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Decision

Matter of: Arc Aspicio, LLC; Aveshka Inc.; Chakrabarti Management Consultancy, Inc.

File: B-412612; B-412612.2; B-412612.3; B-412612.4; B-412612.5

Date: April 11, 2016

David T. Hickey, Esq., William M. Jack, Esq., and Amba M. Datta, Esq., Kelley Drye & Warren LLP, for Arc Aspicio, LLC; Alfred M. Wurglitz, Esq., Daniel S. Koch, Esq., Lorenzo F. Exposito, Esq., and Michael E. Samuels, Esq., Miles & Stockbridge PC, for Aveshka Inc.; J. Dale Gipson, Esq., Tracy A. Marion, Esq., Michael W. Rich, Esq., and Corey W. Jenkins, Esq., Lanier Ford Shaver & Payne PC, for Chakrabarti Management Consultancy, Inc., the protesters.

Jonathan D. Shaffer, Esq., Mary Pat Buckenmeyer, Esq., and Nicholas J. Surace, Esq., Smith Pachter McWhorter PLC, for Ardent Management Consulting, Inc.; William Wozniak, Esq., and Anthony H. Anikeeff, Esq., Williams Mullen, for Java Productions, Inc; and Joseph P. Hornyak, Esq., Elizabeth N. Jochum, Esq., and Gregory R. Hallmark, Esq., Holland & Knight LLP, for The Ambit Alliance, the intervenors.

Charlene T. Storino, Esq., Department of Homeland Security, for the agency. Lois Hanshaw, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protests challenging the agency's evaluation of quotations is denied where the record shows that the agency's evaluation was reasonable and consistent with the solicitation.
2. Allegation that the agency engaged in disparate treatment by assigning two awardees' quotations weaknesses and the protester's quotation a deficiency is denied where the agency rated vendors' quotations equally.
3. Protest challenging the agency's determination that an awardee did not have a disqualifying organizational conflict of interest is denied where the protester fails to present hard facts establishing the existence of a conflict and where the contracting officer reasonably found that no conflict existed.

DECISION

Arc Aspicio, LLC, of Washington D.C., Aveshka Inc., of Arlington, Virginia, and Chakrabarti Management Consultancy, Inc. (CMCI), of Fairfax, Virginia, challenge the establishment of multiple blanket purchase agreements (BPA) with Ardent Management Consulting (Ardent), of Reston, Virginia, Java Productions Inc. (JPI), of Blacksburg, Virginia, and The Ambit Alliance (Ambit), of Reston, Virginia, under request for quotations (RFQ) No. HSHQDC-15-Q-00225, issued by the Department of Homeland Security (DHS) for technical and program support services for DHS's Information Sharing Environment Office (ISEO).

We deny the protests.

BACKGROUND

The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, Dec. 17, 2004, requires the intelligence community, including DHS, to establish an information sharing environment that will “innovate and deploy new approaches and tools to effectively share, discover, fuse and enable timely action on terrorism-related information.” RFQ, Statement of Work (SOW) at 15.¹ The DHS ISEO, under the Office of the Chief Information Officer (OCIO), seeks to advance the DHS information sharing environment, as well as the development of policy, architecture, and governance for and across DHS.² Id. The RFQ sought to procure highly specialized technical services and program support services to assist ISEO with key information sharing and exchange programs that enable the secure and immediate exchange of critical information and situational awareness across the homeland security enterprise. Id. at 16.

¹ The agency produced separate reports for each protest. Nonetheless, each report uses the same exhibit numbering system for the central exhibits (the solicitation and amendment thereto (Tab 5 and 5C), the source selection decision (SSD) (Tab 23), and the Technical Evaluation Consensus (TEC) Report (Tab 18). Citations in this decision to the central exhibits are to the Agency Report (AR); citations to exhibits unique to a particular agency report identify the specific AR—for example, Arc Aspicio AR. Additionally, the ARs contain Bates numbering for individual tabs. Accordingly, our citations to pages in the record are based upon those numbers.

² The acquisition will primarily support four ISEO offices, including, as relevant here, the Identity Credential and Access Management (ICAM) program management office, which is responsible for defining, planning, promoting, and coordinating the enterprise implementation of the homeland security ICAM environment in accordance with federal mandates and best practices. RFQ at 16.

On August 31, 2015, the agency issued the ISEO RFQ as a small business set-aside to procure technical and program support services in accordance with the SOW. RFQ at 1. The agency anticipated the establishment of up to three BPAs to General Services Administration (GSA) federal supply schedule (FSS) No. 70 contract holders for fixed-price, labor-hour, and time-and-materials call orders for a 5-year base period and four 1-year options. Id. at 11, 114. The BPAs would have a \$150 million ceiling not to be exceeded during the 5-year ordering period.³ Id. at 115.

