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Decision

Matter of: Portage, Inc.

File: B-410702; B-410702.4

Date: January 26, 2015

Kenneth B. Weckstein, Esq., Shlomo D. Katz, Esq., and Tammy Hopkins, Esq., Brown Rudnick LLP, for the protester.
Richard P. Rector, Esq., C. Bradford Jorgensen, Esq., and Daniel J. Cook, Esq., DLA Piper LLP (US), for Navarro Research and Engineering, Inc., an intervenor.
Michael W. Ling, Esq., and JiSan A. Lopez, Esq., Department of Energy, National Nuclear Security Administration, for the agency.
Louis A. Chiarella, Esq., and Nora K. Adkins, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's technical and past performance evaluations is denied where record shows that the evaluations were reasonable and consistent with the stated evaluation criteria.
 2. Protest that agency failed to give adequate consideration to awardee's potential organizational conflicts of interest (OCI) is denied, where record shows that agency thoroughly investigated potential OCIs and, after completing its investigation and concluding that there was a limited possibility of an OCI, reasonably concluded that the OCI would be avoided by the careful assignment of work under the contract.
 3. Cost/technical tradeoff was proper where source selection authority reasonably identified relevant technical distinctions between offerors' competing proposals and adequately documented her conclusion that the higher technically-rated, higher cost proposal represented the best value to the government.
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DECISION

Portage, Inc., of Idaho Falls, Idaho, protests the award of a contract to Navarro Research and Engineering, Inc., of Oak Ridge, Tennessee, under request for proposals (RFP) No. DE-SOL-0005982, issued by the Department of Energy (DOE), National Nuclear Security Administration (NNSA) for environmental program

services (EPS). Portage argues that the agency's evaluation of offerors' proposals and the resulting award decision were improper. The protester also contends that Navarro has an OCI that should have disqualified the firm from the competition.

We deny the protest.

BACKGROUND

NNSA administers the Nevada National Security Site (NNSS), a 1,360 square mile restricted access site in Nevada. Performance Work Statement (PWS) § 1.1. The NNSS was the site of numerous explosives tests, including approximately 928 underground and atmospheric nuclear tests. Id. In 1989, DOE established the Environmental Management Program, which is responsible for addressing the environmental effects of nuclear weapons tests at sites across the country, including the NNSS. Id. In 1996, DOE, the Department of Defense, and the state of Nevada entered into the Federal Facilities Agreement and Consent Order (FFACO) to identify sites requiring environmental remediation, including the NNSS, and to develop plans and procedures for the remediation work. Id. § 2.1. The purpose of the procurement here is to retain a contractor to provide program management and public involvement support, site characterization and assessments, field services, remedial action, and waste acceptance services for the NNSS. Id. § 3.

In 2009, DOE awarded a contract for environmental characterization and remediation services (ECRS) at the NNSS to Navarro Nevada Environmental Services, LLC (also known as Navarro-Intera, LLC), a joint venture between Navarro and Intera, Inc. The award challenged here is for the follow-on contract, which will continue the site identification and remediation services for the NNSS.

The RFP, issued on January 28, 2014, as a small business set-aside, contemplated the award without discussions of a cost-plus-award-fee contract for a base year with four 1-year options.¹ RFP § B. In general terms, the PWS required the contractor to provide all personnel, materials, and supplies necessary to perform specified EPS activities in five areas: soils; underground test area (UGTA); industrial sites; radioactive waste acceptance program (RWAP); and program integration. PWS §§ 2.1, 3.2. The solicitation also established that contract award would be made on a best-value basis, based on five evaluation factors in descending order of importance: technical approach and staffing plan summary (hereinafter technical approach); key personnel; corporate experience; past performance; and cost. RFP § M-2. The noncost factors, when combined, were significantly more important than cost. Id.

¹ The RFP was subsequently amended four times. Unless specified otherwise, all citations are to the final version of the solicitation.

Five offerors, including Navarro and Portage, submitted proposals by the March 14 closing date. An agency source evaluation board (SEB) evaluated offerors' noncost proposals using an adjectival rating scheme as follows: excellent; good; satisfactory; less than satisfactory; and, with regard to past performance, a neutral rating was also applicable. Agency Report (AR), Tab 7, SEB Report, Aug. 29, 2014, at 11. Offerors' cost proposals were evaluated for reasonableness and realism. Id. The evaluation ratings and costs of the Navarro and Portage proposals, which were the two most highly-rated offerors, were as follows:

	Navarro	Portage
Technical Approach	Excellent	Excellent
Key Personnel	Excellent	Excellent
Corporate Experience	Excellent	Good
Past Performance	Excellent	Excellent
Overall	Excellent	Excellent
Proposed Cost	\$58,777,239	\$56,360,326
Evaluated Cost	\$58,777,282	\$57,558,951

Id. at 10.

The agency evaluators also identified strengths and weaknesses in support of the adjectival ratings assigned to offerors' noncost proposals. Specifically, the SEB identified a total of 8 significant strengths and 8 strengths in support of the ratings assigned to Navarro's proposal, and a total of 11 significant strengths, 8 strengths, and 1 weakness in support of the ratings assigned to Portage's proposal. Id., Tab 8, SEB Evaluation of Navarro, Aug. 20, 2014, at 1-32; Tab 24, SEB Evaluation of Portage, Aug. 20, 2014, at 1-38.

The agency source selection authority (SSA) subsequently reviewed and accepted the findings and ratings of the evaluators. Id., Tab 33, Source Selection Decision, Sept. 3, 2014, at 1-8. The SSA concluded that Navarro's proposal was superior to Portage's under the technical approach and corporate experience factors. Id. at 4-7. Further, the SSA found that Navarro's noncost advantages outweighed Portage's \$1.2 million cost advantage, and that Navarro's proposal represented the best value to the government all factors considered. Id. at 7-8.

