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Decision

Matter of: Gulf Coast Petroleum Reserve Operations, LLC

File: B-409004.2, B-409004.3, B-409004.4, B-409004.6

Date: January 24, 2014

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DIGEST

1. Agency reasonably evaluated protester's proposal as good, rather than outstanding, under the most important management approach evaluation factor based, in part, on various weaknesses in protester's proposal.
 2. Agency evaluated awardee's proposal as superior to protester's under the key personnel evaluation factor based, in part, on evaluated weaknesses identified in connection with protester's oral presentation.
 3. Agency reasonably concluded that the performance of an architect-engineer contract by the awardee nearly 20 years ago did not create a significant conflict of interest that required mitigation.
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DECISION

Gulf Coast Petroleum Reserve Operations, LLC (GCPRO), of Springfield, Virginia, protests the Department of Energy's (DOE) award of a contract to Fluor Federal Petroleum Operations, LLC, of Greenville, South Carolina, pursuant to request for proposals (RFP) No. DE-SOL-0003490 to provide management and operating

(M&O) services for DOE's strategic petroleum reserve (SPR).¹ GCPRO challenges the agency's evaluation under various evaluation factors and complains that the agency failed to consider an alleged organizational conflict of interest.

We deny the protest.

BACKGROUND

In February 2012, the agency issued the subject solicitation, seeking proposals to perform M&O services for the SPR. AR, Tab A-13, RFP.² Under the heading "General Requirements," the solicitation's performance work statement (PWS) provided that the contractor will be responsible for operations,³ maintenance,⁴ major maintenance,⁵ utility operations,⁶ environmental management,⁷ security,⁸ and

¹ The SPR is a large crude oil stockpile that was mandated by the Energy Policy Conservation Act of 1975; it consists of four underground storage sites in Louisiana and Texas, a project management office in New Orleans, and a warehouse in Mississippi. Agency Report (AR), Tab A-13, RFP, at 10-11; Tab F-1, Source Selection Decision (SSD), at 1. The mission of the SPR is to store crude oil to reduce the adverse economic impact of a major supply interruption to the United States and to fulfill obligations of the United States under the international energy program. SSD at 1. Since 1985, the SPR has operated under a series of M&O contracts. Id. DM Petroleum Operations Company is currently the incumbent contractor.

² Separate page numbers for each of the attachments/tabs provided with the agency report were generated by the agency. This decision's citations to specific pages within the attachments/tabs refer to those agency-generated page numbers.

³ Under the sub-heading "Operations," the PWS provided that the contractor will "[p]erform management, planning, oversight, documentation, training, operational functions, energy management and crude oil activities associated with the operation of the SPR sites/facilities." RFP at 13.

⁴ Under the sub-heading "Maintenance," the PWS provided that the contractor will "[m]anage and perform preventive, corrective, predictive, and general maintenance on Government-owned equipment and facilities, including caverns, and wells." Id. at 15.

⁵ Under the sub-heading "Major Maintenance," the PWS provided that the contractor will "[d]evelop long-term plans and, as assigned, perform major maintenance projects and related construction management involving engineering, procurement, construction, fabrication, installation, and testing. . . ." Id.

⁶ Under the sub-heading "Utility Operations," the PWS provided that the contractor will "manage electric power usage and other SPR utilities programs tied to drawdown/fill readiness for ensuring their cost effectiveness. . . ." Id. at 15-16.

technical support/management.⁹ RFP at 13-21. The solicitation contemplated award of a cost-plus-award-fee contract for a 5-year base period and a 5-year option period; provided for award on a best value basis; and established the following evaluation factors: management approach, key personnel, organizational structure, past performance, relevant experience, transition approach, and cost/price.¹⁰ Id. at 232-33.

With regard to the agency's evaluation under the most important factor, management approach, section M of the solicitation provided:

DOE will evaluate the depth, quality, effectiveness, and completeness of the Offeror's proposed approach to performing work described in the PWS, including implementing a contractor assurance system that identifies and corrects deficiencies; developing budgets and establishing cost controls; achieving safe and environmentally

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⁷ Under the sub-heading "Environmental," the PWS provided that the contractor will "[d]evelop, implement, and maintain a comprehensive Environmental Management System, which shall include all activities necessary to ensure that SPR operations do not adversely impact the environment. . . ." Id. at 16.

