRE, Booz Allen and Deloitte each challenge DHA's evaluation of PwC's labor mix, level of effort, and price under the management approach evaluation factor and award criteria. Deloitte contends that the agency failed to meaningfully consider PwC's price relative to Deloitte's lower price, contrary to the requirements of FAR subpart 8.4, by treating price as a pass/fail requirement rather than determining whether PwC's price was worth the additional price premium. As discussed below, we find that the agency's evaluation of price was consistent with

⁸ PwC also contends that its quotation did not take exception to the data rights clause, for reasons similar to the agency, as well as other reasons. For example, the intervenor notes that vendors other than Deloitte offered data rights limitations. The fact that other vendor's may have incorporated restrictions limiting the government's rights, however, has no bearing on the question of the acceptability of PwC's quotation vis-à-vis a protest argument raised by Deloitte, which did not take exception to the requirement. We find no basis to conclude that the PwC did not take exception to the data rights clause, or reason to conclude that the agency's failure to address this area in the evaluation was not a prejudicial error.

the RFQ, and that any challenges to the solicitation's provisions concerning the agency's consideration of the vendors' relative prices are untimely. We also conclude, however, that the agency's evaluation of PwC's quotation's labor mix was not reasonable, and sustain the protest on this basis.

Consideration of relative price

Deloitte argues that DHA failed to meaningfully consider PwC's price and technical features relative to other lower-priced quotations. The protester argues that the agency was required to perform a price/technical tradeoff, and to consider whether PwC's quotation was worth the price premium compared to its own lower-priced quotation. We find this issue to be untimely.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotations are required to be filed before that time. 4 C.F.R. § 21.2(a)(1). Here, the RFQ's selection procedures specifically stated that award would be made to the highest rated quotation proposing an appropriate mix of labor for the required level of effort at a fair and reasonable price. RFP at 7. In addition, RFQ amendment No. 001 specifically advised vendors that the award would not be based on best value. RFP amend. 1, at Question & Answer No. 20 ("In ordering from the BPA under FAR 8.405-3(c), the Agency will not be making an additional best value determination"). Thus, the fact the award would not be based on a price/technical tradeoff or best value basis was apparent prior to the closing date. Since Deloitte waited to challenge this issue until after the award, which did not consider best value or price/technical tradeoff, we find that its protest does not meet our timeliness requirements and is untimely.

Labor mix

As discussed above, the RFQ required the agency to consider whether the highest-ranked quotation reflected an appropriate mix of labor for the required level of effort. RFP at 7. The agency determined all prices to be reasonable based on adequate competition. See AR, Tab 11, Price Analysis Report, at 1.

In connection with the price analysis of PwC's quotation, the agency concluded as follows:

[PwC], proposed the third lowest grand total price of \$58,234,952.00 which is inclusive of base and all option periods and optional tasks. Their grand total proposed price is 26% lower than the competitive average price of \$74,106,444.00. The total proposed hours are [DELETED] less than the IGCE [independent government cost estimate]. The [DELETED] is not considered to be within the established median of the IGCE. These variances contribute to the

lower proposed total price. [DELETED]. The [DELETED] appears to be a large gap however, there was no historical data used in the development of the IGCE and therefore we cannot say conclusively if PwC's quoted hours are too low. The TEB reviewed the labor mix and hours which establish that PwC's technical and management approach are more than adequate.

Id. at 4.

In addition, the record reflects that the TEB evaluator reviewed PwC's labor mix under the management approach factor, finding that PwC's quotation provided a "key advantage" in that out of the [DELETED] key personnel offered, PwC had proposed a total of [DELETED] full time equivalents (FTEs) worth of work, which was [DELETED] ratio--meaning that the work of the [DELETED] FTEs would be performed by [DELETED] individuals. See AR, Tab 10, Technical Evaluation Report, at 5. In this regard, the TEB evaluator explained that [DELETED]." Id.

Booz Allen and Deloitte argue that the agency's evaluation of PwC's labor mix was unreasonable because, in determining the appropriateness of PwC's labor mix, the agency failed to consider PwC's entire labor mix, instead focusing exclusively on key personnel. CALIBRE and Deloitte also argue that the agency's positive assumptions, as reflected in the evaluation of PwC's labor mix in connection with the management approach factor, are not supported by PwC's quotation. We agree.

