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## Decision

**Matter of:** Onsite Health Inc

**File:** B-408032; B-408032.2

**Date:** May 30, 2013

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### DIGEST

1. Protester was not treated disparately as compared to the awardee where the agency restored the protester's previously-excluded proposal to the competitive range, and provided an opportunity for meaningful discussions.
2. A competitive advantage arising from the awardee's performance of the incumbent contract did not give rise to an organizational conflict of interest where the advantage was attributable to a normal incumbent's advantage, and not preferential treatment or unfair action by the agency.
3. Protest challenging agency's evaluation of the protester's technical proposal is denied where protester does not demonstrate that the evaluation was based on unequal treatment.

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### DECISION

Onsite Health, Inc., of Arlington Virginia, protests the award of a contract to Logistics Health, Inc. (LHI), of La Crosse, Wisconsin, under request for proposals (RFP) No. HT0011-12-R-0009, issued by the Department of Defense, TRICARE Management Activity (TMA), for Reserve Health Readiness Program services. Onsite argues that TMA treated the offerors unequally during discussions, failed to

recognize and mitigate an organizational conflict of interest (OCI) that arose from the awardee's performance of the incumbent contract, and unequally evaluated the offerors' technical proposals.

We deny the protest.

## BACKGROUND

The Reserve Health Readiness Program (RHRP) fulfills the medical and dental needs of Department of Defense (DoD) service components including active duty, reserve, and civilian personnel. These needs include immunizations, physical examinations, periodic health assessments (PHA), post-deployment health reassessments (PDHRA), mental health assessments (MHA), dental examinations and x-rays, dental treatment, laboratory services, occupational health services, vaccine storage and distribution services, and other services required to meet DoD's health readiness needs.

The RFP, issued on April 12, 2012, sought proposals to provide RHRP II services under a fixed-price indefinite-delivery, indefinite-quantity contract.<sup>1</sup> Award was to be made on a best-value basis considering non-price evaluation factors and price. The following non-price evaluation factors and subfactors were listed in the RFP:

Evaluation Factor #1: Technical Approach: Periodic Health Assessments (PHA) and Individual Medical Readiness (IMR)

Sub-factor 1.1: PHA Requirements  
Sub-factor 1.2: Individual Medical Readiness  
Sub-factor 1.3: Additional Services

Evaluation Factor #2: Technical Approach: Post Deployment Health Reassessments (PDHRA) and Mental Health Assessments (MHA)

Evaluation Factor #3: Corporate and Management Capabilities

Sub-factor 3.1: Program Management  
Sub-factor 3.2: Quality Control Plan  
Sub-factor 3.3: Transition Plan

Evaluation Factor #4: Past Performance

RFP § M, at 93.

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<sup>1</sup> TMA issued six amendments to the RFP.

The prospective technical adjectival ratings that could be assigned to each factor and subfactor were outstanding, good, acceptable, marginal, and unacceptable; the risk ratings were low, moderate, and high.<sup>2</sup> The prospective past performance confidence ratings were high confidence, confidence, not favorable and not unfavorable, little confidence, and no confidence. See RFP at 94-95.

As relevant here, section C.9. of the RFP stated the following with regard to OCIs:

C.9.2.1 “Potential” or “actual” OCIs may exist with [TRICARE] Contractors that currently perform logistical, program, operational, data management support for [TRICARE] Aurora [Colorado], [TRICARE] Falls Church [Virginia], and the Pacific Joint Information Technology Center. It is incumbent on all Offerors to use sound business judgment and determine the significance of any conflict of interest.

C.9.2.2 Potential or actual OCIs may exist with former DoD officials/employees that have served in positions such as TRICARE acquisitions, program management, finance, in an executive position or participated in a TRICARE source selection evaluation board as the Source Selection Authority, an advisor or an evaluator.

RFP § C.9, at 47.

For purposes of award, the non-price factors, when combined, were significantly more important than price. RFP § M, at 96. Evaluation factor 1 was more important than the remaining technical factors, combined; factors 2, 3 and 4 were equal to each other in weight, but, when combined, were more important than price.<sup>3</sup> Id.

Five offerors, including Onsite and LHI<sup>4</sup>, responded to the RFP by the May 24 closing date. A source selection evaluation board (SSEB) evaluated the proposals in accordance with the RFP evaluation factors. Based on the evaluation results, a competitive range was established on June 21, which excluded the proposals of three offerors, including Onsite; LHI and another offeror were included in the competitive range.<sup>5</sup> Agency Report (AR) at 1.