⁸ Under the sub-heading "Security," the PWS provided that the contractor will "develop, implement, and maintain a Security Program to protect personnel, Government property, and classified information from theft, sabotage, espionage, or other acts. . . ." Id.

⁹ Under the sub-heading "Technical Support and Management," the solicitation identified various specific activities the contractor will be required to perform in connection with engineering, quality assurance, project management, information systems and knowledge management, financial management, procurement/contracts, property management, human resource management, safety and health, fire protection and emergency management, and internal audit. Id. at 17-21.

¹⁰ The solicitation provided that the non-cost/price factors were significantly more important than cost/price. With regard to the non-cost/price factors, the solicitation provided that management approach was the most important; followed in importance by key personnel; followed by organizational structure and past performance, which were equally important; followed by relevant experience and transition approach, which were also equally important. Id. at 233. With regard to cost/price, the solicitation provided that an offeror's evaluated cost/price would reflect its key personnel costs, transition costs, and proposed fee, and that each offeror's cost/price would be evaluated for reasonableness, realism, and completeness. Id. at 237.

responsible performance of work; assuring the operational readiness of the storage sites/facilities; managing a large workforce; ensuring the integrity, including optimal storage capacity, of the crude oil storage caverns; and identifying specific actions to reduce contract cost.

RFP at 234.

With regard to the agency's evaluation under the second most important factor, key personnel, the solicitation identified five key positions,¹¹ stated that all proposed key personnel were required to attend and participate in oral presentations,¹² and advised offerors that their proposed key personnel would be evaluated based on the written information provided with the offerors' proposals as well as information obtained during the oral presentations. RFP at 189, 234. Specifically, under the heading "Written Information," the solicitation stated that key personnel would be evaluated with regard to demonstrated leadership; qualifications presented in resumes; and experience "in performing work similar in size, scope, and complexity to the PWS." Id. Under the heading "Oral Presentation," the solicitation stated:

DOE will utilize individual key personnel interviews and a sample problem provided to the entire Key Personnel Team to evaluate the proposed Key Personnel on:

- Quality and effectiveness of the responses.
- Understanding and performance in their respective positions and as members of the Offeror's management team.
- Understanding of the management challenges posed by the operation of the [SPR].
- Interaction and participation as an integrated management team.

Id. at 235.

¹¹ The five positions were: (1) Project Manager; (2) Director, Operations and Maintenance (O&M); (3) Director, Engineering; (4) Director, Environmental, Safety and Health (ES&H); and (5) Director, Finance. Id. at 188.

¹² Attendance at the oral presentation was also limited to proposed key personnel. Id. at 189.

In June 2012, proposals were submitted by five offerors, including GCPRO and Fluor.¹³ Thereafter, each offeror's key personnel participated in oral presentations, responding to various questions and addressing a sample problem posed by the agency. The agency's source evaluation board (SEB) evaluated the offerors' proposals, presentations, and responses as follows:¹⁴

Evaluation Factor	GCPRO	Fluor
Management Approach	Good	Good
Key Personnel	Good	Outstanding
Organizational Structure	Good	Good
Past Performance	Good	Good
Relevant Experience	Good	Good
Transition Approach	Good	Satisfactory
Evaluated Cost/Price	\$114,107,977	\$98,056,245

SEB Report at 46, 212.

In evaluating GCPRO's proposal as good under the most important evaluation factor, management approach, the agency identified various strengths, but also identified weaknesses regarding GCPRO's approaches to performing: (1) [redacted]; (2) innovations and initiatives; and (3) cost reductions. SEB Report at 64-65.

In evaluating GCPRO's proposal as good under the key personnel evaluation factor, the SEB considered the written information provided with the proposal, assigning a significant strength to GCPRO's proposed Director, O&M,¹⁵ and strengths to each

¹³ GCPRO consists of four "parent" companies: AECOM National Security Programs, Inc.; Geostock U.S. Federal Services, LLC; Akima Technical Solutions, LLC; and Lonquist & Company, LLC. AR, Tab E-2, SEB Report, at 9. Fluor consists of one "parent" company--Fluor Federal Services, Inc.--and three major subcontractors: MRIGlobal, Booz Allen Hamilton, and ASRC Petroleum Operations and Maintenance. Id. This decision does not discuss the other offerors or their proposals.