First, although the TEB evaluator reviewed PwC's labor mix and hours, she addressed only the hours that PwC proposed for its key personnel labor categories in the base year. AR, Tab 10, Technical Evaluation Report, at 4-5. PwC's pricing sheet reflected [DELETED] hours for its program manager III based on [DELETED]; [DELETED] hours for its project manager based on [DELETED]; [DELETED] hours for its senior functional consultant II labor category based on [DELETED]; and [DELETED] hours for its senior functional consultant I labor category based on [DELETED]. AR, Tab 15a, PwC Pricing Sheet, at 3. DHA explains that the TEB evaluator estimated that PwC proposed [DELETED] FTEs across [DELETED] personnel by dividing the proposed hours for [DELETED]. See AR at 17; Decl. of CO (Sept. 10, 2015) at 11. Based on this analysis the agency concluded that PwC's proposed labor mix was appropriate. AR, Tab 10, Technical Evaluation Report, at 4-5.

The TEB evaluator's assessment focused solely on the hours and positions proposed by PwC for its key personnel. See id. Although the agency argues in its response to the protest that the TEB evaluator considered all of the labor categories proposed by PwC, and concluded that they were appropriate, there is no detail in the contemporaneous record, nor is there meaningful detail in the agency's response that supports this assertion. See AR at 54; Decl. of TEB Evaluator at 19.

For these reasons, we conclude that the agency did not reasonably evaluate whether PwC's overall proposed labor mix, which included [DELETED] FTEs, was appropriate for the level of effort, as required by the RFQ.

CALIBRE and Deloitte also argue that DHA's assumptions regarding PwC's proposed key personnel staffing did not have a reasonable basis. For this reason, the protesters contend that the agency had no basis to find that the awardee's labor mix provided a "key advantage" based on the [DELETED]. See AR, Tab 10, Technical Evaluation Report, at 5. We agree.

The protesters argue that the evaluator's assumptions are unreasonable because the pricing sheet reflected [DELETED] hours for the senior functional consultant I labor category for the base year, but listed [DELETED] for this labor category. See id. The protesters note that it would be impossible for [DELETED] to work all of these hours, which means that other personnel, such as non-key personnel, would perform this work. DHA concedes that [DELETED] could not perform all [DELETED] hours, but contends that it was possible that PwC intended that the [DELETED] key personnel named under the consultant II labor category, or other non-key personnel, could assist [DELETED]. AR at 51. To the extent that the agency concedes that other personnel would be needed to assist [DELETED] for the senior functional consultant I labor category, this concession clearly undercuts the agency's finding of a "key advantage" based on [DELETED]. For these reasons, we sustain the protest.

Unequal Treatment

Next, CALIBRE, Booz Allen, and Deloitte each argue that DHA evaluated their quotations in an unequal manner as compared to PwC. Each identifies several documented findings made concerning its quotation, which each argues are unfounded, or reflect that the agency applied a different standard when evaluating PwC's quotation. For the reasons discussed below, we agree with Booz Allen and Deloitte that certain areas of the evaluation reflect unequal treatment, and sustain their protests on this basis.

It is fundamental that a contracting agency must treat all offerors equally and evaluate offers evenhandedly against common requirements and evaluation criteria. Fitnet Purchasing Alliance, B-410263, Nov. 26, 2014, 2014 CPD ¶ 344 at 8-9. Under FAR subpart 8, an agency also must treat all offerors equally and evaluate quotations evenhandedly against all common requirements. Id.

Booz Allen argues that the TEB evaluator's positive assessment of PwC's quotation under the management approach factor was based on her finding that PwC's key personnel were outstanding due to meeting all the required and preferred qualifications. Specifically, the evaluation found that PwC's [DELETED], and that,

as discussed above, PwC's intent to provide [DELETED]. See AR, Tab 10, Technical Evaluation Report, at 4-5.

With regard to these conclusions about PwC's management approach, the evaluator explains that she found PwC's labor mix, including key and non-key personnel, appropriate by converting the proposed hours to approximate FTEs. Decl. of TEB Evaluator (Sept. 10, 2015) at 19. The evaluator states that she was not able to determine the total FTEs for Booz Allen, and therefore did not compare the quotations on this basis. Id. The record, however, reflects that Booz Allen's quotation listed the specific individuals proposed for key personnel positions, and the FTE commitments for each position; for this reason, it is not clear why the TEB evaluator could not have conducted the same analysis regarding the protester's quotation. See AR, Tab 18, Booz Allen Quotation, Vol. III, at 3-4. Additionally, while the agency credited PwC's quotation based on the [DELETED], Booz Allen did not receive credit for the [DELETED].

As a related matter, Booz Allen argues that DHA cited concerns regarding the qualifications of the protester's [DELETED], finding that the [DELETED] did not meet all of the solicitation requirements. Although the TEB evaluator did not cite the basis for finding that the [DELETED] failed to meet the requirements, the evaluation stated that all of Booz Allen's proposed personnel meet the qualification requirements, "[DELETED]." AR, Tab 10, Technical Evaluation Report, at 11. Booz Allen contends that [DELETED] met all qualification requirements for the position. Booz Allen Supp. Protest (Aug. 31, 2015) at 5.