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<sup>2</sup> The RFP explained that a rating of unacceptable for any of the evaluation factors would render a proposal unacceptable, and ineligible for award. See RFP at 96.

<sup>3</sup> For evaluation factor 1, subfactors 1.1 and 1.2 were equal in weight and were each more important than subfactor 1.3. For evaluation factor 3, the subfactors were listed in descending order of importance.

<sup>4</sup> LHI is the incumbent contractor for this requirement.

<sup>5</sup> For the overall non-price rating, LHI’s proposal was rated as outstanding/low risk, and the other offeror included in the competitive range received a rating of

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On July 3, TMA conducted discussions with the competitive range offerors and requested revised proposals. The SSEB reevaluated the revised proposals, and on July 13, requested that the offerors confirm their “Best and Final Cost Proposal.” See AR, Tab 008, SSEB Chair Report, at 2. Neither offeror made changes to their technical proposals, but each submitted price revisions. Following reevaluation by the SSEB, the ratings of the offerors remained unchanged under the non-price factors, and LHI had the lowest total evaluated price. See id. at 1-5.

A source selection advisory council (SSAC) meeting was held on July 26, to review the SSEB’s finding, but no source selection decision was made by the agency at that time. Instead, TMA concluded that there had been errors in the source selection process. Specifically, the agency found that discussions with the offerors in the competitive range were not meaningful because the agency had failed to identify specific deficiencies, significant weaknesses, and adverse past performance information. Contracting Officer Statement at 3. The agency also concluded that the offerors excluded from the competitive range, including Onsite, had not been properly notified of their elimination. Id.

On October 2, TMA notified the three non-competitive range offerors of their elimination from the competition. Onsite requested a pre-award debriefing, which was provided by the agency in writing on October 5. See AR, Tab 139E, Onsite Debriefing at 4-33. This written debriefing advised the protester of concerns regarding its proposed technical approach and past performance. Id. On October 9, Onsite notified the agency that it believed that “the [a]gency’s conclusions regarding [Onsite’s] proposal . . . reflect an improper application of the requirements of the RFP and misstatements of various elements of [Onsite’s] proposal,” and requested an oral debriefing. AR, Tab 140E, Onsite Letter (Oct. 9, 2012) at 1. TMA initially agreed to hold an oral debriefing, but prior to the scheduled time, the agency concluded that Onsite’s proposal should not have been eliminated from the competitive range. On October 12, Onsite was notified that it would be included in the competitive range and provided an opportunity for discussions.

On October 30, TMA issued RFP amendment No. 0005, which made clarifications to sections L (Proposal Instructions) and M (Evaluation Factors), and the instructions for reporting past performance. The agency also provided all the competitive range offerors, including Onsite, the opportunity to submit revised proposals. See AR, Tab 016, Email (Oct. 30, 2012). On November 1, TMA issued

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good/moderate risk. See AR, Tab 010, SSEB Report at 2. Onsite’s proposal, which received an overall non-price rating of marginal/moderate risk, was rated unacceptable/high risk under evaluation factor 2.

amendment No. 0006, which answered offerors' questions and extended the due date for revised proposals to November 6. Following the receipt of revised proposals, the SSEB reevaluated the offerors' proposals.

Based on this reevaluation, on November 20, 2012, TMA conducted detailed discussions with offerors concerning the weaknesses, deficiencies, and uncertainties in their proposals. With regard to Onsite, the agency addressed the following concerns: (1) additional readiness services, (2) handling emergent referrals, (3) process for managing a customer service department, (4) scheduling in-clinic PHA appointments, (5) databases for documenting allergies, (6) accessing the Air Force's automated mental health assessment questionnaire, (7) MHA services, (8) PDHRA and MHA implementation, (9) CAC (common access cards), (10) verification processes, (11) behavioral assessments, (12) group events, (13) report availability, (14) critical incident debriefings, (15) deployment of personnel, (16) dental and behavioral health providers, (17) PDHRA and MHA appointment schedules, (18) in-clinic and group event vouchers, (19) small business goals, and (21) subcontractors. See AR, Tab 161, E-mail and Discussions at 5-6.

Following the final round of discussions, offerors were permitted to submit revised proposals. The agency received final proposal revisions from offerors on December 4. The final ratings were as follows:

	<b>LHI</b>	<b>ONSITE</b>
<b>Factor 1: Technical Approach: PHA and IMA</b>	<b>Outstanding/Low</b>	<b>Good/Low</b>
Sub-factor 1.1 – PHA requirements	Outstanding/Low	Good/Low
Sub-factor 1.2 - IMR	Outstanding/Low	Good/Low
Sub-factor 1.3 – Additional Services	Outstanding/Low	Acceptable/Low
<b>Factor 2: Technical Approach: PDHRA and MHA</b>	<b>Outstanding/Low</b>	<b>Good/Low</b>
<b>Factor 3: Corporate and Management Capabilities</b>	<b>Outstanding/Low</b>	<b>Good/Low</b>
Sub-factor 3.1 – Program Management	Outstanding/Low	Good/Low
Sub-factor 3.2 – Quality Control Plan	Good/Low	Good/Low
Sub-factor 3.3 – Transition Plan	Good/Low	Good/Low
<b>Factor 4: Past Performance</b>	<b>Confidence</b>	<b>Confidence</b>
<b>OVERALL NON-PRICE RATING/RISK</b>	<b>OUTSTANDING/ LOW</b>	<b>GOOD/LOW</b>
<b>PRICE</b>	<b>\$749,425,040</b>	<b>\$786,307,085</b>

See AR, Tab 003, SSAC Report at 2-19.

On January 31, 2013, the source selection authority (SSA) selected LHI for the award. Based on an integrated assessment of the evaluation criteria, evaluation reports, and the recommendation of the SSAC, the SSA concluded that, while all offerors had the same past performance rating, LHI's highest-technically-rated,

lowest-priced proposal provided the best value. See AR, Tab 002, Source Selection Decision Document, at 3, 10. As relevant here, the SSA found that LHI's proposal did not have any weaknesses or deficiencies, and only contained strengths. Id. at 7. In contrast, the SSA found that Onsite's proposal contained weaknesses that were not cured after discussions. Id. The SSA also found that the strengths that were present in Onsite's technical proposal did not match the quality and quantity of strengths that were present in LHI's technical proposals, and found eleven strengths that were unique to LHI's proposal. Id. at 7-8. The agency provided a debriefing to Onsite on February 12, and this protest followed.

## DISCUSSION

Onsite argues that the award to LHI was flawed based on the following three arguments: (1) TMA treated offerors disparately with regard to the initial competitive range decision and failed to provide Onsite with meaningful discussions; (2) TMA failed to identify and mitigate an OCI involving LHI; (3) and TMA evaluated the strengths in Onsite's and LHI's proposals unequally. For the reasons discussed below, we find no basis to sustain the protest.<sup>6</sup>

### Unequal Discussions and Disparate Treatment

Onsite argues that TMA treated it disparately based on the discussions the agency held in July 2012 with the two competitive range offerors, including LHI. Onsite's protest argues, in essence, that the additional discussions conducted with the competitive range offerors in July resulted in unequal treatment in the overall source selection process because, despite the fact that the agency later conducted discussions with Onsite, the protester did not have the same opportunity to address the agency's concerns as these offerors. See Protest at 14-15; Protester's Comments (Apr. 8, 2013) at 6-9; Supplemental Comments (Apr. 25, 2013) at 6-7. We find no merit to these arguments.

As a preliminary matter, Onsite argues that TMA unreasonably eliminated its proposal from the competitive range. The protester also argues that the record does not adequately explain why the agency concluded that its proposal was not eligible for inclusion in the competitive range, but was then subsequently reinstated to the competition.

As discussed above, TMA recognized that its source selection process contained errors, including that Onsite should not have been excluded from the competitive range. TMA corrected these errors by placing Onsite in the competitive range, along with the other offerors. To the extent that the protester argues that its

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<sup>6</sup> Onsite raises other collateral issues. We have reviewed all of the protester's arguments and find that none provides a basis to sustain the protest.

proposal should not have been excluded from the initial competitive range, this issue is moot, as the protester was provided with discussions and an opportunity to revise its proposal.

To the extent the protester argues that the absence of written documentation concerning the agency's rationale for reinstating Onsite into the competition shows bad faith on the part of the agency, we find no merit to this argument. Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. Here, the record shows that the agency reinstated Onsite, conducted discussions, and provided the protester an opportunity to revise its proposal. We find that none of the agency's actions here demonstrate bias or bad faith.

Next, with regard to discussions, Onsite argues that TMA treated it unequally because the agency conducted discussions with LHI following the protester's elimination from the competitive range. The Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Although discussions may not be conducted in a manner that favors one offeror over another, FAR § 15.306(e)(1): see Chemonics Int'l, Inc., B-282555, July 23, 1999, 99-2 CPD ¶ 61, and offerors must be given an equal opportunity to revise their proposals, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror's proposal. See FAR §§ 15.306(D)(1), (e)(1): WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6.

Here, while Onsite did not receive identical treatment as compared to the other offerors with regard to discussions, the record does not reflect that Onsite was treated in a prejudicially unequal manner. Onsite does not contend, nor does the record establish, that TMA failed to provide it an opportunity to address the agency's concerns regarding its proposal, or that the protester was denied an opportunity to submit a revised price and technical proposal. Instead, the protester argues that the agency's discussions with LHI in July 2012 resulted in prejudice that was not cured by the agency's discussions with all offerors in November 2012. Specifically, the protester argues that it was prejudiced because, while it was provided an opportunity to revise its technical proposal and submit a revised price, it

was not provided a second opportunity to revise its price. See Protester's Comments (Apr. 8, 2013) at 8 ("While Onsite was offered discussions in November 2012, it was not permitted to submit a BAFO focusing solely on its price proposal after it submitted its December 4, 2012 proposal.")

As discussed above, Onsite was initially excluded from the competitive range; as a result, the two offerors in the competitive range, including LHI, had an opportunity for discussions in July 2012. Subsequently, however, the agency provided Onsite with a debriefing that addressed the agency's concerns regarding its technical approach and past performance, restored the protester to the competitive range, and provided the company an opportunity to submit a revised proposal. Moreover TMA subsequently held detailed discussions with the protester regarding the deficiencies, weaknesses and uncertainties in its proposal, and gave Onsite a second opportunity to revise its proposal. On this record, we find that while the offerors may not have been treated in precisely the same manner, the protester was provided with meaningful discussions, and there is no basis to sustain the protest.

#### Organizational Conflicts of Interest – Mental Health Assessments

Next, Onsite contends that LHI had an unfair competitive advantage arising from its performance of the incumbent contract requirements for MHA services, and that this advantage constituted an unequal access to information OCI that TMA was required to mitigate or neutralize. As discussed above, section C.2.2.5 of the RFP requires the contractor to perform MHAs for beneficiaries. Onsite alleges that LHI enjoyed an unfair competitive advantage because LHI developed a process to implement MHAs during its performance of the incumbent contract. The protester asserts that the other offerors had to develop a MHA process without the benefit of guidance or pre-approval from the agency.

TMA explains that LHI's knowledge of the MHA process was information that the firm developed during its performance of tasks required under the incumbent RHRP contract. TMA argues that LHI's advantage was that of an ordinary incumbent, and did not result from an unequal access to information OCI. See AR at 15. We agree with the agency.

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 responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the



firm a competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8.

On the other hand, it is well settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor. Our Office has held that the government is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); CACI, Inc.--Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Tech. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10.

Onsite does not demonstrate that LHI's knowledge regarding its own implementation of the MHA requirements gave rise to an OCI. Instead, the protester merely argues that the awardee had been performing the incumbent contract requirements, and thus had an advantage because "LHI already knows that its MHA process will receive agency approval." Protest at 19; see also Protester's Comments (April 8, 2013) at 19. This ordinary incumbent advantage does not rise to the level of an OCI. See Council for Adult & Experiential Learning, supra, Government Bus. Servs. Group, supra.

