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## Decision

**Matter of:** Deloitte Consulting, LLP

**File:** B-412125.2; B-412125.3

**Date:** April 15, 2016

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David S. Cohen, Esq., John J. O'Brien, Esq., Laurel A. Hockey, Esq., Amy J. Spencer, Esq., and Daniel Strouse, Esq., Cohen Mohr LLP, for the protester. Thomas K. David, Esq., Kenneth D. Brody, Esq., and Katherine A. David, Esq., David, Brody & Dondershine, LLP, for Data Networks Corporation, an intervenor. David R. Smith, Esq., and Randy Stone, Esq., Department of Defense, Defense Health Agency, for the agency. Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that awardee had unmitigable impaired objectivity organizational conflicts of interest is denied where the contracting officer gave meaningful consideration to whether the awardee had the alleged organizational conflicts of interest and there is no clear evidence in the record that the agency's conclusion was unreasonable.
  2. Protest challenging the agency's evaluation of key personnel is sustained where the record demonstrates that multiple proposed individuals did not meet the minimum qualifications of the key personnel positions for which they were proposed.
  3. Protest challenging the agency's evaluation of past performance relevancy is sustained where the agency's evaluation record is insufficiently documented to allow our Office to review the reasonableness of the evaluation judgements.
  4. Protest alleging that the agency conducted unequal discussions is sustained where the agency advised the awardee of past performance reference contracts that were evaluated by the agency as only "somewhat relevant," but did not similarly advise the protester of its own "somewhat relevant" references.
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## DECISION

Deloitte Consulting, LLP, of Arlington, Virginia, protests the award of a contract to Data Networks Corporation (DNC), of Reston, Virginia, by the Department of Defense, Defense Health Agency (DHA), under request for proposals (RFP) No. HT0011-15-R-0010, for the agency's governance, requirements, and architecture management support (GRAMS) requirement. Deloitte first alleges that DNC's performance of the GRAMS requirement presents unmitigable impaired objectivity organizational conflicts of interest (OCI) with regard to two other contracts currently held by DNC. Deloitte also alleges that the agency's evaluation was irrational, unsupported, and disparate in multiple areas, and that the agency conducted unequal discussions, among many other protest grounds.

We sustain the protest in part, and deny it in part.

## BACKGROUND

### The GRAMS Requirement

The agency issued the RFP on February 26, 2015, for the purpose of awarding a contract for the GRAMS requirement, which provides program management support to requirement managers in DHA's Health Information Technology Directorate.<sup>1</sup> The RFP performance work statement (PWS) explained that the requirement managers "collect, refine, and integrate Military Health System generated Information Management/Information Technology (IM/IT) user functional requirements." Agency Report (AR), Tab 7, RFP Amendment 004, at 94. These tasks involve "extensive interaction with end users who prioritize which requirements are mission essential [and] further coordinat[ion] with the Services on their functional requirements for [information technology] solutions." *Id.* The GRAMS contractor's objective is to provide day-to-day support to the requirement managers; to develop, enhance, or improve the processes and procedures for accomplishing the work; and to improve the timeliness and quality of the requirement managers' products and services. *Id.* at 94-95.

Stated generally, the task of the requirement managers and GRAMS contractor is to ask software end users (such as doctors at Veterans Administration medical centers) about what new functionality they would like to have added to their information technology systems, and to then develop requirements statement packages for the requested functionality. AR, Legal Memo, at 7. Thereafter, if approved by the Medical Health System Functional Advisory Council, the

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<sup>1</sup> The GRAMS requirement consolidates two contracts previously performed by Deloitte. Thus, Deloitte is essentially the incumbent contractor in this competition.

requirements packages are passed on to other directorates or program offices for software development and, ultimately, delivery of the desired functionality. Id. at 7-8.

## The GRAMS RFP

The RFP provided that the GRAMS contract was to be awarded on a best-value basis, for a one-year base period and four one-year option periods. The best-value decision was to be based on four evaluation factors and subfactors, as follows:

1. Factor 1--Technical
  - Subfactor 1A--Technical Approach
  - Subfactor 1B--Staffing Approach
  - Subfactor 1C--Transition In and Out
  - Subfactor 1D--Quality Control Approach
2. Factor 2--Past Performance
3. Factor 3--Small Business Participation Plan  
(acceptable/unacceptable)
4. Factor 4--Price

AR, Tab 7, RFP Amendment 004, at 61. The RFP advised that the evaluation factors and subfactors were listed in descending order of importance, with the technical factor being most important and significantly more important than the past performance factor, and price being the least important factor (small business participation plan was to be considered only on an acceptable/unacceptable basis). Id.

