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Decision

Matter of: ViON Corporation; EMC Corporation

File: B-409985.4; B-409985.5; B-409985.6; B-409985.7; B-409985.8

Date: April 3, 2015

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DIGEST

1. Protest challenging agency's evaluation of awardee's proposal is denied where record shows evaluation was reasonable and consistent with terms of solicitation.
 2. Protest alleging agency failed to investigate potential organizational conflict of interest is denied where protester failed to present hard facts indicating existence of conflict.
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DECISION

ViON Corporation, of Herndon, Virginia, and EMC Corporation, of McLean, Virginia, protest the award of a contract to World Wide Technology, Inc. (WWT), of Maryland Heights, Missouri, by the Defense Information Systems Agency (DISA), Defense Information Technology Contracting Agency, under request for proposals (RFP) No. HC1028-13-R-0015 for information technology (IT) storage infrastructure services. ViON and EMC assert that the agency's evaluation of proposals was unreasonable in various respects. ViON also asserts the agency failed to consider an alleged organizational conflict of interest (OCI).

We deny the protests.

BACKGROUND

The solicitation, issued on September 19, 2013, contemplated the award of a single fixed-price, indefinite-delivery/indefinite-quantity contract with a four-year base period and two one-year option periods. RFP at 1, 16, 80. The solicitation included a performance work statement (PWS), which described the requirement as “a dynamically scalable storage capability utilizing an on-demand service approach, for new equipment, that will quickly adjust to changes in storage and throughput requirements, both increases and decreases, and is priced on a utility (‘as used’) basis or tiered structure.” PWS § 4.0. This requirement is known as Enterprise Storage Solution II (ESS II). Id. § 2.0. ViON is the incumbent ESS contractor.

Award was to be made based on a best-value tradeoff, considering the following three factors, listed in descending order of importance: technical/management; past performance; and cost/price.¹ RFP at 73. The technical/management factor included the following three equally-weighted subfactors: technical solution; service delivery; and proof of concept. Id. The solicitation provided that for each technical/management subfactor, proposals would be assigned both “technical/management ratings” as well as “technical/management risk ratings.” Id. at 73-74, 76. The technical/management ratings were outstanding, good, acceptable, marginal, and unacceptable, while the technical/management risk ratings were low, moderate, and high. Id. at 74, 76.

The solicitation provided evaluation criteria for each factor and subfactor. RFP at 73-81. As relevant here, the criteria for the technical solution subfactor stated that the agency would “evaluate the soundness of the Offeror’s approach for ensuring the proposed solution meets the functional and performance requirements.” Id. at 74. As also relevant, the criteria for the proof of concept subfactor stated that the agency may elect to “validate the Offeror’s solution” by conducting testing in a proof of concept demonstration. Id. at 75. Finally, the solicitation also included the following provision regarding pricing:

The Government may reject any proposal that is evaluated to be . . . unreasonably high or low in price when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program.

¹ Notwithstanding the inclusion of a factor designated “cost/price,” the solicitation called for the submission of fixed prices and contemplated the award of a fixed-price contract. See RFP at 2-6 (all line items designated “FFP,” meaning firm, fixed-price); ViON Agency Report (AR), Tab 26, Award Brief, at 7 (stating contract type is “Firm Fixed Price IDIQ”).

RFP at 72.

The agency received seven proposals by the solicitation's closing date, including proposals from ViON, EMC, and WWT. ViON AR at 18. WWT's proposal reflected that Hewlett Packard (HP) was a "major subcontractor" for WWT and that WWT's technical solution employed many HP products.² ViON AR, Tab 17B, WWT Final Proposal Revision (FPR), Vol. I, Executive Summary, at 8.

After one offeror withdrew from the competition, the agency established a competitive range of the six remaining offerors. ViON AR at 19. The agency then conducted four rounds of discussions. See id. at 20-31. The agency also tested the offerors' proposed solutions through proof of concept demonstrations.³ See id. at 43-51. At the conclusion of discussions and the proof of concept testing, the proposals of ViON, EMC, and WWT were assigned the final ratings and total evaluated prices shown in the table below.

