



GAO

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

Comptroller General
of the United States

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: Chenega Federal Systems, LLC

File: B-299310.2

Date: September 28, 2007

William K. Walker, Esq., Walker Reausaw, for the protester.
Maj. Geraldine Chanel, Department of the Army, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that agency conducted misleading cost discussions is denied where record shows that agency provided protester with detailed information during discussions relating to evaluation of its cost proposal, and protester's response to that information shows that it independently analyzed the information and formed its own business judgments regarding how to respond to the agency's information.
 2. Protest that awardee had an impermissible organizational conflict of interest (OCI) is denied where protester previously raised the same assertion, agency conducted a detailed investigation and concluded that no OCI existed, and protester offers no evidence in support of its position; protester's mere suspicion of an OCI in light of agency's detailed investigation, without more, is inadequate to establish that OCI exists.
-

DECISION

Chenega Federal Systems, LLC protests the award of a contract to Calnet, Inc. under request for proposals (RFP) No. W911W4-05-R-0012, issued by the Department of the Army for translation and interpretation services in Guantanamo Bay, Cuba (GTMO). Chenega asserts that the agency engaged in misleading discussions and failed to identify an organizational conflict of interest (OCI) on the part of Calnet.¹

¹ In its initial letter of protest, Chenega also alleged that the agency unreasonably evaluated its technical proposal and made unreasonable adjustments to its proposed cost. The agency responded to these assertions in detail in its report. In its comments on the report, Chenega made no mention of these assertions; we therefore
(continued...)

We deny the protest.

The RFP contemplated the award of an indefinite-delivery/indefinite-quantity, cost-plus-award-fee contract for a base period of 3 months, with 19 3-month option periods (for a total performance period of 5 years) to provide, on an as-needed basis, translation and interpretation services at GTMO. Offerors were advised that the agency intended to make award to the firm submitting the proposal deemed to offer the “best value” to the government, considering three factors: management, past performance (deemed less important than management), and cost (deemed less important than past performance). RFP at 122-23. For cost evaluation purposes, the RFP advised that the agency would evaluate the proposals for reasonableness and perform a cost realism evaluation to determine the most probable cost for performance of a task order included in the RFP. RFP at 121.

The agency received four proposals, and included all in the competitive range. Thereafter, the agency engaged in discussions with the offerors and solicited and obtained final proposal revisions (FPR). The agency evaluated the FPRs and assigned the following ratings:

	Management	Past Performance	Evaluated Cost
Calnet Inc.	Adequate/Moderate Risk-Good/Low Risk	Excellent/Very Low Risk	\$49.4 million
Chenega Federal Systems	Good/Low Risk	Excellent/Very Low Risk	\$62.1 million
Offeror A	Adequate/Moderate Risk	Excellent/Very Low Risk	\$73.1 million
Offeror B	Good/Low Risk-Excellent/Very Low Risk	Excellent/Very Low Risk	\$68.0 million

AR, exh. 57, at 4. The agency advised Chenega by letter dated December 15, 2006, that Calnet had been selected for award. AR, exh. 52. After receiving a debriefing, Chenega filed a protest in our Office alleging, among other things, that Calnet had an impermissible OCI. By letter dated January 23, 2007, the agency advised our Office that it intended to set aside the award to Calnet, investigate Chenega’s OCI allegation, and make a new source selection decision. AR, exh. 55. Based on this proposed action, we dismissed Chenega’s protest as academic (B-299310, Jan. 31, 2007). After reviewing the matter, the agency executed a revised source selection decision, finding that there were no impermissible OCIs and affirming its earlier

(...continued)

deem them abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

decision to make award to Calnet. AR, exh. 57. After being advised of the agency's decision, Chenega filed this protest.

Chenega maintains that the agency engaged in misleading discussions. Specifically, the protester asserts that, during discussions, the agency advised it that its proposed costs were approximately \$10 million lower than the government's estimate of the firm's most probable cost. The protester contends that this information led it to dramatically increase its proposed cost to avoid receiving a high risk rating for its management proposal. Chenega maintains that this was misleading because, as the incumbent for this requirement, it had a proven management structure that could not reasonably be viewed as high risk.

In negotiated procurements, any discussions must be meaningful, that is, firms must be provided a reasonable opportunity to address the agency's concerns with their proposals. In conducting discussions, agencies may not, inadvertently or otherwise, prejudicially mislead offerors into revising their proposals in a manner that does not address the agency's concerns. First Preston Housing Initiatives, LP, B-293105.2, Oct. 15, 2004, 2004 CPD ¶ 221 at 3. In the context of discussions relating to cost or price, agencies may not coerce or mislead an offeror during discussions into raising its price. Id. at 5.

Here, there is no basis for finding that Chenega was misled. First, the information the agency provided was in accordance with the RFP scheme. The RFP advised that, in evaluating costs, the agency would prepare a most probable cost estimate reflecting its assessment of the cost of performing the requirement using each offeror's proposed technical approach; the agency would adjust each offeror's proposed costs to ensure that they realistically reflected the actual cost of performance, consistent with its technical approach. RFP at 121. This is precisely what the agency did. It prepared a detailed most probable cost estimate for Chenega that it determined was consistent with the firm's technical approach and, during discussions, provided Chenega the detailed calculations and information relating to its proposed staffing. AR, exhs. 12, 27.² This information showed that the agency had determined that Chenega's proposal understated its management staffing by [deleted] hours, and that the estimated cost for these additional hours was \$[deleted].³ Id. Significantly, these calculations merely noted the areas where

² This was consistent with Federal Acquisition Regulation §15.306(e)(3), which provides that the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion.

³ The agency provided Chenega with two spreadsheets, one showing the agency's calculation of Chenega's most probable cost, and one detailing the hours and staffing categories where the agency determined that Chenega's proposed staffing was inconsistent with its technical approach. AR, exh. 12, at 14-15.

Chenega's proposal was found to have a shortfall in staff hours proposed, with no indication of the impact these shortfalls could have on the technical evaluation.

Further, there is no indication that the information the agency provided was somehow invalid, such that it would be misleading to Chenega and should not have been provided. While Chenega's argument suggests that the agency should have known that its proposed hours must be sufficient in light of the firm's incumbency, it does not argue that the agency's calculations are inconsistent with its technical approach in any specific way, or that the agency's calculations are otherwise inaccurate.

The record also shows that Chenega did not blindly rely upon the agency's information in increasing its staffing hours. Rather, Chenega's revised cost proposal, AR, exh. 13A, shows that, in some areas, Chenega proposed additional hours where the government did not identify a shortfall, and in others proposed hours in excess of the identified shortfall. For example, in the area of senior management staff, Chenega initially proposed [deleted] hours, and the agency made no adjustment to the firm's proposed cost or staffing in this area. AR, exh. 12, at 15. Nonetheless, in its revised proposal, Chenega added [deleted] hours for senior management staff. AR, exh. 13A, at 3, attach. 2. Similarly, while the agency identified a [deleted] hour shortfall in Chenega's proposed personnel staff, AR, exh. 12, at 15, its revised proposal added [deleted] staff hours for personnel staff, or [deleted] more hours than the shortfall identified by the agency.⁴ AR, exh. 13A, attach. 2.

In other instances, Chenega did not add as many hours as the identified shortfall. For example, the agency identified a shortfall of [deleted] hours for accounting staff, AR, exh. 12, at 15, but Chenega added only [deleted] accounting staff hours, AR, exh. 13A, attach. 2, stating as follows:

CFS [Chenega] has estimated the present requirements at [deleted] personnel for a total of [deleted] [staff hours] which is [deleted] less than the Government estimate. The addition[al] support required for this effort is provided through [deleted].

AR, exh. 13A, at 3. Similarly, while the agency identified a shortfall of [deleted] staff hours for security staff, AR, exh. 12, at 15, Chenega added only [deleted] staff hours, AR, exh. 13A, attach. 2, stating that its subcontractors would provide the additional security staffing. AR, exh. 13A, at 3.

⁴ The record shows that there were a number of other areas where Chenega proposed staffing in excess of the requirements identified by the agency; for its administrative staff, Chenega proposed [deleted] extra hours above the shortfall in hours identified by the agency, and for its purchasing contracts and subcontracts staff, Chenega proposed [deleted] extra hours.

It is clear from the record, then, that Chenega independently analyzed the agency's feedback provided during discussions and proposed staffing that, in its business judgment, would be sufficient for it to perform the requirement in a manner that was consistent with its proposed technical approach. First Preston Housing Initiatives, LP, supra, at 5. These actions are inconsistent with Chenega's assertion that it was misled. This being the case, and since, moreover, Chenega has not shown that the information provided by the agency during discussions--in accordance with the scheme set forth in the RFP--was inaccurate, there is no basis to conclude that Chenega was misled by the discussions.

Chenega asserts that the awardee has an impermissible OCI. In this regard, Chenega maintains that Calnet hired an individual that had worked as a contracting officer's technical representative at GTMO. According to the protester, this individual may have had access to invoices Chenega submitted under its incumbent contract, and may have provided this information to Calnet for use in preparing its cost proposal.

As noted, in response to Chenega's prior protest, the agency conducted a detailed investigation into this matter. The agency concluded that the individual in question had performed low-level administrative functions such as ensuring that contractor linguists working at GTMO had adequate housing and meals, and were appropriately behaved during performance of their jobs. AR, exh. 56, at 2. Further, based on interviews with the administrative contracting staff at GTMO, the contracting officer concluded that there was no possibility that the individual could have had access to information (either in the form of contractor invoices or other procurement sensitive data) that could have provided Calnet a competitive advantage, and that he did not have the necessary technical expertise to interpret such information even if it had been available to him. Id. Although it has seen both the investigation results, as well as the detailed cost information provided by Calnet in its proposal, Chenega has provided no evidence showing that, notwithstanding the results of the agency's investigation, the individual in question had access to its cost information, or provided such information to Calnet. Since there is no other basis for us to question the results of the investigation, there is no basis for us to find that Calnet had an improper competitive advantage during the acquisition.

The protest is denied.

Gary L. Kepplinger
General Counsel