¹⁴ In evaluating proposals under the non-cost/price evaluation factors, the agency identified strengths, weaknesses, deficiencies, and favorability of relevant past performance for each proposal and assigned ratings of outstanding, good, satisfactory, marginal, and/or unsatisfactory (as well as neutral for past performance). Id. at 28-32.

¹⁵ In assigning the significant strength, the SEB stated: "[GCPRO's proposed Director O&M] was an SPR M&O contractor employee for [redacted] years and held the positions of [redacted]. Id. at 97. Subsequently, the SEB also assigned a
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of GCPRO's other proposed key personnel.¹⁶ Id. at 97-103. However, based on GCPRO's oral presentation, the SEB assigned a weakness based on the "quality and effectiveness of the team's response and the interaction and participation as an integrated management team," specifically identifying flaws in the responses of GCPRO's proposed Engineering Director, its ES&H Director, and its Finance Director, and concluding that the identified flaws "increase the risk of unsuccessful contract performance."¹⁷ SEB Report at 102.

In March 2013, the SEB presented its report to the agency's source selection official (SSO). Thereafter, the SSO conducted an assessment of the proposals and concluded that Fluor's proposal offered the best value to the government, stating:

As between GCPRO and Fluor's Management Approaches, Fluor's approach is considered to be slightly superior. Fluor offers an effective approach to long-term planning at the SPR and also proposed some specific cost-reduction actions with depth and quality. On the other hand, the GCPRO approach to achieving cost reductions lacks depth, and several proposals included impractical and/or incomplete concepts that lacked depth and effectiveness. . . .

Regarding [key personnel proposed by] Fluor and GCPRO . . . all five key personnel from Fluor have both extensive experience and qualifications in their proposed respective subject matter areas. It is recognized that [GCPRO] . . . also had strengths for each of [its] respective key personnel [and] receive[d] a significant strength for its Director, O&M, and I agree and find that on an individual comparative basis her [GCPRO's proposed O&M Director] qualifications are stronger than the proposed Director, O&M of Fluor. However, Fluor had nine total strengths, including a number of strengths related to the oral presentations, and no weaknesses. . . . [D]uring the oral presentations, Fluor's Project Manager, Director, O&M, and Director, ES&H all received strengths for the high quality and effectiveness of their presentations, while for GCPRO, a strength was given only to the presentation given by the Director, O&M. . . . GCPRO also received a weakness regarding the quality and effectiveness of the team's

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strength to GCPRO's proposal based on the O&M Director's responses during the oral presentation. Id. at 101.

¹⁶ The SEB similarly assigned strengths to Fluor's proposal for each of its proposed key personnel, but did not assign a significant strength for any of them.

¹⁷ In evaluating Fluor's oral presentation, the SEB assigned additional strengths and no weaknesses for its proposed key personnel. SEB Report at 93-96.

response and the interaction and participation as an integrated management team. In particular, the responses of three of their proposed key personnel . . . were lacking understanding and/or clarity during the oral presentations. . . . Based upon the evaluation of the key personnel during the oral presentations, including the nature and quality of the strengths for Fluor and the weakness for GCPRO and after carefully considering the significant strength of GCPRO for their Director, O&M, I find that Fluor is overall technically superior to GCPRO with respect to key personnel. . . .

SSD at 13, 18.

Based on the evaluated superiority of Fluor's proposal under the management approach and key personnel evaluation factors, along with GCPRO's higher evaluated cost/price, the SSO concluded that Fluor's proposal offered the better value. SSD at 34, 41. On September 18, 2013, GCPRO was notified that Fluor's proposal had been selected for award. This protest followed.

DISCUSSION

GCPRO protests that the agency should have rated GCPRO's proposal as outstanding, rather than good, under the management approach evaluation factor; that the agency unreasonably evaluated Fluor's proposal as superior to GCPRO's under the key personnel evaluation factor; and that the agency failed to consider an alleged organizational conflict of interest with regard to Fluor. As discussed below, none of GCPRO's assertions has merit.¹⁸

Management Approach

In asserting that DOE should have rated its proposal outstanding, rather than good, under the management approach evaluation factor, GCPRO complains that the agency (1) failed to properly consider its approach to performing the solicitation's operational readiness and cavern integrity requirements and (2) improperly assigned weaknesses to its proposal.

