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Decision

Matter of: A Square Group, LLC

File: B-421792.2; B-421792.3

Date: June 13, 2024

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DIGEST

1. Protest is sustained where the agency failed to reasonably consider the strategy proposed by the awardee to mitigate an impaired objectivity organizational conflict of interest.
 2. Protest that the agency's evaluation of the awardee's technical quotation was unreasonable is sustained where the record shows that, to mitigate an organizational conflict of interest, the awardee materially altered its technical approach, and the evaluation contains no evidence that the agency considered the impact of the changed approach on contract performance.
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DECISION

A Square Group, LLC (ASG), a small business of Rockville, Maryland, protests the issuance of a task order to Cogent People Inc. (Cogent), a small business of Columbia, Maryland, under request for quotations (RFQ) No. 230314, issued by the Department of Health and Human Services, Center for Medicare and Medicaid Services (CMS) for health insurance marketplace and financial management operational analytics. The protester challenges the agency's consideration of an impaired objectivity organizational conflict of interest (OCI), numerous aspects of the agency's evaluation of Cogent's quotation, the best-suited vendor determination, and the best-value tradeoff decision.

We sustain the protest.

BACKGROUND

CMS is responsible for management and oversight of large portions of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 *et seq.*, and related legislation. Agency Report (AR), Tab 3b, Statement of Work (SOW) at 6. The RFQ sought a contractor to perform operational analytics (including data analysis, reporting, root cause analysis, and surveillance functions) related to the agency's operations under the Patient Protection and Affordable Care Act. Contracting Officer's Statement (COS) at 1. CMS issued the RFQ on February 15, 2023, as a small business set-aside, pursuant to Federal Acquisition Regulation (FAR) section 8.405-3, seeking quotations from holders of General Services Administration multiple award schedule contracts under special item numbers 54151S (information technology professional services) and 541611 (management and financial consulting, acquisition and grants management support, and business program and project management services).¹ AR, Tab 2a, RFQ Cover Letter at 1.

The RFQ contemplated the issuance of a time-and-materials task order (referred to here as the operational analytics (OA) task order) to the vendor whose quotation represented the best value to the agency, considering five factors, listed in descending order of importance: (1) technical understanding and approach; (2) corporate experience, personnel qualifications, and key personnel; (3) quality assurance plan/quality surveillance plan (QAP/QSP); (4) management and staffing plan; and (5) price.² AR, Tab 4b, RFQ attach. 2 at 14-15. The RFQ provided that the nonprice factors, when combined, were significantly more important than price, but "as the degree of technical equality increases between quotations, cost/price will become more important." *Id.* at 14. Relevant here, the RFQ stated: "Once the Government determines the Offeror that is the best-suited (i.e., the apparent successful Offeror), the Government reserves the right to communicate with only that Offeror to address any remaining issues, if necessary, and finalize a Task Order with that Offeror." *Id.*

CMS received seven quotations before the March 10, 2023 submission deadline, evaluated the quotations, conducted a best-suited vendor determination, and eliminated four quotations from further consideration. COS at 2. The agency conducted exchanges with the three remaining vendors, including Cogent and ASG. *Id.* at 4.

¹ CMS amended the RFQ four times. COS at 2. All citations of RFQ attachment 2, instructions and evaluation criteria, refer to the version issued with amendment 2, submitted as agency report Tab 4b.

² The RFQ included two additional factors, section 508 compliance and past performance, which were evaluated but not scored or rated. RFQ attach. 2 at 17. Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

When the technical evaluation panel (TEP) reviewed Cogent’s quotation, the agency identified a potential OCI concerning one of Cogent’s subcontractors and posed the following question: “[REDACTED] is currently performing validation of data and runs processes in the Marketplace, how does Team Cogent plan to ensure there is no conflict of interest (COI), as a subcontractor supporting this task order?”³ AR, Tab 8e, TEP Report at 83. Cogent responded by stating it would firewall [REDACTED] personnel from reviewing or validating payment data generated by [REDACTED] personnel under the FFE contract, and Cogent would provide strict oversight of the data validation process to ensure it was free from any conflict of interest. *Id.* at 83-84. CMS reviewed the response and determined that Cogent addressed the concern. *Id.* at 84.