On September 25, the agency provided Portage with notice of contract award to Navarro. On October 17, after the agency had provided Portage with a debriefing, Portage filed this protest.

DISCUSSION

Portage's protest raises numerous issues regarding the agency's evaluation and resulting award decision. First, the protester alleges the agency's evaluation of offerors' technical approach proposals was unequal and employed an unstated evaluation criterion. Portage also alleges that the agency's evaluation of Navarro's key personnel, corporate experience, and past performance was improper. Further, Portage contends that the agency's evaluation of Navarro's organizational conflict of interest (OCI) was unreasonable. Lastly, Portage alleges that the agency's best value tradeoff decision was flawed and contrary to the RFP.² We have considered all the issues and arguments raised by the Portage protest and, although we do not address them all, find they provide no basis on which to sustain the protest.

Technical Approach Evaluation

Portage protests the agency's evaluation of proposals under the technical approach factor. Specifically, the protester alleges that NNSA employed unstated evaluation criteria--i.e., a broader programmatic application for UGTA activity, as well as internal and external organization and integration relating to the UGTA activity--in its evaluation of proposals.³ Portage also argues that because the SSA found these unstated evaluation criteria to be technical advantages in Navarro's proposal, it was prejudiced by the agency's action. Protest, Oct. 17, 2014, at 26-32.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately

² Portage also initially challenged the agency's evaluation of its corporate experience; the evaluation of Navarro's past performance, cost realism, and compliance with subcontracting limitations; and the documentation of the cost-technical tradeoff decision. Protest, Oct. 17, 2014, at §§ A.2, B.2, C-D, F. Portage subsequently elected to withdraw these protest grounds. Protest, Nov. 28, 2014, at 22 n.13; Portage Email to GAO, Jan. 13, 2015.

³ The UGTA activity defines the hydrologic boundaries of NNSS and surrounding area groundwater resources that may be unsafe for domestic or municipal use, and performs data analysis and modeling activities. PWS § 3.2.2. The data analysis and modeling activities allow for informed decisions to ensure risk to public health and the environment posed by impacted groundwater are, and will remain, within protective levels. Id.

documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's disagreement with an agency's judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Additionally, although agencies are required to identify in a solicitation all major evaluation factors, they are not required to identify all areas of each factor which might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated factors. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 18; Chenega Technical Prods., LLC, B-295451.5, June 22, 2005, 2005 CPD ¶ 123 at 5.

The RFP stated that “[t]he Government will evaluate the proposed Technical Approach . . . to assess the Offeror's understanding of the requirements, completeness and feasibility of the proposed technical approach associated with the PWS requirements identified for this Criterion in Section L.” RFP § M-2. In turn, the RFP's proposal instructions stated that:

The Offeror shall describe its proposed technical approach for accomplishing the following selected requirements of the PWS. . . .

(ii) Underground Test Area (UGTA)

(A) The development and application of conceptual, geologic source term and groundwater flow and transport models to aid in the characterization of deep underground contamination (700 to over 4,000 feet below ground surface) for radiologically contaminated groundwater in complex geologic settings covering areas larger than 100 square miles. This includes the collection and utilization of data to define, develop, and implement the source term models.

(B) The development of a long-term groundwater monitoring program based on the computer flow and transport models.

RFP § L-2; RFP Amend. 0001 at 3 (emphasis added).

Subsequent amendments to the RFP provided additional guidance on what aspects of the UGTA activity offerors were to address in their proposals. Specifically, the agency informed offerors that “[a]ll activities in [the UGTA Well Drilling Support, and Well Development and Testing] sections” were applicable when considering the phrase in Section L above (This includes the collection and utilization of data to define, develop, and implement the source term models.). RFP Amend. 0002, Question and Answer (Q&A) No. 30. In this regard, the UGTA well drilling support and well development and testing tasks together comprised almost the entire UGTA

activity. PWS § 3.2.2. Moreover, the well drilling support task included interface with the management and operations (M&O) contractor, while the well development and testing task included coordination with Nevada Field Office (*i.e.*, NNSA) representatives and the M&O contractor. PWS §§ 3.2.2.1.1, 3.3.2.1.2. Further, with regard to the requirement that offerors describe “[t]he development and application of conceptual, geologic source term and groundwater flow and transport models . . .,” the agency clarified that “[t]he Offeror shall describe its proposed technical approach for accomplishing its own portions of the [UGTA program] work and how it will interact with the other entities [national laboratories].” RFP Amend. 0002, Q&A No. 2.

The SSA subsequently found Navarro’s “detailed proposal demonstrate[s] in-depth understanding and a logical and methodical technical strategy for the entire UGTA program” to be a strength highly beneficial to the Government. AR, Tab 33, Source Selection Decision, Sept. 3, 2014, at 5. The SSA also found, by contrast, that “Portage’s proposal emphasized modelling but only minimally addressed other important elements of UGTA, such as internal and external organization and integration, providing a lesser degree of detail than Navarro.” *Id.* The SSA concluded that Navarro’s broader programmatic application for the UGTA activity was one of the features that made Navarro’s proposal technically superior to that of Portage, and the overall best value. *Id.* at 7.

Portage argues that the evaluation of offerors’ technical approaches for the UGTA activity was, per the RFP, to be limited to: (1) the development and application of conceptual, geologic source term and groundwater flow and transport models; and (2) the development of a long-term groundwater monitoring program based on the computer flow and transport models. Portage also alleges that because offerors were not instructed to address any other aspects of the UGTA activity, the agency’s consideration of broad programmatic application, and internal and external organization and integration, were unstated evaluation criteria. Alternatively, the protester contends that its proposal addressed coordination and integration with stakeholders and other entities, and that the agency’s evaluation was unequal.⁴ Protest, Oct. 17, 2014, at 26-32.