In its response to the protest, the agency does not dispute that Booz Allen's [DELETED] met the requirements, but instead argues that this concern was not specifically cited in the award decision, and therefore could not have been prejudicial to the protester. AR at 41. As the protester notes, however, the TEB evaluator's response to the protest specifically cited this concern as a basis for finding PwC's quotation superior under the management approach factor. Decl. of TEB Evaluator (Sept. 10, 2015) at 18-19. On this record, we conclude that the agency does not reasonably explain the basis for this evaluation conclusion.

Deloitte contends that DHA unreasonably evaluated its quotation as compared to PwC with regard to a number of areas. With regard to the corporate experience evaluation subfactor of the technical approach factor, the TEB evaluator found that although Deloitte's quotation provided "evidence of current and relevant corporate experience and capability," the vendor "[DELETED]." AR, Tab 10, Technical Evaluation, at 11. The evaluation therefore concluded that the protester's experience did not result in any "distinct advantage." Id. The protester contends that the agency's evaluation was unreasonable because the agency gave specific credit to PwC based on the experience of its team members with the requirements of the solicitation. See id. at 4-5.

Additionally, Deloitte argues that DHA gave credit to PwC based on the strength of its client list, as follows:

In addition, many of the organizations that PwC lists as clients [DELETED].

Id. at 3. The protester contends it was treated unequally because its quotation had a similar list of [DELETED] clients—including [DELETED] of the same [DELETED] clients cited in the evaluation of PwC. See AR, Tab 22, Deloitte Quotation, Vol. I, at 7.

In its response to the protest, DHA contends that Deloitte's arguments are without merit because "these are not areas where Deloitte's quote comes out on top." AR at 49. The agency's position appears to be that because Deloitte's quotation was rated lower than PwC, CALIBRE, and Booz Allen, the protester's disagreements with the agency's judgment do not provide a basis to sustain the protest. Deloitte's arguments, however, address alleged unequal treatment as compared to PwC, the highest-rated vendor. For this reason, we conclude that Deloitte's arguments cannot be dismissed merely because the agency's evaluation found the protester to be the lowest-rated vendor.

On this record, we conclude that DHA's evaluation of Booz Allen's and Deloitte's quotations was unequal as compared to the evaluation of PwC's quotation. We therefore sustain the protest on this basis.

Organizational Conflicts of Interest

Finally, CALIBRE contends that the award to PwC was tainted by an impermissible OCI because PwC consulted with, and received non-public, competitively useful, inside information from a DHA consultant. The protester also argues that PwC had unequal access to information as a result of its contract with DHA to support MHS Governance, discussed above. CALIBRE argues that the agency failed to identify or equalize the competition by furnishing all competitors with the same information. For the reasons discussed below, we find no merit to this argument.

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 existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. Thus, the responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397 et al., July 27, 1995, 95-2 CPD 129 at 12.

In making this determination, the FAR expressly directs contracting officers to examine the particular facts associated with each situation, giving consideration to

the nature of the contracts involved, and further directs contracting officers to obtain the advice of counsel and appropriate technical specialists before exercising their own sound discretion in determining whether an OCI exists. FAR §§ 9.504, 9.505; CACI, Inc. Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 9. The FAR identifies situations in which an OCI may arise, including, as relevant here, unequal access to information conflicts where a firm competing for a government contract has “[p]roprietary information that was obtained from a Government official without proper authorization” or “source selection information . . . that is relevant to the contract but [was not made] available to all competitors, and such information would assist that contractor in obtaining the contract.” FAR § 9.505(b)(1), (2).

To demonstrate that an agency’s OCI determination is arbitrary or capricious, 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. PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). The Court of Appeals for the Federal Circuit has noted that “the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion.” Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1382 (Fed. Cir. 2009). The standard of review employed by this Office in reviewing a contracting officer’s OCI determination mirrors the standard required by Axiom. In this regard, we review the reasonableness of the CO’s investigation and, when 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. See CACI, Inc.--Fed., supra, at 9; CIGNA Gov’t Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 12.

In response to CALIBRE’s protest, the CO conducted an investigation into each of the protester’s allegations. With respect to the consultant, the CO’s investigation found the following: (1) the consultant retired from the Army in 2012 but never worked for DHA in any capacity; (2) a Power Point presentation cited in CALIBRE’s protest, which involved a project involving the consultant and college students, did not directly involve PwC or include any DHA non-public competitively useful information; (3) the consultant’s involvement in market research was limited to introducing an industry representative to an agency official--months in advance of when the official developed the solicitation--by arranging the industry representative’s attendance at meetings with the agency official; and that a member of the CALIBRE team was invited to the same meeting. See Decl. of CO (Sept. 10, 2015) at 2-7.