The agency requested revised quotations from the three vendors remaining in the competition, evaluated the revised quotations, and issued the task order to ASG on June 27, 2023. COS at 4. Cogent filed a protest with our Office, challenging various aspects of the agency’s evaluation and award decision, including the agency’s conduct of exchanges. The agency elected to take corrective action by conducting exchanges with the best-suited vendors, reevaluating revised quotations, and making a new award decision. Based on the proposed actions, our Office dismissed the protest as academic. *Cogent People Inc.*, B-421792, Aug. 21, 2023 (unpublished decision).

Following the voluntary corrective action, the TEP reevaluated the revised quotations and recommended that CMS hold exchanges with Cogent and ASG as the best-suited vendors. COS at 4. CMS issued questions to both vendors, requested revised quotations (referred to here as the second revised quotations), and evaluated the second revised quotations as follows:

	ASG	Cogent
Technical Understanding and Approach	High Confidence	Some Confidence
Corporate Experience, Personnel Qualifications, Key Personnel	High Confidence	High Confidence
QAP/QSP	High Confidence	High Confidence
Management and Staffing Plan	High Confidence	High Confidence
508 Compliance	Evaluated	Evaluated
Past Performance	Evaluated	Evaluated
Proposed Price	\$37,285,259	\$30,648,173

³ [REDACTED] holds a contract to support the operation of the Federally Facilitated Exchange (FFE). Supp. COS at 2. The FFE is a health insurance exchange, the public-facing component of which is known as “Healthcare.gov.” The FFE is operated by CMS pursuant to the Patient Protection and Affordable Care Act, and it allows individuals and small-business employers to compare and shop for private health insurance options. AR, Tab 14b, FFE PWS at 7.

AR, Tab 8c, Best-Suited Vendor Determination at 2.⁴ The contracting officer reviewed the TEP's findings and ratings and adopted them. *Id.* at 3. The contracting officer wrote: "Both offerors received confidence ratings of High for [three of the nonprice factors] and were considered nearly equivalent in quality." *Id.* at 18. The contracting officer continued: "As detailed in the comparison above, the [contracting officer] found the quoters equally favorable under Factor B, Corporate Experience, Personnel Qualifications and Key Personnel, Factor C, Quality Assurance Plan / Quality Surveillance Plan, and Factor D, Management and Staffing Plan." *Id.* Because the contracting officer believed the quotations were essentially of equal merit under the nonprice factors, and ASG quoted a higher price, the contracting officer selected Cogent as the best-suited vendor and held additional exchanges with Cogent. *Id.*; see also COS at 6.

CMS requested a third revised quotation from Cogent. COS at 6-7. When the TEP evaluated Cogent's third revised quotation, the TEP determined that they had overlooked concerns under the QAP/QSP factor that had been present in Cogent's second revised quotation. AR, Tab 8e, TEP Report at 69. Specifically, for several tasks, the TEP found Cogent's responses assumed a level of understanding that would not be present in the base year, and a higher level of CMS oversight would be needed for Cogent to successfully perform quality assurance.⁵ *Id.* at 69-70. The TEP assessed a weakness and changed the rating assigned to Cogent's quotation under the QAP/QSP factor from a rating of high confidence to some confidence. *Id.*

After evaluating Cogent's third revised quotation, CMS sent Cogent a written exchange letter and requested a fourth revised quotation. COS at 4. The TEP reviewed the fourth revised quotation and recommended that the task order be issued to Cogent. *Id.* at 4-5. The contracting officer reviewed the strengths and weaknesses identified in Cogent's quotation under each of the factors,⁶ and compared the ratings assigned to Cogent's