¹⁸ In its various protest submissions, GCPRO has raised arguments that are variations of, or additions to, those specifically discussed below. We have considered all of GCPRO's assertions and find no basis to sustain its protest.

A. Operational Readiness and Cavern Integrity

GCPRO asserts that the agency failed to properly evaluate its proposal with regard to “two of the most important aspects” of the management approach evaluation factor--operational readiness and cavern integrity.¹⁹ Protest, Oct. 7, 2013, at 2. More specifically, GCPRO asserts that operational readiness and cavern integrity are “the very core of the SPR’s mission,” that DOE indicated these areas “would be of primary importance to SPR’s evaluators,” and that [redacted]. Id. at 7-10. Notwithstanding the above, GCPRO complains that the agency “completely ignored these items in its evaluation” and maintains that, but for the agency’s “fail[ure] to consider these two important aspects,” GCPRO’s proposal would have been rated outstanding, rather than good, under the management approach evaluation factor. Id. at 10.

It is an offeror’s responsibility to submit a proposal that responds to, and demonstrates a clear understanding of, the solicitation requirements; where a proposal fails to do so, the offeror runs the risk that the procuring agency will evaluate its proposal unfavorably. See, e.g., United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 3; International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7. In reviewing a protest against an agency’s evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester’s mere disagreement with an agency’s judgment in evaluating proposals is insufficient to establish that the agency acted unreasonably. See VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4; Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, to the extent GCPRO is asserting that the agency’s evaluators were required to give “primary importance” to offerors’ proposed approaches to performing the solicitation’s operational readiness and cavern integrity requirements, GCPRO is mistaken. As noted above, the solicitation provided that the agency would evaluate

¹⁹ GCPRO’s reference to “operational readiness” refers to “the ability of the SPR to draw from the oil reserves when so ordered.” Protest, Oct. 7, 2013, at 8. GCPRO’s reference to “cavern integrity” refers to the requirement to “manage and operate the SPR cavern integrity, cavern remediation, and workover program.” Protester’s Comments and Supp. Protest, Nov. 29, 2013, at 5. Under the PWS sub-heading “Operations,” the solicitation contained the sub-sub-headings, “Drawdown Readiness” and “Cavern Integrity and Workovers.” RFP at 13-14.

each offeror's proposed approach to performing all of the PWS requirements,²⁰ stating:

DOE will evaluate the depth, quality, effectiveness, and completeness of the Offeror's proposed approach to performing work described in the PWS, including implementing a contractor assurance system that identifies and corrects deficiencies; developing budgets and establishing cost controls; achieving safe and environmentally responsible performance of work; assuring the operational readiness of the storage sites/facilities; managing a large workforce; ensuring the integrity, including optimal storage capacity, of the crude oil storage caverns; and identifying specific actions to reduce contract cost.

RFP at 234 (underlining added).

Nothing in this, or any other, solicitation provision provided GCPRO with a rational basis to conclude that an offeror's proposed approach to performing the operational readiness and cavern integrity requirements would be "the most important aspects" under the management approach evaluation factor.²¹ Rather, these requirements were among several that were listed as specific examples of requirements that would be evaluated.

Further, GCPRO's assertion that the agency's evaluation "completely ignored" the particular requirements regarding operational readiness and cavern integrity is contrary to the record. Among other things, the contemporaneous SEB report shows that the agency assigned a strength to GCPRO's proposal in connection with its proposal to create working groups that would address specific areas, including "cavern integrity" and "operations systems and processes." SEB Report at 61. Similarly, the agency's contemporaneous evaluation record establishes that the agency considered--and, as discussed further below, assigned a weakness for--GCPRO's proposed approach related to operational readiness. Id. at 64. On this record, GCPRO's assertion that the agency "ignored" these aspects of its proposal is without merit.

²⁰ As noted above, under the heading "General Requirements," the PWS listed multiple requirements including operations, maintenance, major maintenance, utility operations, environmental, security, and technical support/management for various specific activities. Id. at 13-21.

²¹ Similarly, the solicitation expressly advised offerors that "[a]reas within an evaluation criterion are not sub-criteria and will not be individually rated but will be considered in the overall evaluation for that particular evaluation criterion." Id. at 233.