With respect to PwC’s DHA Governance contract, DHA determined that PwC performed as a subcontractor under a prime contract held by Cherokee Nation Technology Solutions, which involved a different strategic transformation initiative, managed by a different DHA office. Supp. Decl. of CO (Sept. 10, 2015) at 2. The CO determined, after review of the protest and PwC’s quotation, that the allegations

centered around a June 2015 meeting of the Medical Deputies Action Group (MDAG) called by the Principal Deputy Assistant Secretary of Defense (PDASD) for Health Affairs to discuss the agency's on-going MHS Governance initiative. Id. at 1-2. The CO found that MHS Governance and HRO transformation were two separate agency initiatives; that PwC's Governance contract did not involve defining the RFQ's requirements, would not impair PwC's objectivity, and did not give PwC access to non-public competitively useful information beyond the normal experience gained in the performance of a contract. Id. at 2-3. The CO states that the PDASD explained in an interview that the MDAG meeting focused on the Governance structure, not MHS HRO transformation, and that no in-depth discussion of the HRO initiative took place at the meeting. Id. The CO also found, regarding CALIBRE's reference to a "Vision and Journey Map" that was unavailable to other vendors, that the map was something to be developed in the future, and that the facilitator who attended the June meeting is not identified in PwC's quotation. Id. at 3. Based on these findings, the CO concluded that PwC did not have an unequal access to information OCI. Id.

We conclude that the CO reviewed CALIBRE's allegations and reasonably concluded that PwC did not have any disqualifying OCIs. Although the protester argues that the CO should have conducted a more in-depth analysis, and also generally disagrees with the CO's findings, we conclude that the protester's arguments do not demonstrate that the agency's evaluation was unreasonable. For these reasons, we deny this basis of protest.

Prejudice

DHA argues that none of the errors identified above should be considered prejudicial to the protesters because the RFQ gave the agency "maximum discretion" to evaluate the quotations. AR at 8 ("To give the Agency maximum discretion in its evaluation of quotes, the RFQ did not identify evaluation criteria, per se"). In this regard, the agency contends that the solicitation was not intended to have specific evaluation criteria, but was intended to allow the agency to evaluate each quotation "as a whole." Id. at 8, 35, 48. As discussed above, we find that the awardee took exception to a material solicitation clause, which renders its quotation unacceptable. Additionally, to the extent the agency argues that the other errors in its evaluation are not prejudicial because the evaluations were reasonable "as a whole," or in the abstract, irrespective of any specific evaluation findings, we disagree.⁹

⁹ We also disagree with DHA's contention that, because the RFQ did not establish the relative weight or importance of the evaluation criteria, the agency was effectively free to consider each quotation "as a whole" without regard to any particular evaluation criteria. Although DHA did not assign weights to the evaluation factors, we have held that for procurements conducted under the FSS procedures
(continued...)

DHA correctly notes that it was not required to assign quotations adjectival ratings, as such ratings are discretionary and are in any event merely guides to intelligent decision making. See Research & Dev. Solutions, Inc., B-410581, B-410581.2, Jan. 14, 2015, 2015 CPD ¶ 38 at 10 n.9. Additionally, as discussed above, we agree with the agency that the RFQ did not provide for a best-value tradeoff that considered vendors' relative prices. Nonetheless, the RFQ clearly set forth evaluation criteria that established the basis upon which quotations would be evaluated. Thus, because we find that certain areas of the agency's evaluation were not reasonable, and because the record does not show how a proper evaluation would have affected the ranking of the vendors' proposals, we conclude that the protesters were prejudiced by the agency's evaluation. See Solers Inc., B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 12.

CONCLUSION AND RECOMMENDATION

In sum, we find that DHA's evaluation and award decision were inconsistent with the terms of the solicitation and lacked a reasonable basis for the reasons discussed above. We recommend that the agency reevaluate quotations consistent with our decision, and conduct discussions and solicit revised quotations, if appropriate. To the extent DHA believes that the data rights clause is not material, the agency should amend the RFQ, and request revised quotations. Following the revised evaluation, the agency should make a new award decision. If PwC is no longer the awardee, the agency should terminate its order and issue an order consistent with the new selection. We also recommend that CALIBRE, Booz Allen, and Deloitte be reimbursed the reasonable costs of filing and pursuing their protests, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Each protester should submit its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling
General Counsel

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of FAR subpart 8.4, where a solicitation is silent as to the weighting of factors, the factors are presumed to be weighted equally. RVJ Int'l, Inc., supra, at 7-8; see also FAR § 8.405-3(b)(1)(ii)(A) (providing that when placing orders under a BPA that exceed the simplified acquisition threshold, the agency "[s]hall provide an RFQ that includes a description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made").