⁴ The TEP defined a rating of high confidence as "The Government has *high confidence* that the offeror understands the requirement, proposes a sound approach, and will be successful in performing the contract *with little or no* Government intervention." AR, Tab 8e, TEP Report at 4. The agency defined a rating of some confidence as "The Government has *some confidence* that the offeror understands the requirement, proposes a sound approach, and will be successful in performing the contract with *some* Government intervention." *Id.*

⁵ For example, the TEP wrote: "Their response to [enrollment system analytics and reporting] also assumes a level of knowledge that has historically taken 1-2 years of daily involvement before CMS oversight is only minimally needed. The TEP was however comfortable with the elements of the QA plan, understanding a higher level of oversight is necessary." AR, Tab 8e, TEP Report at 70.

⁶ The contracting officer discussed the weakness assessed to Cogent's quotation under the QAP/QSP factor due Cogent's limited understanding and the resulting need for additional oversight. AR, Tab 8f, Award Decision at 58. The contracting officer

(continued...)

quotation to those assigned to ASG’s quotation, which was the next best rated quotation, as follows:

	ASG	Cogent
Technical Understanding and Approach	High Confidence	Some Confidence
Corporate Experience, Personnel Qualifications, Key Personnel	High Confidence	High Confidence
Quality Assurance Plan / Quality Surveillance Plan	High Confidence	Some Confidence
Management and Staffing Plan	High Confidence	High Confidence
Proposed Price	\$37,285,259	\$30,648,172

AR, Tab 8f, Award Decision at 61. The contracting officer then discussed the evaluation findings for each quotation. The contracting officer acknowledged the weaknesses identified in Cogent’s quotation under the nonprice factors and stated:

Although I find that ASG provides slight benefits under [the technical understanding and approach factor] and [the QAP/QSP factor], mainly related to their incumbent knowledge, any benefits associated are minor as compared to Cogent’s quote]. Due to the increasingly equal merits under the non-price factors, price becomes more important to the best value decision. Here, Cogent’s quote offers a \$6,637,086 cost savings as compared to ASG’s quote. Due to Cogent’s substantially lower price and the similar benefits offered in Cogent’s quote as compared to ASG’s, I have determined that Cogent’s quote is overall the highest rated and provides the Government with the best value.

Id. at 63.

On February 26, 2024, CMS notified ASG that the task order had been issued to Cogent. AR, Tab 6j, Notice of Award. After receiving a brief explanation of award, ASG filed this protest with our Office.

contrasted the weakness with the enhancements and improvements that Cogent proposed under the technical understanding and approach factor and concluded that Cogent had sufficient tools, capabilities, and experience to ensure acceptable performance. *Id.* at 59-60.

DISCUSSION

ASG challenges various aspects of the conduct of the procurement.⁷ As set forth below, we first sustain the protest on the basis that CMS unreasonably concluded that Cogent's OCI mitigation strategy would avoid an impaired objectivity OCI. Second, we sustain the protest on the basis that the agency failed to reasonably consider the impact of Cogent's OCI mitigation strategy on its technical approach. We have reviewed all of the protester's other arguments and find no additional basis on which to sustain the protest.⁸

Impaired Objectivity OCI

As noted above, CMS identified a potential OCI because [REDACTED] supports the FFE under a separate contract, and the OA task order's SOW requires the contractor to reconcile and validate FFE enrollment and payment data. AR, Tab 8e, TEP Report at 83; SOW at 22; AR, Tab 21, OCI Memo at 6. The agency explains this task as follows:

⁷ Initially, ASG challenged the agency's evaluation of Cogent's quotation under all of the nonprice factors, asserting that because Cogent lacks experience performing the services sought under the RFQ, its quotation should have received ratings of low confidence under all of the nonprice factors. Protest at 25. The protester subsequently withdrew these arguments. Comments & Supp. Protest at 16 n.3.