Finally, in challenging the agency's evaluation under the management approach evaluation factor, GCPRO asserts that its proposed approach was "unquestionably superior to Fluor's." Protester's Comments and Supp. Protest, Nov. 29, 2013, at 3. In this regard, GCPRO's protest merely reflects its own view regarding the relative merits of the competing proposals. As noted above, we will not reevaluate proposals, and GCPRO's complaints in this regard reflect mere disagreement with the agency's judgments which provide no basis for sustaining its protest. On this record, GCPRO's assertions that the agency failed to properly consider its proposed approach to performing the operational readiness and cavern integrity requirements are denied.

B. Weaknesses in GCPRO's Proposed Management Approach

GCPRO also complains that the agency "unreasonably" assigned three weaknesses to its proposed management approach. As noted above, the agency evaluated GCPRO's proposal as reflecting various strengths, but also identified weaknesses regarding GCPRO's proposed approach to performing: (1) [redacted]; (2) innovations and initiatives; and (3) cost reductions. SEB Report at 64-65. GCPRO challenges the agency's evaluation with regard to the first two weaknesses.²²

With regard to the first weakness, the SEB stated:

[redacted].

SEB at 64.

GCPRO protests that, because its [redacted] was offered "at *no cost* to the government,"²³ and GCPRO considered this proposal to be an "enhancement" beyond the RFP's minimum requirements, the agency was precluded from assessing a weakness. Protest, Oct. 7, 2013, at 11-13 (*italics in original*).

²² Initially, GCPRO also protested the agency's evaluation of the third weakness regarding cost reductions. Following receipt and review of the agency report, GCPRO withdrew those protest allegations. Protester's Comments and Supp. Protest, Nov. 29, 2013, at 1. As noted above, the SSO's source selection decision expressly referenced the evaluated weakness with regard to cost reductions in concluding that Fluor's proposed management approach was superior to GCPRO's. SSD at 13.

²³ Despite its assertion that the assessment would be performed at no cost to the government, GCPRO acknowledges that its proposal anticipates that DOE personnel will be involved in the assessment. Protest, Oct. 7, 2013, at 11; AR Tab C-1, GCPRO's Technical/Business Management Proposal, at 89.

The agency responds that GCPRO's proposal demonstrated a lack of understanding with regard to the agency's security needs for the SPR site. Contracting Officer's Statement of Fact/Agency Memorandum of Law (COSF/MOL), Nov. 18, 2013, at 15-16. The agency elaborates that various aspects of GCPRO's proposed [redacted] lacked feasibility and had the potential to degrade system effectiveness noting, for example, that the proposed use of [redacted]. Id. Overall, the agency maintained that GCPRO's proposed [redacted] reflected a lack of understanding, and increased the risk of unsuccessful contract performance.

As noted above, section M of the solicitation advised offerors that, in evaluating management approach, "DOE will evaluate the depth, quality, effectiveness, and completeness" of each offeror's proposed approach to performing the work described in the PWS. RFP at 234. Under the sub-heading "Security," the PWS provided that the contractor will "[d]evelop, implement, and maintain a Security Program to protect personnel, Government property, and classified information from theft, sabotage, espionage, or other acts. . . ." Id. at 16. Accordingly, GCPRO's assertion that its [redacted] was not mandated by the RFP and would be provided at "no cost" to the government, does not preclude the agency's evaluation regarding the "quality [and] effectiveness" of its proposed approach to providing security. On the basis of the record here, we do not question the agency's assessment of a weakness regarding GCPRO's proposed [redacted].

With regard to the second weakness, the SEB found that some of the innovations/initiatives that GCPRO proposed, "lack[ed] depth and effectiveness," identifying as examples, GCPRO's proposal to [redacted] and its proposal to [redacted]. SEB Report at 64; see Protester's Technical Proposal, at 38-39.

GCPRO complains that, because its proposal simply identified ideas "that *might* be implemented . . . if determined to be effective following study," the agency was precluded from assessing a weakness. Protest, Oct. 7, 2013, at 16 (italics in original).

The agency responds by providing an extensive discussion regarding the basis for its conclusion that GCPRO's proposed innovations/initiatives "lack[ed] depth and effectiveness," maintaining that the proposal demonstrated a "fundamental misunderstanding" of the agency's needs and that GCPRO should have been aware of the proposal's fundamental flaws. COSF/MOL, Nov. 18, 2013, at 17-20. For example, the agency noted that the [redacted]. SEB Report at 64.