	<u>ViON</u>	<u>EMC</u>	<u>WWT</u>
Technical/Management⁴			
Subfactor 1--Technical Solution	Good/Low Risk	Good/Low Risk	Acceptable/ Low Risk
Subfactor 2--Service Delivery	Good/Low Risk	Good/Low Risk	Good/Low Risk
Subfactor 3--Proof of Concept	Pass	Pass	Pass
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence
Total Evaluated Price	\$190,826,156	\$397,955,199	\$108,921,114

See ViON AR, Tab 25A, Source Selection Advisory Council (SSAC) Memorandum for Record, at 2.

² HP also independently submitted an offer.

³ At the time of the proof of concept demonstrations, EMC and Oracle America, Inc. filed protests challenging the parameters of the testing. Our Office docketed the protests as B-409985.1, B-409985.2, and B-409985.3. The protests later were withdrawn.

⁴ The solicitation provided that the agency would assign ratings under each of the technical/management subfactors but not an overall rating for the technical/management factor. RFP at 73.

Based on the evaluation results, the source selection evaluation board (SSEB) and SSAC both recommended to the source selection authority (SSA) that award be made to WWT. See ViON AR at 128. After receiving a briefing and reviewing the evaluation record, the SSA agreed with the recommendations of the SSEB and SSAC. See ViON AR, Tab 28, Source Selection Decision Document (SSDD), at 1, 41-42. Additionally, the SSA documented an “integrated assessment” of the competitive range proposals in which he compared their relative evaluated merits. Id. at 36-40. At bottom, the SSA found as follows:

With WWT’s overall cost being 13% to 265% lower than any other offeror’s proposed cost, in my assessment, there are more benefits to the Government in the proposal from WWT than from [any other competitive range offeror]. . . . The additional evaluated strengths of the ViON and EMC proposals absolutely do not justify the additional costs to the Government if award were to be made to either of those two offerors.

Id. at 41. Based on this finding, the SSA determined WWT’s proposal represented the best value to the government.

On December 19, 2014, award was made to WWT. ViON AR at 131. Following debriefings, ViON and EMC filed protests with our Office.

DISCUSSION

ViON and EMC assert the agency’s evaluation of proposals was unreasonable in numerous respects. ViON also asserts the agency failed to consider an alleged OCI. We have reviewed all of the protesters’ arguments, and we find, based on the record, that none furnishes a basis on which to sustain the protests.⁵ Below we discuss the protesters’ principal contentions.

Technical Evaluation

ViON and EMC allege the agency’s evaluation of WWT’s proposal under the technical/management factor was unreasonable. More specifically, the protesters allege WWT’s technical approach did not meet PWS requirements for enterprise class storage solutions. ViON Comments at 36-46; ViON Supp. Comments at 52-60; EMC Comments at 29-34; EMC Supp. Comments at 50.

⁵ For example, ViON and EMC allege, among other things, WWT allegedly took exception to material terms of the solicitation and the agency’s evaluation of past performance was unreasonable. Again, we have reviewed all of the protesters’ arguments and find, based on the record, there is no basis to sustain the protests.

As relevant to the protesters' claims, PWS § 6.1.1.1 set forth the enterprise class storage solutions requirements. The requirements were set forth in a list and, as relevant here, included the following:

- Supports heterogeneous data migration which is non-disruptive to ongoing operations.
- Supports 3-way replication of data.
- Supports multi-tenancy.

PWS § 6.1.1.1. Following the list of technical requirements, PWS § 6.1.1.1 included the statement: "All components provided for the enterprise class storage solution must meet enterprise class storage features listed above." However, PWS § 6.1.1.1 also included the statement: "Enterprise class solution for open systems (listed in 6.3.1.2 - 6.3.1.5)⁶ should meet all requirements above except support for FICON [fiber connectivity] and mainframe operating systems."

The protesters point out WWT's enterprise class storage solution consisted of two devices: the HP XP7 storage array and the HP 3PAR 10000 storage array. ViON alleges that while the HP XP7 array meets the solicitation requirements, the HP 3PAR 10000 array is a lower-cost, "mid-grade" device that does not meet the PWS § 6.1.1.1 requirements shown in the bullets above. ViON Comments at 38-39. As a result, ViON argues, WWT's proposal should have been found unacceptable. EMC makes a similar argument, except EMC alleges the 3PAR 10000 array "may be minimally acceptable," which should have resulted in a higher risk rating than was assigned to WWT's proposal. EMC Comments at 30.