Based on our review, we agree with the agency that consideration of UGTA broad programmatic application, and internal and external organization and integration, was consistent with the stated evaluation criteria. As set forth above, the RFP specified the UGTA tasks that offerors’ proposals were to address (and which the agency would evaluate), included the development and application of conceptual,

⁴ In fact, the Portage protest includes an entire page discussing the many different instances where its proposal addressed the very UGTA task that Portage allegedly believed it was not required to address--coordination and integration with stakeholders and other elements. Protest, Nov. 28, 2014, at 31-32.

geologic source term and groundwater flow and transport models. RFP § L-2; RFP Amend. 0001 at 3. However, when specifically asked how to interpret the scope of this requirement, the agency made clear that it included all UGTA well drilling support tasks; all UGTA well development and testing tasks; and the offeror's approach for accomplishing its own portions of the work and how it would interact with other entities. RFP Amend. 0002, Q&A Nos. 2, 30. In light thereof, the agency's consideration of Navarro's in-depth understanding of the entire UGTA activity and its internal and external organization and integration with other entities were not unstated evaluation criteria.

Portage does not dispute that Q&A No. 30 of Amendment 0002 informed offerors to interpret the original RFP language as including all UGTA well drilling support and well development and testing tasks. Rather, the protester points to another Q&A, No. 29, which it alleges required offerors to address only the geologic modeling aspects of the UGTA activity.⁵ Portage argues that reading the two Q&As together required offerors to only address "all" geologic modeling activities. Protest, Nov. 28, 2014, at 26. We disagree.

Q&A No. 29, to which Portage cites, provided proposal instructions to offerors regarding many different PWS activities (*i.e.*, soils, UGTA, and RWAP), while Q&A No. 30 applied specifically to the UGTA activity. When read together, we also find that although offerors may not have needed to address the requirements of entire PWS activities, with regard to the UGTA activity, offerors were to address all well drilling support and well development and testing tasks, both of which included interface and coordination with other entities.⁶ Moreover, Portage ignores the other amended provision (Q&A No. 2) which required the offeror to "describe its proposed technical approach for accomplishing its own portions of the work and how it will interact with the other entities," such as national laboratories. RFP Amend. 0002, Q&A No. 2. In sum, we find the agency's consideration of UGTA coordination and integration tasks was not an unstated evaluation criterion, and that the agency

⁵ When asked if offerors were to address the requirements of the entire PWS sections of Soils, UGTA, and RWAP, the agency stated that "NNSA's technical evaluation will include those areas of the PWS as identified in Section L, provision NNS-L-2002, of the RFP." RFP Amend. 0002, Q&A No. 29; AR, Tab 37, Draft RFP Q&A No. 19.

⁶ At best, the aforementioned solicitation amendment provisions--Q&A No. 29 and No. 30--were ambiguous, and Portage was required to protest this solicitation defect prior to the closing time for submission of proposals. See 4 C.F.R. § 21.2(a)(1) (2014).

reasonably determined that Navarro provided a more detailed response than Portage in addressing this aspect of the UGTA activity.⁷

Navarro Corporate Experience Evaluation

Portage challenges the agency's evaluation of Navarro's corporate experience. Specifically, the protester argues that the agency should have assigned a weakness to Navarro's proposal for a lack of UGTA-related experience. Protest, Oct. 17, 2014, at 36-38.

The RFP stated that the agency would evaluate the relevancy and depth of an offeror's corporate experience as it related to performing the PWS. RFP § M-2. The solicitation also instructed offerors to submit corporate experience information that is "relevant (similar in nature, size in dollars, and complexity) to the management and execution of the overall scope of work and/or to the specific areas of the PWS for which each team member will be responsible." RFP § L-2(b)(3). Relevant to the protest here, the RFP also stated that:

If the Offeror, or a team-member, is the successor company of another business entity resulting from a name change or a transfer of substantially all of the assets of the predecessor company to the Offeror or team-member, it may submit corporate experience from its predecessor company(s) provided that such corporate experience falls within the parameters of this provision and is accompanied by documentary evidence of the name change or asset transfer

Id.

Navarro's proposal included three corporate experience references for itself as the prime contractor. The first reference was Navarro's work on the incumbent ECRS contract, where Navarro was the majority owner (62.5%) of the Navarro-Intera joint

⁷ Portage also argues that NNSA's evaluation was unequal regarding offerors' technical approach for accomplishing the characterization of radiologically-contaminated soils ("Both offers proposed to perform internal dose calculations using gamma spectroscopy. And both proposed to measure plutonium and americium.") Protest, Nov. 28, 2014, at 10. We find the agency's evaluation here was not unequal, and that Portage misinterprets what the agency identified as the significant strength and discriminator in Navarro's proposal--the awardee's innovative approach to using gamma spectroscopy and the well-established americium-plutonium ratios to estimate the concentrations of the element which is generally more difficult to measure (plutonium) by determining the concentrations of the element which is more readily ascertainable (americium). AR, Tab 8, SEB Evaluation of Navarro, Aug. 20, 2014, at 3.

venture and was responsible for the overall management of the project, including the UGTA activity.⁸ AR, Tab 5D, Navarro Proposal, Vol. II, Technical Proposal, Criterion 3, at 1-3. Navarro also detailed how the UGTA work performed under the ECRS contract was very similar to the UGTA work to be performed here. Id. at 2. Further, Navarro's proposal set forth the extent to which Navarro-Intera resources would be used to perform the new contract. Specifically, the Navarro senior vice-president who served as the program manager for the incumbent contract was proposed to serve as Navarro's program manager here. Id. at 1-2. Similarly, the Navarro employee who worked as the UGTA field manager under the incumbent contract was proposed by Navarro in the same position here.⁹ See id., Criterion 2, at 16. Navarro also had access to its employees who performed technical work under the incumbent contract, including UGTA work, and it proposed to employ its incumbent staff members on the new contract. AR, Tab 5B, Navarro Proposal, Vol. II, Technical Proposal, Criterion 1, at 1.