Here, as noted above, the solicitation provided for the evaluation of the "depth, quality, effectiveness, and completeness" of the offeror's proposed management approach to performing the PWS requirements. In addition, the PWS stated: "it is the Contractor's responsibility to develop and implement innovative approaches." RFP at 10. Thus, the solicitation clearly advised offerors that the agency would

assess, among other things, the “quality [and] effectiveness” of an offeror’s proposed innovations/initiatives.

Here, the agency has given multiple examples of GCPRO’s proposed innovations/initiatives that the agency viewed as being infeasible or otherwise flawed. The fact that GCPRO had not yet committed to the particular innovations/initiatives it specifically mentioned in its proposal does not shield those innovations/initiatives from the agency’s evaluation. On the record here, including the agency’s substantive discussion regarding the bases for criticizing GCPRO’s proposed innovations/initiatives, we do not find unreasonable the agency’s determination that GCPRO’s proposal reflected a failure to fully understand the agency’s needs and, therefore, constituted a weakness in the company’s proposed management approach.

Key Personnel

Next, GCPRO protests that it was unreasonable for the agency to evaluate Fluor’s proposal as superior to GCPRO’s under the key personnel evaluation factor, since one of GCPRO’s proposed personnel (its O&M Director) has substantial experience at the SPR, and Fluor’s proposed key personnel “lack[] experience in management and operation of a salt cavern-based crude oil storage facility.” Supp. Protest, Nov. 29, 2013, at 17-18. On this basis, GCPRO asserts that the agency failed to apply the solicitation’s evaluation criterion which provided that proposed personnel would be evaluated as to their experience in performing work “similar in size, scope, and complexity” to the PWS requirements. Id.; RFP at 234.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion and, in reviewing a protest against an agency’s evaluation, our Office will not reevaluate proposals but, rather, will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria. See IPlus, Inc., supra; Shumaker Trucking & Excavating Contractors, Inc., supra.

Here, while section M of the solicitation provided that key personnel would be evaluated as to their experience in performing work “similar in size, scope and complexity” to the PWS requirements, it also provided that key personnel would be evaluated on the basis of their participation in oral presentations. RFP at 234-35. Specifically, the solicitation provided that DOE would “utilize individual key personnel interviews and [responses to] a sample problem” during oral presentations to evaluate the proposed personnel.”²⁴ Id. at 235. The solicitation

²⁴ The solicitation scheduled 4 hours and 30 minutes for each oral presentation, allocating 2 hours for interviews and 2 hours for resolution of the sample problem. RFP at 189.

further provided that the agency would consider the “[q]uality and effectiveness of the [key personnel’s] responses,” their “[u]nderstanding and performance in their respective positions,” their “[u]nderstanding of management challenges,” and their “[i]nteraction and participation as an integrated management team.” Id.

As noted above, in evaluating GCPRO’s proposal as good under the key personnel factor, the SEB assigned a significant strength for GCPRO’s proposed O&M Director, and strengths for each of GCPRO’s other proposed key personnel.²⁵ Nonetheless, based on GCPRO’s oral presentation, the SEB also assigned a weakness to GCPRO’s proposal based on the “quality and effectiveness of the team’s response and the interaction and participation as an integrated management team,” and identified specific flaws in the responses of three of the proposed personnel,²⁶ concluding that the identified flaws “increase the risk of unsuccessful contract performance.” SEB Report at 102. In contrast, based on Fluor’s oral presentation, the SEB assigned three additional strengths²⁷ and no weaknesses. Id. at 93-96.

In comparing Fluor’s and GCPRO’s proposals regarding key personnel, the SSO expressly recognized all of GCPRO’s strengths, specifically acknowledging that the qualifications of GCPRO’s proposed O&M Director were stronger than those of Fluor’s proposed O&M Director, but concluding that, “[b]ased upon the evaluation of the key personnel during the oral presentations, including the nature and quality of the strengths for Fluor and the weakness for GCPRO,” Fluor’s proposal was “overall technically superior” to GCPRO’s with respect to key personnel. SSD at 18.

²⁵ Similarly, the SEB assigned strengths, but no significant strengths, for each of Fluor’s proposed key personnel.