⁸ ASG protests multiple aspects of the procurement, including the best-suited vendor determination, the agency's price evaluation, CMS's evaluation of Cogent's technical quotation, the conduct of discussions, the scope of the corrective action, and the best-value tradeoff decision. While we discuss the allegations that provide a basis to sustain the protest, we do not discuss every issue that we found to have no merit. As one example, the protester complains that CMS's evaluation of Cogent's quote under the corporate experience, personnel qualifications, and key personnel factor was unreasonable because Cogent's quotation did not include all of the corporate experience information required by the RFQ. Comments & Supp. Protest at 17. CMS responds that the "requirements" the protester cites are RFQ instructions, and complying with the instructions was not a material requirement. Supp. MOL at 4. The agency also states that Cogent's quotation contained sufficient information to assess the firm's corporate experience. *Id.* at 3-4. We deny this allegation. For one, the protester does not identify any language in the RFQ that required the rejection of a quotation for failing to strictly comply with the RFQ instructions. *DynCorp Int'l, LLC*, B-419100; B-419100.2, Dec. 16, 2020, 2021 CPD ¶ 7 at 11-12. Additionally, the TEP found there was sufficient information in the quotation to evaluate Cogent's corporate experience. Supp. COS at 1; Supp. MOL at 3-4. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *DynCorp, supra* at 7.

The OA contractor performs validation of enrollment and payment data using logic developed independently. This independent validation provides CMS confidence that the enrollment data supporting the monthly payment processing are correct. It is imperative that these determinations remain independent so that we prevent as best as possible any flaw in these calculations occurring in both sets of calculations.

AR, Tab 21, OCI Memo at 6. When the agency reviewed Cogent's quotation, the TEP identified a potential OCI because [REDACTED]--the holder of the FFE contract--was proposed as a subcontractor. AR, Tab 8e, TEP Report at 83. The concern being that as a subcontractor on the contract, [REDACTED] would be responsible for validating the enrollment and payment data it produced under its FFE contract. In response, Cogent stated it would "firewall [REDACTED] personnel from participation in reviewing and/or validating payments data generated by [REDACTED] personnel on the FFE contract. Only personnel from Cogent People or its other subcontractors will perform validation of [REDACTED]-generated payment data and reports on the OA contract." *Id.* Cogent added that it would "provide strict oversight of the payments data validation process"--including "continuous monitoring of all data validation activities"--and it would relocate "resources assigned to payments data validating as necessary and appropriate." *Id.* at 84. The TEP found that Cogent adequately addressed the OCI concern. *Id.*

After ASG challenged the agency's review of the OCI, the contracting officer prepared a memorandum discussing the nature of the OCI and the agency's review of Cogent's proposed mitigation approach.⁹ AR, Tab 21, OCI Memo. In the memorandum, the contracting officer wrote that she believed Cogent effectively mitigated the impaired objectivity OCI by firewalling [REDACTED] personnel from validating FFE payment data. *Id.* at 6. The contracting officer stated that she understood the firewall "as inclusive of all contributing data that is used to derive payment data including final monthly payment amounts . . . and any enrollment data arising from the FFE contract." *Id.* at 6-7. The contracting officer noted that Cogent said it would provide "continuous monitoring of all data validation activities" to confirm no OCI exists. *Id.* at 7.

The contracting officer also wrote that she rereviewed Cogent's quotation and verified that Cogent's proposed business analyst lead responsible for the validation of payment and External Data Gathering Environment (EDGE) data was a Cogent employee. AR, Tab 21, OCI Memo at 7. She stated: "This is significant to ensure that the data

⁹ Our Office will consider a contracting officer's assessment of OCIs that was made after a protest was filed. *Science Applications Int'l Corp.*, B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 9. The contracting officer first prepared a memorandum dated April 22, 2024. AR, Tab 9, First OCI Memo. Subsequently, our Office held a conference call with the parties and asked the agency to clarify the types of FFE data reviewed under the OA task order. Electronic Protest Docketing System No. 44. The contracting officer then prepared a second memorandum, dated May 16, 2024, to offer additional information regarding the contracting officer's analysis of the OCI. 2nd Supp. COS at 2.

validation task is headed by a [business analyst] Lead that has no conflict. This confirms what Cogent identified in their mitigation that [REDACTED] is not involved in the task that will perform the data validation.” *Id.* The contracting officer, however, did not address the fact that Cogent’s other proposed business analyst lead--the individual responsible for enrollment validation--was an [REDACTED] employee. See AR, Tab 7a, Cogent Technical Quotation at 50, 62.