Navarro provided two additional references in support of its corporate experience: (1) its \$80 million environmental compliance and operations contract at the White Sands Test Facility for the National Aeronautics and Space Administration (NASA); and (2) its \$68.5 million contract for environmental operations and maintenance at the Rocky Mountain Arsenal for the U.S. Army. AR, Tab 5D, Navarro Proposal, Vol. II, Technical Proposal, Criterion 3, at 4-9. Navarro's NASA and Army references both involved long-term groundwater (well) monitoring programs, id. at 5, 7-8, and Navarro explained how its NASA and Army references were also relevant to the PWS's UGTA activity. Id. at 29, 33-34.

The SEB evaluated Navarro's corporate experience as excellent, and identified as a significant strength that Navarro had directly relevant experience managing and performing all PWS areas, including program integration, UGTA, soils, and RWAP. AR, Tab 8, SEB Evaluation of Navarro, Aug. 20, 2014, at 21. The significant strength assigned by the agency evaluators was based on the offeror's relevant experience as one of the incumbent prime contractors under the current ECRS contract, as well as Navarro's current prime contracts with NASA and the Army. Id. at 21-22.

⁸ The agency contends that this controlling ownership interest made Navarro the parent company of the Navarro-Intera subsidiary (and that Navarro was not the successor company of the Navarro-Intera predecessor). AR, Nov. 17, 2014, at 36-37.

⁹ Navarro's UGTA field manager, or field operations manager, is responsible for field planning, data acquisition, and hydrogeological reporting, site safety and environmental protection; he also coordinates UGTA well development and drilling activities with the other participants. AR, Tab 5B, Navarro Proposal, Vol. II, Technical Proposal, Criterion 1, at 20.

Portage argues that the agency should have assigned a weakness to Navarro's proposal for a lack of UGTA-related experience, because joint-venture partner Intera--not Navarro--provided the key staff to lead and perform the UGTA work under the incumbent contract. Portage also contends that it was contrary to the terms of the solicitation for the agency to give Navarro credit for the experience of incumbent Navarro-Intera, because Navarro was not the successor company to Navarro-Intera.

We find the agency's evaluation of Navarro's UGTA-related corporate experience to be reasonable. First, the record reflects that the evaluation of Navarro's corporate experience was not solely based on the challenged incumbent Navarro-Intera reference, but was also based on the offeror's other two references. Further, Portage does not dispute that Navarro's environmental compliance contracts with both NASA and the Army included long-term groundwater monitoring, sampling, modeling, and data collection, nor that Navarro's work under these references was relevant to the PWS's UGTA requirements. See Protest, Nov. 28, 2014, at 28-32. Quite simply, the agency's determination that Navarro possessed relevant experience in all PWS areas, including relevant UGTA experience, was not limited to the incumbent Navarro-Intera contract as the protester suggests.

Further, we find no merit in Portage's assertion that because Navarro was not the successor company to the Navarro-Intera entity, the solicitation precluded the agency from considering Navarro's experience on the incumbent contract. The protester's argument here is mistakenly premised on the belief that the solicitation provision regarding predecessor and successor companies is the only, or exclusive, means by which offeror can receive corporate experience credit for prior relevant work. We find this interpretation to be unreasonable, as nothing in the solicitation stated that this is the only way in which an offeror could receive credit for the experience for its prior work. Accordingly, the solicitation did not preclude the agency from considering the experience of the Navarro-Intera entity when evaluating the corporate experience of the joint venture's majority owner and controlling member, Navarro.

Lastly, we find the agency's evaluation of Navarro's UGTA-related experience on the Navarro-Intera contract was reasonable. Our Office has found that an agency properly may consider the experience or past performance of an offeror's affiliated companies where the firm's proposal demonstrates that the resources of the affiliated company will affect the performance of the offeror. West Sound Servs. Group, LLC, B-406583.4, B-406583.5, July 9, 2014, 2014 CPD ¶ 208 at 14; see Federal Acquisition Regulation (FAR) § 15.305(a)(2)(iii). The relevant consideration is whether the resources of an affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. West Sound Servs. Group, LLC, supra; Ecompex, Inc.,

B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5; Hot Shot Express, Inc., B-290482, Aug. 2, 2002, 2002 CPD ¶ 139 at 3.

Here, as set forth above, Navarro was the majority owner of the incumbent contractor, and was responsible for the performance of the entire scope of work, including the UGTA activity. Further, the evaluators reasonably found that various resources which Navarro “seconded” (i.e., loaned) to the Navarro-Intera subsidiary were now proposed to be used by Navarro here. These included the program manager from the incumbent contract who was proposed to serve as Navarro’s program manager here, and the incumbent UGTA field manager who was also proposed by Navarro in the same position here. AR, Tab 5D, Navarro Proposal, Vol. II, Technical Proposal, Criterion 2, at 16. Navarro also proposed to employ incumbent Navarro staff members on the new contract. In sum, the record available to the agency indicated that Navarro members of the Navarro-Intera subsidiary would have meaningful involvement in performance of Navarro’s contract here, such that NNSA could properly attribute experience of the Navarro-Intera subsidiary to Navarro. Taken as a whole, we find the agency’s evaluation of Navarro’s corporate experience as related to the UGTA activity was reasonable.¹⁰

