



## Decision

**Matter of:** CompQSoft, Inc.

**File:** B-416585

**Date:** August 22, 2018

---

### DECISION

CompQSoft, Inc., of Houston, Texas, protests the issuance of a task order to Arch Systems, Inc., of Baltimore, Maryland, under task order request for proposals (TORP) No. 180358, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for computer system security testing and monitoring. The protester argues that Arch Systems and one of its subcontractors have an unmitigable conflict of interest; the agency failed to conduct a price realism analysis; and the agency improperly relied on adjectival ratings in its evaluation and source selection decision.

We dismiss the protest because, as filed with our Office, it does not establish a valid basis for challenging the agency's actions.

The solicitation was issued to contract holders of the strategic partners acquisition readiness indefinite-delivery, indefinite-quantity (IDIQ) contract, historically underutilized business zones pool, under Federal Acquisition Regulation (FAR) § 16.505. Protest, attach 1, TORP, Proposal Instructions and Evaluation Factors, at 1. The solicitation contemplated the issuance of a single hybrid fixed-priced task order with a total five-year period of performance, including base, option, and transition out periods. Id. at 1, 3, 9. Award was to be made on a best-value tradeoff basis considering price and the following non-price factors, in descending order of importance: corporate experience, management plan, past performance, and 508 product accessibility template. Id. at 11. The solicitation advised that the non-price proposal would be evaluated in accordance with FAR § 15.404 cost/price analysis and that a price analysis would be utilized to determine a reasonable price. Id. at 13. The solicitation advised that the non-price factors, when combined, were significantly more important than price. Id. at 11.

The statement of work (SOW) explains in detail eight task areas contemplated under the task order, including task area two, continuous security testing and ongoing

authorization. See generally Protest, exh. 3, SOW. The SOW explains that CMS tracks approximately 230 information technology (IT) systems in its Federal Information Security Modernization Act (FISMA) systems inventory.<sup>1</sup> Id. at 5, 7. As relevant here, under task area two, the contractor is to perform, inter alia, security testing of systems within CMS’s FISMA systems inventory. Id. at 7. In this regard, the SOW stated the following:

In order to perform security assessment testing and analyses, the contractor and testing team members shall consist of independent third-party individual(s) responsible for developing and executing test procedures. To be considered independent, the [c]ontractor and testing team members shall not have a vested interest in the development, maintenance, operation, or documentation of the system to be tested. The testing team shall consist of an ample number of testers to cover all the technologies, devices, databases, interviews for operational and management security controls, and documentation evaluations. The contractor shall provide a plan of action if a CMS system requiring testing is found to have been managed, developed, maintained or documented at any time by the [p]rime [c]ontractor or any of its [subcontractors].

Id. at 12.

The agency received five proposals, including those from CompQSoft and Arch Systems. Protest, exh. 8, Award Notice. On July 2, 2018, CompQSoft was notified that the agency had made award to Arch Systems. Id. The same day, CompQSoft requested a debriefing and, on July 11, was provided an oral debriefing. Protest, exh. 9, Post Debriefing Email at 1-2.<sup>2</sup> As a result of the award notice and debriefing, CompQSoft was informed of the following evaluation results:

|                                       | <b>CompQSoft</b>         | <b>Arch Systems</b>    |
|---------------------------------------|--------------------------|------------------------|
| <b>Corporate Experience</b>           | <b>Highly Acceptable</b> | <b>Excellent</b>       |
| <b>Management Plan</b>                | <b>Acceptable</b>        | <b>Acceptable</b>      |
| <b>Past Performance</b>               | <b>Low Risk</b>          | <b>Low Risk</b>        |
| <b>Product Accessibility Template</b> | <b>Acceptable</b>        | <b>Acceptable</b>      |
| <b>Total Price</b>                    | <b>\$47,405,431.09</b>   | <b>\$39,962,420.80</b> |

<sup>1</sup> Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 128 Stat. 3073 (Dec. 18, 2014), requires executive branch agencies to implement information security programs.

<sup>2</sup> On July 13, 2018, the protester sent this email with the subject line “Debrief Understanding,” in which it prepared a table to reflect its understanding of what the agency said at the oral debriefing.

Id., see also Protest at 2; Protest, exh. 8, Award Notice. The protester was also informed that the agency found Arch Systems' technically-superior, lower-priced offer to represent the best value and selected Arch to receive the task order. Protest, exh. 9, Post Debriefing Email at 1. CompQSoft was also informed that Arch Systems submitted an organizational conflict of interest (OCI) mitigation plan that was deemed acceptable. Id. at 2.