ASG argues that CMS failed to meaningfully review the impaired objectivity OCI.¹⁰ Supp. Comments at 13. The protester also asserts that CMS did not recognize that Cogent’s mitigation approach is logistically unworkable because it is inconsistent with Cogent’s proposed approach to task order performance. *Id.* We address each argument below.

CMS’s Analysis of the OCI and Cogent’s Mitigation Strategy

The FAR requires that contracting officials avoid, neutralize, or mitigate significant potential conflicts of interest 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 categorized into three groups: (1) impaired objectivity; (2) biased ground rules; and (3) unequal access to information. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an impaired objectivity OCI exists where a firm’s work under one government contract could entail evaluation of itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR 9.505-3; *ICI*

¹⁰ ASG also alleges that Cogent has an impaired objectivity OCI because [REDACTED] recently acquired [REDACTED], and that firm holds a contract under which it reports insurance enrollment data that will be validated under the OA task order. Comments & Supp. Protest at 26. However, as the agency notes, the acquisition agreement was not announced until April 15, 2024--after the task order had been issued--and there is no evidence that CMS was aware of the acquisition prior to task order issuance. An agency’s obligation to consider the effects of a corporate transaction--including any potential OCIs--arises only when the agency becomes aware of an imminent and essentially certain corporate transaction prior to award. *WHR Grp., Inc.*, B-420776, B-420776.2, August 30, 2022, 2022 CPD ¶ 230 at 6. An agency’s lack of knowledge of a proposed corporate transaction is generally not unreasonable, and an agency generally has no affirmative obligation to discover and consider such information. *Id.* Here, because CMS was unaware of the acquisition at the time of award, we find no obligation on the agency’s part to have considered the effects of [REDACTED] acquisition of [REDACTED], including any potential OCIs, prior to award. However, because we are sustaining the protest on other bases and recommending that the agency reconsider its award decision, and CMS is now aware of the acquisition, CMS should consider the allegation when making a new award decision.

Servs. Corp., B-418255.5, B-418255.6, Oct. 13, 2021, 2021 CPD ¶ 342 at 17; *Strategic Mgmt. Sols., LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, 2019 CPD ¶ 426 at 5.

In reviewing protests that challenge an agency's OCI determinations, our Office reviews the reasonableness of the agency'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. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Id.*

Here, there is no dispute that [REDACTED] performance as a subcontractor under the OA task order gives rise to an impaired objectivity OCI because the SOW requires the OA contractor to validate data generated under [REDACTED] FFE contract.¹¹ AR, Tab 21, OCI Memo at 5; Comments & Supp. Protest at 16. Instead, the dispute concerns the adequacy of the proposed mitigation of the OCI.

The protester contends that CMS's analysis of the OCI and Cogent's mitigation approach was inadequate. Supp. Comments at 15. In support of this position, ASG asserts that Cogent proposed to firewall [REDACTED] from validating payments data--but not all FFE data prepared by [REDACTED]--rendering Cogent's proposed mitigation incomplete, at best. Protester Supp. Briefing at 3-4.

