



Homeland Security

May 26, 2017

Mr. Glenn G. Wolcott
Mr. Matthew T. Crosby
Office of the General Counsel
U.S. Government Accountability Office
441 G. Street, NW
Washington, DC 20548
VIA EMAIL: crosbym@gao.gov, wolcottg@gao.gov

SUBJECT: GAO Bid Protests of EDC Consulting, Cybermedia Technologies, Inc. (CTEC), Harmonia Holdings Group, Incentive Technology Group (ITG), Brillient Corporation, Citizant, Inc., Ventera Corporation, BC Digital Services (BCDS), and IntegrityOne Partners (IOP) - B-414175.10 *et al.* – Agency’s Motion to Dismiss Protests

Dear Mr. Wolcott and Mr. Crosby:

The Department of Homeland Security (DHS) respectfully requests that the protests be dismissed for the reasons stated below. DHS has determined that it is in the best interest of the government to cancel the requirement because it no longer represents DHS’ needs and the record does not adequately support the award determinations that were made. After significant review and discussion, DHS recognizes that there are significant errors and missteps in the procurement process for the Flexible Agile Support for the Homeland (FLASH) procurement.

Among the issues DHS identified, DHS has determined that the evaluation criteria and adjectival ratings did not permit evaluators to reasonably evaluate the offerors and assign appropriate ratings based upon the evaluation criteria. DHS has also determined that the evaluation of the offerors may have resulted in unequal treatment of offerors’ weaknesses and risks. This is partially due to the adjectival ratings that were used, but also due to the evaluation process used to evaluate and assess offerors during the technical challenge exercises. DHS has identified issues in the price evaluation report (PER) and best value tradeoff analysis (BVTA) which do not adequately support its award decisions. The methodology by which the price evaluation team evaluated price realism is not identified in the PER. Nor is it evident in the PER itself what DHS reviewed and evaluated to determine whether prices were reasonable and realistic. DHS did not require offerors to provide sufficient information to assess whether the prices proposed were realistic to perform work on task orders at the Top Secret/Sensitive Compartmented Information (TS/SCI) level or provide the necessary information to assess whether the rates proposed met the requirements of FAR 52.222-46.

Within the BVTA, DHS has determined it did not conduct a reasonable tradeoff of offerors to determine which offerors represented a best value to DHS. DHS has previously acknowledged that documents had been created after award, specifically additional price realism memoranda and a memorandum detailing the methodology it used to evaluate price realism, and changed documents after award, specifically the Technical Evaluation Report (TER) and BVTA. Given the additions

and the changes to documents after award, which DHS had previously submitted to Government Accountability Office (GAO) as representative of the record at the time of award, and the other issues discussed earlier, DHS has determined that the evaluation process and documents do not meet DHS' standards for award.

While normally DHS would consider re-evaluating proposals, seek revisions to proposals, and conduct a new best value tradeoff determination, the information in the record does not permit such a re-evaluation. For example, the video recordings of the technical challenge exercises are of such varying quality that it would be infeasible to re-evaluate every offeror based on those recordings. Also, the video recordings did not capture all the conversations, notations, and presentations given in the technical challenge exercises for evaluators to use and assess. DHS also does not have records of the source code for at least two offerors, and does not have complete records for non-source artifacts and tools that offerors used during their technical challenge exercises. In addition to the problems with the record of the technical challenge exercises, many of the evaluation members DHS originally used have left. It would be difficult to substitute new evaluators to review the technical challenge exercises for re-evaluation with the information DHS currently has. Additionally, the evaluation of agile software services requires particular knowledge that DHS does not readily have available for a re-evaluation of this scale at this time.

In addition to the above, DHS has determined that substantial modifications to the requirements would need to be made to ensure that FLASH meets DHS' evolving mission needs. Through the process of awarding FLASH, DHS has learned more about its needs and the ways that FLASH does not meet them. The FLASH requirements, while extensive, do not include services that DHS now sees as critical components for the success of this type of vehicle. The inclusion of these additional required services would require a significant change to what information offerors would be required to provide and how DHS would evaluate offerors.

DHS has determined that cancellation of the FLASH solicitation, HSHQDC-16-R-00118, is the only viable option to address the many issues that DHS has identified as problems with the requirement and the record. The integrity of the procurement process will be served by this cancellation.

GAO has stated that cancellation of a solicitation is proper "where the agency has a reasonable basis to cancel, and the record contains plausible evidence or a reasonable possibility that a decision not to cancel the solicitation would be prejudicial to the government or the integrity of the procurement system." *Integrity Nat'l Corp.*, B-411582, Sept. 1, 2015 CPD ¶ 278 at 2; *See Noelke GmbH*, B-278324.2, Feb. 9, 1998, 98-1 CPD ¶ 46 at 3-4. Given the information described above, DHS has determined that cancellation of the FLASH solicitation, HSHQDC-16-R-00118, is the only viable option to address the many issues that DHS has identified as problems with the requirement and the record and ensure the integrity of the procurement process. The current contract awards will be terminated for convenience. DHS plans to solicit a new set of requirements that better meet DHS' needs and use improved processes for the evaluation at such time when DHS is ready sometime after this calendar year.

DHS believes the proposed cancellation renders the protests academic. *Superlative Tech., Inc.*, B-293709.2, June 18, 2004, 2004 CPD ¶ 116 at 2. Therefore, DHS respectfully requests that the protests be summarily dismissed.

Sincerely,

Paul B. Oman
Attorney-Advisor

Copies Furnished via email:

Counsel for the Protesters

Counsel for EDC
Katherine Nucci, knucci@thompsoncoburn.com

Counsel for Cybermedia Technologies, Inc. (CTEC)
Richard O'Keeffe, rokeeffe@wileyrein.com

Counsel for Harmonia Holdings
Joseph Hornyak, joe.hornyak@hklaw.com

Counsel for Incentive Technology Group, LLC (ITG)
Edward Tolchin, etolchin@offitkurman.com

Counsel for Brillient Corporation
Jeffery Chiow, jchiow@rjo.com

Counsel for Citizant
James Boland, jyboland@venable.com

Counsel for Ventera
John G. Horan, john.horan@dentons.com

Counsel for BC Digital Services (BCDS)
Jon Levin, jlevin@maynardcooper.com

Counsel for IntegrityOne Partners (IOP)
David Fletcher, dfletcher@cooley.com

Counsel for the Intervenors

Counsel for Karsun Solutions
Ruth Morrel, rmorrel@potomaclaw.com

Counsel for Excella Consulting
Bryan King, bking@bassberry.com

Counsel for Wexler Technical Solutions
Stephanie Wilson, swilson@berenzweiglaw.com

Counsel for Ad Hoc
Joseph Fuller, joseph.fuller@kutakrock.com