



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: Pillar Systems Corporation

File: B-408221

Date: July 11, 2013

Patricia L. Payne, Esq., Payne & Associates, for the protester.
R. René Dupuy, Esq., United States Agency for International Development, for the agency.
Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the awardee should have been excluded from the competition based on a biased ground rules organizational conflict of interest is denied where the protester did not identify hard facts that indicate the existence or potential existence of a conflict.

DECISION

Pillar Systems Corporation, of Alexandria, Virginia, protests the award of a contract to Highlight Technologies, of Fairfax, Virginia, under request for proposals (RFP) No. RFP-M-SOL-OAA-13-000004, issued by the United States Agency for International Development (AID), for system support services at the AID Office of Acquisition and Assistance, in Washington, D.C.

We deny the protest.

BACKGROUND

The RFP, issued on November 27, 2012, sought an 8(a) small business contractor to provide system support services including: task management, automation support, reporting, electronic commerce and web design, administrative support for the credit card program and budget, human resources, information technology, and administrative support. The solicitation anticipated the award of a fixed-price contract for a 1-year base period with two 1-year options. The RFP advised that the contract would be awarded based upon the evaluation of four factors: (1) technical approach, (2) personnel, (3) past performance, and (4) price. RFP at 74-75. For

purposes of award, the technical factors, when combined, were considered significantly more important than price. Id. at 74.

The agency evaluated the offerors' proposals, and on April 4, 2013, awarded a contract to Highlight for \$4,454,385; this protest followed.

DISCUSSION

Pillar, the incumbent for the requirements here, contends that there is "substantial circumstantial evidence" that Pillar's former employees cooperated with Highlight to assist it in obtaining the award. Protest at 4. In this regard, Pillar asserts that its former employees refused to provide signed biographical data sheets to submit with Pillar's offer. Pillar also alleges that its former project manager, who is now employed by the awardee, claimed responsibility for writing portions of the solicitation's statement of work. The protester argues that this individual's actions gave rise to an organizational conflict of interest (OCI) that should be imputed to Highlight, and that this OCI should disqualify that firm from award.

With regard to the protester's arguments concerning its employees' refusal to sign biographical data sheets, we previously dismissed this portion of the protest in response to the agency's dismissal request because the allegation concerned a private dispute that our Office does not review. See Pemco Aeroplex, Inc., B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 12. Pillar also suggested that the agency engaged in improper actions regarding the protester's request to replace its project manager during the performance of the incumbent contract. We previously dismissed Pillar's contentions regarding this matter because the protester failed to set forth specific allegations that stated a valid basis of protest. See Bid Protest Regulations, 4 C.F.R. §§ 21.1(c)(4), (f) (2013). We therefore address the only remaining protest ground--Pillar's contention that Highlight has an OCI, which renders it ineligible for award. For the reasons discussed below, we find no basis to sustain the protest.

The Federal Acquisition Regulation (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. 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. In these cases, the primary concern is that the firm could skew the competition, whether

intentionally or not, in favor of itself. Operational Resource Consultants, Inc., B-299131, B-299131.2, Feb. 16, 2007, 2007 CPD ¶ 38 at 6.

We review an OCI investigation for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009). 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., supra, at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

Pillar argues that an OCI must be imputed to Highlight because, the protester contends, Pillar's former project manager--now the project manager under Highlight's current contract--wrote the solicitation's statement of work. In this regard, Pillar alleges that during a proposal preparation meeting, which was attended by Pillar employees and a proposal writer hired by Pillar to respond to the current solicitation, the protester's former project manager stated that he was personally responsible for preparing the solicitation's statement of work. Protest at 4. In support of its argument, the protester provided a partial transcript of the meeting, which the protester states was prepared by the proposal writer from an audio recording. This one-page transcript provides an exchange between the proposal writer and project manager wherein the proposal writer asks, "[d]id you write this requirement," to which the project manager responds, "pretty much." Protester's Response to Request for Dismissal (May 3, 2013), Exhibit 1, at 1.