CMS responds that the contracting officer reasonably concluded that the OCI was properly mitigated. Supp. MOL at 8. The agency asserts that the terms "payments

¹¹ In its final submission to our Office, the intervenor, for the first time, suggests that [REDACTED] performance as a subcontractor would not give rise to an OCI because the data validation tasks do not involve subjective judgments and are regimented by defined business rules. Intervenor Supp. Briefing at 2 n.1. Cogent characterizes the validation work as "monitoring and administrative functions" that do not create an OCI risk. *Id.* (citing *Deva & Assocs., PC*, B-415508.11, June 21, 2019, 2019 CPD ¶ 230 at 10-11). We find the intervenor's argument unavailing. For one, in *Deva & Associates*, our Office found the contracting officer reasonably found there was no significant OCI risk because federal employees were heavily involved in the review process. There is no evidence of similar agency involvement here. The only evidence the intervenor offers to support its assertion that validation of the FFE data does not involve any subjective judgments is a cursory self-serving statement. At the same time, CMS concedes that [REDACTED] performance as a subcontractor creates an apparent OCI. AR, Tab 21, OCI Memo at 5. If [REDACTED] were to validate FFE data under the task order, it would be in a position to make judgments that could be directly influenced by its self-interest. The situation is a quintessential example of an impaired objectivity OCI.

data” and “enrollment data” are often used interchangeably.¹² Agency Supp. Briefing at 1; 2nd Supp. COS at 1. Based on this, CMS claims [REDACTED] will be firewalled from reviewing or validating all FFE data, and the impaired objectivity OCI was therefore mitigated.

We find the contracting officer’s position unreasonable and not supported by the record.¹³ As noted above, when Cogent explained its mitigation approach, it specifically stated that [REDACTED] would be firewalled from reviewing or validating *payments* data. AR, Tab 8e, TEP Report at 83-84. Cogent never stated it would firewall [REDACTED] from validating enrollment data or FFE data generally.¹⁴

The agency’s position that payments data and enrollment data are interchangeable is not supported by the SOW, which does not treat the terms as equivalent or interchangeable. Task B, Enrollment Reconciliation, Analytics, and Reports, requires

¹² The contracting officer states that payment data consists of payment calculations and payment amounts, and enrollment data consist of reconciliation and determinations concerning the accuracy of policies. 2nd Supp. COS at 1. She explains: “Given this relationship between enrollment data and payment data, these terms are often used interchangeably as one cannot have accurate payment data without first ensuring enrollment information that issuers hold matches exactly the enrollment information that CMS holds for each issuer.” *Id.*

¹³ Other aspects of the agency’s response to the protest suggest that the contracting officer misunderstands the nature of an impaired objectivity OCI and appropriate ways to mitigate it. For example, the contracting officer opines that because [REDACTED] employs approximately 13,000 employees, and only a small portion are assigned to the FFE contract and are involved with enrollment and payment calculations, Cogent could use [REDACTED] personnel who are not involved with the FFE contract to support OA task order performance. Supp. COS at 3. As our prior decisions have explained, an impaired objectivity OCI exists when a contractor cannot perform its obligations in an objective and unbiased manner because of countervailing economic or business interests. See, e.g., *Guidehouse LLP*, B-419848.3 *et al.*, June 6, 2022, 2022 CPD ¶ 197 at 10. The conflict of interest is not limited to employees of the contract that work on a given contract--it applies to the company as a whole.

¹⁴ Additionally, the contracting officer reasoned that the firewall would apply to all data because Cogent’s proposed oversight would entail continuous monitoring of all data validation activities to confirm that no perceived, actual, or potential conflicts arose. AR, Tab 21, OCI Memo at 7. The contracting officer failed to recognize that Cogent repeatedly referred to firewalling [REDACTED] from validating payment data--and never spoke to firewalling [REDACTED] from validating enrollment data. Moreover, the contracting officer understanding was at odds with Cogent’s technical approach, which assigned [REDACTED] personnel to oversee the validation of enrollment data. See AR, Tab 7a, Cogent Technical Quotation at 50, 62. Because the contracting officer’s interpretation disregards the entirety of Cogent’s response and its technical approach, and instead focuses on one sentence in isolation, it is not reasonable.