Navarro Key Personnel and Staffing Evaluation

Portage argues that the agency’s evaluation of Navarro’s key personnel and staffing was improper. The protester alleges that because Navarro proposed the same individual to fill two key personnel positions simultaneously, it was unreasonable for the agency not to identify this as a weakness in the awardee’s proposal. Protest, Nov. 28, 2014, at 11-16. Portage alternatively argues that because it proposed five

¹⁰ Portage also argues that NNSA’s evaluation of Navarro’s corporate experience and past performance was unreasonable because neither of Navarro’s two team members, Leidos, Inc. (formerly part of SAIC) and HydroGeologic, Inc. (HGL) were performing “major or critical aspects of the PWS,” as required by the RFP. Protest, Nov. 28, 2014, at 17-22, citing RFP § M-1(f). The protester points to the fact that Leidos was providing 4.31 full time equivalents (FTEs), and HGL was providing 3.2 FTEs, of a total Navarro staffing of [DELETED] FTEs in the base year. Id. at 19; AR, Tab 5, Navarro Proposal, attach. L-7, Staffing Summary, at 2, 16-17. As the RFP did not define “major or critical aspects,” the SEB elected to interpret the relevant solicitation provision broadly when evaluating all offerors. AR, Tab 50, SEB Chair Declaration, Jan. 14, 2015, at 1. The SEB also found that although the total number of FTEs for Leidos and HGL was not large, both Navarro team members were proposed to perform critical aspects of the UGTA and RWAP activities. Id. at 1-3. As the SEB found the work to be performed by Leidos and HGL to be both critical and an excellent predictor of performance, it credited Navarro’s proposal for the corporate experience and past performance of its team members. Id. We find the agency’s evaluation here to be reasonable.

different individuals to fill the five key personnel positions, this should have been identified as a technical discriminator in its favor. Id. at 16.

The RFP required offerors to identify proposed key personnel for five specific positions: program manager; soils manager; UGTA manager, RWAP management; and program integration manager. RFP § H-2013. The solicitation did not, however, define the duties and responsibilities of the key personnel positions, see id., but rather, left that determination to the offerors' discretion.¹¹ With regard to the key personnel evaluation factor, the solicitation stated that:

The Government will evaluate and assess the degree to which the key personnel identified . . . have the education and/or experience to effectively execute the duties and responsibilities for their proposed position considering the nature, size and scope of the work required in the PWS relevant to their proposed positions.¹²

RFP § M-2.

Navarro proposed the same individual, a company senior vice-president, for both the program manager and the program integration manager key positions.¹³ AR, Tab 5D, Navarro Proposal, Vol. II, Technical Proposal, Criterion 2, at 1-10. The Navarro proposal also set forth the individual's education and experience to perform the duties and responsibilities for each key personnel position. Id. Navarro also explained that the proposed individual currently served as the program manager for the incumbent contract where he is fully responsible for the compliant and cost-effective performance of the overall PWS, and that he has successfully managed the program integration functions by integrating and managing the work of PWS activity-specific managers ("similar to what is proposed" here) Id. at 1, 6. The SEB evaluated the education and experience for each offeror's proposed key personnel: the agency's key personnel evaluation did not consider whether the individual proposed was part-time or full-time. See AR, Tab 8, SEB Evaluation of Navarro, Aug. 20, 2014, at 12-20; Agency Legal Memorandum, Nov. 17, 2014, at 6.

¹¹ The record reflects that Navarro and Portage defined the duties and responsibilities of each key personnel position differently. See AR, Tab 4, Portage Proposal, Vol. II, Technical Proposal, Criterion 2, at 1-15; Tab 5, Navarro Proposal, Vol. II, Technical Proposal, Criterion 2, at 1-22.

¹² The solicitation also stated that the agency would evaluate offerors' staffing plans as part of the technical approach factor to assess the offeror's understanding of the requirements, completeness, and feasibility of the proposed technical approach. RFP § M-2.

¹³ Navarro's proposal did not indicate the percentage of time that the proposed individual would spend in each key personnel position.

The SEB rated Navarro's key personnel as excellent, and identified two significant strengths related to its senior vice-president. Specifically, the agency evaluators found that the individual's education and experience made him extremely well-qualified for both the Program Manager and Program Integration Manager positions. AR, Tab 8, SEB Evaluation of Navarro, Aug. 20, 2014, at 12-14, 19-20. Also, when evaluating Navarro's staffing, the SEB found Navarro's plan demonstrated that the offeror understood the labor types, skill mix, and approximate quantities needed to perform each major element of the PWS, and identified no strengths or weaknesses in Navarro's staffing. Id. at 10.

Portage argues that the agency was required to consider more than the education and experience of the individuals proposed as part of key personnel, and should have identified the Navarro senior vice-president's part-time status for two key personnel positions as a weakness.¹⁴ Protest, Nov. 28, 2014, at 13. We disagree.

The solicitation stated that the agency would evaluate the degree to which the proposed key personnel possessed the education and/or experience to effectively execute the duties and responsibilities for their proposed positions. We find that the agency's evaluation was entirely consistent with the stated evaluation criteria, and the decision not to consider whether the individual was proposed full-time or not was simply not required. As set forth above, Navarro's proposal detailed how its senior vice-president would perform the program manager and program integration manager duties. The Navarro proposal also explained how the individual here had done so successfully under the incumbent contract. The record reflects that the agency evaluators were completely aware that Navarro's senior vice-president would divide his time between the program manager and program integration manager positions, and found that Navarro's total staffing plan was adequate to perform all PWS functions notwithstanding this fact. Portage's argument that the agency unreasonably failed to assign a weakness to Navarro's approach to have one individual perform two key personnel functions amounts to mere disagreement with the agency's reasonable evaluation.¹⁵

¹⁴ The solicitation stated that the key personnel proposed were to be "dedicated full-time to this contract." RFP § H at 46. The RFP did not specify, however, that a proposed individual be dedicated full-time to a key personnel position. Portage does not argue that Navarro's proposal was noncompliant with the RFP for proposing the same individual for two key personnel positions but contends that the agency should have assigned a weakness to Navarro's approach. Protest, Dec. 16, 2014, at 36 n.18.