In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6. An offeror's disagreement with the agency's evaluation does not establish the evaluation was unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

The agency defends the evaluation of WWT's enterprise class storage solution on two grounds. First, the agency contends the evaluation was reasonable because

⁶ PWS §§ 6.3.1.2 through 6.3.1.5 consisted of the following list of "chipsets/ operating environments": "X-86 (Windows Server, Red Hat Enterprise Linux, SUSE Linux Enterprise Server, Solaris, Vmware vSphere Enterprise Plus)"; "Itanium (HP-UX)"; "SPARC (Solaris)"; "IBM System p (AIX)."

the solicitation permitted offerors to propose different solutions for enterprise class mainframe storage versus enterprise class open systems storage. Supp. AR at 59. The agency asserts WWT proposed the HP XP7 array for the mainframe component of the enterprise class storage solution requirement and the HP 3PAR 10000 array for the open system component of the enterprise class storage solution. Based on this hybrid solution, the agency asserts its evaluation of WWT's proposal was reasonable. EMC AR at 142-43; ViON AR at 143; Supp. AR at 59-60.

As a second argument in support of its evaluation, the agency states WWT's solution passed the proof of concept testing and, therefore, the protesters' claims have no merit. Supp. AR at 59-61. As related to this argument, the agency points to evaluation findings showing WWT's solution was subjected to and passed test connected with PWS § 6.1.1.1--i.e., the PWS section at issue in the protests. Id. (citing ViON AR, Tab 24A, WWT Final Consensus Report, at 13-17).

WWT's proposal shows the firm proposed the HP XP7 array for the mainframe component of the enterprise class storage solution and the HP 3PAR 10000 array for the open system component of the enterprise class storage solution. ViON AR, Tab 17C, WWT FPR, Vol. II, at 7, 19, 37. Further, it appears the agency understood this to be WWT's approach because the agency asked WWT during discussions to clarify what hardware was being proposed for open systems applications versus mainframe workload. See ViON AR, Tab 7, WWT Discussions, at 132.

As shown from the provisions of PWS § 6.1.1.1 quoted above, there was a firm requirement that the mainframe component of the enterprise class storage solution have the capabilities at issue in the protest claims here, and there is no dispute WWT's proposed array for the mainframe storage component met this requirement. In contrast, PWS § 6.1.1.1 provided only that the open systems enterprise class storage solution "should," rather than "must," have those features. PWS § 6.1.1.1. Given the permissive language of this provision, WWT's relatively low acceptable rating under the technical solution subfactor, and the agency's documented finding that WWT's solution passed the proof of concept testing, we do not see a basis to overturn the agency's technical evaluation judgments.

Price Realism

ViON and EMC allege the agency failed to evaluate the realism of WWT's pricing, as required by the solicitation. ViON Comments at 5-18; ViON Supp. Comments at 30-42; EMC Comments at 41-49; EMC Supp. Comments at 7-29. The protesters point out WWT's total evaluated price was significantly lower than the IGCE and the total evaluated price of any other offeror, except HP. ViON Comments at 11. The table below compares the overall price in the independent government cost estimate (IGCE) to the offerors' total evaluated pricing.

IGCE and Offeror Pricing	
IGCE	\$427,177,921.00
WWT	\$108,921,113.92
HP	[\$DELETED]
ViON	\$190,826,156.37
Offeror 4	[\$DELETED]
Offeror 5	[\$DELETED]
EMC	\$397,955,198.80

ViON AR, Tab 25A, SSAC Memorandum for Record, at 2.

The protesters also point out WWT's unit prices are dramatically lower than the unit prices in the IGCE. To illustrate, ViON offers the data in the table below to contrast the year-one enterprise class disk storage unit pricing in the IGCE with the pricing in WWT's FPR.

	Terabyte Per Day Price (Enterprise Class 15k)	Terabyte Per Day Price (Enterprise Class 10k)	Terabyte Per Day Price (Enterprise Class 7.2k)
IGCE	\$2.72	\$2.63	\$2.25
WWT	[\$DELETED]	[\$DELETED]	[\$DELETED]

ViON AR, Tab 34, IGCE (Cost Data Sheet); ViON AR, Tab 20L, ViON FPR, Cost Model (B-Table Sheet); ViON AR, Tab 22G, WWT FPR, Cost Model (B-Table Sheet). As the table reflects, WWT's unit pricing is a small fraction of the unit pricing in the IGCE.

Finally, the protesters assert none of the contemporaneous evaluation documents--including the final consensus evaluation report for WWT's FPR or the SSDD--references a price realism analysis or address the realism of WWT's pricing.