As relevant to this decision, the RFP PWS identified nine positions as key personnel, and identified minimum requirements for those positions. Id. at 130-133. Under Subfactor 1B--Staffing Approach, the RFP provided that the key personnel resumes and commitment letters would be evaluated to determine the “[r]elevant qualifications and experience of proposed Key Personnel.” Id. at 62.

Also relevant, concerning Factor 2--Past Performance, the RFP provided that the agency would determine its level of confidence in the offeror’s ability to provide the required services, based on “a demonstrated record of recent, relevant performance.” Id. at 63. The RFP further advised that relevant performance “includes efforts of the same or similar scope, magnitude of effort, and complexity this solicitation requires,” and would be evaluated using relevancy rating criteria, as set forth in the following chart:

Rating	Definition
Very Relevant	Past performance effort involved essentially the same scope and magnitude of effort and complexities this solicitation requires.
Relevant	Past performance effort involved similar scope and magnitude of effort and complexities this solicitation requires.
Somewhat Relevant	Past performance effort involved some of the scope and magnitude of effort and complexities this solicitation requires.
Not Relevant	Past performance effort involved little or none of the scope and magnitude of effort and complexities this solicitation requires.

Id. at 63-64.

The RFP included an organizational conflict of interest clause that identified companies which, due to the nature of their contract performance with DHA, had actual or potential OCIs that were required to be avoided, neutralized, or mitigated. The clause additionally identified “[a]ll contractors and subcontractors directly supporting Defense Healthcare Management System (DHMS) Program Executive Office” as having actual or potential OCIs. AR, Tab 7, RFP Amendment 004, at 58. The clause advised that to avoid OCIs, the offerors agreed not to offer or accept a contract for the development or production of any information technology products or services, where “the product requirement directly refers to or is constrained by the architecture artifacts and requirements, as well as cost and schedule estimates, for which the Contractor assisted in the Government’s preparation and review under this contract.” Id. at 58-59. The RFP required that Offerors represent within their proposal that there were no relevant facts or circumstances which could give rise to an OCI concerning the GRAMS requirements. In the event that an actual or potential OCI did exist, the offeror was required to submit a mitigation plan to the contracting officer. Id. at 59.

Six offerors, including Deloitte and DNC, submitted proposals in response to the RFP. Of those offerors, only DNC acknowledged the existence of an actual or potential OCI, which concerned its performance of the Theater Medical Data Store/Medical Situational Awareness in Theater (TMDS/MSAT) contract with the DHMS Program Executive Office, Joint Operational Medicine Information Systems Program Management Office. DNC submitted a mitigation plan indicating there was a remote, insignificant, potential OCI between the GRAMS contract and TMDS/MSAT contract, which it proposed to mitigate. The contracting officer reviewed the mitigation plan and concluded that, because the TMDS/MSAT contract would be coming to an end before performance GRAMS would begin there was, in effect, no OCI. The agency therefore concluded that DNC’s proposal should be considered under the GRAMS RFP.

After an initial evaluation the agency established a competitive range consisting of the four firms that had submitted the highest rated proposals (which included Deloitte and DNC) and conducted discussions. Following discussions, each of the four offerors timely submitted a final proposal revision (FPR).

Subsequent to evaluation of FPRs, the agency made an initial award to DNC on September 17, 2015. Deloitte then filed a protest of that award decision with our Office, alleging in part that DNC had unmitigable impaired objectivity OCIs due to two other contracts held by DNC--the TMDS/MSAT contract described in DNC's original OCI mitigation plan, and also DNC's System Integration and Engineering Support (SI&ES) contract in support of the DHMS Program Executive Office, Defense Medical Information Exchange (DMIX) program office.<sup>2</sup> In response to Deloitte's protest, the agency informed our Office that it would conduct a new OCI analysis considering the SI&ES contract. Our Office then dismissed Deloitte's protest as academic on October 26. Deloitte Consulting, LLP, B-412125, Oct. 26, 2015 (unpublished decision).

After dismissal of the protest, the contracting officer conducted a new investigation of DNC's TMDS/MSAT contract and an investigation of the SI&ES contract, which included discussions with the contracting officer representatives for both contracts, and with DHA subject matter experts including the chair of the GRAMS source selection evaluation board. The contracting officer also requested that DNC submit a revised OCI mitigation plan for both contracts, which DNC completed on November 3. AR, Tab 53, OCI Analysis Memo, at 3-4. DNC's updated OCI mitigation plan again acknowledged a remote, insignificant, potential OCI concerning the TMDS/MSAT contract. AR, Tab 57, Revised DNC OCI Mitigation Plan, at 6. With the respect to the SI&ES contract, the OCI mitigation plan concluded that there was only a minimal potential OCI. Id. at 9. The contracting officer completed an OCI analysis memorandum on December 14, concluding that the connections between the contracts did not, in fact, present impaired objectivity OCIs. AR, Tab 53, OCI Analysis Memo, at 6.