the contractor to support the agency's understanding of enrollment operational functions, and the SOW defines "enrollment functions" as "the set of transactions between an enrollee, Marketplace, and issuer that result in an accurate record of the enrollee's status in a given health insurance plan; as well as the data stored as a result of these transactions, and any necessary reconciliation thereof." SOW at 22. As such, enrollment data encompasses more than payment data. Within the SOW task area concerning enrollment data reconciliation, there are multiple tasks involving the reconciliation, analysis, and reporting of enrollment data. *Id.* at 22-27. Within this SOW section, there is a single reference to payment data.¹⁵ Task C, Payment System Analytics and Reporting, includes specific requirements for validating payment data. *Id.* at 27-31. That section of the SOW states that when instructed, the contractor should use multiple sources of data to verify payment data and identifies enrollment data as an example of an additional data set. *Id.* at 27. Based on the foregoing, we find the SOW distinguishes between payment data and enrollment data, and the SOW does not support CMS's argument that payment data and enrollment data are interchangeable.

Furthermore, the agency's position regarding the interchangeability of payment data and enrollment data is inconsistent with other aspects of the record. For example, Cogent proposed to have two business analyst leads: a lead responsible for validation of payment and EDGE data (a Cogent employee) and a lead responsible for validation of enrollment data (an [REDACTED] employee). AR, Tab 7a, Cogent Technical Quotation at 50-51. Cogent also proposed different approaches to enrollment reconciliation, analytics, and reporting (*id.* at 12-17) and payment system analytics and reporting (*id.* at 17-22). Cogent treated the two types of data differently, which further demonstrates that enrollment data and payment data were not one and the same.¹⁶

In sum, we reject CMS's assertion that payment data and enrollment data are interchangeable terms, and by committing to firewall [REDACTED] from validating payment data, Cogent was also committing to firewall [REDACTED] from validating enrollment data. Accordingly, we conclude that CMS's OCI analysis relies on the unreasonable understanding that Cogent in fact proposed to firewall [REDACTED] validating FFE enrollment data.

¹⁵ The SOW states that the OA contractor may collaborate with other stakeholders to develop a more streamlined enrollment reconciliation process, and that collaboration may include "Continuing to review analytics and improve reconciliation processes to ensure more accurate updates and payments." SOW at 26-27.

¹⁶ We also note that the TEP separately evaluated the vendors' approaches to the enrollment validation tasks (task B) and the payment data validation tasks (task C). See AR, Tab 8e, TEP Report at 9 ("Cogent's quote also exhibited a thorough comprehension of the payment process procedures and analytics (Task C) and showcased prior experience improving the process.") and 23 ("the TEP believes that significant intervention will be needed by the Government to ensure that all activities of Task B can be successfully executed.").

CMS does not dispute that [REDACTED] validation of any data produced under the FFE contract would result in an impaired objectivity OCI. Agency Supp. Briefing at 2; AR, Tab 21, OCI Memo at 6. As such, because Cogent's proposed mitigation approach did not address the entirety of the scope of work giving rise to the OCI (*i.e.*, all of the FFE data), it was unreasonable for CMS to conclude that Cogent mitigated the impaired objectivity OCI. We therefore sustain the protest.

Implications of the Mitigation Approach

We turn to the protester's allegation that CMS failed to consider whether Cogent's mitigation approach, albeit limited as discussed above, is logically workable, given Cogent's technical approach. Comments & Supp. Protest at 1325. In other words, we address whether the agency considered the impact of the OCI mitigation measures on Cogent's technical approach.

Agencies are required to consider the effect that a firm's OCI mitigation measures have on its technical approach, and whether such OCI mitigation measures either directly contradict a firm's proposed technical approach, or otherwise call into question the agency's original evaluation conclusions concerning the merit of a firm's proposed approach. *Deloitte Consulting, LLP*, B-422094, B-422094.2, Jan. 18, 2024, 2024 CPD ¶ 36 at 5-6; *ARES Tech. Servs. Corp.*, B-415081.2, B-415081.3, May 8, 2018, 2018 CPD ¶ 153 at 6.