¹⁵ We also find no merit in Portage's assertion that NNSA should have identified Portage's greater key personnel staffing--5 FTEs versus 4--as a technical advantage. As a preliminary matter, the RFP did not require that offerors perform any of the key personnel positions full-time. Further, given the degree of overlap between the program manager and program integration manager positions, the
(continued...)

OCI Evaluation of Navarro

Portage protests that the agency's evaluation of Navarro's OCI was improper. Specifically, the protester contends that because Navarro handles, packages, ships, and provides documentation regarding radioactive waste being sent to NNSS, it cannot conduct unbiased or independent audits or surveillances of waste generator programs as required by the EPS contract.¹⁶ Protest, Oct. 17, 2014, at 43-46.

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. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5. As relevant here, an impaired objectivity OCI exists where a firm's ability to render impartial advice to the government will be undermined by the firm's competing interests, such as a relationship to the product or service being evaluated. FAR § 9.505-3; see also FAR § 2.101 (OCI definition); Pragmatics Inc., B-407320.2, B-407320.3, Mar. 26, 2013, 2013 CPD ¶ 83 at 3; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

Contracting officers are required to identify and evaluate potential OCIs as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts of interest before contract award. 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 officer. Alliant Techsystems, Inc., B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4; The LEADS Corp., B-292465, Sept. 26, 2003, 2003 CPD ¶ 197 at 5. Contracting officers are to exercise "common sense, good judgment, and sound discretion" in assessing whether a significant potential conflict exists and in developing appropriate ways to resolve it. FAR § 9.505; Q2 Administrators, LLC, B-410028, Oct. 14, 2014, 2014 CPD ¶ 305 at 7.

We review the reasonableness of a contracting officer's OCI investigation 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,

(...continued)

agency reasonably found that Navarro's staffing was appropriate. In sum, while Portage shows that it proposed a greater number of FTEs for the key personnel positions, it has not shown that the agency's evaluation here was unreasonable.

¹⁶ Portage also alleges that the agency's cost realism evaluation improperly failed to take into account the additional costs to the government as a result of Navarro's OCI.

absent clear evidence that the agency's conclusion is unreasonable. Alliant Techsystems, Inc., supra. In this regard, 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., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011). As set forth below, we have no basis to question the contracting officer's investigation or conclusion with regard to the alleged impaired objectivity OCI concerns.

The PWS established, as part of the RWAP activity, that the contractor would perform Waste Acceptance Facility Evaluations (FEs)/Verifications as follows:

The Contractor will perform and document the results of an estimated 20 annual FEs of low-level waste/mixed low-level waste (LLW/MLLW) generator programs to support compliance with the NNSS [Waste Acceptance Criteria] requirements. FEs include audits and surveillances which are conducted to evaluate waste generator programs and compliance with the NNSS [Waste Acceptance Criteria]. FEs support the program by providing an independent oversight tool to ensure that waste being shipped to the NNSS is in compliance with the NNSS [Waste Acceptance Criteria].

PWS § 3.2.4.2.

The solicitation required offerors to submit an OCI avoidance and mitigation plan as part of their proposals. RFP § L-1. Navarro's OCI plan identified a potential, inherent OCI related to the EPS contract, as the PWS included requirements for the contractor to act both as a low-level waste generator at NNSS and to potentially audit its own waste generation program.¹⁷ AR, Tab 5, Navarro Proposal, Vol. I, Business Proposal, Tab 2, OCI Plan, at 1-5. Navarro proposed to mitigate this OCI by having firewalled employees of subcontractor Leidos perform the audits and surveillances of the waste generation program when auditing waste generation activities at NNSS. Id. The contracting officer, however, determined that Navarro's OCI plan did not fully mitigate the OCI. AR, Tab 23, Contracting Officer OCI Analysis, Sept. 16, 2014, at 2-3. Ultimately the contracting officer determined that the OCI would be avoided completely by having government employees perform the FE audits of the EPS contractor's waste generation activities rather than having the

¹⁷ This potential OCI would affect any awardee of the EPS contract, which Portage does not dispute.

contractor or a subcontractor perform such work.¹⁸ Id. at 3-4. Navarro then revised its OCI plan accordingly. AR, Tab 23, Navarro OCI Plan, Sept. 12, 2014, at 4.

The Portage protest identified two specific Navarro subcontracts--at the Y-12 National Security Complex, Oak Ridge, Tennessee, and the Los Alamos National Laboratory (LANL), Los Alamos, New Mexico--that allegedly created an impaired objectivity OCI relating to the EPS contract. Specifically, Portage alleged that an OCI existed because Navarro “handles, packages, ships, and provides documentation regarding waste quantities and types” which are disposed of at NNSS and which Navarro may have to audit. Protest, Oct. 17, 2014, at 44.

The contracting officer conducted an additional OCI analysis in light of the Portage assertions. AR, Tab 46, Contracting Officer OCI Analysis, Nov. 13, 2014, at 1-4. The contracting officer requested that Navarro provide copies of the statements of work for both Y-12 and LANL subcontracts for review. Id. at 2. The agency also contacted government officials and prime contractors at the Y-12 and LANL sites to obtain further information about the work that Navarro was performing there. Id. The contracting officer determined that under both subcontracts, Navarro performed packaging and shipping services for various types of waste for disposal at a number of different sites, including NNSS, but that Navarro did not act as the waste generator and did not assist the prime contractors/waste generators in developing or implementing their NNSS Waste Acceptance Criteria compliance programs. Id. The contracting officer also found that Navarro did not support the waste generators’ waste characterization, quality assurance, or waste certification activities. Id. From these findings the contracting officer determined that there was no potential OCI relating to Navarro’s performance of waste profile review task (PWS § 3.2.4.3, Waste Acceptance Review Panel) under the EPS contract. Id.