Also during the corrective action period, the agency decided that it would reconsider the Factor 1--Technical evaluation of each FPR. The agency's technical evaluation board then reviewed the prior evaluation and prepared an addendum to the prior technical consensus report, which revised the prior consensus report in several areas.

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<sup>2</sup> DNC submitted its original OCI mitigation plan on March 28, 2015. DNC then submitted updated OCI mitigation plan on June 2, which additionally addressed DNC's newly-awarded SI&ES contract. DNC updated that OCI mitigation plan on July 29, and, as described below, again on November 3.

Both the contracting officer’s OCI analysis memorandum and the technical consensus addendum were provided to the source selection authority (SSA). The SSA then prepared an addendum to the prior source selection decision document (SSDD), incorporating the OCI analysis memorandum and the addendum to the technical consensus report. As relevant to this protest, the SSDD addendum recorded the evaluation results as follows:

	<b>Deloitte</b>	<b>DNC</b>
Factor 1--Technical	[DELETED]	[DELETED]
1A--Technical Approach	[DELETED]	[DELETED]
1B--Staffing Approach	[DELETED]	[DELETED]
1C--Transition	[DELETED]	[DELETED]
1D--Quality Control	[DELETED]	[DELETED]
Factor 2--Past Performance	[DELETED]	[DELETED]
Factor 3--Small Business	[DELETED]	[DELETED]
Factor 4--Price	\$(DELETED)	\$79,801,431.05

AR, Tab 9, SSDD Addendum, at 2, 6, 8. The SSA conducted a tradeoff analysis based on these evaluation results and concluded that, on reevaluation, the proposal submitted by DNC still represented the best value to the government. Specifically, the SSA concluded that “DNC’s technical superiority outweighs the \$(DELETED) [price] difference (over five years and inclusive of Optional Tasks which may or may not be exercised) between DNC and [Deloitte].” Id. at 7.

The SSDD reflects the SSA’s determination that Deloitte’s technical approach and staffing approach “did not measure up” to DNC’s outstanding proposal in these areas, and that DNC was also stronger under the quality control subfactor. Id. Concerning past performance, the SSDD reflects that the SSA considered Deloitte and DNC essentially equal, and that past performance was not a discriminator. Specifically, the SSDD addendum provided that:

Although the [technical evaluation board] found Deloitte’s past performance record to be “[DELETED]” (Deloitte being the incumbent contractor) and DNC’s past performance record to be “[DELETED],” I agree with the [technical evaluation board’s] “[DELETED]” ratings for both Offerors . . . . Further, I considered these Offerors to be essentially equal in this area--based on their past performance records, I have a high expectation that either contractor could perform the work.

Id. at 8.

In the final SSDD addendum analysis the SSA concluded that:

It is my determination that DNC is still the highest technically rated Offeror taking into consideration my review of the [technical evaluation board] Addendum consensus dated 17 December, 2015, the revised price evaluation dated 09 December, 2015, and the OCI [memorandum] prepared by the [contracting officer] dated 14 December, 2015. I further determined that the substantial technical superiority of DNC outweighs the cost differences between it and the other offerors. Thus, I re-affirm that DNC's offer represents the best value to the Government and determined that the award be made to DNC.

Id. at 10. The agency officially reaffirmed the award to DNC on December 31, 2015. This protest followed.

## DISCUSSION

Deloitte challenges the agency's conclusion that DNC did not have an OCI. In this regard, Deloitte argues that various facts and documents which were not considered in the contracting officer's OCI analysis memorandum prove the existence of OCIs with respect to both the TMDS/MSAT contract and the SI&ES contract. Deloitte also alleges that the agency's evaluation was unreasonable, unsupported, and disparate under the technical factor, staffing approach subfactor, and the past performance factor. Finally, Deloitte alleges that the agency conducted unequal discussions with respect to past performance.<sup>3</sup>

### OCI Analysis

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<sup>3</sup> We have reviewed all of the allegations presented in Deloitte's protest, and to the extent that allegations are not discussed in this decision, we have concluded that they provide no basis on which to sustain the protest. For example, Deloitte alleges that the agency failed to adequately document its evaluation where the resolutions of weaknesses or deficiencies identified in DNC's discussions notice were not specifically addressed in the agency's final technical evaluation. The record, however, contains DNC's discussions responses and FPR, which indicate that DNC responded to all issues presented in discussions, and the agency's memo on DNC's discussion responses, which indicates that the responses "reflect an understanding of the discussion points raised by the Government." AR, Tab 38, Agency Discussions Response Memo, at 1. Further, the agency's post-protest explanations of the evaluation of DNC's FPR are consistent with those documents. The record in this area is thus more substantial in comparison to the context in which we sustain Deloitte's challenges to the agency's failure to document its past performance evaluation, below. Accordingly, we found no basis to sustain the challenge to the evaluation of technical issues described in DNC's discussion notice.