As explained above, Cogent's proposed plan to mitigate the OCI was to firewall [REDACTED] personnel from validating payment data. AR, Tab 8e, TEP Report at 83-84. However, in contrast to this arrangement, Cogent's quotation shows that several [REDACTED] personnel are responsible for supporting the payment validation tasks. The organizational chart in Cogent's quotation provides that three senior data analysts--all [REDACTED] employees--will support the FFE data validation tasks. AR, Tab 7a, Cogent Technical Quotation at 50, 69. The quotation also establishes that a business analyst who is an [REDACTED] employee will support payment validation work. *Id.* at 69. Each of these employees is proposed to provide several hundred labor hours in support of the payment validation tasks in each period of performance. *Id.* at 69-73.

Additionally, we note that although Cogent stated it would firewall [REDACTED] personnel from validating payment data in the first revised quotation, and subsequently submitted three revised quotations, none of the revised quotations reflected this firewall. See AR, Tab 7d, Cogent 1st Revised Quotation; AR, Tab 7g, Cogent 2nd Revised Quotation; AR, Tab 7j, Cogent 3rd Revised Quotation; AR, Tab 7m, Cogent 4th Revised Quotation. Instead, Cogent continues to state that [REDACTED] would be "a direct participant in the core functions of the OA program" (AR, Tab 7j, Cogent 3rd Revised Quotation at 14), which Cogent defined as "Enrollment Reconciliation, Payment Validation, and Premium Stabilization Reporting." AR, Tab 7a, Cogent Technical Quotation at 1. There is no evidence in the record that Cogent ever updated its staffing approach to remove [REDACTED] personnel from supporting the conflicted tasks.

We sustain this aspect of the protest. First, there is nothing in the contemporaneous record to show that the agency evaluated the impact of Cogent's mitigation strategy on its technical approach. Although Cogent informed the agency of its intention to firewall [REDACTED] from payment validation, there is nothing in the record to show that the TEP meaningfully considered the impact of Cogent's mitigation strategy on its technical approach. See AR, Tab 8e, TEP Report; AR, Tab 8f, Award Decision.

Although the contracting officer makes various assertions and claims in response to ASG's allegations, the statements respond to the allegation that Cogent's mitigation strategy is inconsistent with the technical approach--as opposed to whether the TEP considered the impact of the mitigation strategy. For example, the contracting officer states that if certain [REDACTED] personnel are firewalled from a conflicted task, individuals in other labor categories could perform the work.¹⁷ Supp. COS at 4. These assertions address whether firewalling [REDACTED] is potentially feasible. There is no documentation in the record, however, showing that the agency considered the impact of Cogent's mitigation strategy on Cogent's actual technical approach as represented in Cogent's actual quotation. Under these circumstances, we sustain this aspect of the protest.

CONCLUSION AND RECOMMENDATION

We sustain the protest because the contracting officer unreasonably concluded that Cogent effectively mitigated the apparent OCI associated with [REDACTED] performance as a subcontractor under the OA task order, and CMS unreasonably failed to consider the impact of Cogent's proposed mitigation strategy on the firm's technical approach. We recommend that the agency conduct a new OCI evaluation that reassesses the potential for conflicts arising from [REDACTED] obligations under the FFE contract and its proposed scope of work under the OA task order, including that firm's OCI mitigation plan, and document its findings. In carrying out the corrective action, the agency may need to solicit revised quotations.

In addition, we recommend that ASG be reimbursed its costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester

¹⁷ Additionally, many of the contracting officer's statements pertain to enrollment data validation, because, as discussed above, the contracting officer erroneously assumed that [REDACTED] would be firewalled from validating enrollment data--as opposed to only payment data. Supp. COS at 3-4. For example, the contracting officer states that [REDACTED] personnel could perform tasks "that surround enrollment reconciliation broadly" but do not involve enrollment reconciliation processing. *Id.* at 3.

should submit its certified claim, detailing the costs incurred, directly to the contracting officer within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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