As set forth above, the PWS also required the contractor to perform and document the results of an estimated 20 FE audits annually of low-level waste/mixed low-level waste generator programs to support compliance with the NNSS Waste Acceptance Criteria (WAC) requirements. The WAC contain standards for the review of waste generators, who must be approved before they can dispose of waste at NNSS. The approval requirements include an audit which involves evaluation of waste characterization, quality assurance, and waste traceability program elements. Id.; AR, Tab 47, NNSS Waste Acceptance Criteria, § 2.2.1.1.

¹⁸ The contracting officer also determined that this does not change the scope of the EPS contract, because the exclusion of the NNSS waste generation program did not change the “estimated 20 annual FE[]” audits that the contractor was to perform, and because it was at the Government’s discretion to determine which FE audits to assign to the EPS contractor. AR, Tab 23, Contracting Officer OCI Analysis, Sept. 16, 2014, at 3 n.1.

The contracting officer found that because Navarro was not the waste generator at Y-12 and LANL, and did not support the waste generators' WAC compliance programs, no potential OCI was likely to arise with respect to Navarro performing the waste characterization, quality assurance, and waste certification elements of FE audits for these sites. Id. at 3. Moreover, accepting actual waste shipments was not within the scope of work to be performed by the EPS contractor, but rather, the site's M&O contractor. Therefore, Navarro would not be in a position to evaluate and accept waste shipments that it packaged and shipped itself. Id.

The contracting officer, however, found that an OCI potentially existed with regard to the "traceability" element of FE audits. Id. "Traceability" refers to documentation which traces the contents of the waste to their origin, and includes documentation relating to the handling, control, and shipment of the waste. Id. Thus, an audit of such documents would potentially include an examination of shipping documents, such as shipping manifests, prepared by Navarro under the Y-12 and LANL subcontracts. Id. The contracting officer concluded that, in these limited circumstances, Navarro would potentially be in a position to audit its own work.¹⁹ Id. The contracting officer determined that this potential OCI would be avoided in the same manner as the inherent OCI relating to the contractor's waste generation program at NNSS--by having government employees perform the traceability element of the FE audits, or all elements of FE audits, which involved at Y-12 and LANL, "whichever as deemed appropriate at the time."²⁰ Id.

Based on the record before us, we find the agency's evaluation of Navarro's OCI to be thorough and reasonable. As a preliminary matter, the contracting officer reasonably determined that the OCI potential was not a significant one. The EPS contract was not one where the task in question--FE audit services--was the sole or principle portion of the total effort. Rather, FE audits were but one task within five separate PWS activities. Further, the record reflects that the contracting officer meaningfully assessed the extent of Navarro's potential OCI, and reasonably determined that an OCI could exist only with regard to one specific element (traceability) of the FE audits that Navarro was to perform, and only when the FE

¹⁹ The contracting officer also found that the traceability portion of the FE audits was so minor that any potential related OCI posed only a minimal risk to the government. Id. at 4; see FAR § 9.504(a)(2) (the contracting officer shall avoid, neutralize, or mitigate significant potential OCI).

²⁰ The contracting officer again found that having government employees perform FE audits (or parts of FE audits) in situations where an OCI existed did not change the scope of the EPS contract. Id. Because there are currently 25 waste generators that are audited on an annual basis, even if government employees are performing the FE audits for Y-12 and LANL, the EPS contractor will still be assigned approximately 20 FEs annually, as stated in the contract, and as determined at the agency's discretion. Id.

audits involved Y-12 and LANL. The contracting officer then reasonably determined that the OCI could be avoided by assigning FE audits (or portions thereof) involving Y-12 and LANL to government employees, without reducing the amount of work that Navarro was expected to perform (*i.e.*, 20 FE audits annually). We find that the contracting officer's chosen method of avoiding the potential OCI here was entirely reasonable. See The LEADS Corp., supra, at 5-7.

Portage also argues that the agency's OCI analysis was unreasonable because the avoidance approach decided upon was not one proposed by Navarro. Protest, Nov. 28, 2014, at 50. This does not provide a basis to challenge the evaluation of Navarro's plan. As a preliminary matter, it is the contracting officer's responsibility to identify and evaluate potential OCIs, and avoid, neutralize, or mitigate significant potential OCIs. FAR §§ 9.504(a), 9.505. Moreover, the agency's OCI avoidance approach does not alter Navarro's technical approach inasmuch as Navarro will still perform an estimated 20 FE audits annually and the determination as to what FE audits to assign to Navarro is one that will be made by NNSA, not by Navarro. See The LEADS Corp., supra, at 6. Quite simply, in light of the agency's determination that any potential OCI could be avoided by the careful assignment of work under the contract to ensure that Navarro did not handle FE audits in which it had a potential conflict, the reasonableness of the agency's analysis does not turn on whether this is reflected in the awardee's OCI plan.

Portage also argues that the agency failed to consider the additional costs to the government arising from the OCI avoidance plan. Protest, Nov. 28, 2014, at 52. We disagree. First, the use of government employees to perform audits involving waste generation by the EPS contractor would apply to all offerors equally, including Portage. Further, the agency did not reduce the FE audit requirements for Navarro, as the protester alleges. Navarro was still required to perform an estimated 20 FE audits annually as part of the EPS contract; it would only be limited to FE audits for those sites where a potential OCI did not exist.²¹ Quite simply, Navarro would not be performing fewer FE audits than Portage, just different ones. Lastly, the protester has failed to demonstrate that the use of government employees to perform the traceability element of the FE audits for Y-12 and LANL was anything other than negligible.²²

²¹ Accordingly, there was also no change to Navarro's proposed technical approach to perform the RWAP activity, including the FE audit task.

