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Decision

Matter of: Guidehouse Inc.

File: B-421740.3; B-421740.4

Date: July 23, 2024

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DIGEST

Protest that the agency unreasonably failed to mitigate an agency employee's personal conflict of interest regarding her participation in the drafting of the solicitation is denied where the record shows that the agency considered the integrity of the ground rules of the competition and their potential for bias and determined that the employee's participation did not create any competitive harm to the protester.

DECISION

Guidehouse, Inc., of McLean, Virginia, the incumbent contractor, protests the issuance of a task order to Deloitte & Touche LLP, of Arlington, Virginia, under request for quotations (RFQ) No. HQ003423R0124, issued by the Department of Defense (DOD), Washington Headquarters Services (WHS), for audit remediation and sustainment services. Guidehouse argues that WHS failed to investigate and mitigate a government employee's personal conflict of interest.

We deny the protest.

BACKGROUND

On April 10, 2023, WHS issued the RFQ to procure audit remediation and sustainment services supporting the agency's annual audit of other defense organizations' (ODO) financial statements.¹ Agency Report (AR), Tab 1, RFQ at 19. Specifically, the selected vendor would be required to provide program management and audit support services, develop and test financial controls, reconcile budgetary information, draft memoranda of understanding, and utilize "Tiger Teams"² for special projects. *Id.* at 21-23. Further, the selected vendor would primarily support the Office of the Under Secretary of Defense (Comptroller) (OUSD(C)) because the OUSD(C) bears responsibility for overseeing ODO's efforts to obtaining and sustaining an unmodified audit opinion of the ODO's financial statements. Contracting Officer's Statement (COS) at 1.

Competition was limited to holders of blanket purchase agreements (BPA) that previously had been established by the agency against vendors' federal supply schedule contracts. AR, Tab 2, RFQ, amend. 1 at 115. The RFP contemplated the issuance of a single hybrid task order with fixed-price, labor-hour, and time-and-materials contract line-items to be performed over a 1-year base period, and four 1-year option periods. RFQ at 31; RFQ, amend. 1 at 115; RFQ, amend. 2 at 152. The procurement was conducted using the procedures set forth under Federal Acquisition Regulation (FAR) section 8.405-3. RFQ, amend. 2 at 151.

Award would be made on a best-value tradeoff basis considering technical approach and capability, management approach, and price factors.³ RFQ, amend. 2 at 152-153. The RFQ advised that the non-price factors were of equal importance and were individually more important than the price factor. *Id.* at 151.

As relevant here, under the technical approach and capability factor, the RFQ instructed vendors to respond to two scenarios. RFQ at 75. The first scenario focused on DOD's fund balance with Treasury. *Id.* It required the vendor to provide a "Tiger Team Project Plan" to develop solutions for reducing undistributed and unmatched transactions regarding other defense agencies' fund balances with Treasury. *Id.* The second

¹ ODOs are comprised of various defense agencies, field activities, offices, programs, commands, defense funds, and trust funds. Agency Report, Tab 3, RFQ, amend. 2 at 125.

Additionally, we note that all citations to the report use the BATES page numbers provided by the agency.

² "Tiger Teams" are cross-functional teams assembled to address a critical issue.

³ As part of their quotations, the RFQ instructed vendors to submit an independence assertion, as well as their latest peer review report. RFQ at 72-73. During the evaluation, the agency would initially assess the independence assertion and peer review report on a pass or fail basis. *Id.* at 73; RFQ, amend. 2 at 152.

scenario required the vendor to develop a strategy for creating a “Universe of Transactions” through investigating intragovernmental transactions and eliminations across the other defense agencies. *Id.* at 76.

The RFQ advised that the agency would evaluate each vendor’s technical approach and capability by assessing their responses to the two scenarios. RFQ, amend. 2 at 152. The agency would examine each vendor’s understanding, ingenuity, and ability to satisfy the requirements. *Id.*

Three vendors, including Deloitte and Guidehouse, submitted quotations prior to the April 26, 2023, close of the solicitation period. AR, Tab 10, Best-Value Decision Memorandum (BVDM) at 794. After evaluating and comparing quotations, WHS identified Deloitte’s quotation as representing the best value. Contracting Officer’s Statement (COS) at 3.

On June 12, 2023, Guidehouse challenged the issuance of the task order to Deloitte in a protest filed with our Office, alleging that the technical evaluation board (TEB) chairperson (*i.e.*, Employee A) had an impermissible conflict of interest that the agency failed to investigate or mitigate. *Guidehouse, Inc.*, B-421740, B-421740.2, Sept. 18, 2023, 2023 CPD ¶¶ at 3.