Award would be made on a best-value basis considering the following four factors, listed in descending order of importance: (1) technical understanding and capabilities (technical capabilities), (2) management approach, (3) past performance, and (4) price. Id. at 114, 121. When combined, the non-price factors would be significantly more important than price. Id. at 121. Non-price factors would be evaluated using adjectival ratings.⁴ Id. at 122.

The SOW stated that the contractors would perform tasks related to strategic communications, and support for strategy, policy, and governance; architecture and planning; and development and implementation. RFQ, SOW at 16.

As relevant here, the technical capabilities factor required vendors to address a sample task SOW on international information sharing at DHS (sample task SOW) for which DHS sought a unified approach to improve bi-directional data exchange capabilities between the United States and international partners. Id. at 110, 123. For the sample task SOW, the agency sought to establish an international information sharing program office to coordinate activities across all DHS components. Id. at 111.

³ As relevant here, RFQ Amendment 3 included the agency's response to a vendor's pre-closing question regarding whether the \$150 million ceiling was for each BPA or a combined \$150 million for all three. AR, Tab 5C, RFQ Amendment 3, at 4. The agency responded that the "Total BPA ceiling is \$150 million combined." Id. Additionally, the RFQ places a monetary limit on the contract line item numbers (CLINs) for other direct costs and travel for the base and option year periods. RFQ at 3-6. For example, for the first year's ordering period, the RFQ states the travel "CLIN shall not exceed \$100,000" and that the other direct costs "CLIN shall not exceed \$20,000." Id. at 3. This monetary limit is not applicable to other CLINs, including the CLINs for the base and option years for technical and program support services. Id. at 3-6.

⁴ Technical quotations would be rated superior, good, satisfactory, marginal, and unsatisfactory. AR, Tab 7, Technical Evaluation Plan, at 12.

The sample task SOW required vendors to perform the same tasks as the RFQ's SOW. Id. at 113. As relevant here, the architecture and planning support task required vendors to: (1) develop an architecture that promotes secure access and information sharing by foreign users and services (section 2.2.1); (2) recommend business processes for both the development of agreements and implementation of exchanges regarding the alignment of NIEM (National Information Exchange Model)⁵ conformant information exchanges with international information sharing requirements (section 2.2.2); and (3) develop an architected solution enabling connectivity while ensuring safeguards against access to DHS systems by foreign users (section 2.2.4).⁶ Id. at 113.

Vendors' responses to the sample task SOW would be evaluated on how well they demonstrated their understanding and capability to meet the requirements of the sample task SOW through an effective approach and methodology. RFQ at 123. Vendors would also be evaluated on whether the proposed approach defined and effectively mitigated the most significant technical challenges to implementing the solution. Id.

For the price evaluation, the RFQ required vendors to complete a pricing table with their proposed labor rates for labor categories listed in the pricing table. Id. at 120. Price would be evaluated to determine whether it was fair and reasonable, but not rated. Id. at 124.

The agency received 11 quotations by the September 15 closing date.⁷ Arc Aspicio Legal Memorandum at 4. The price evaluation committee evaluated vendors' prices by comparing a vendor's price to its GSA FSS rates and by comparing labor rates against the government-provided evaluation hours included in the pricing table. AR, Tab 20, Price Evaluation, at 2. The agency also noted the range of prices evaluated for quotations, including the difference between total evaluated price for the lowest and highest priced quotations, and determined that price variance was

⁵ The RFQ describes NIEM as a 10 year old program that routinely interacts with federal, state, local, international and industry and standards development organizations. RFQ at 16.

⁶ The final task required the contractor to develop a high-level strategy to mitigate conflicts between NIEM and potential information sharing office content. RFQ, Sample Task SOW at 113.

⁷ Three of these quotations were received late and were not reviewed. Arc Aspicio Legal Memorandum at 5.

due to differences in the vendors' quoted labor rates.⁸ Id. Additionally, in accordance with the RFQ, the agency determined that the vendors' prices were fair and reasonable. Id. at 25.

A TEC committee evaluated the technical capabilities and management approach factors and assigned adjectival ratings.⁹ AR, Tab 18, TEC Report, at 3. For the technical capabilities factor, the awardees received superior ratings, while the protesters received marginal ratings.¹⁰ Id. For the technical capabilities factor, Arc Aspicio's quotation received a deficiency based on combination of weaknesses in addressing the sample task SOW.¹¹ Id. at 8. Aveshka's quotation received five weaknesses, including one for its response to the sample task SOW that the agency determined failed to meet minimum requirements and significantly increased the risk of unsuccessful performance. Id. at 12-13. CMCI's response to the technical capabilities factor received three deficiencies.¹² Id. at 15.