²² Portage also alleges that Navarro has an OCI because it has financial interests with the Y-12 and LANL prime contractors. Protest, Nov. 28, 2014, at 40, 49-50. We find that Portage's assertion here is not supported by hard facts. Moreover, having the FE audits for Y-12 and LANL performed by government employees rather than Navarro would avoid the alleged conflict.

In sum, the record reflects that the agency reasonably evaluated Navarro's potential OCI and avoided a minor conflict of interest, which would affect a very small aspect of the total work requirements, in a manner consistent with the discretion afforded to contracting officers. See FAR § 9.504. We find the agency's analysis here to be unobjectionable.

Best Value Decision

Lastly, Portage challenges the agency's best value tradeoff decision. The protester alleges, among other things, that because Navarro and Portage were evaluated to be very similar in technical merit, Portage's lower cost should have been the determining factor in the source selection. Protest, Oct. 17, 2014, at 48-51.

Source selection officials in negotiated best-value procurements have broad discretion in making cost/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 20. Source selection decisions must be documented, and the documentation must include the rationale for any business judgments and cost/technical tradeoffs made, including the benefits associated with the additional costs. FAR § 15.308; General Dynamics Info. Tech., Inc., B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11.

As set forth above, the SEB's evaluation of offerors' proposals included the identification of strengths and weaknesses in support of the adjectival ratings assigned. The SSA then reviewed the SEB evaluation reports and accepted the evaluators' findings and ratings when preparing her source selection decision.²³ AR, Tab 33, Source Selection Decision, Sept. 3, 2014, at 4. In this regard, the SSA highlighted the evaluators' findings under each of the factors. With respect to the technical approach factor, the SSA noted that Navarro's approach was superior to that offered by Portage and provided several significant strengths that would greatly benefit NNSA such as: (1) its unique and innovative approach to internal dose calculation strategy for sites with plutonium contamination that can be widely applied to more efficiently calculate plutonium concentration in soils; and (2) an in-depth understanding and a logical and methodical technical strategy for the entire

²³ The SSA also independently read offerors' technical proposals, and was briefed by the SEB on its evaluation findings. Contracting Officer's Statement, Nov. 17, 2014, at 15.

UGTA program, including internal and external organization and integration. Id. at 5. Also, under the corporate experience factor, the SSA concluded that Navarro's proposal was superior to Portage's insofar as Navarro possessed substantial depth of experience in all PWS areas, including UGTA activities, which Portage did not possess. Id. at 6-7.

Ultimately, the SSA determined that Navarro's proposal represented the best value to the agency. Id. at 7-8. In reaching her conclusion, the SSA explained as follows:

I find there are discernable differences that make Navarro technically superior to Portage and more advantageous to the Government. Navarro's Technical Approach has advantages over Portage's approach based on its broader programmatic application which should reduce programmatic risk and result in greater long-term efficiencies. . . . I find Navarro's Corporate Experience to be superior to Portage's due to Navarro's experience covering all areas of the PWS whereas Portage's weakness in their proposed UGTA lead, subcontractor AMEC could have a negative impact on financial, schedule and regulatory/stakeholder confidence aspects of the Program. . . . While Navarro's probable cost is higher than Portage's, the approximately 2% difference is small over a 5-year period of performance and is worth the additional cost because Navarro's superior, all-encompassing programmatic approach and corresponding experience should lessen programmatic risk to the Government through adherence to schedules, meeting FFACO compliance milestones, controlling cost, and maintaining regulator/stakeholder confidence in the Government's ability to successfully complete the work scope. Accordingly, . . . I find that Navarro's proposal represents the best value to the Government.

Id. at 7-8.

We find that the agency's source selection decision was reasonable, consistent with the solicitation's evaluation criteria, and fully documented. As the record demonstrates here, the SSA reviewed the relative importance of the RFP's stated evaluation criteria and the size of the cost difference between the Portage and Navarro proposals. The SSA also looked behind the assigned adjectival ratings and concentrated on the actual differences between the offerors' proposals under the noncost factors. The SSA then detailed why, in her judgment, Navarro's superiority under the technical approach and corporate experience factors outweighed the additional cost, and adequately documented the rationale for this determination.

Portage argues that the proposals were "very similar" in terms of technical merit, such that cost should have been the determining factor. Protest, Oct. 17, 2014,

at 48. However, Portage ignores the SSA's determination that, although the offerors received similar ratings, there were discernable differences in the quality of the proposals under the technical approach and corporate experience factors. One of those differences was the weakness in Portage's corporate experience related to the UGTA program, which the protester does not dispute. While Portage undoubtedly would have preferred the SSA to find the differences between the offerors' technical submissions to be negligible, the record reasonably reflects why the SSA concluded that Navarro's technical advantages outweighed the associated cost premium.

Portage also argues that the greater level of detail found in Navarro's proposal does not make it a better value. Protest, Oct. 17, 2014, at 49. As explained above, the SSA found, among other things, that Navarro's greater level of detail demonstrated greater understanding and a logical and methodical strategy for accomplishing PWS requirements. From this the SSA reasonably concluded that Navarro's superior understanding would reduce programmatic risk, result in greater long-term efficiencies, and contribute to the overall success of the UGTA program. Quite simply, Portage's assertion that Navarro's greater level of detail should not have been viewed as a better technical solution amounts to mere disagreement with the agency's judgment, which does not provide our Office with a basis to sustain the protest.

The protest is denied.

Susan A. Poling
General Counsel