The record shows that Employee A was a former employee of Deloitte who worked for the company from December 2016 through May 2020, and was thereafter hired by the agency. *Guidehouse, Inc, supra* at 4. During her employment with Deloitte, she was a senior consultant. *Id.*

After being selected by DOD to serve as a member of the TEB, Employee A advised the agency that she may have a conflict of interest. *Guidehouse, Inc., supra* at 4. The agency conducted a limited investigation and advised that Employee A’s employment with Deloitte and continued financial holdings (*i.e.*, a 401(k) account and possibly a pension) did not create a conflict that would prevent her from serving on the TEB. *Id.* Critically, the agency did not provide our Office with any of the underlying contemporaneous documentation related to its investigation. *Id.* at 5.

Because the agency withheld the evidence of its investigation, we sustained the protest allegation. We explained that our Office could not reach any conclusions about whether the contracting officer adequately considered whether Employee A’s assets presented an actual or apparent conflict because the agency had withheld any analysis of the precise nature of the assets. *Id.* Additionally, we expressed some concern with Employee A’s participation in preparing and issuing the RFQ, noting that if Employee A had a disqualifying financial interest, then the RFQ may contain improper provisions favoring Deloitte. *Id.* at 7-8. We recommended that WHS document its investigation into Employee A’s financial interest and consider whether any mitigation measures were appropriate in light of any actual or apparent conflict of interest. *Id.* at 9.

After receiving our decision, the contracting officer elected to convene a new TEB that did not include Employee A. COS at 3. The contracting officer also investigated Employee A's role in drafting the solicitation. *Id.* at 6. Ultimately, the contracting officer found that Employee A participated in drafting the performance work statement (PWS) for the RFQ and the technical and evaluation capability evaluation scenarios but determined that Employee A's participation did not compromise the integrity of the solicitation or competitively harm Guidehouse. *Id.*

The new TEB then evaluated the quotations and assigned both Deloitte and Guidehouse "good" ratings for the technical approach and capability, and management approach factors. AR, Tab 10, BVDM at 798. Deloitte's total price was \$77,782,765, and Guidehouse's total price was \$85,745,412. *Id.* Following the evaluation, the source selection authority (SSA) compared the quotations and determined that Deloitte offered more advantageous technical capability and more experienced key personnel. AR, Tab 10, BVDM at 809-811.

On May 3, WHS notified Guidehouse that its quotation was unsuccessful. AR, Tab 11, Unsuccessful Quoter Notice at 814-816. This protest followed.

DISCUSSION

Guidehouse argues that the agency conducted a flawed conflict of interest investigation. First, Guidehouse contends that the contracting officer failed to participate meaningfully; instead, Guidehouse argues that the investigation was limited to another agency employee's (Employee B) findings and conclusions. First Supp. Protest at 3. Second, Guidehouse contends that the agency's investigation was unreasonably limited in scope because the agency did not determine the extent of Employee A's financial interest in Deloitte. *Id.* at 3-4. Finally, Guidehouse contends that the agency's conclusions are inaccurate because the record shows that Employee A was heavily involved in developing and approving the PWS and the evaluation factors.⁴ *Id.* at 5-6.

The agency counters that the investigation affirmatively demonstrated that any apparent or actual conflict of interest did not prejudice Guidehouse's competitive position. The agency explains that the contracting officer relied on Employee B to review Employee A's role in developing and approving the RFQ, and that Employee B determined that Employee A's role was limited. Memorandum of Law (MOL) at 13. The agency explains that the contracting officer reviewed how the RFQ was drafted and determined that Employee A did not drive any significant changes that could have aided Deloitte. *Id.* Additionally, the agency explains that the contracting officer relied on Employee B's reports to conclude that the RFQ did not contain advantages for Deloitte or prejudicial requirements for Guidehouse. *Id.*

⁴ In its protest, Guidehouse argued that the agency unreasonably evaluated its quotation and improperly conducted the tradeoff analysis. Protest at 15-20. Guidehouse later withdrew these allegations. Comments at 1 n.1.

As referenced above, after we sustained Guidehouse's prior protest arguing that Employee A had a disqualifying personal conflict of interest, the agency elected to convene a new TEB, reevaluate quotations, and make a new selection decision. COS at 3-4.