CompQSoft subsequently filed their protest with our Office on July 16, arguing that Arch Systems and one of its subcontractors have an unmitigable conflict of interest; the agency failed to conduct a price realism analysis; and the agency improperly relied on adjectival ratings in its evaluation and source selection decision.

Prior to the due date for the agency report, the agency and intervenor requested that our Office dismiss CompQSoft's protest for failing to state any valid basis for protest. CompQSoft was permitted to reply to these requests. Based on our review of the record, we agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Cybermedia Tech., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. Our role in this regard is to review whether a procurement action constitutes a "violation of a procurement statute or regulation." 31 U.S.C. § 3552. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B 407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

Here, the protest does not include sufficient information to establish the likelihood that the agency in this case violated applicable procurement laws or regulations.

First, quoting from the following language from the SOW with regard to task area two, the protester argues that both Arch Systems and one of its subcontractors have unmitigable conflicts of interest:

In order to perform security assessment testing and analyses, the contractor and testing team members shall consist of independent third-party individual(s) responsible for developing and executing test procedures. To be considered independent, the [c]ontractor and testing team members shall not have a vested interest in the development, maintenance, operation, or documentation of the system to be tested.

See Protest at 5 (quoting Protest, exh. 3, SOW, at 12). In this regard, the protester contends that Arch Systems and one of its subcontractors have "vested interests" in the

development, maintenance, operation, or documentation of the systems to be tested. Id. In support of this argument, the protester contends that “Arch Systems, specifically has developed, or continues to develop, or operates or maintains at least four computer systems in the [a]gency’s FISMA list . . . . See[,] e.g.[,] *Exhibits 10 and 11.* [Its subcontractor] either developed, continues to develop, operates or maintains several more systems on the CMS FISMA list.” Id. (italics in original). The protester contends that as a result of these “vested interests,” the “Arch Systems team” cannot objectively evaluate the security of systems because this circumstance creates an impaired objectivity OCI, in addition to violating the “explicit and specific conflict of interest prohibition” of the solicitation. Id. In this regard, the protester contends that there is no mitigation plan that could mitigate this conflict of interest. Id.

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. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. An impaired objectivity conflict 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; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CDP ¶ 177 at 7.

As our Office has explained, 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. DGC Int’l, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 7; Science Applications Int’l Corp., B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 8-9.

Here, aside from asserting generally that Arch Systems has developed, continues to develop, operates, or maintains four computer systems, the protester does not specify which one of these four actions Arch Systems actually performed, nor does it identify any specific facts demonstrating that Arch Systems actually performed such work on any of those systems. In this regard, while the protester cites to two resumes of individuals that held positions with Arch Systems, there is nothing in the protest explaining how these resumes establish that Arch Systems has developed, continues to develop, operates, or maintains the four computer systems. See Protest at 5.

In fact, in their respective requests for dismissal, both the agency and the intervenor have explained that none of the four computer systems (that the protester argues Arch Systems developed, continues to develop, operates, or maintains) have been or are being developed, operated, or maintained by Arch Systems. See Agency’s Request for Dismissal at 3-4; Intervenor’s Request for Dismissal at 3-4. In response, the protester merely maintains that it has alleged and provided evidence in support of its allegations

in its protest.<sup>3</sup> Based on CompQSoft's failure to identify hard facts demonstrating the existence of an OCI, we dismiss this aspect of the argument for failing to state a valid basis of protest.<sup>4</sup> 4 C.F.R. § 21.5(f); see DGC Int'l, supra; Science Applications Int'l Corp., supra.

Similarly, with regard to Arch Systems' subcontractor, we have repeatedly stated that a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. See, e.g., Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. CompQSoft's assertion, without more, that one of Arch Systems' subcontractors either developed, continues to develop, operates or maintains several systems in the agency's FISMA list does not satisfy this requirement.