²⁶ Specifically, the SEB stated that GCPRO’s proposed Engineering Director “focused the answer to his question on his previous utility experience without giving his planned ideas for the SPR”; that the ES&H Director “was very vague in response to his question and did not take adequate time to expound on his ideas”; and that the Finance Director “has very limited knowledge of SPR activities and struggled to clearly explain how he would balance competing demands for contract resources.” SEB Report at 102.

²⁷ Specifically, the SEB stated that the message of Fluor’s proposed Project Manager encompassed “clear vision-based teamwork, program ownership and strategic goals” and that he “demonstrated a full understanding of his position as the leader of the management team”; that Fluor’s O&M Director “demonstrated a good understanding of his position” noting that “[h]is response to the question regarding optimizing site integration was clear and effective”; and that Fluor’s ES&H Director’s performance “was effective and well structured.” Id. at 93-95.

On this record, it is clear that the agency reasonably considered all of the stated evaluation criteria, including both the relative experience of the key personnel and their performance during oral presentations. Accordingly we find no basis to question the agency's conclusion that Fluor's proposal was superior to GCPRO's under the key personnel evaluation factor. GCPRO's protest to the contrary is without merit.

Alleged Organizational Conflict of Interest

Finally, GCPRO asserts that award to Fluor was improper because it, or its affiliate, held an architect-engineer (AE) contract to perform design work for the SPR "from the late 1980s until at least as late as 1994."²⁸ Supp. Protest, Oct. 15, 2013, at 3. Accordingly, GCPRO asserts that, in the event of an accident or oil spill Fluor will have an "impaired objectivity" organizational conflict of interest (OCI)²⁹ in performing the M&O contract, since "it would be in a position to evaluate whether its design, or some other factor, was responsible" for the accident or spill. Id. at 4.

The agency responds that it considered Fluor's performance of the AE contract nearly 20 years ago, and concluded that the facts presented did not give rise to a potential impaired objectivity OCI. The agency notes that the M&O contractor is not generally required to evaluate and render advice regarding designs performed by former AE contractors, and notes that, in the event such a situation should arise, the matter would be properly considered at that time. COSF/MOL, Nov. 18, 2013, at 46-51. In short, the agency maintains that it reasonably concluded that the prior performance of the AE contract did not create the potential for a significant OCI for Fluor that would require mitigation. COSF/MOL, Nov. 18, 2013, at 46-51.

The FAR requires that contracting officers identify potential OCIs and "avoid, neutralize or mitigate" significant OCIs. FAR § 9.504. Contracting officers are directed to exercise "common sense, good judgment, and sound discretion" in assessing whether a significant potential conflict exists. FAR § 9.505; Epoch Eng'g, Inc., B-276634, July 7, 1997, 97-2 CPD ¶ 72 at 5.

²⁸ GCPRO's states that "in 1994, a firm named Walk Haydel & Associates . . . became SPR's AE contractor." Supp. Protest, Oct. 15, 2013, at 3.

²⁹ The situations in which OCIs arise, as described in the Federal Acquisition Regulation (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. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5.

In reviewing bid protests that challenge an agency's conflict of interest determinations, the Court of Appeals for the Federal Circuit has mandated application of the "arbitrary and capricious" standard established pursuant to the Administrative Procedures Act. See Axiom Res. Mgmt, Inc. v. United States, 564 F.3d 1374, 1381 (Fed. Cir. 2009). To demonstrate that an agency's OCI determination is arbitrary or capricious, 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. Turner Constr. Co., Inc. v. United States, No. 2010-5146, slip. op. at 17-18 (Fed. Cir. July 14, 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

Here, we view GCPRO's protest as failing to provide the requisite "hard facts" to establish that the agency's determination was unreasonable. First, the set of circumstances that GCPRO asserts would create an impaired objectivity OCI do not reflect the routine activities that the M&O contractor will be required to perform. As the agency points out, in the event a future situation might create the potential for an OCI, the agency may reasonably address the matter at that time. Further, we view the FAR's OCI requirements as creating an obligation for a procuring agency to consider and address the reasonable likelihood that a contractor will be faced with a significant OCI in performing the contract and, in such instances, to take appropriate action. We do not read the FAR's OCI guidance to require that agencies speculate about remotely possible scenarios. Here, GCPRO's speculation regarding potential future scenarios in which Fluor's performance of an AE contract nearly 20 years ago could create an OCI is insufficient to establish that the agency's OCI determination was unreasonable.

The protest is denied.

Susan A. Poling
General Counsel