Significant to the instant protest, WHS also elected to consider whether Employee A's participation in drafting the solicitation required any mitigation measures. COS at 3-4. In so doing, the contracting officer requested that OUSD(C) assist in analyzing Employee A's role in drafting the RFQ. COS at 4. The contracting officer requested OUSD(C)'s assistance because it has the subject matter expertise, developed the requirement, and drafted the RFQ. *Id.* OUSD(C) assigned one employee (*i.e.*, Employee B) who was a member of the integrated product team (IPT) that drafted the RFQ.⁵ *Id.*

On October 19, 2023, Employee B completed his first report. AR, Tab 13, PWS Analysis at 818. Employee B reported that he had analyzed the PWS requirements and concluded that they did not contain evidence of bias toward any company. *Id.*

In reaching this conclusion, Employee B explained that the IPT drafted seven versions of the PWS. AR, Tab 13, PWS Analysis at 818. While Employee A led the IPT and created the initial version of the PWS (*i.e.*, "Version 0"), Employee B explained that Employee A simply adopted the PWS from the incumbent contract performed by Guidehouse. *Id.* at 818-819. Further, Employee B explained that, while Employee A suggested comments and revisions, Employee B was responsible for drafting the remaining versions of the PWS and incorporating any revisions. *Id.* at 818. Employee B also explained that final authority to approve the PWS rested with an OUSD(C) director, and that the director frequently was consulted regarding the scope and structure of the PWS. *Id.* ("As a sponsor of the [Other Defense Organizations Audit Remediation Support (OARS)] project, [the director] gave final approval for the PWS used for the OARS solicitation and approved major changes made to the PWS during development, and the OARS IPT Leader met with her periodically to give her status updates and obtain guidance.").

On October 25, 2023, the WHS Office of General Counsel (OGC) requested additional information from Employee B. AR, Tab 13, PWS Analysis at 835. The OGC asked the following questions:

1. Beyond her role in creating the PWS, was [Employee A] involved at all in creating the evaluation factors (such as the scenarios)?

⁵ The IPT consisted of Employee A, Employee B, and a third employee. AR, Tab 13, PWS Analysis at 818. The IPT also had an accountant and a financial analyst serving as subject matter experts. *Id.*

2. The [October 19, report] mentions [Employee A's] in-line comments. What do those comments show?

Id.

On October 31, 2023, Employee B responded to the specific questions. AR, Tab 13, PWS Analysis at 835. First, Employee B explained that Employee A was involved in creating the evaluation factors, including the scenarios, along with the other members of the IPT. *Id.* Employee B explained that generally he drafted the factors, that the other members of the IPT commented on the factors, and that the OARS director provided final approval. *Id.* As to the scenarios, Employee B explained that he suggested using them as an evaluation factor, and that they were ultimately approved by the OARS director. *Id.*

Second, Employee B addressed Employee A's in-line comments on the PWS drafts. AR, Tab 13, PWS Analysis at 835-837. Employee B characterized the comments as standard remarks typical of the edit and revision process. *Id.* at 835.

On November 14, 2023, Employee B completed a supplemental report, which focused exclusively on Employee A's role in drafting the RFQ. AR, Tab 13, PWS Analysis at 832. Further, Employee B focused on five specific areas: (1) how Employee A specifically participated in drafting the RFQ; (2) advantages to Deloitte resulting from Employee A's participation in the procurement; (3) identifying any PWS areas that were Deloitte specific; (4) identifying any advantages Deloitte may have gained from the evaluation factor scenarios; and (5) whether Employee A's input was overwritten by other WHS employees. *Id.* at 832 834.

As to the first area, Employee B explained that Employee A developed "Version 0" of the PWS from the incumbent contract, and by drafting the scenario descriptions. AR, Tab 13, PWS Analysis at 832. On the second area, Employee B explained that Employee A's participation in the drafting of the RFQ did not provide Deloitte any advantages in the competition. *Id.* at 833. Specifically, Employee B explained that Deloitte did not gain any advantage because Employee A provided comments typical of the revision process. *Id.* Employee B also explained that Employee A's development of the evaluation factor scenarios did not provide any advantage to Deloitte because she only described the scenarios which had already been determined by the OARS director. *Id.*

Regarding the third area, Employee B determined that no PWS function was specific to Deloitte. AR, Tab 13, PWS Analysis at 833. Instead, Employee B explained that successful performance requires understanding the DOD audit environment and providing cleared personnel and key personnel with specialized skills. *Id.* On the fourth area, Employee B explained that the two scenarios did not provide Deloitte with any advantage in the competition because the scenarios represent long-standing material weaknesses in DOD's financial statements, are well-known by DOD audit-remediation contractors, and have been the focus of DOD remediation efforts for some time. *Id.* As

to the fifth area, Employee B explained that Employee A's comments were not overwritten (*i.e.*, the scenarios that she drafted were not removed by subsequent revisions). *Id.*