Deloitte contends that DNC is ineligible for award due to the existence of impaired objectivity OCIs with respect to both the TMDS/MSAT contract and the SI&ES contract. As a general matter, the Federal Acquisition Regulation (FAR) requires that contracting officers avoid, neutralize, or mitigate potential significant OCIs. FAR § 9.504(a). An impaired objectivity OCI, as addressed in FAR subpart 9.5 and the decisions of our Office, arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505(a); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6. The concern in such impaired objectivity situations is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 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 judgement for the agency's, absent clear evidence that the agency's conclusion is unreasonable. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. 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., supra at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

#### TMDS/MSAT Contract

With respect to DNC's TMDS/MSAT contract, Deloitte asserts that the contract has now been extended such that the period of performance will overlap with the GRAMS contract, which invalidates the contracting officer's prior conclusion that DNC did not have an OCI concerning the TMDS/MSAT contract because that contract would be ending prior to the start of the GRAMS effort. The agency responds that the updated December 14, 2015 OCI analysis memorandum does not rely on the expiration of the TMDS/MSAT contract for its conclusion that there is no OCI between that contract and the GRAMS requirement. Rather, the updated OCI analysis memorandum concludes that there is no OCI because DNC's development work under the TMDS/MSAT contract was completed in early 2015, and the contract and system is scheduled to transition to sustainment by December 31. AR, Tab 53, OCI Analysis Memo, at 4-5.

On this point, Deloitte contends that the alleged OCI between the contracts remains, nonetheless, because even in the sustainment phase the TMDS/MSAT

PWS includes development work on connected systems, as well as updates, enhancements, and other necessary modifications. Deloitte argues that this continuing development work presents an impaired objectivity OCI because DNC will be defining new requirements under the GRAMS contract that will be developed by DNC under the TMDS/MSAT contract, and that the developed updates will then be validated by DNC under the GRAMS contract, presenting a situation in which DNC will be reviewing its own work.

On our review of the record here, including the relevant performance work statements, DNC's updated OCI mitigation plan, the agency's OCI analysis memorandum, and affidavits from the relevant contracting officer representatives, we cannot conclude that the agency's OCI analysis was unreasonable. In our view, Deloitte's argument overlooks the key distinction between the development phase and the sustainment phase of DNC's TMDS/MSAT contract, which is that "development" requirements during the sustainment phase do not originate from the DHA Health Information Technology Directorate supported by the GRAMS contractor, nor are the completed updates validated by that office. AR, Tab 57, Revised DNC OCI Mitigation Plan, at 8. Rather, during the sustainment phase of the TMDS/MSAT contract, requirements for "development" work (such as updates or enhancements) originate from the DHA Healthcare Operations Directorate, and verification and validation of the update work is completed by the DHMS Joint Operational Medicine Information Systems Program Management Office. Id. Therefore, as the GRAMS contractor DNC would not be in a position to validate work it performed (development or otherwise) on the TMDS/MSAT contract during sustainment.

DNC's OCI mitigation plan asserted the only possible potential for an OCI between these contracts would be if the need arose to completely overhaul the TMDS/MSAT systems, essentially starting over from the beginning. Id. at 6-7. In that case, high level functional requirements would originate from the DHA Health Information Technology Directorate supported by the GRAMS contractor. Id. at 7. However, DNC's OCI mitigation plan notes that, should a complete overhaul of the systems be required, it would very likely result in a completely new development contract. Id. Ultimately, the agency's OCI analysis memorandum concludes that where no such work is occurring or planned for the future of the TMDS/MSAT systems, no OCI between the contracts exists. AR, Tab 53, OCI Analysis Memo, at 5. Where the only remote possibility for a potential OCI is speculative, we see nothing unreasonable in the agency's conclusion that the contracts do not present an OCI.

#### SI&ES Contract

Deloitte next alleges that a conflict exists between the GRAMS contract and DNC's SI&ES contract in support of the DMIX program office. According to Deloitte, the OCI stems from the fact that functional requirements captured under the GRAMS contract, when approved, are passed on to the DMIX program office for

development by the SI&ES contractor. The GRAMS contractor then has a role in preparing documentation and participating in compliance reviews and inspection support concerning that development work completed by the SI&ES contractor, creating a situation in which DNC would participate in reviews of its own work. Deloitte also asserts that SI&ES contract tasks overlap with GRAMS tasks, where both contracts have responsibility for “functional requirements.” In this connection, Deloitte alleges that DNC has an impaired objectivity OCI because it will have a financial incentive to divide work between the fixed-price GRAMS contract and the cost-reimbursement SI&ES contract so as to maximize DNC’s profits.

We conclude that Deloitte’s arguments are based on an inaccurate portrayal of the workflows between the DHA Health Information Technology Directorate supported by the GRAMS contract and the DMIX program office supported by the SI&ES contract, and the workflows within the DMIX program office. Additionally, we conclude that, while both the GRAMS contract and SI&ES contract do involve “functional requirements,” the tasks under the two contracts do not, in fact, overlap.

As explained by the agency, when the functional requirements captured by the GRAMS contractor are passed to the DMIX office, they are not passed directly to the SI&ES contractor, and the SI&ES contractor does not ultimately develop the systems to fulfill the requirements. See Supplemental AR, Attachment 3, Supplemental DMIX Director of Business Operations Affidavit. Rather, the SI&ES contractor assists the DMIX program office in managing workflows between other contractors that conduct the required development work, by managing development and systems update release schedules, and conducting integration work. Id. at 3.

Specifically, the agency represents that the process of transferring functional requirements to the DMIX office (coordinating with the Functional Advisory Council and potentially the GRAMS contractor), is accomplished by a program management contractor (Booz Allen Hamilton). Id. at 2. Thereafter, another DMIX contractor--SeKON Enterprise, Inc.--receives the functional requirements package and converts the package into functional/technical requirements for development (the agency notes that Deloitte is a SeKON subcontractor on this effort). Id. at 3; AR, Tab 53, OCI Analysis Memo, at 6. SeKON then enters the converted requirements into a software development platform, which allows various contractor teams to integrate the required software development tasks. Supplemental AR, Attachment 3, Supplemental DMIX Director of Business Operations Affidavit, at 3.

The SI&ES contractor uses that software development platform to analyze the status of the various functional/technical requirements in order to determine whether the requirements are properly documented and finalized. Id. The SI&ES contractor then coordinates with the DMIX office’s development contractors--ManTech Advanced Systems International, Inc., and Hokaukahu, LLC--to group sets of requirements into a software release. AR, Tab 53, OCI Analysis Memo, at 9 (SI&ES and GRAMS Contracting Officer’s Representative signed joint

Memorandum); Supplemental AR, Attachment 3, Supplemental DMIX Director of Business Operations Affidavit, at 2-3. Finally, the SI&ES contractor ensures that the completed software release is validated under another contract--the Independent Verification and Validation contract (the agency notes that this contract is held by Deloitte). Supplemental AR, Attachment 3, Supplemental DMIX Director of Business Operations Affidavit, at 3.

At this point in the process, the GRAMS contractor does have a role in verifying that the release addresses the original functional requirements. However, in the agency's OCI analysis memorandum, the contracting officer concludes that this relationship between the GRAMS contractor and SI&ES contractor does not present an impaired objectivity OCI and that, in fact, the objectives under the two contracts are aligned in the same interest. AR, Tab 53, OCI Analysis Memo, at 5. Specifically, the contracting officer concludes that both contractors are ultimately reviewing the work of other non-DNC contractors, to ensure that the agency's information systems requirements are properly developed and that the agency receives the desired functionality. Id. Based on this analysis, we cannot conclude that the agency's OCI analysis was unreasonable.

Finally, with respect to Deloitte's allegation that the GRAMS and SI&ES contracts have overlapping roles concerning "functional requirements," we conclude that the allegation is not supported by the record. Deloitte specifically alleges, based on progress reports under DNC's SI&ES contract, that the SI&ES contract involves reviewing the GRAMS contractor's progress in capturing functional requirements, and that the SI&ES contractor may recommend that the GRAMS contractor be provided with assistance in that effort. However, as explained by the DMIX Program Office, Director of Business Operations, Deloitte's argument is based on a misinterpretation of references to functional requirements in the SI&ES progress reports.

The Director of Business Operations explains that, in reality, the GRAMS contractor and all DMIX contractors complete tasks that involve "functional requirements," but that the tasks are not the same and do not overlap in the manner alleged by the protester. Supplemental AR, Attachment 3, Supplemental DMIX Director of Business Operations Affidavit, at 2. Specifically, the director explains that the SI&ES progress reports concern the status of functional/technical requirements recorded in the DMIX software development platform by the SeKON contractor, and review delays in finalizing the requirements in the platform or grouping the requirements in a software release. Id. Because the SI&ES contractor's work does not review the initial capturing of functional requirements conducted by the GRAMS contractor, we see no basis for the allegation that the two contractor's tasks concerning "functional requirements" create an impaired objectivity OCI.

Subfactor 1B--Staffing Approach

Deloitte next alleges that the agency's evaluation of the offerors' key personnel under subfactor 1B--staffing approach, was unreasonable, undocumented, and disparate. In reviewing protests of an agency's evaluation and source selection decision, our Office will not reevaluate proposals; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Velos, Inc., B-400500.8, B-400500.9, Dec. 14, 2009, 2010 CPD ¶ 13 at 11; Keeton Corrections, Inc., B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6. While we will not substitute our judgement for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

We agree with the protester that the agency's evaluation was unreasonable, and also conclude that it was inconsistent with the terms of the RFP. Specifically, the record here shows that DNC's proposed senior information architect for architecture--a key personnel position--did not meet the minimum requirements for the position as set forth in the RFP. In relevant part, the RFP PWS provided that the "Sr. Information Architect (Architecture)," "shall have a minimum of 5+ years of experience leading Information Architecture teams for a large federal health system/organization." AR, Tab 7, RFP Amendment 004, at 130. The resume provided by DNC for this position stated in a "Qualifications Summary" that the proposed individual had "more than 5 years of experience," as required by the RFP. AR, Tab 27, DNC Technical Proposal, at 102. However, closer inspection of the resume demonstrates that, at the time of proposal submission, the individual had only 1 year and 9 months of applicable experience with the DMIX program office, and an additional 1 year and 9 months of experience at the firm "Xcalibur Software" dating from 2003-2005, during which one project apparently involved information architecture work for the National Cancer Institute. Id. at 103-104.

Thus, even counting the individual's entire tenure at Xcalibur Software as applicable experience (which the resume suggests was not the case), the individual's resume demonstrated less than 4 years of applicable experience in contrast to the "more than 5 years" claimed in the qualifications summary. Nonetheless, the agency's evaluation of the individual's resume concluded that it demonstrated "5+ years of experience," and that the individual met the minimum requirements. AR, Tab 12, Technical Evaluation Board Report, at 10.

The agency concedes that the technical evaluation board miscalculated DNC's proposed senior information architect, but argues that Deloitte was not prejudiced by the relaxation of the minimum experience requirements, where requirements were also relaxed for Deloitte's program manager. In this regard, Deloitte's proposed program manager's resume demonstrated that only approximately 5 years of the individual's required 10 years of experience was with a "large Federal Health System/Organization," as was mandated by the PWS; the balance of the

individual's experience being with a Department of Defense personnel organization. AR, Tab 21, Deloitte FPR, at 67-70. However, unlike the misvaluation of DNC's senior information architect, in the case of Deloitte's program manager, the agency's evaluation correctly assessed the individual as lacking the required experience and documented the relaxation of the requirement--apparently accepting the individual's experience at the Department of Defense as counting towards the minimum requirement. AR, Tab 11, Technical Consensus Addendum, at 7.

In an affidavit submitted by the Technical Evaluation Board chairperson, the chairperson contends that there is no prejudice because the requirements were relaxed equally, in that, throughout the key personnel evaluation, the evaluators took into account non-health system experience contained in individuals' resumes to conclude that they met the key personnel requirements. Supplemental AR, Attachment 1, Supplemental Technical Evaluation Board Chairperson Affidavit, at 3. Specifically, the technical evaluation board chairperson states that:

The [technical evaluation board], in several cases, gave "credit" to (or found acceptable) key personnel candidates who were short of the required years of experience if their resumes offered other experience that was seen as a close fit. In these cases, the [technical evaluation board] only considered these candidates as having "met" the Government's requirements (i.e., it did not assign any strengths).

Id. The chairperson contends that in the case of DNC's senior information architect, "[a]lthough [the individual] had just under five years of experience, the [technical evaluation board] assessed that he met the requirements as well, taking into account other experience contained in his resume." Id.

On our review of the record here, we cannot conclude that the evaluation was reasonable, or that protester was not prejudiced by the agency's improper evaluation. First, we conclude that the chairperson's affidavit is not consistent with the contemporaneous record. As discussed, the contemporaneous record demonstrates that the evaluators knowingly relaxed the key personnel requirements for Deloitte's program manager, but demonstrates no equivalent knowing relaxation of the requirements for DNC's senior information architect. Additionally, the chairperson's analysis of DNC's senior information architect's resume is incorrect insofar as it concludes that the individual had just under five years of experience--in fact, the resume demonstrates only 1 year and 9 months of clearly applicable experience, and another 1 year and 9 months of work that apparently included at least some applicable experience. AR, Tab 27, DNC Technical Proposal, at 102-104.

Second, we cannot conclude that the relaxation of the minimum requirements was equivalent. The contemporaneous evaluation indicates that Deloitte's program manager was considered to meet the requirements on the basis of his similar work

at the Department of Defense. In contrast, the technical evaluation chairperson’s affidavit does not attempt to explain what other experience in the resume of DNC’s senior information architect the evaluators relied upon to conclude that the individual met the requirements. Further, we cannot conclude that the relaxation was equal where the chairperson’s affidavit suggests that the requirements were relaxed in several cases, but does not identify which key personnel of which offeror did not meet the stated requirements, or what other experience in the individual’s resumes was considered in concluding that the individuals were acceptable. Where the evaluators were aware that the minimum requirements were relaxed for Deloitte’s key personnel in rating Deloitte as “good” under the subfactor, but were apparently not aware that the minimum requirements were also relaxed for DNC’s key personnel when they rated DNC “outstanding,” we cannot conclude that Deloitte was not prejudiced by the agency’s misevaluation under the staffing approach factor.<sup>4</sup>

Factor 2--Past Performance

Deloitte asserts that the agency’s evaluation of the relevancy of DNC’s past performance references was unreasonable and undocumented. DNC received the following relevancy ratings for its eight past performance references:

Reference No.	Relevancy Rating
1	[DELETED]
2	[DELETED]
3	[DELETED]
4	[DELETED]
5	[DELETED]
6	[DELETED]
7	[DELETED]
8	[DELETED]
<b>Overall</b>	<b>[DELETED]</b>

AR, Tab 13, Past Performance Evaluation Report, at 4. Deloitte specifically alleges that the agency unreasonably rated DNC’s past performance references 3 and 6 as

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<sup>4</sup> It is clear that at least one individual proposed by each offeror did not meet the stated key personnel requirements of the PWS. Therefore, an evaluation consistent with the stated requirements would have found each offeror unacceptable under subfactor 1B--staffing approach. Upon the reopening of discussions as recommended as corrective action by this decision, below, the agency should advise the offerors of all individuals evaluated as not meeting the stated minimum requirements for the key personnel positions for which the individuals were proposed.

[DELETED], and that the evaluation record contains no justification for those ratings.

With respect to DNC reference 3, Deloitte asserts that the record contains no substantiation for a significant increase in the reference's relevancy rating, from "[DELETED]" as reflected in the initial evaluation, to "[DELETED]" following discussions, despite the fact that DNC did not update any aspect of the reference in its FPR. With respect to DNC reference 6, Deloitte asserts that the record contains no justification for the agency's conclusion that DNC's past performance reference 6--acknowledged by DNC's proposal as the least relevant reference provided--warranted a rating of [DELETED]. Deloitte asserts that if these two references were properly rated as only [DELETED], DNC's past performance would have included only [DELETED], which would have presented a clear discriminator in Deloitte's favor under the past performance factor.

On our review of the record, we agree with Deloitte that the agency's contemporaneous documentation is insufficient to permit our office to review the reasonableness of the past performance relevancy evaluation. In order for us to review an agency's evaluation, an agency must have adequate documentation to support its judgement. Southwest Marine, Inc.: American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10. In this regard, the FAR requires that agencies sufficiently document their judgments supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4.

In determining the rationality of an agency's evaluation and award decision, we do not limit our review to contemporaneous evidence, but consider all the information provided. Northwest MEP Servs., Inc., B-285963.5 et al., Jan. 5, 2001, 2001 CPD ¶ 28 at 7. While we consider the entire record, including the parties' later explanations and arguments, we accord greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

In this case, the entirety of the agency's contemporaneous evaluation of the relevancy for DNC's [DELETED] past performance references is as follows:

DNC provided eight past performance references and [DELETED] of the references were "[DELETED]" to the GRAMS solicitation as they were similar in scope, magnitude of effort and complexity. . . . [DELETED] of DNC's past performance contracts involved similar scope and magnitude of effort and complexities that the GRAMS solicitation requires.

AR, Tab 13, Past Performance Evaluation Report, at 4. The agency attempts to support the relevancy ratings with explanation provided in its supplemental legal memorandum, and in an affidavit submitted by the past performance evaluator. With regard to reference 3, the agency explains that the reference was originally rated as [DELETED] because the agency was unable to reach the point of contact for that reference. Supplemental AR, Legal Memo, at 18. The agency asserts, however, that after receiving amended contact information, the agency was able to obtain feedback on the reference which led to the reevaluation of the reference's [DELETED] rating. Id. According to the past performance evaluator, on reevaluation the reference "related more to GRAMS than I initially thought," "related to all major task[s] under GRAMS," and warranted a [DELETED] rating. Id., Attachment 2, Past Performance Evaluator Affidavit, at 4.