Before awarding a fixed-price contract, an agency is required to determine whether the price offered is fair and reasonable. Federal Acquisition Regulation (FAR) § 15.402(a). An agency's concern in making this determination in a fixed-price environment is primarily whether the offered prices are too high, as opposed to too low, because it is the contractor and not the government that bears the risk that an offeror's low price will not be adequate to meet the costs of performance. Sterling Servs., Inc., B-291625, B-291626, Jan. 14, 2003, 2003 CPD ¶ 26 at 3; CSE Constr., B-291268.2, Dec. 16, 2002, 2002 CPD ¶ 207 at 4.

Although not required, an agency may choose to provide for a price realism analysis in a solicitation for the award of a fixed-price contract for the purpose of assessing whether an offeror's low price reflected its understanding of the contract requirements or to avoid the risk of poor performance from a contractor that is forced to provide services at little or no profit. See The Cube Corp., B-277353,

Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. Our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 17. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Star Mountain, Inc., B-285883, Oct. 25, 2000, 2000 CPD ¶ 189 at 6.

In its response to the protests, the agency asserts "the RFP did NOT mandate that the Agency conduct a realism analysis."⁷ Supp. AR at 44. We disagree.

As stated above, the solicitation included the following provision:

The Government may reject any proposal that is evaluated to be . . . unreasonably high or low in price when compared to Government estimates, such that the proposal is deemed to reflect an inherent lack of competence or failure to comprehend the complexity and risks of the program.

RFP at 72. Thus, the solicitation advised "unreasonably . . . low" pricing may serve as a basis for rejection of a proposal. Implicit in the reference to "unreasonably . . . low" pricing is the presumption the agency would consider whether an offeror's pricing was unrealistic and, as a consequence, unacceptable. Accordingly, notwithstanding the agency's argument to the contrary, the solicitation contemplated a price realism evaluation. Optex Sys., Inc., B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 8 (price realism evaluation required where solicitation expressly states (1) agency will review prices to determine whether they are so low they reflect lack of technical understanding, and (2) proposal can be rejected for offering low prices).

Next, the agency asserts that although "it did not specifically use the term price realism in its evaluation documents, the Agency believes that it in fact did such an analysis." Supp. AR at 45. In this regard, the agency asserts a price realism analysis occurred through various aspects of the evaluation.

The record reflects the agency's evaluation was consistent with what is required of a reasonable price realism analysis. In particular, the record reflects the agency evaluated WWT's technical solution and assigned it a rating of acceptable based on the solution's specific technical features. See ViON AR, Tab 24, WWT Final Consensus Report, at 1-8. In this regard, the agency states the solicitation permitted offerors to propose their own technical solutions and the individual

⁷ This position is consistent with the agency's statement in ViON's debriefing that "this is a Firm Fixed Price contract and a realism analysis was not required." ViON AR, Tab 31C, at 3.

technical solution would drive pricing. ViON AR at 134. The record further reflects the agency evaluated the risk associated with WWT's technical solution as "low" based on the following findings:

The offeror's solution clearly meets all technical requirements in accordance with the Section M evaluation criteria for Subfactor 1, Technical Solution. The proposed solutions are unlikely to cause any disruption in schedule, increase costs, or degrade performance. Any difficulties encountered implementing and maintaining these solutions are likely to be overcome with normal Government monitoring and contractor efforts. The offeror also successfully completed all Proof of Concept (POC) technical tests

ViON AR, Tab 24, WWT Final Consensus Report, at 3.

Finally, the record reflects the agency evaluated WWT's pricing to ensure it was consistent with the technical approach.⁸ In this regard, the following passage appears in the price evaluation portion of WWT's final consensus report:

With the assistance of the technical evaluation team, the offeror's pricing notes were reviewed to ensure the solutions employed were consistent with the technical solutions contained in Volume II-- Technical/Management Proposal. Based on our analysis and in coordination with the technical evaluation team, we determined that the offeror addressed all Government uncertainties and its cost/price proposal is consistent with the work to be performed based on its technical approach.

Id. at 35. We view these aspects of the record to constitute an adequately documented and reasonable price realism analysis. While the protesters' assert WWT's low price should have prompted the agency to conduct a more probing analysis, as stated above, the depth of an agency's price realism analysis is within its discretion. Here, the agency reasonably found WWT's technical approach acceptable, with low risk, for the work required, and its price consistent with the technical approach. As a result, the protesters' claims that the agency failed to conduct or document a reasonable price realism analysis are denied.