After reviewing Employee B's analysis, the contracting officer determined that Deloitte did not receive any advantage from Employee A's participation in drafting the RFQ. COS at 6. The contracting officer agreed that Employee A only provided revision assistance to the PWS and drafted scenarios that represent longstanding material weaknesses in DOD's financial audits. *Id.* at 6-7. Satisfied that Employee A's involvement did not prejudice Guidehouse, the contracting officer permitted the new TEB (which did not include Employee A) to reevaluate quotations and make a new selection decision. *Id.* at 7.

Turning to our review of the contracting officer's investigation, we consider whether the agency reasonably determined that Employee A's apparent conflict did not compromise Guidehouse's competitive position. See COS at 4 ("Therefore, I asked OUSD(C) to provide me information regarding [Employee A's] role in the drafting of the requirement. I required this information to decide whether the apparent conflict arising from [Employee A's] financial holdings necessitated additional action beyond the decision that she not participate in the re-evaluation or in any other role in the acquisition.").

Even where a potential conflict of interest exists, we will not sustain a protest where the record demonstrates that there was no competitive prejudice to the protester. *TDF Corp.*, B-288392, B-288392.2, Oct. 23, 2001, 2001 CPD ¶ 178 at 9. Indeed, although we assume prejudice where a conflict of interest exists, such presumption is rebuttable. *BAE Sys. Tech. Sols. & Servs., Inc.*, B-411810.3, June 24, 2016, 2016 CPD ¶ 174 at 8. To rebut the presumption, an agency must affirmatively demonstrate the absence of any competitive harm. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 305 at 13. Further, where, as here, an apparent conflict concerns the integrity of the ground rules of the competition, the agency should focus its inquiry on the integrity of the specifications and their potential for bias. *Id.*

Here, our review of the record leads us to conclude that the agency has affirmatively demonstrated the absence of any competitive harm to Guidehouse because the contracting officer's investigation shows that Employee A's participation did not affect the integrity of the RFQ or create bias in favor of Deloitte. Indeed, the agency explains, and our review confirms, that Employee A did not draft the RFQ in such a manner that would benefit the awardee. As noted above, her largest contributions to developing the RFQ were drafting "Version 0" of the PWS and the two evaluation scenarios for the technical approach and capability factor. Neither contribution benefitted Deloitte because the contracting officer's investigation shows that "Version 0" was adopted from the incumbent contract which Guidehouse is currently performing, and the evaluation scenarios contemplate existing, well-known problems with DOD financial audits.

Additionally, our review confirms the contracting officer's conclusion that Employee A's revisions to the PWS were relatively unextraordinary, plain, or otherwise mundane in

nature. See AR, Tab 13, PWS Analysis at 835-837. For example, when reviewing a PWS task, Employee A commented, “[w]hat specific outcomes can we anticipate from tiger teams?” *Id.* at 870. Similarly, responding to another IPT member’s comment regarding support for the joint strike fighter program, Employee A responded “[w]e may want to delete this entire subtask.” *Id.* at 928. Consistent with the contracting officer’s findings, we agree that both comments are typical of a standard review process because they reflect simple efforts to elucidate the final product. Further, neither comment nor any of Employee A’s other comments indicate efforts to provide Deloitte with an advantage in the competition.

Moreover, the record supports the contracting officer’s determination that Employee A did not drive the substantive changes to the PWS or evaluation factors. As noted, the record shows that the OARS director had final approval for the PWS and determined the technical approach and capability scenarios. AR, Tab 13, PWS Analysis at 818. The record contains instances where members of the IPT commented on potential changes and noted that the OARS director needed to provide final approval. See, e.g., *id.* at 924 (“Get [OARS director’s] approval for this. This means [contractors] don’t require on-site space. But before COVID, they were working on-site.”). The record also contains meeting notes which show that the OARS director, not Employee A, determined the scope of the PWS functions. See *id.* at 1001-1003 (listing OARS director’s instructions for revising the PWS functions). Thus, because the contracting officer’s investigation shows that Employee A had relatively minor contributions without actual authority over the direction of the acquisition, we agree that the agency has successfully rebutted the presumption of prejudice.