We cannot conclude that the agency's explanation is consistent with the underlying record in this case. In this regard, the contemporaneous record does not indicate that DNC's reference 3 was a reference for which the point of contact could not be reached. While the agency's discussion memo to DNC noted problems with the points of contact for references 4, 7, and 8, it did not indicate an inability to reach the point of contact for reference 3. AR, Tab 36, DNC Discussions Notice, at 6-7. Instead, the discussions memo noted only that reference 3 had been rated as "[DELETED]." Id. at 6. Second, the record does not support the agency's explanation that it received updated contact information for this reference. Rather, DNC's discussion responses and FPR demonstrate that DNC made no changes to reference 3 following discussions. AR, Tab 37, DNC Discussions Responses, at 19-21 (Bates number). Where the agency's explanations, and the provided affidavit, are in multiple respects inconsistent with the underlying (insufficiently documented) contemporaneous record, we cannot conclude that the agency undertook a reasonable evaluation of reference 3.

Next, with respect to DNC reference 6, the record confirms that this reference was the least relevant reference that DNC submitted; DNC's proposal provided that the reference included work relevant to only [DELETED] tasks under the GRAMS PWS. AR, Tab 28, DNC FPR, Past Performance Volume, at 137 (Bates Number). As discussed above, the contemporaneous evaluation record contains no justification for the agency's determination that this reference warranted a "[DELETED]" rating. Further, in the case of reference 6, the affidavit submitted by the past performance evaluator provides only that:

While each offeror noted in each past performance reference which of the GRAMS PWS tasks were relevant to the past performance referenced [in the] contract, I made an independent assessment of the contract to determine a relevancy rating. For example, I used my own judgement, in evaluating DNC's Past Performance Reference Number 6 and

determined that this contract in particular covered more of the PWS tasks than indicated.

Supplemental AR, Attachment 2, Past Performance Evaluator Affidavit, at 4. Where the contemporaneous evaluation record, the agency's arguments, and the past performance evaluator's affidavit, all fail to explain which aspects of DNC's work on reference 6 support the determination that this reference was "[DELETED]," we cannot conclude that the rating was reasonably based, and we sustain the protest. See Systems Research & Applications Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

### Unequal Discussions

Finally, Deloitte alleges that the agency conducted unequal discussions concerning past performance, where it advised DNC of each reference evaluated as only [DELETED], but did not similarly advise Deloitte of its own [DELETED] references. In this regard, DNC's discussions memorandum demonstrates that DNC was advised that two of its past performance references, references 2 and 3, were considered only "[DELETED]." AR, Tab 36, DNC Discussions Notice, at 6-7. With respect to Deloitte, the record shows that two of Deloitte's past performance references, references 7 and 8, were also evaluated as only [DELETED]; however, Deloitte was not equally advised of that fact during discussions. AR, Tab 13, Past Performance Evaluation Report, at 2. Instead, Deloitte was advised only that the agency was unable to reach the point of contact for Deloitte's reference 5. AR, Tab 32, Deloitte Discussions Notice, at 16.

If a procuring agency holds discussions with one offeror, it must hold discussions with all offerors whose proposals are in the competitive range. International Resources Group, B-286663, Jan. 31, 2001, 2001 CPD ¶ 35 at 6. Additionally, when holding discussions, procuring agencies are not permitted to engage in conduct that favors one offeror over another. FAR § 15.306(e)(1). In this case, the impropriety in the conduct of discussions is self-evident. Where the agency chose to include notice of "[DELETED]" references in its discussions with DNC, it was obligated to equally notify other offerors where their past performance evaluations also included "[DELETED]" references. The agency's discussions with Deloitte were unequal in this respect, and we sustain the protest.

### CONCLUSION

On the basis of our review of the record, we conclude that the agency's OCI analysis concerning DNC's performance of the TMS/MSAT and DMIX SI&ES contracts was not unreasonable. Accordingly, we deny the protest in that respect.

We sustain the protester's challenge to the agency's evaluation of key personnel where the evaluation unreasonably determined that DNC's senior information

architect met the minimum requirements for that position. To the extent the agency asserts that it relaxed the key personnel requirements for all offerors, we cannot conclude on the basis of the record that the relaxation of the requirements was equivalent. We also sustain the protester's challenge to the agency's evaluation of past performance, where the agency's contemporaneous evaluation is insufficiently documented to permit our Office to review the reasonableness of the agency's conclusions, and the agency's post-hoc explanations are inconsistent with the contemporaneous record and provide inadequate support for the evaluation results. Finally, we sustain the protester's challenge concerning discussions, where the agency's discussions on past performance relevancy were unequal.

## RECOMMENDATION

We recommend that the agency reopen discussions with the offerors in the competitive range, request new final proposal revisions, and thereafter conduct and document a new evaluation of the proposals in accordance with the evaluation criteria set forth in the RFP.<sup>5</sup> We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing the protests, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim for costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling  
General Counsel

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<sup>5</sup> Discussions pursuant to this recommendation should include evaluation notices to the offerors concerning any proposed key personnel who do not meet the minimum requirements of the RFP. In the event the agency concludes that the key personnel qualifications should be relaxed, the agency should amend the RFP to advise the offerors of that fact.