Here, the record shows that, upon receiving Pillar's protest, the agency investigated the protester's contentions. Agency Report (AR), at 1-3. Specifically, the contracting officer's representative, who was responsible for preparing the performance work statement,¹ provided a declaration to the agency that stated as follows:

¹ The protest references the term "statement of work," while the agency references the term "performance work statement;" these terms are used synonymously in our decision.

I alone, . . ., a federal employee of [AID] wrote the Performance Work Statement. Pillar held the prior contract with [AID] for this requirement, but none of Pillar's current or former employees wrote, were consulted, or had any input whatsoever into the current Performance Work Statement.

Agency Dismissal Request, Tab 2, Contracting Officer's Representative Declaration (April 23, 2013), at 1.

The contracting officer also submitted a declaration explaining that she oversaw the performance work statement preparation, and reviewed it in draft and final form. AR, Tab 4, Contracting Officer Declaration (May 15, 2013), at 1. The contracting officer's declarations stated that Pillar's former project manager "did not develop any part of the RFP or its requirements," "did not write the RFP," and "did not write any part of the Performance Work Statement." Id.

As part of its investigation, the agency also questioned Pillar's former project manager regarding the transcript of the meeting, discussed above.² The project manager reviewed the document and submitted a declaration to the agency stating that he "did not write any part of the RFP, or any part of the Statement of Work/Performance Work Statement." AR, Tab 3, Project Manager Declaration (May 14, 2013), at 1. The project manager's declaration explained that any reference in the transcript to "requirements," was a reference to "the document on [his] computer monitor," which he prepared, and which addressed the job requirements of a current Pillar employee. Id. The project manager's declaration clarified that he wrote the job requirement document on his computer but "certainly did not write any part of the RFP." Id. Based upon its investigation into the protester's allegations, the agency concluded that no OCI exists. AR at 3.

In response to the agency's investigation, Pillar asserts that the declarations submitted by the contracting officer's representative, contracting officer, and its former project manager are unsworn, and are contradicted by both the sworn statement of the proposal writer hired by Pillar, as well as the audio file and related transcript of the full meeting.³

² The one-page transcript was submitted by Pillar with its response to the agency's dismissal request. Protester's Response to Request for Dismissal (May 3, 2013), Exhibit 1, at 2. While Pillar failed to submit this document with its initial protest, the agency's investigation took this document into consideration.

³ The audio recording of the meeting was not produced by the protester. On May 24, in response to the agency's report, Pillar stated that it was in the process of transcribing the entire audio file of the meeting, and intended to submit the full transcript in "several weeks." Our Office informed the protester that its transcription
(continued...)

Based upon the record, we conclude that Pillar has failed to identify hard facts that indicate the existence, or potential existence, of a conflict.⁴ While the protester argues that its former project manager's transcribed comments should be interpreted to suggest that he was involved in preparing the statement of work, the transcript does not clearly support such a proposition. In this regard, while the protester contends that the phrase "pretty much" should be viewed as an admission that its former project manager prepared the statement of work, the context of the transcript does not specifically refer to the solicitation's statement of work. See Protester's Response to Request for Dismissal (May 3, 2013), Exhibit 1, at 1.

In light of AID's specific statements that only agency personnel were responsible for preparing the solicitation and statement of work, we conclude that Pillar's inferences and speculation are insufficient to sustain the protest. The record here indicates that the agency performed a thorough investigation of Pillar's allegations and reasonably concluded that no OCI's were apparent. For this reason, we find no basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel

(...continued)

would not be accepted, because it would be an untimely piecemeal development of its protest grounds. In this regard, our timeliness rules require all information forming the basis of the protest to be submitted within 10 days of when the protester knew or should have know the ground of protest. 4 C.F.R. § 21.2(a); AINS, Inc., B-405902.3, May 31, 2012, 2012 CPD ¶ 180 at 6 n.12.

⁴ To the extent Pillar argues that the declarations submitted by the contracting officer's representative, contracting officer, and the protester's former project manager should be discounted because they were not "sworn statements," we note that all statements submitted to our Office in connection with a bid protest are subject to the penalties of the False Statements Act, 18 U.S.C. § 1001 (2006). We see no basis to discount the declarations or question their reliability based on the protester's concern.