⁸ The record also reflects that while the agency compared WWT's total evaluated pricing to the total price in the IGCE, the agency also discredited and apparently abandoned the IGCE. In this regard, the price evaluation portion of WWT's final consensus report states "the pricing team identified differences in the methodology for developing the IGCE and the methodology for the evaluation contained in the RFP, thereby precluding a comparison between the IGCE and the total evaluated price of the offerors." AR, Tab 24A, WWT Final Consensus Report, at 36.

Organizational Conflict of Interest

ViON alleges the agency improperly failed to review a potential OCI. ViON Comments at 24-35; ViON Supp. Comments at 50-52. ViON's allegation concerns an IT storage consulting firm known as the Evaluator Group. ViON alleges that since late 2009, the agency has had "subscription" contract with the Evaluator Group and that under this contract the Evaluator Group provides IT storage education, product briefs and analysis, product comparisons, consultations, and training sessions. ViON Comments at 27. ViON further alleges the Evaluator Group has "financial ties" with HP because the Evaluator Group's website lists HP as one of its "Clients." ViON Comments at 27-29. ViON claims HP paid the Evaluator Group for a white paper favorable to HP 3PAR products. *Id.* at 30. Finally, ViON claims that in August, 2014--which coincides with the time the evaluation in this procurement took place--an Evaluator Group senior strategist gave a presentation to the agency regarding storage trends and technology. ViON Comments at 33. Based on these allegations, ViON argues "The Evaluator Group's role advising DISA on its IT storage procurement needs may very well have resulted in 'biased ground rules' and/or 'impaired objectivity.'" Supp. Comments at 34.

The FAR requires contracting officials to 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. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5.

As relevant here, 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. 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. An impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505-3. 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. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4.

In response to ViON's claims, the agency's technical team lead states as follows:

DISA did not use [the Evaluator Group senior strategist] or Evaluator Group as a consultant for any consultation or training of DISA personnel in support of the ESS II procurement process. Moreover, DISA did not utilize [the Evaluator Group senior strategist] or

Evaluator Group for any part of ESS II procurement or evaluations. As identified in the RFP, [the firm] Kepler was an identified support contractor and provided the Source Selection Training for the ESS II acquisition . . . not Evaluator Group [or the Evaluator Group senior strategist]. In terms of the ESS II Source Selection, DISA did not use [the Evaluator Group senior strategist] or Evaluator Group as a consultant for this RFP, DISA had no discussion with Evaluator Group or [the senior strategist] regarding the ESS II solicitation, evaluation, training or any other aspect of the RFP.

ViON AR, Tab 33A, Technical Evaluation Team Lead Decl., at 31-32.

With regard to the Evaluator Group presentation described in ViON's OCI allegation, the technical team lead states as follows:

In the course of normal operations, DISA did utilize Evaluator Group to provide an approximately three hour presentation on storage trends and technology to the DISA Storage Engineering team and DISA field staff [T]he [Evaluator Group senior strategist's] presentation was a small portion of a normal operational discussion and was widely attended by the majority of DISA storage support personnel. This presentation discussed overall storage technology trends at a very high level and did not focus on any specific storage solution or particular vendor. The presentation and discussion did not involve the ESS II procurement or acquisition effort.

ViON AR, Tab 33A, Technical Evaluation Team Lead Decl., at 32.

Here, ViON has alleged the Evaluator Group's work under its subscription services contract with the agency may have resulted in biased ground rules or impaired objectivity OCI. However, ViON has failed to satisfy the standard required to support an allegation regarding the existence of an OCI because it does not identify hard facts in support of its allegations. Specifically, ViON fails to allege hard facts indicating the Evaluator Group was involved in crafting the PWS or any provisions of the solicitation such that WWT--through its team member HP--could be said to potentially have a biased ground rules OCI. Further, ViON fails to allege hard facts indicating the Evaluator Group's work for the agency somehow triggers an impaired

objectivity OCI on the part of WWT, or WWT's team member HP. In sum, ViON simply has not provided sufficient facts to indicate the existence or potential existence of an OCI. See TeleCommunication Sys. Inc., supra.

The protest is denied.

Susan A. Poling
General Counsel