The final ratings were as follows:

⁸ Regarding price variance, the agency also noted the reason, if any, that vendors offered to explain their rates, even though it noted that such explanation was not a requirement. AR, Tab 20, Price Evaluation, at 23-25.

⁹ Past performance was evaluated by the past performance evaluation committee. Arc Aspicio Legal Memorandum at 5.

¹⁰ Superior was defined as a quotation without deficiencies that exceeds the requirements in a way that yields significant benefits to the government and whose weakness, if any, are of small impact. AR, Tab 7, Technical Evaluation Plan, at 12. Marginal was defined as a quotation that fails to meet the minimum requirements and includes one or more deficiencies that are correctable without major revisions to the quotation. Id. Additionally, as relevant here, Ambit and Ardent each received a weakness for their response to one area of the architecture and planning support task of the sample task SOW. See AR, Tab 18, TEC Report, at 5, 10.

¹¹ A deficiency was defined as a material failure of the quotation to meet a requirement or a combination of weaknesses that increases the likelihood of unsuccessful performance to an unacceptable level. AR, Tab 7, Technical Evaluation Plan, at 13. A weakness was defined as a flaw in the quotation that increases the likelihood of unsuccessful contract performance. Id.

¹² As relevant here, CMCI was also assessed a deficiency for its response to the management approach factor. AR, Tab 18, TEC Report, at 16.

Vendor	Technical Capabilities	Management Approach	Past Performance	Evaluated Price
Ambit	Superior	Good	Superior	\$189,581,683
Arc Aspicio	Marginal	Good	Superior	\$161,866,108
Ardent	Superior	Good	Superior	\$157,544,433
Aveshka	Marginal	Good	Superior	\$131,923,430
CMCI	Marginal	Marginal	Superior	\$122,285,364
JPI	Superior	Satisfactory	Superior	\$117,712,394

AR, Tab 23, SSD, at 5.

The ISEO Executive Director served as the source section authority (SSA). AR, Tab 7, Technical Evaluation Plan, at 6. In the SSD, the SSA provided an extensive explanation of the agency's evaluation. In this regard, the SSA compared the price and non-price factors for each awardee to each vendor, indicated which vendor was better rated--or comparably rated--for each factor, and provided the basis for making any price/technical tradeoffs in determining best-value. AR, Tab 23, SSD, at 6-47. In this regard, the SSA considered that non-price factors were more important than price and determined that Ambit's and Ardent's additional technical benefits justified their associated price premiums, and that JPI's significant technical benefit was low risk and offered the lowest price. Id. at 47.

On December 23, DHS established BPAs with Ardent, JPI, and Ambit and notified the vendors of award. Arc Aspicio Contracting Officer (CO) Statement at 4. After the protesters requested and received a brief explanation of the basis of award, in accordance with Federal Acquisition Regulation (FAR) subpart 8.4, these protests were timely filed.

DISCUSSION

The protesters raise various challenges to the agency's evaluation of their own and the awardees' quotations. Additionally, Arc Aspicio and CMCI argue that Ambit had organizational conflicts of interest (OCI) that could not be mitigated and that the agency's OCI investigation was unreasonable. While we address only the most significant protest allegations here, we have reviewed all of the protesters' allegations, and find no basis to sustain the protests.

Evaluation of Quotations

The protesters raise various challenges to the agency's evaluation of quotations. Arc Aspicio challenges the evaluation of its quotation and the awardees' quotations. Aveshka argues that the \$150 million award ceiling was a material term of the solicitation and that the agency--in making award to vendors whose solution exceeded the ceiling--failed to follow the ground rules of the solicitation. Additionally, Aveshka asserts that the agency's evaluation of the technical

capabilities and management approach factors was flawed. CMCI alleges that the agency unreasonably assessed two deficiencies for its technical capabilities quotation. CMCI Protest at 11. As discussed below, we find no basis to sustain these protests.

Where an agency conducts a formal competition for the establishment of a BPA, we will review the agency's actions to ensure that the evaluation was reasonable and consistent with the solicitation and applicable procurement statutes and regulations. Alexander & Tom, Inc., B-412358 et al., Jan. 21, 2016, 2016 CPD ¶ 46 at 7. In reviewing protests of alleged improper evaluations and source selection decisions, it is not our role to reevaluate submissions; rather, we will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. 22nd Century Techs., Inc., B-412547 et al., Mar. 18, 2016, 2016 CPD ¶ 93 at 10. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Cyberdata Technologies, Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 4.

Arc Aspicio's Challenges

Arc Aspicio raises various challenges to the evaluation of its own quotation and Ambit's quotation.¹³ Arc Aspicio Comments/Supp. Protest at 5, 7.

