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Decision

Matter of: Lynchval Systems Worldwide, Inc.

File: B-420295.4

Date: April 26, 2022

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DIGEST

Protest that award was tainted by organizational conflicts of interest is denied where the record does not support allegations that the awardee drafted specifications or had access to non-public information that would have provided a competitive advantage, and where the protester's assertions do not present the hard facts necessary to refute the agency's conclusion that the awardee's participation in this procurement was not barred by an impermissible conflict of interest.

DECISION

Lynchval Systems Worldwide, Inc. (Lynchval), a small business of Herndon, Virginia, protests the award of a contract to Deloitte Consulting, LLP (Deloitte), of Arlington, Virginia, under request for proposals (RFP) No. 16PBGC21R0010, issued by the Pension Benefit Guaranty Corporation (PBGC) for services developing and supporting the single-employer Transformational Pension Insurance Modeling System (T-PIMS) technology modernization effort. The protester contends that the award to Deloitte was improper because Deloitte has organizational conflicts of interest (OCIs).

We deny the protest.

BACKGROUND

The Employee Retirement Income Security Act of 1974 established the PBGC to encourage the growth of defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at a minimum.¹ Agency Report (AR), Tab 4, RFP at 9.² PBGC protects the pensions of nearly 40 million workers and retirees in more than 24,000 private defined benefit pension plans and administers two insurance programs: the single employer (SE) and multi-employer (ME) insurance programs.³ *Id.* The Pension Insurance Modeling System is the primary tool used to analyze the impact of proposed or enacted legislation on pension plans and the SE and ME insurance programs. *Id.*

Procurement History

PBGC requires a new system architecture to support PIMS SE and ME models and plans to acquire it in two phases. Contracting Officer's Statement (COS) at 1. In Phase 1, PIMS Modernization, the contractor, in collaboration with the agency's Policy, Research and Analysis Department (PRAD), is to develop the "blueprint" for the new modeling system. *Id.*; AR, Tab 2, PIMS Modernization RFP at 11-12. In Phase 2, T-PIMS, which will be solicited as a new requirement, the contractor is to implement and deploy the new modeling system and provide ongoing systems operations and maintenance. COS at 1; AR, Tab 2, PIMS Modernization RFP at 11-12.

PIMS Modernization Contract

On July 23, 2019, PBGC issued RFP No. 16PBGC19R0028 for Phase 1, PIMS modernization. AR, Tab 2, PIMS Modernization RFP at 1. The solicitation provided that the contract was "for system design services only" and did not "include any implementation effort." *Id.* at 16. The solicitation also provided that the system architecture should be considered a new system and should include all documents and work product pertaining to architecture, logical, and physical design. *Id.* The solicitation indicated that the contractor would develop the new system blueprint in close collaboration with the PRAD, which would provide "federal oversight, review, and

¹ As a wholly-owned government corporation, the PBGC is a "federal agency" as defined by section 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 472, over which GAO has bid protest jurisdiction. *Integrated Mgmt. Res. Grp., Inc.*, B-400550, Dec. 12, 2008, 2008 CPD ¶ 227 at 2 n.1; see 31 U.S.C. § 3551; 4 C.F.R. § 21.0(c).

² Citations to the record are to the pages of the Adobe PDF documents produced in the agency report. Furthermore, the RFP was amended once to include answers to offeror questions. Tab 4 includes the RFP, amendment 1, and attachments to the RFP.

³ "A defined benefit plan provides a specified monthly benefit at retirement, often based on a combination of salary and years of service." AR, Tab 2, Pension Insurance Modeling System (PIMS) Modernization RFP at 11.

modification of the deliverables submitted under this contract.” *Id.* at 17. The solicitation specified that PBGC wanted to own the system and would not consider migrating the PIMS to the contractor’s proprietary system, and therefore a proprietary system would not be suitable for the agency’s new system architecture. *Id.*

The PIMS Modernization RFP contemplated a 1-year base period and four 1-year option periods with the blueprint to be completed within the base period. *Id.* at 12. The solicitation stated that the option periods were to support the next phase of the PIMS modernization effort if the Phase 1 contractor was not also selected as the Phase 2 contractor. *Id.* at 12, 16.

PBGC awarded Deloitte the PIMS Modernization contract on September 25, 2019, and Deloitte provided all the defined deliverables by June 30, 2020.⁴ AR, Tab 5, OCI Determination at 11. Specifically, Deloitte submitted the following defined deliverables:

- (1) Future State Requirements and Processes (December 20, 2019);
- (2) Initial PBGC PIMS Blueprint (May 31, 2020);
- (3) Refined PBGC PIMS Blueprint (June 30, 2020); and
- (4) PBGC PIMS Modernization Roadmap (June 30, 2020).

Id.; AR, Tab 9, PIMS Modernization Contract Administrative Deliverables at 74-76. The record indicates that Deloitte no longer performed work under the PIMS Modernization contract after submitting the deliverables; and PBGC independently revised the deliverables before including them in the solicitation. AR, Tab 5, OCI Determination at 11.

Planning for the T-PIMS Solicitation and the T-PIMS Contract Award

The agency began acquisition planning for T-PIMS in the spring of 2021, at which time it considered potential OCIs from Deloitte’s work on the PIMS Modernization contract, as well as Lynchval’s work on legacy PIMS and PIMS-related contracts. COS at 5-6. In particular, internal PBGC stakeholders, from PRAD and the agency’s Business Innovation Service Department (BISD),⁵ determined that Lynchval’s involvement in developing T-PIMS documents was minimal, and that the PBGC project team “provided input, feedback, direction, and oversight” over Deloitte’s performance of the PIMS Modernization contract. AR, Tab 5, OCI Determination at 27.

⁴ Deloitte was also required to submit monthly status reports to PBGC for the duration of the contract. Deloitte continued to submit monthly status reports after June 30, 2020. AR, Tab 9, PIMS Modernization Contract Administrative Deliverables at 8-170.

⁵ BISD provides information technology (IT) support, including IT program management and IT contract oversight, to the agency. RFP at 11.

Furthermore, PBGC specifically analyzed OCIs for Deloitte under the general rules for conflicts of interest set forth in Federal Acquisition Regulation (FAR) section 9.505. *Id.* at 27-28. In this regard, PBGC found that Deloitte did not provide any systems engineering under the contract and that the agency provided technical direction to Deloitte, including directing Deloitte to use Microsoft products and cloud services for the blueprint. *Id.* at 27-28. Further, while Deloitte developed and recommended the PIMS modernization blueprint and roadmap, PCGC reviewed and updated the roadmap without sharing the updated version with Deloitte. *Id.* at 28. As part of its acquisition planning, the agency also intended to provide the blueprint, the future state of technology requirements and processes, and the updated roadmap as attachments to the T-PIMS solicitation. *Id.*

The agency also determined that Deloitte did not prepare the performance work statement or specifications for the T-PIMS solicitation and stated in its OCI determination that the RFP documents had been primarily drafted by the agency with assistance from another contractor, Jefferson Consulting. *Id.* Furthermore, PBGC found that Deloitte would not evaluate proposals or otherwise participate as part of the agency's evaluation process. *Id.* Finally, PBGC found that Deloitte did not use proprietary information in performing the PIMS Modernization contract; PBGC developed the independent government cost estimate (IGCE); the blueprint uses open source, widespread, commercially available technology; and the government has not decided upon a specific modeling technology. Accordingly, PBGC concluded that it could proceed as planned with an open competition in which all interested firms could participate. *Id.*

On May 12, 2021, PBGC issued the T-PIMS solicitation on an unrestricted basis to establish a single indefinite-delivery, indefinite-quantity (IDIQ) contract. RFP at 6. The T-PIMS solicitation seeks modernization of the PIMS and creation of new modeling systems for the SE and ME insurance plans, as well as ongoing systems operation and maintenance services for the PRAD. *Id.* at 6, 15. The first task order request (TOR) was issued with the T-PIMS solicitation; offerors were instructed to submit proposals for both the underlying IDIQ and TOR by June 15. *Id.* at 96, 106. The RFP contemplated a 10-year maximum period of performance, including base and option years, with a maximum value of \$75 million. *Id.* at 6, 41.

The RFP provided that award would be made on a best-value tradeoff basis, considering six factors: key personnel for the TOR, corporate experience, IDIQ requirements not part of the TOR, response to the TOR, past performance, and price. *Id.* at 107. With regard to the relative weight of the factors, the RFP provided that the key personnel and corporate experience factors would be equal in weight, and together were more important than the factors assessing the IDIQ requirements, response to the TOR, and past performance, which were listed in descending order of importance. *Id.* The RFP further provided that the non-price factors together were significantly more important than price. *Id.*

Four offerors, including Deloitte (the PIMS Modernization contractor) and Lynchval (the legacy PIMS contractor) submitted proposals. COS at 5. After receiving the proposals, PBGC contacted Deloitte and Lynchval and requested OCI mitigation plans.⁶ *Id.* at 5-6. Deloitte submitted a detailed mitigation plan, whereas Lynchval did not submit a mitigation plan, and instead explained why it concluded it did not have an OCI. *Id.* at 6-7. In this regard, Lynchval asserted that the legacy PIMS contract did not give it unequal access to information and that the “[l]egacy PIMS technology is completely different from the technology blueprint of T-PIMS, so Lynchval has no advantage.” *Id.* at 6. In addition, Lynchval informed PBGC that it did not compete for the PIMS Modernization contract because it wanted to avoid any OCI in relation to the T-PIMS contract. *Id.* at 7.

The agency completed an initial evaluation, established a competitive range, and conducted several rounds of discussions. Concurrent with--but separate from--the agency’s evaluation of proposals, the contracting officer considered the possible OCIs of Lynchval and Deloitte. *Id.* The contracting officer included the agency’s earlier OCI analysis in her investigation, as well as both firms’ responses to PBGC’s requests for mitigation plans. COS at 7-9; see also AR, Tab 5, OCI Determination.

The contracting officer determined that Lynchval did not have an impermissible OCI due to its performance of legacy PIMS requirements and could compete for the T-PIMS contract. *Id.* at 7-9. The contracting officer also found that Deloitte could compete for the T-PIMS contract because Deloitte did not have any OCIs from the PIMS Modernization contract and that any potential OCIs were properly mitigated. *Id.*

On September 28, the agency selected Deloitte for award. *Id.* at 7.

GAO Protests

On October 13, Lynchval filed a protest with our Office challenging PBGC’s evaluation and award determination and arguing that Deloitte has an impermissible organizational conflict of interest. *Id.* at 9. On October 21, the agency notified our Office that it would take corrective action by reevaluating proposals and making a new best-value determination. Notice of Corrective Action at 1. The agency explained, however, that it would not revisit its OCI determination because the agency had already thoroughly investigated and analyzed whether Deloitte and Lynchval had OCIs and concluded that they did not. *Id.* at 2. On November 1, we dismissed Lynchval’s protest based on the agency’s proposed corrective action. *Lynchval Sys. Worldwide, Inc.*, B-420295, B-420295.2, Nov. 1, 2021 (unpublished decision).

⁶ Notwithstanding PBGC’s earlier determination that there were no OCIs, out of an abundance of caution, PBGC advised Deloitte and Lynchval of a possible appearance of an OCI and requested that both companies submit mitigation plans. COS at 5-6; see also AR, Tab 5, OCI Determination at 7.

The same day that we dismissed the foregoing protest, Lynchval filed another protest alleging that Deloitte should be excluded from the reevaluation of proposals due to its OCIs. While this protest was pending, PBGC notified our Office that it had completed its corrective action and, on December 23, awarded the T-PIMS contract to Deloitte. COS at 10. On January 3, 2022, we dismissed Lynchval's B-420295.3 protest as premature, noting that while the agency's corrective action was complete, the protester had requested a debriefing in connection with the new award, which had not yet been provided. *Lynchval Sys. Worldwide, Inc.*, B-420295.3, Jan. 3, 2022 (unpublished decision). The agency subsequently provided the debriefing, and, on January 18, Lynchval filed this protest.

DISCUSSION

Lynchval contends that Deloitte has two unmitigated OCIs that PBGC failed to reasonably identify and resolve. Protest at 12-16. The protester alleges that Deloitte has a biased ground rules OCI because Deloitte wrote the specifications for the T-PIMS solicitation. *Id.* at 13-15. The protester also argues that Deloitte has an unequal access to information OCI stemming from its performance of the PIMS Modernization contract, which required Deloitte to work closely with the agency. Protest at 15-16. Having considered all of Lynchval's arguments, we find no basis to sustain the protest.⁷

The FAR requires a contracting officer to “[a]void, neutralize, or mitigate significant potential conflicts of interest before contract award,” so as to prevent the existence of conflicting roles that might impair a contractor's objectivity or provide an unfair competitive advantage. FAR 9.504(a)(2); FAR 9.505; *Snell Enters., Inc.*, B-290113, B-290113.2, June 10, 2002, 2002 CPD ¶ 115 at 3. The situations in which OCIs arise, as addressed in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to non-public information, and impaired objectivity. Contracting officers must exercise “common sense, good judgment, and sound discretion” in assessing whether a potential conflict exists and in developing appropriate ways to resolve it; the primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR 9.505; *Alliant Techsystems, Inc.*, B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4.

We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7; *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of

⁷ The protester raises other collateral arguments. Although our decision does not specifically address each of the protester's arguments, we have carefully reviewed all of the arguments and find that none provides a basis on which to sustain the protest.

considerable discretion. *Systems Made Simple, Inc., supra*; 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. *ViON Corp.; EMC Corp.*, B-409985.4 *et al.*, Apr. 3, 2015, 2015 CPD ¶ 141 at 10; see *PAI Corp. v. United States*, 614 F.3d 1347, 1352 (Fed. Cir. 2010) (“[A] protest must identify ‘hard facts’; a mere inference or suspicion of an actual or apparent conflict is not enough.”).

As detailed below, Lynchval’s protest arguments lack the hard facts required for our Office to sustain the protest. As a result, we have no basis to question the contracting officer’s conclusion that Deloitte’s participation in this procurement does not raise potential OCI concerns.

Biased Ground Rules OCI

Turning first to Lynchval’s biased ground rules arguments, a biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the statement of work or providing materials upon which a statement of work is based. FAR 9.505-1, 9.505-2; *Networking & Eng’g Techs., Inc.*, B-405062.4 *et al.*, Sept. 4, 2013, 2013 CPD ¶ 219 at 10. In these cases, the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. *Energy Sys. Grp.*, B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 at 4.

Lynchval alleges that Deloitte has a biased ground rules OCI arising from Deloitte’s performance of the PIMS Modernization contract. Protest at 12-15. Under that contract, Deloitte drafted specifications for the T-PIMS requirement, including the blueprint, roadmap, and future state of technology requirements and processes, which were included in the T-PIMS solicitation. *Id.* The protester alleges that the awardee’s creation of T-PIMS specifications puts Deloitte in a position to favor its own products or capabilities under the current requirement and therefore creates an unfair competitive advantage. *Id.*

In response, the agency contends that it reasonably identified, considered, and resolved Deloitte’s potential OCIs. Memorandum of Law (MOL) at 4-15. PBGC also avers that the government prepared the T-PIMS specifications, with assistance from a different contractor, Jefferson Consulting, and not Deloitte. *Id.* at 16-18. PBGC states that while Deloitte contributed to the development of the T-PIMS attachments for the blueprint, roadmap, and future state of technology requirements and processes, these were not “complete specifications,” and PRAD and BISD technical experts updated Deloitte’s PIMS deliverables before including these documents as attachments to the T-PIMS RFP. *Id.* at 16-21. Moreover, PBGC asserts that Deloitte did not have final decision-making authority over the blueprint; rather, Deloitte assisted in gathering information on industry standards and leading technology, and then presented the available options for the target technology to PRAD and BISD. *Id.* at 20-21. The agency also contends that it designed the PIMS Modernization RFP to minimize the risk

of OCIs by prohibiting the awardee from proposing its own proprietary products, and notes that Deloitte did not identify any such products. *Id.* at 21-22.

PBGC explains further that even if Deloitte's deliverables were considered final specifications, Deloitte did not have a biased ground rules OCI because PBGC supervised and controlled Deloitte's work as an industry representative under the PIMS Modernization contract. MOL at 23-30. In this regard, while FAR section 9.505-2 generally excludes contractors who provided complete specifications for nondevelopmental items from competing to furnish those items, the agency notes that FAR subsection 9.505-2(a)(1)(ii) provides an exception for situations in which contractors act as industry representatives to help the government prepare, refine, or coordinate specifications. *Id.* at 25-27. The agency argues that Deloitte's work under the PIMS Modernization contract falls within this exception.

Based upon our review of the record, we find that the PBGC reasonably concluded that Deloitte did not have an improper biased ground rules OCI, and adequately documented a comprehensive review of the potential for OCIs, both prior to issuing the T-PIMS RFP and prior to award.

As noted above, the agency considered potential OCIs, including Deloitte's conflicts, before the solicitation was issued and again before PBGC made its award decision. Before issuing the T-PIMS solicitation, PBGC reviewed the draft acquisition documents and considered the potential OCIs for companies that PBGC expected to compete for the T-PIMS contract. AR, Tab 5, OCI Determination at 26-27. PBGC concluded that all acquisition documents had been prepared by the agency with support from Jefferson Consulting, and thus the documents did not create a biased ground rules OCI for any of the expected competitors. AR, Tab 5, OCI Determination at 28.

In addition, prior to award, the contracting officer conducted a detailed review and analysis of whether OCIs existed regarding Deloitte's involvement in the T-PIMS solicitation, and consulted with the PBGC Office of General Counsel. The contracting officer reviewed PRAD/BISD's earlier technical input on potential OCIs, including the findings and recommendation; PIMS Modernization solicitation language; and Deloitte's mitigation plan. *Id.* Thereafter, the contracting officer concluded that Deloitte did not have any unmitigated OCIs and recommended that Deloitte's proposal be included in the evaluation. *Id.* at 16.

As a general matter, the mere existence of a prior or current contractual relationship between a contracting agency and a contractor does not create an unfair competitive advantage unless the alleged advantage was created by an improper preference or unfair action by the procuring agency. *Alliant Techsystems, Inc.*, B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 5. Likewise, even if the T-PIMS RFP's specifications were based on Deloitte's PIMS Modernization deliverables, this fact alone does not confer an unfair competitive advantage to be addressed under the OCI rules, as evidenced by the exception for "industry representatives" that help agencies "prepare, refine, or coordinate specifications, provided this assistance is supervised and controlled" by the

government. FAR 9.505-2(a)(1)(ii); see *Lucent Techs. World Servs., Inc.*, B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 at 7 (declining to find that industry exception applies where the record does not show how the agency “played a joint role” or sufficiently exercised supervision and control over a contractor that prepared RFP specifications).

Lynchval maintains that Deloitte prepared specifications that the agency incorporated into the T-PIMS solicitation, was in a position to affect the solicitation, and, in fact, did so. Comments at 6. The protester contends that despite the agency’s revisions to Deloitte’s deliverables before incorporating them into the T-PIMS RFP, the relevant concern is whether a firm’s activities positioned it unfairly in the future competition. *Id.* at 18. We disagree that the agency’s efforts here were insufficient to avoid an unfair competition.

According to the agency, it drafted the specifications with support from a different contractor, not Deloitte. The contracting officer’s OCI determination documents how the agency played at least a “joint role” in developing the T-PIMS specifications and provided government supervision and control over the specifications. The PIMS Modernization solicitation itself informed offerors that the agency would provide guidance, review, oversight, and modification of any deliverables provided under the contract. The PRAD and BISD analysis of potential OCIs describes how PBGC independently revised the roadmap and future state requirements for the T-PIMS solicitation after Deloitte provided the deliverables under the prior contract. In addition, the contracting officer’s OCI determination describes how Deloitte and the agency worked together to develop the blueprint, and how agency representatives approved and accepted industry solutions from multiple sources, and not just those identified by Deloitte.

Finally, the record clearly shows how PBGC stakeholders, such as PRAD and BISD, maintained control and supervision over and worked with Deloitte during the performance of the PIMS Modernization contract. Lynchval has failed to allege the hard facts necessary to support a finding that the agency unreasonably concluded that Deloitte does not have a biased ground rules OCI. Accordingly, we deny this protest ground.

Unequal Access to Information OCI

Lynchval also argues that Deloitte has an unfair competitive advantage based on an unequal access to information OCI stemming from Deloitte’s performance of the PIMS Modernization contract. Protest at 12, 15-16. In support thereof, the protester asserts Deloitte worked closely with the agency on all aspects of the PIMS Modernization contract and “[i]t defies logic to conclude that Deloitte did not have access to nonpublic, competitively useful information.” *Id.* at 15. Lynchval argues that as part of Deloitte’s PIMS Modernization performance, Deloitte may have developed--or, at least, had access to--the IGCE for the T-PIMS solicitation. *Id.* at 15-16. The protester also contends the contracting officer unreasonably concluded that Deloitte did not have

access to nonpublic information that would provide it with a competitive advantage. *Id.* at 16.

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. FAR 9.505-4; *Tatitlek Techs., Inc.*, B-416711 et al., Nov. 28, 2018, 2018 CPD ¶ 410 at 4; *Cyberdata Techs., Inc.*, B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6. The concern regarding this category of OCI is that a firm may gain a competitive advantage based on its possession of proprietary information furnished by the government or source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. See FAR 9.505(b); *Alliant Techsystems, Inc.*, *supra*; *Phoenix Mgmt., Inc.*, B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 3 n.6.

Here, we find reasonable the agency's conclusion that Deloitte does not have an OCI due to unequal access to nonpublic information. The record reflects that in performing her OCI review, the contracting officer reasonably reviewed all pertinent information. As explained above, prior to issuing the T-PIMS, the agency considered the possibility of an unequal access to information OCI, and decided to include all of Deloitte's deliverables in the T-PIMS solicitation to ensure "all interested vendors equal access to all the information produced for this effort." AR, Tab 5, OCI Determination at 28. The PBGC determined that Deloitte did not develop the IGCE and that the agency had isolated Deloitte from any discussions about licenses, pricing, staffing, or user information. *Id.* at 3, 8, 15, 28. The OCI determination also documents that Deloitte submitted its deliverables by June 30, 2020, almost a year before the T-PIMS solicitation was released; Deloitte no longer performed work under the PIMS Modernization contract after submitting the deliverables; and PBGC independently revised the deliverables before including them in the solicitation. *Id.* at 11.

The record further demonstrates that the contracting officer considered Deloitte's mitigation plan and found reasonable the steps Deloitte proposed to mitigate, avoid, and neutralize any possible OCIs arising from its performance of the Modernization Contract. In particular, Deloitte isolated individuals who worked on the PIMS Modernization contract from the Deloitte team that prepared the T-PIMS proposal. *Id.* at 10. We find therefore that the contracting officer's judgment was reasonable.

In addition to demonstrating that the contracting officer reasonably investigated Deloitte's potential OCIs, the record fails to demonstrate that Deloitte received any nonpublic information, either directly or indirectly, from the agency. The record shows that Deloitte did not prepare the T-PIMS IGCE, and that Deloitte recused itself from all pricing discussions.

Moreover, the information that Deloitte allegedly obtained is not nonpublic competitively useful information; rather, it is essentially knowledge that Deloitte acquired from performing the PIMS Modernization contract. For example, Lynchval argues that under

the PIMS Modernization contract Deloitte was “embedded” with the agency and obtained detailed knowledge about the current status of the modeling systems, the agency’s preferences, and alternative options. Comments at 28-31.

It is well-settled, however, that while an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract, including performance as the incumbent contractor, the government is not required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See e.g., *Snell Enters., Inc., supra* at 7-8 (stating that an incumbent contractor’s acquired technical expertise and firsthand knowledge of the costs related to a requirement’s complexity are not generally considered to constitute unfair advantages the procuring agency must eliminate). The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. *Id.*

Here, Deloitte’s status with regard to the T-PIMS procurement is essentially that of an incumbent contractor. There is no basis to object to an offeror’s advantage unless it is created by an improper preference or other unfair action by the procuring agency. *Snell Enters., Inc., supra*. In our view, the record indicates that the agency structured the T-PIMS solicitation in such a way as to minimize Deloitte’s “incumbent advantage” by providing Deloitte’s deliverables as part of the solicitation, and there is no suggestion in the record that the agency’s actions were the result of any improper preference for Deloitte or were otherwise unfair.

In sum, we agree with the agency’s conclusions that Deloitte does not have, or has properly mitigated, any OCIs stemming from its work on the PIMS Modernization contract. The record on this matter contains comprehensive documentation with regard to the scope and substance of the contracting officer’s review, and that documentation supports the contracting officer’s judgments and determinations. GAO affords substantial deference to an agency’s findings and we will not substitute our judgment for the agency’s when the agency’s conclusions are reasonable. *Systems Made Simple, Inc., supra*. Lynchval has failed to present hard facts indicating the existence of impermissible conflicts of interest and Lynchval’s disagreement with the agency’s OCI findings and determination, without more, cannot displace the agency’s reasonable judgment that Deloitte does not have OCIs. We therefore find no basis on which to sustain this protest ground.

The protest is denied.

Edda Emmanuelli Perez
General Counsel