Onsite also argues that that LHI had an unfair advantage because, in the protester's view, "the RFP does not provide any detail regarding MHAs." Protest at 19. As noted by the agency, however, information concerning MHAs was available to offerors from numerous sources, including: section C.2.2.5 of the RFP; the agency's responses to Q&A (questions and answers); the MHA requirements set forth in National Defense Authorization Act for Fiscal Year 2012, Pub.L.No. 112-81 § 702 (Dec. 31, 2011); and a publicly-available Assistant Secretary of Defense memorandum (AR, Tab 132, ASD Memorandum July 19, 2010). For example, the RFP states that "[t]he Contractor shall both in group events and telephonically conduct standalone, deployment-related mental health assessment as provided in the July 19, 2010 ASD/HA [Assistant Secretary of Defense] memorandum and any published updates to that assessment." RFP § C.2.2.5. While Onsite argues that none of this information detailed the process developed by LHI to perform the RFP's MHA requirements, we agree with TMA that LHI's unique approach to satisfying this requirement is a competitive advantage gained from incumbency that was not required to be mitigated as an OCI in this procurement. For this reason, the information possessed by LHI regarding how best to satisfy the requirement did not result from preferential treatment or other unfair action by TMA. Also, to the extent

Onsite argues that it needed more information to understand the MHA requirements and prepare its proposal, it could have raised a timely challenge to the solicitation.

### Technical Evaluation

Finally, Onsite argues that TMA engaged in an unequal evaluation of the proposals by crediting LHI for strengths in its technical proposal while failing to recognize similar strengths in Onsite's proposal.<sup>7</sup> We have reviewed all of Onsite's arguments and find none provides evidence that its proposal was unreasonably evaluated or treated unequally. We discuss a few examples for illustrative purposes.

In reviewing protests challenging the evaluation of proposals, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation's evaluation criteria. Abt Assocs., Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223 at 4. A protester's mere disagreement with the evaluation provides no basis to question the reasonableness of the evaluator's judgments. See Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-287287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

With respect to TMA's evaluation of the relative strengths in the offerors' proposals, the agency states that the assignment of strengths were not the result of unequal treatment but stemmed from differences in the offerors' proposals. For example, the record reflects that although both offerors were assigned strengths for their approaches to working with group events, LHI's proposal offered services not present in Onsite's proposal, which resulted in LHI receiving credit not awarded to Onsite. See Supp. AR at 6-17. In this regard, LHI proposed to [DELETED], which

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<sup>7</sup> Onsite initially argued that TMA improperly assigned its proposal adjectival ratings that were inconsistent with the strengths identified by the agency. Protest at 15-18. In response to the agency's request to dismiss certain protest grounds, Onsite subsequently clarified that its protest did not intend to argue that Onsite should have received a higher technical rating based solely on the agency's evaluation of strengths and weaknesses in its proposal. See Protester's Response to Request for Dismissal (Mar. 15, 2013) at 4. In any event, TMA's report on the protest addressed these arguments in detail. AR at 8-13. Onsite's comments on the agency report, however, did not directly address the agency's response. Instead, the protester raised a supplemental argument, which we address herein--that the agency assigned strengths to LHI's proposal, but failed to recognize similar strengths in Onsite's proposal. To the extent that the protester did not intend to specifically withdraw its initial argument, we consider this argument to have been abandoned based on the failure to comment on the agency report. See Bid Protest Regulations, 4 C.F.R. § 21.3(i); Knowledge Connections, Inc., B-297986, May 18, 2006, 2006 CPD ¶ 85 at 2 n.2.

the agency found would reduce costs to the government. Onsite's proposal did not include a similar technical approach. See AR, Tab 26, Onsite Proposal Vol. I, at 27-31; Tab 51, LHI Proposal Vol. I, at 52; Supp. AR at 7-8. Another example of this involved the pre-event coordination process. Again, the agency states that LHI's proposal offered services not present in Onsite's proposal. See Supp. AR at 8. Specifically, LHI proposed [DELETED], which resulted in the assignment of a strength because the agency found that the awardee's approach would decrease the risk of delays and cost to the Government. See AR, Tab 51, LHI Proposal, Vol. I at 29.

Onsite also argues that TMA's evaluation of the offerors' technical proposals tended to treat multiple elements of Onsite's technical proposal as falling under a single strength, while assigning more strengths to distinct individual elements of LHI's proposal. For this reason, the protester contends, the agency unreasonably assigned more strengths to LHI's proposal, and fewer strengths to Onsite's proposal. As discussed above, however, the record shows that the agency assigned a greater number of distinct strengths to LHI's proposal because its proposal reflected additional features not present in Onsite's proposal. Accordingly, we find no evidence that Onsite's proposal was evaluated unreasonably or that there was any unequal treatment. In sum, we have reviewed all of Onsite's challenges to the evaluation of the offerors' technical proposals and find no basis to sustain the protest.

The protest is denied.

Susan A. Poling  
General Counsel