We first consider Arc Aspicio's argument that its response to the sample task under the technical capabilities factor was unreasonably evaluated. Specifically, the protester contends that the agency improperly assessed a deficiency for the sample task and ignored information identified in Arc Aspicio's quotation regarding its governance model and [deleted] technology in assessing the deficiency. Comments/Supp. Protest at 6. The agency asserts that it reasonably determined

¹³ Additionally, Arc Aspicio challenged the agency's evaluation of the awardees' staffing, under the technical capabilities and management approach factors. Supp. Protest (B-412612.3) at 12. The agency provided a response to these allegations, but Arc Aspicio failed to address these issues in its comments. See Comments/Supp. Protest (B-412612.5) at 5. Accordingly, we view these protest allegations as abandoned and do not consider them further. 22nd Centuries Techs., Inc., supra, at 9.

that the protester's quotation failed to adequately address the requirements of the sample task SOW. Legal Memorandum at 35.

As stated above, Arc Aspicio received a deficiency based on a combination of weaknesses assessed for its failure to adequately address three of the four areas of the architecture and planning support task of the sample task SOW. AR, Tab 18, TEC Report, at 8. As relevant here, the TEC Report states that Arc Aspicio's response was "heavily focused" on information exchanges and did not describe how it would recommend business processes for development of international agreements or the technology implementation of exchanges. Id. Specifically, the agency stated that the quotation included no acknowledgement of existing systems, services, and processes that can be reused to develop the target architecture, which the agency regards to be a critical perspective that the vendor would need to use to propose the entire solution.¹⁴ Id.

As relevant here, Arc Aspicio's quotation asserts, without further elaboration, that it will bring its proven [deleted] methodology to support the development of an international information sharing architecture and provide a [deleted] to define and execute [deleted]. AR, Tab 9, Arc Aspicio Quotation, at 36. The quotation includes a table summarizing the protester's approach to the four areas of the architecture and planning task. Id. For its solution to recommending business processes for development of agreements and implementation of exchanges to support NIEM information exchanges, the table states that it would "use knowledge of developing [deleted] . . . to provide guidance on NIEM conformance and best practices" and would "[deleted] in international information sharing, . . . and [deleted] with NIEM conformance tools . . . to [deleted] on information exchange agreements and

¹⁴ In response to this protest, the agency also offered the declaration of the TEC Chair that includes additional explanations for the agency's rating. In this regard, the TEC Chair states that the protester's flexible governance model did not satisfy the requirements and instead showed a lack of understanding of the value and experience with developing and documenting business processes, as well as a lack of understanding of the role, value of, and challenges in developing international agreements, which are different from the multilateral security agreements described in the protester's response for strategy, policy, and governance support. AR, Tab 31, TEC Chair Declaration, at 4. Additionally, the Chair stated that the protester's description for NIEM failed to describe the architecture to identify existing steps necessary to leverage these technologies. Id. at 5. Our Office generally considers post-protest explanations, such as these, where the explanations provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. Windstream Communications, B-409928, Sept. 9, 2014, 2014 CPD ¶ 271 at 5 n.5.

processes.” Id. The quotation also stated that Arc Aspicio would create a flexible, easy-to-understand governance model for creating multilateral security agreements under the section entitled “Strategy, Policy, [and] Governance.” AR, Tab 9, Arc Aspicio Quotation, at 31.

We find no basis to sustain this aspect of Arc Aspicio’s protest. To the extent the protester contends that its architecture and planning support response recommended business processes for international agreements by proposing a flexible, easy-to-understand governance model, we disagree. Instead, the record reflects that the protester offered this governance model in response to the strategy, policy, and governance support task.¹⁵ See AR, Tab 9, Arc Aspicio Quotation, at 31, 35. Additionally, we find no basis to challenge the agency’s conclusion that Arc Aspicio failed to describe how it would recommend business processes for developing international agreements. In this regard, the record indicates that the agency reasonably concluded that the protester’s cursory description of the [deleted] methodology failed to describe the actual architecture needed to implement the solution. To the extent the protester alleges that the agency overlooked its [deleted] methodology and other statements in its assessment of Arc Aspicio’s recommendation of business processes, the record shows that the agency did consider this information, but found it merited a deficiency. In this regard, the protester’s comments—which continue to offer the same quotation excerpts presented in the protest, despite the agency’s full response thereto—represent nothing more than disagreement with the agency’s judgment and do not provide a basis to sustain the protest.¹⁶ Cyberdata Technologies, Inc., supra.

Arc Aspicio next observes that the agency found that Ambit’s quotation failed “to demonstrate a full understanding . . . to meet the sample task requirement to develop agreements,” and contends that this should have resulted in Ambit receiving a lower rating. Arc Aspicio Comments/Supp. Protest (B-412612.5) at 2, 4. The agency responds that Ambit’s superior rating was reasonable and based on a number of strengths and one minor weakness. Supp. Legal Memorandum at 2.

¹⁵ Additionally, the agency found that the protester’s model reflected a lack of understanding and experience with the challenges in developing international agreements (as opposed to multilateral security agreements) and developing and documenting business processes for international agreements. AR, Tab 31, TEC Chair Declaration, at 4.

¹⁶ To the extent the protester asserts that the agency’s attempt to offer the TEC Chair’s post-protest explanations in the supplemental agency report to support the contemporaneous evaluations is unreasonable, we need not address this argument as the initial agency report provided a reasonable basis for determining that the agency’s evaluation was reasonable. See Alexander & Tom, Inc., supra, at 7.

The RFQ defined how quotations would be rated. RFQ at 122. As relevant here, a superior rating was defined as a quotation that yields significant benefits to the government, contains no deficiencies, and offers weakness, if any, that are of little import. The record reflects that the agency assessed Ambit's technical quotation eight strengths that increased the government's confidence that Ambit could successfully perform; no deficiencies; and one weakness that it found could be easily mitigated. AR, Tab 18, TEC Report, at 4-5; Tab 23, SSD, at 6. Aside from the weakness, Ambit has not challenged the other aspects of Ambit's evaluation. On this record, we find the agency's evaluation unobjectionable. Without more, the protester's assertions to the contrary are unavailing.

Finally, we find no merit to Arc Aspicio's contention that the agency failed to make a meaningful determination regarding the reasonableness of Ambit's price, as required by FAR § 8.405-3(b)(2)(vi).¹⁷ The record indicates that the agency determined that prices were fair and reasonable, as required by the RFQ; evaluated proposed labor rates against the labor categories listed in the pricing table; noted the range of evaluated prices; and determined the reasons for price variance in the vendors' quotations. Additionally, the agency conducted a tradeoff between vendors' quotations that specifically included price. See AR, Tab 23, SSD, at 5-46. We fail to see how these methods and analysis do not show comparative analysis or meaningful consideration of price. To the extent the protester argues that the agency was specifically required to conduct additional analysis of Ambit's price--even though it was not the highest priced quotation received--the protester has offered no legal reason, and we know of none, that requires an agency to engage in such an analysis.

Aveshka's Challenges

Aveshka raises various challenges to the evaluation of its own and the awardees' quotations. Regarding Aveshka's quotation, we will address Aveshka's challenge to the evaluation of the weakness assessed for its response to the sample task SOW because the agency identified this as a discriminator between the quotations of the protester and the awardees. See AR, Tab 23, SSD, at 11, 24, 39.

Aveshka contends that but for the \$150 million order ceiling, it would have proposed a different solution and that the agency's award to vendors who exceeded the ceiling was inconsistent with the RFQ requirements. The gravamen of Aveshka's

¹⁷ This section requires that the ordering activity shall ensure all quotations received are fairly considered and award is made in accordance with the basis for selection in the RFQ. FAR § 8.405-3(b)(2)(vi). The ordering activity is responsible for considering the level of effort and the mix of labor proposed to perform, and for determining that the proposed price is reasonable. Id.

complaint is that the \$150 million ordering ceiling was a material term that placed a cap on the amount that vendors could propose for their solution. The agency contends that there was no RFQ language making the ceiling a material requirement here, and that the ceiling constituted notice of the ceiling amount for all the awarded BPAs under the effort. Aveshka Legal Memorandum at 11. We agree with the agency.

Aveshka's insistence that the ceiling precluded vendors from offering a quotation priced at more than \$150 million is at odds with the plain language of the RFQ.¹⁸ The RFQ addresses the maximum value of orders placed against the BPA.¹⁹ RFQ at 14. It does not address the maximum value of quotations, as Aveshka suggests. Additionally, only the CLINs for travel and other direct costs were limited by price; the CLINs for technical and program support services were not. Accordingly, we do not view the \$150 million ordering ceiling to be a material term. Additionally, the protester has failed to show that vendors were put on notice that failing to comply with the \$150 million ceiling could result in the elimination of quotations. See Akira Techs., Inc.; Team ASSIST, B-412017 et al., Dec. 7, 2015, 2015 CPD ¶ 383 at 5.

Aveshka also alleges that the agency improperly downgraded its response to the requirement to develop an architected solution (section 2.2.4) under the architecture and planning support task of the sample task SOW. Aveshka Comments at 8. In this regard, Aveshka challenges the agency's criticism of Aveshka's proposed solution to "[deleted]" Id. The crux of Aveshka's argument in this regard is that the RFQ established specific requirements to exclude foreign users from accessing Neptune, a DHS system, and that this required a "[deleted]" Id. The protester contends that the agency not only unreasonably found fault with Aveshka's proposed solution, but also failed to consider the benefits that the solution offered. Aveshka Protest at 14-15. The agency asserts that the protester's quotation and protest allegations appear to mischaracterize [deleted] and the agency's requirements. Aveshka Legal Memorandum at 19. In this regard, the agency states that [deleted] as proposed by Aveshka's quotation is not needed, and that this proposed approach demonstrates the protester's lack of understanding in the international environment. Id.

¹⁸ To the extent Arc Aspicio contends in its supplemental protest that the agency changed the RFQ requirements by allowing vendors to exceed the \$150 million ceiling, we similarly find that protest to lack merit. See Supp. Protest (B-412612.3) at 15.

¹⁹ In this regard the pre-closing question indicates that the \$150 million ceiling would apply for all three BPAs collectively. Based on this information, and considering that the agency intended to establish multiple BPAs, we fail to see how the ceiling could be interpreted to constrain individual vendors to \$150 million.

We find the agency's evaluation reasonable. The record indicates that the agency considered the protester's solution regarding the [deleted] to be unnecessary. In response, the protester asserts only that its quotation proposed a compliant solution. On the record here, we see no basis to question the agency's evaluation.

Additionally, the record reflects that the agency concluded that the protester's response to recommending business processes for development of agreements and implementation of exchanges to support NIEM-conformant information exchanges (sample task SOW, section 2.2.2) significantly increased the risk of unsuccessful performance, and identified this as a weakness. AR, Tab 18, TEC Report, at 13. This weakness was not challenged.

In sum, we view the TEC's finding that Aveshka did not adequately address the requirement to develop an architected solution under the sample SOW section 2.2.4 as reasonable. Based on this, as well as the TEC's unchallenged finding that Aveshka's quotation demonstrated a complete lack of understanding with regard to NIEM under the sample task SOW section 2.2.2, we also view the agency's assessment of this weakness as reasonable. Additionally, given that the awardees' technical ratings are superior, *i.e.*, at least three levels higher than the marginal rating assigned to Aveshka's quotation, we fail to find competitive prejudice flowing from the agency's evaluation of Aveshka's technical quotation. Accordingly, we find no basis to sustain the protest.

CMCI's challenges

CMCI challenges the agency's evaluation of its technical capabilities quotation. CMCI Protest at 11. The record shows that CMCI's quotation was assessed four deficiencies--three deficiencies under the technical capabilities factor and one deficiency under the management factor. See AR, Tab 18, TEC Report, at 15, 16. However, the protester challenges only two of the three deficiencies for the technical capabilities factor and did not challenge the deficiency identified for the management approach. Accordingly, we find no basis to sustain the protest since the protester has failed to show competitive prejudice.

Here, even if we found merit to CMCI's current challenges, and found two of the three deficiencies for the technical capabilities factor to be unreasonable--which we do not here--the protester's standing in the evaluation results would not change, since CMCI would still have deficiencies that remain unchallenged in both the technical capabilities and management approach factors. Under these circumstances, we see no basis to conclude that CMCI was prejudiced by these alleged evaluation errors, and therefore deny this protest ground.

In view of the foregoing, we decline to address CMCI's remaining challenge alleging that Ambit has an unmitigable OCI. A protester is an interested party to challenge the agency's evaluation of proposals where there is a reasonable possibility that the

protester's proposal would be in line for award if its protest were sustained. Enterprise Info. Servs., Inc., B-405152 et al., Sept. 2, 2011, 2011 CPD ¶ 174 at 7 n.8. Based on the lack of competitive prejudice found here, we conclude that CMCI would not be in line for award and therefore lacks the requisite interest to advance its remaining argument. See Raytheon Tech. Servs. Co. LLC, B-404655.4 et al., Oct. 11, 2011, 2011 CPD ¶ 236 at 4 (protester found to be an interested party where errors in the evaluation of its proposal raised the possibility that the assessment of its proposal could change).

Allegation of Disparate Treatment

Arc Aspicio contends that the agency treated the vendors unequally in the evaluation of the technical capabilities factor. Comments/Supp. Protest (B-412612.5) at 7. Specifically, the protester contends that despite similar flaws in the sample SOW, Ambit's and Ardent's quotations were assessed only weaknesses while the protester's quotation received a deficiency. Id. at 7, 10. Additionally, the protester asserts that the agency considered--and gave credit for--information in other parts of Ardent's quotation, while failing to do the same for the protester. Id. at 8-9. Specifically, the protester notes that in evaluating Ardent's quotation the agency considered that Ardent's expertise "was not sufficiently covered or evidenced by past work to understand whether the capability could be met" (emphasis in original) and contends that the agency's evaluation of the protester's quotation did not review or consider similar information. Id.; See AR, Tab 18, TEC Report, at 10.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. LCPtracker, Inc.; eMars, Inc., B-410752.3 et al., Sept. 3, 2015, 2015 CPD ¶ 279 at 6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the vendors' quotations. See, A-Tek, Inc., B-404581.3, Aug. 22, 2011, 2011 CPD ¶ 188 at 8.

Regarding the sample task SOW evaluation, the record indicates that where a vendor failed to adequately address an area of the sample task SOW, the agency consistently assessed a weakness. For example, Ambit and Ardent each received a weakness for their failure to address one area of the architecture and planning support task. See AR, Tab 18, TEC Report, at 5, 10. Similarly, Arc Aspicio received a weakness in each of the three areas that the agency found were inadequately addressed. The record also shows that as a result of failing to adequately address these three areas, Arc Aspicio received a deficiency. To the extent the protester argues that failing to address one requirement should be treated the same as failing to address three requirements, we disagree. We find no merit to the protester's argument.

Similarly, the protester's arguments regarding the evaluation of Ardent's quotation are factually incorrect. The record indicates that the agency included similar language regarding Arc Aspicio's quotation. Although the protester alleges that the agency did not consider other areas of its quotation, the record shows that the agency considered--for both Ardent's and Arc Aspicio's quotations--that expertise "was not sufficiently covered or evidenced by past work to understand whether the [technical] capability could be met." See AR, Tab 18, TEC Report, at 7, 10. Accordingly, this aspect of the protest fails to state a valid basis of protest. See 4 C.F.R. § 21.5(f).

Organizational Conflict of Interest

Arc Aspicio contends that Ambit's work on another task order (TO) for the Enterprise Business Management Office (EBMO) created OCIs that could not be mitigated.²⁰ Specifically, the protester argues that Ambit's work created an unequal access OCI by giving Ambit access to non-public, proprietary information, such as labor rates, hours, and categories. Arc Aspicio Protest at 14. Arc Aspicio also asserts that Ambit's work on the EBMO TO created an impaired objectivity OCI because Ambit would be put in a position to establish evaluation criteria and evaluate itself for the ISEO (Information Sharing Environment Office) BPA. Id. at 16. For the reasons stated below, the protester has failed to show hard facts that indicate the existence of a conflict or that the agency's OCI determination was unreasonable.

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The 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: (1) unequal access to information; (2) impaired objectivity; and (3) biased ground rules. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505(b); Smartronix, Inc.; ManTech

²⁰ On September 21, 2015, Ambit received an EBMO TO as an awardee under DHS's Eagle II (Enterprise Acquisition Gateway for Leading-Edge Solutions) small business function category 2 Information Technology (IT) program for program monitoring and control assessment services supporting the OCIO's initiative for ensuring successful delivery of major IT investments. AR, Tab 27, EBMO TO, HSHQDC-15-J-00422, at 1, 9. The EBMO oversees IT budget functions and ensures that DHS's IT investments align with its mission and objectives. Arc Aspicio CO Statement at 7.

Advanced Sys Int'l, Inc., B-411970 et al., Nov. 25, 2015, 2015 CPD ¶ 373 at 15. An impaired objectivity OCI 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); Council for Logistics Research, Inc., B-410089.2, B-410089.3, Feb. 9, 2015, 2015 CPD ¶ 76 at 9.

In reviewing protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. MILVETS Sys. Tech., Inc., B-411721.2, B-411721.3, Jan. 14, 2016, 2016 CPD ¶ 42 at 5. 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. ViON Corp.; EMC Corp., B-409985.4 et al., Apr. 3, 2015, 2015 CPD ¶ 141 at 10.

In response to this protest, the ISEO CO--who is also the CO for the EBMO TO--stated that prior to the receipt of the protest allegations, she had no knowledge that an OCI existed, but conducted an OCI investigation in response to the protest allegations.²¹ AR, Tab 24, OCI Determination, at 1. As part of her OCI evaluation, the CO reviewed the EBMO TO and discussed Ambit's role under the EBMO TO with the EBMO Program Manager and contracting officer's representative and the ISEO program manager and Executive Director.²² Id. The CO determined that no OCIs exist. Id.

The CO explains that under the EBMO TO, Ambit assesses the program health of DHS's major IT investments and provides recommendations to reduce risk and ensure program success by using data provided by the program office through the Investment Evaluation, Submission, and Tracking (INVEST) system, which provides

²¹ The RFQ included a response to a pre-solicitation question regarding whether the solicitation presented an OCI with any of the tasks under DHS Eagle II, Functional Category 1--rather than Category 2, under which Ambit's TO was issued--in response to which the agency indicated that it did not anticipate a conflict. RFQ at 140.

²² The ISEO program manager was also the TEC Chairperson for the ISEO BPA. See AR, Tab 38, Declaration of ISEO TEC Chair, at 1.

an IT portfolio summary report for the agency.²³ Id. at 3. INVEST does not include contractor proprietary information. Id. INVEST may include pre-decisional information, such as a program's overall proposed funding amount. Id. However, if INVEST includes pre-decisional information, the program office notifies EBMO, prior to any contractor involvement, and a federal employee is assigned to review the program.²⁴ Id. Even if a contractor were to access pre-decisional information related to a program's proposed funding, that contractor could not access how much funds are available for contracts or allotted to a specific contract as this data is not contained in the INVEST system. Id. More importantly, any pre-decisional information in INVEST is already publicly available on the Federal IT Dashboard. Id. at 4. The CO states that Ambit has access to INVEST. AR, Tab 41, OCI Determination Amendment, at 1.

As relevant here, the CO explained that with the exception of the Identity Credential and Access Management (ICAM) program, programs within the ISEO portfolio do not fall under the scope of program assessments conducted by EBMO.²⁵ AR, Tab 24, OCI Determinations, at 4. With regard to ICAM review under EBMO, the CO determined that ICAM does not have pre-decisional information in INVEST. Id.

The CO states that any governance task performed for EBMO by Ambit--in the form of giving recommendations regarding the program, not the contractor--would be validated by federal staff and any action approving or disproving a program assessment would be determined by EBMO's Executive Director and Deputy Chief Information Officer. Id. at 4.

Accordingly, the CO concluded that Ambit's work with EBMO does not create any OCIs because Ambit neither has access to ISEO program information that would

²³ These assessments are conducted for the Program Compliance Division (program office) using predetermined criteria from DHS's Program Health Assessment Scoring Guide (Scoring Guide). AR, Tab 24, OCI Determination, at 1; AR, Tab 30, Scoring Guide, at 2-3. The criteria ensure a common approach to program assessments and assist in addressing programmatic concerns. Id. at 2. The Scoring Guide does not include proprietary information, procurement strategies, or specific funding amounts of contracts. AR, Tab 37, Declaration of ISEO Executive Director, at 3.

²⁴ Ambit's program manager concurs with the outlined procedure by stating that the assessments are assigned to either EBMO staff or Ambit and that Ambit has not been assigned health assessments or any other work related to ICAM. Ambit Comments, Exh. A, Declaration of Ambit's EBMO Program Manager at 1-2.

²⁵ As stated above, the ICAM program would be one of the four ISEO program offices that the acquisition would primarily support. See RFQ at 16.

give it an unfair advantage, nor does it have access to nonpublic, or proprietary information related to contractors performing work for OCIO.²⁶ Id. at 1.

Additionally, the CO concluded that Ambit would not be able to affect or evaluate its own performance or a potential competitor's performance on a different DHS IT contract, since Ambit does not review contract-specific information, is not in a position to evaluate its own performance, and does not perform tasks that require the preparation of specifications of work. Id. at 4, 6. On this record, we find no basis to sustain the protest.

Best Value

The protesters also challenge the agency's best-value decision, essentially arguing that their lower-priced, or lower-rated, quotations offered the best value to the government.

Where, as here, the RFQ allows for a price-technical tradeoff, the selection official retains discretion to select a higher-priced but also technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. Buckley & Kaldenbach, Inc., B-298572, Oct. 4, 2006, 2006 CPD ¶ 138 at 3; See e.g., Argus International Risk Services, LLC, B-411682, B-411682.2, Sept. 25, 2015, 2015 CPD ¶ 303 (an agency also has discretion to make award to a lower-priced, higher-technically-rated quotation).

In our view, the detailed record, including the comprehensive source selection decision, confirms the reasonableness of the evaluation and best-value decision. As explained in the source selection decision, and as the record confirms, the protesters' quotations were reasonably rated marginal.

The SSA determined that Ambit's and Ardent's additional technical benefits justified the associated price premiums, and that JPI's significant technical benefit offered low risk and the lowest price. Based on our review of the record, we find this selection decision to be reasonable and consistent with the evaluation criteria.

²⁶ As stated above, the EBMO is also an office within the DHS OCIO. However, all programs under the ISEO portfolio are managed jointly with the Under Secretary for Intelligence and Analysis as the Chair of the Senior Information Sharing and Safeguarding Governance Board (Guidance Board). Id. at 1. The EBMO was not involved in the standup of ISEO or the Guidance Board, has limited oversight of ISEO programs, and is generally not involved with evaluating ISEO requirements. Id. at 2. Additionally, the SSA states that under the EBMO TO, neither EBMO nor Ambit assist ISEO in developing any architecture or specifications related to the deployment of IT programs. Id.

The protests are denied.

Susan A. Poling
General Counsel