As to Guidehouse’s specific arguments, we do not find any persuasive. First, while Guidehouse argues that the contracting officer’s investigation was deficient because she relied only on the analysis of a single employee, we disagree. See Comments at 3-4. Although Employee B may have been the only person to prepare the reports, his findings and conclusions are supported by the PWS drafts, meeting notes, and emails between other employees. See, e.g., AR, Tab 13, PWS Analysis at 1000-1003 (August 22 and 30, 2022, Meeting Notes with OARS director), 1092-1093 (Email from Employee B to DoD employees discussing next steps for reviewing RFQ). Thus, even though the contracting officer may have relied solely on Employee B’s reports, we are not persuaded by Guidehouse’s arguments challenging the singular nature of those reports because Employee B’s conclusions are supported by contemporaneous documents showing how the agency developed the RFQ. Further, government officials, such as Employee B, are presumed to act in good faith, and since Guidehouse does not sufficiently demonstrate otherwise, we have no reason to question the veracity of Employee B’s analyses.⁶ See *Nexagen Networks, Inc.*, B-411209.7, June 20, 2016, 2016 CPD ¶ 164 at 5 (government officials are presumed to act in good faith).

⁶ Guidehouse also argues that Employee B reported to Employee A as part of their participation in the IPT, and that, therefore, the contracting officer should not have relied upon Employee B’s reports in conducting her investigation. See Comments at 4. The
(continued...)

Second, we disagree that the contracting officer's investigation was unreasonably limited in scope. See Comments at 4-5. In this regard, Guidehouse complains that the agency did not ascertain or divulge the extent of Employee A's financial ties to Deloitte. *Id.* at 5. While we would encourage the agency to ascertain or divulge such details where a protester challenges the reasonableness of an investigation into a potential conflict of interest, such concern is not present here. Instead, the record shows that the agency treated Employee A's situation as if she had the appearance of a conflict, and that it has sought to mitigate the effect of such conflict. COS at 3-4. Given this posture, we fail to see how or why the contracting officer needed to investigate further whether Employee A, in fact, had a potential conflict.

Third, Guidehouse argues that the contracting officer's findings are based on inaccurate assessments of Employee A's participation. Comments at 5. In so arguing, Guidehouse calls attention to comments allegedly showing Employee A approving specific PWS provisions and clarifying other PWS provisions. *Id.* at 6. As examples, Guidehouse highlights comments showing that Employee A agreed to revise how deliverables are submitted to the agency (*i.e.*, from allowing only emailed copies to also allowing copies uploaded directly to the agency's network), and that Employee B suggested that the group agree on when and how often the contractor's project management plan must be submitted to the agency. *Id.*; see also AR, Tab 13, PWS Analysis at 925, 935.

We are unpersuaded by Guidehouse's characterization of Employee A's participation. The identified comments show Employee A concurring with or suggesting routine revisions primarily affecting how a contractor's deliverables are provided to the agency. We simply fail to see how this sort of unremarkable activity demonstrates that the contracting officer's investigation was factually inaccurate.

The fact of the matter is our review shows that the contracting officer thoroughly investigated Employee A's role and contributions to the development of the RFQ by documenting and examining Employee A's participation in the acquisition. The contracting officer then considered the scope of the employee's participation and determined that such participation did not create any competitive benefit to Deloitte or

agency responds that "the IPT was informal; there was no written charter, IPT members were not appointed in writing, and IPT member roles and reporting relationships were not explicit." COS at 4. Additionally, the agency explains that Employees A and B collaborated on developing the RFQ. *Id.* The agency also clarified that Employee B does not report to Employee A, and that both employees are in different divisions with different supervisors and managing supervisors. *Id.* While we recognize that Employees A and B worked closely as part of their participation on the IPT, we agree with the agency this proximity does not provide a basis to question the truthfulness of Employee B's reports. Put simply, Employee B does not appear to face any repercussions from truthfully discussing the IPT's activities because Employee A does not officially supervise or oversee Employee B.

detriment to Guidehouse. Thus, despite Guidehouse's view, the record shows that the contracting officer judged that Employee A's participation did not taint the ground rules of the competition. In this regard, Guidehouse's disagreement with the contracting officer's judgments regarding the scope and level of Employee A's participation does not provide us with a basis to sustain the protest. See *Lynchval Sys. Worldwide, Inc.*, B-420295.4, Apr. 26, 2022, 2022 CPD ¶ 103 at 11 (simple disagreement with an agency's organizational conflict of interest investigation and determination does not provide GAO with a basis to sustain a protest).

The protest is denied.

Edda Emmanuelli Perez
General Counsel