Next, we also find CompQSoft's assertion that the agency failed to perform a price realism analysis to be legally and factually insufficient. In this regard, generally, for fixed-price contracts (or orders), an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk (see FAR § 15.404-1(d)(3)), but it may do so only when offerors have been advised that the agency will conduct such an analysis. IR Techs., B-414430 et al., June 6, 2017, 2017 CPD ¶ 162 at 7; American Access, Inc., B-414137, B-414137.2, Feb. 28, 2017, 2017 CPD ¶ 78 at 4-5; National Disability Rights Network, Inc., B-413528, Nov. 16, 2016, 2016 CPD ¶ 333 at 9. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies

---

<sup>3</sup> In its August 7, 2018 response to the agency's request for dismissal, the protester argues for the first time that the resumes "explicitly stated that the employees were developing the system" and included "activities which are a standard part of developing, operating, or maintaining a software system." See Protester's Response to Agency's Request for Dismissal at 5-6. As stated above, our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). Further, our Bid Protest Regulations do not contemplate piecemeal presentation of protest issues that could and should have been made earlier. 4 C.F.R. § 21.2(a)(2); JAVIS Automation & Eng'g, Inc., B-290434, B-290434.2, Aug. 5, 2002, 2002 CPD ¶ 140 at 7 n.11.

<sup>4</sup> Similarly, we also find the protester's argument that Arch Systems' has an unmitigable OCI under "the explicit and specific conflict of interest prohibition in the language of the solicitation itself," to be legally insufficient where the protester cites to nothing other than the language from the SOW that does not contain any "prohibition," but rather also specifically requests that "The contractor shall provide a plan of action if a CMS system requiring testing is found to have been managed, developed, maintained or documented at any time by the [p]rime [c]ontractor or any of its [subcontractors]." Compare Protest at 5 with Protest, exh. 3, SOW, at 12.

are neither required nor permitted to conduct such an analysis in awarding a fixed-price contract. American Access, Inc., supra, at 5.

Here, the solicitation did not provide for a price realism analysis and as such, the agency was neither required nor permitted to conduct one. CompQSoft's unsupported assertion that the agency was required by the terms of the solicitation to conduct a price realism analysis is contradicted by the facts, since no such price realism evaluation was required, and therefore, does not state a valid basis for protest. Compare Protest at 6; Protester's Response to Agency's Request for Dismissal at 3 with TORP at 13 ("The business proposal will be evaluated in accordance with FAR 15.404 price/cost analysis. Price analysis will be utilized to determine a reasonable price.").

Finally, we find the protester's argument that the agency improperly relied on adjectival ratings in its evaluation and source selection decision, rather than on a proper review of the strengths and weaknesses, to be legally and factually insufficient. See Protest at 5-6. In this regard, the protester argues that the agency's mechanical application of adjectival ratings, which were not defined in the solicitation, obscured the actual relative merits of the technical proposals and the offerors, and therefore the agency's technical evaluation of the offerors' proposals was unreasonable.<sup>5</sup> Id. at 6. For this argument, the protester relies on a table it apparently prepared itself, to reflect its understanding of what the agency said at the debriefing. Protest, exh. 9, Post Debriefing Email at 1-2. When it submitted the table to the agency for confirmation, the agency replied "generally, yes . . . . We evaluated non-price factors according to the RFP, and Arch was superior under the non-price factors." Id.

The protester is correct in asserting that ratings, be they numerical, adjectival, or color, are merely guides for intelligent decision making in the procurement process. See Environmental Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. Source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. General Dynamics, American Overseas Marine, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10.

On this record, however, the protester has provided no support that the agency did not consider the underlying basis for the ratings. In this regard, the protester contends that "[w]hile in a post-debrief email, the [c]ontracting [o]fficer stated that the [a]gency compared technical proposals, the [c]ontracting [o]fficer also confirmed (or did not deny) that the basis for that comparison was the adjectival ratings." Protest at 6. However, the actual email neither confirms nor denies that the sole basis of comparison between the offerors was adjectival ratings. See Protest, exh. 9, Post Debrief Email at 1. Rather, the agency stated that it "evaluated non-price factors according to RFP and

---

<sup>5</sup> In this regard, we note that the protester has not directly challenged any aspect of its or Arch Systems' technical evaluation.

Arch [Systems] was superior under the non-price factors,” and that it “then considered price and Arch [Systems] had the lowest price.” Id.

Finally, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. Here, the record shows that the agency did not perform a tradeoff in selecting Arch Systems. Further, because the agency selected the highest-rated, lowest-price proposal, a price/technical tradeoff was not required. See Segovia, Inc. d/b/a Inmarsat Gov’t, B-408376, B-408376.2, Sept. 3, 2013, 2013 CPD ¶ 203 at 10. As a result, the protester’s argument that the “tradeoff” was unreasonable because it was based on the agency’s unreasonably reliance on adjectival ratings, is factually and legally insufficient. The protester’s assertion of improper agency action alone, without any supporting explanation or documentation, does not satisfy these requirements.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel