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# Decision

**Matter of:** Fisher BioServices, Inc.

**File:** B-413982.4; B-413982.6

**Date:** November 29, 2017

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## DIGEST

1. Protest challenging the agency's evaluation under the technical evaluation factors is denied where the evaluation was reasonable and in accordance with the solicitation's evaluation criteria.
  2. Protest alleging that the awardee had an "unequal access to information" organizational conflict of interest through receipt of proprietary information regarding the protester's methodology for storing samples is denied where the protester fails to present sufficient facts indicating the existence of a conflict of interest, and where the contracting officer reasonably found no conflict existed.
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## DECISION

Fisher BioServices, Inc., of Rockville, Maryland, protests the award of a contract to Precision Bioservices, Inc., of Frederick, Maryland, under request for proposals (RFP) No. NIH-NIDDK-KUH-ASB-2016-19, issued by the Department of Health and Human Services, National Institute of Child Health and Human Development, for the National Institute of Diabetes and Digestive and Kidney Disease (NIDDK) biosample and genetics repositories. Fisher challenges the agency's evaluation of proposals and source selection decision.

We deny the protest.

## BACKGROUND

The agency issued the RFP on May 9, 2016, under Federal Acquisition Regulation (FAR) part 15, for the award of a fixed-price contract with a base year and four 1-year options. The RFP sought proposals for two components of the NIDDK's central repositories: the biosample repository and the genetics repository.<sup>1</sup> RFP, amend. 5, at 10. The biosample repository gathers, stores, and distributes biological samples collected by large clinical studies funded by NIDDK. Id. at 9. The current collection in the biosample repository is 5.7 million individual samples, and Fisher has been the incumbent contractor since the repository's inception in 2003. Id. The genetics repository receives and processes blood samples to allow genetic analyses, create immortalized cell lines, and prepare DNA from whole blood, cryopreserved cells and cell lines. Id. at 10. The genetics repository also supports the continued storage, maintenance, quality control, and distribution of DNA and other resources to study diseases under the mandate of NIDDK. Id. The current collection in this repository is more than 150,000 individual samples, and Rutgers University has been the contractor since the repository's inception. The RFP here sought one contractor to support both repositories and provide the associated services. Id.

The RFP provided that award would be made to the offeror whose proposal represented the best value to the government considering price, past performance, and four technical evaluation factors (listed in descending order of importance): (1) management plans and procedures; (2) understanding the requirement and technical approach; (3) personnel; and (4) facilities. Id. at 85-88. The RFP advised that all evaluation factors (past performance and the four technical evaluation factors), when combined, were significantly more important than price. Id. at 85.

Each technical evaluation factor was composed of multiple subfactors. For example, under the first technical evaluation factor, management plans and procedures, offerors were to be evaluated under four subfactors. Id. at 86. As relevant to this decision, the first subfactor was:

Subfactor 1: Management plan for integrating biosample and genetics repository services into a single repository, eliminating redundant services as appropriate and maximizing efficiency.

Id. at 86. Under the third technical evaluation factor, personnel, the RFP provided that the agency would evaluate the experience, training, and appropriateness of the proposed project director (subfactor 1), project manager/repository supervisor

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<sup>1</sup> The third component of the central repositories, the NIDDK data repository, is not part of this requirement. The current incumbent for the data repository is Information Management Services, Inc. (IMS).

(subfactor 2), information systems manager (subfactor 3), and project manager/repository supervisor-cell culture services (subfactor 4). Id. at 86-87.

The RFP stated that proposals would be assigned adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable under the technical evaluation factors and subfactors.<sup>2</sup> Id. at 85. With regard to past performance, the government would evaluate the quality of the offeror's past performance based on references and other relevant past performance information obtained from other sources. Id. at 88. The RFP provided that past performance would not be scored, "but the Government's conclusions about overall quality of the offeror's past performance will be influential in determining the merits of the offeror's proposal and in selecting the offeror." Id.

The agency received four proposals, including Fisher's and Precision's, by the June 9, 2016 closing date. After evaluating proposals, the agency made award to Precision on September 28. On October 11, Fisher protested the award decision to our Office, and, on October 14, Rutgers filed a protest. In response, the agency notified our Office of its intent to take corrective action. Specifically, the agency would terminate the contract with Precision, revise the RFP, request and evaluate revised proposals, and make a new source selection decision. Fisher BioServices, Inc., B-413982, Nov. 15, 2016 (unpublished decision). Rutgers subsequently withdrew its protest, and, on November 15, our Office dismissed Fisher's protest as academic. Id.

After conducting the corrective action, the agency reaffirmed its award to Precision on March 6, 2017. Fisher again protested the award, and the agency again notified our Office of its intent to take corrective action. Specifically, the agency stated that it would revise the RFP, request revised proposals, convene a new technical evaluation/review panel, conduct a new evaluation, and make a new source selection decision. Fisher BioServices, Inc., B-413982.3, Apr. 13, 2017 (unpublished decision).

In accordance with its corrective action, the agency amended the solicitation and sought new proposals on April 19. The agency received three proposals, including Fisher's and Precision's, by the May 2, 2017 closing date. The agency's new technical evaluation panel (TEP) conducted an evaluation of the offerors' proposals, and rated Fisher's and Precision's proposals as follows<sup>3</sup>:

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<sup>2</sup> As relevant to this protest, an outstanding rating indicated a proposal that significantly exceeds most or all the solicitation requirements for this factor or subfactor; exceeds a "good" rating; and has an extremely low risk of unsuccessful performance. Id. at 85. A good rating indicated a proposal that fully meets all solicitation requirements and exceeds many of the requirements for this factor or overall; or exceeds a small number of minimum requirements but to a significant degree or in a valuable way for this factor or subfactor or overall; exceeds an "acceptable" rating; and has a very low risk of unsuccessful performance. Id.

<sup>3</sup> Consistent with the RFP, the agency did not score past performance. Rather, the agency's evaluation consisted of a narrative describing the offerors' past performance. (continued...)

	Precision	Fisher
<b>Technical (Overall)</b>	<b>Outstanding</b>	<b>Good</b>
Management Plan and Procedures	Outstanding	Good
Understanding the Requirement and Technical Approach	Outstanding	Good
Personnel	Outstanding	Good
Facilities	Outstanding	Outstanding
<b>Proposed Price</b>	<b>\$19,380,096</b>	<b>\$17,466,739</b>

AR, Tab 7a, Technical Evaluation Consensus Report (TECR), at 1-22, 54-77; AR, Tab 10a, Source Selection Decision Memorandum (SSDM), at 3.

The TEP’s ratings were supported by narrative, which detailed the evaluators’ findings for each evaluation factor and subfactor.<sup>4</sup> AR, Tab 7a, TECR, at 1-22, 54-77. With regard to Fisher’s overall rating of “good,” the agency noted that Fisher’s proposal contained no deficiencies, met all the requirements, had some weaknesses (including some significant weaknesses), exceeded a number of the solicitation’s requirements, and demonstrated very low risk. AR, Tab 7a, TECR, at 54. The agency found notable aspects of Fisher’s proposal to be (among other things) that a majority of the samples

(...continued)

Agency Report (AR), Tab 10a, Source Selection Decision Memorandum (SSDM), at 4-5.

<sup>4</sup> Under each subfactor, the agency identified strengths, significant strengths, weaknesses, significant weaknesses, and deficiencies. The TECR explained that significant strengths were outstanding or exceptional aspects of a proposal that have merit and exceed the specified performance or capability requirements in a way beneficial to the National Institutes of Health (NIH), and either will be included in the contract or are inherent in the process and greatly increase the likelihood of successful performance. Strengths were aspects of a proposal that increase the likelihood of successful performance. Weaknesses were flaws in a proposal that increase the risk of unsuccessful performance. Significant weaknesses were flaws in a proposal that appreciably increase the risk of unsuccessful performance. AR, Tab 7a, TECR, at 1-77.

are already at Fisher's Germantown, Maryland facility, where there is space available to integrate the genetics repository; that having the two repositories in one location, under one management group, would provide streamlined processes and maximize efficiency; that Fisher had "limitations regarding experience with managing a genetics repository and with the use of BSI [Biological Specimen Inventory];"<sup>5</sup> and that Fisher did not clearly demonstrate a plan for the timely transfer of samples and data migration, with the consequent integration of both repositories within the time frame required by the RFP. Id. at 54-55.

With regard to Fisher's evaluation under the management plan and procedures factor, the agency assigned a total of 15 strengths, 2 significant strengths, 6 weaknesses, and 1 significant weakness across the four subfactors.<sup>6</sup> Id. at 55-61. In summarizing its overall rating of good for this factor, the agency highlighted several notable points, including that Fisher's relationship with [DELETED] was considered a significant benefit; that the offeror's overall management plan "reflects limitations with BSI and STARLIMS";<sup>7</sup> that the offeror lacked a specific plan for the transfer/integration of the genetics repository within the time frame required; and that the agency had a "major concern regarding the status of the Germantown site incident Response Plan." Id. at 62.

Under the personnel factor, the agency assigned a total of 10 strengths and 2 weaknesses to Fisher's proposal across the four subfactors.<sup>8</sup> In summarizing its overall rating of good for the personnel factor, the agency highlighted several notable points, including that Fisher's proposed personnel met (and in a number of cases exceeded) the solicitation requirements; that Fisher had no significant strengths; that Fisher had weaknesses identified with one of its personnel; and that the firm's personnel were "strong and overall demonstrate very low performance risk." Id. 74.

With regard to Precision's evaluation under the management plan and procedures technical evaluation factor, the agency assigned a total of 15 strengths, 4 significant strengths, and 1 weakness to Precision's proposal across the four subfactors. Id. at 9-15. In summarizing its overall rating of outstanding for this technical evaluation factor, the agency highlighted several notable points, including that Precision proposed

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<sup>5</sup> BSI is inventory software developed by IMS.

<sup>6</sup> The agency did not specifically enumerate the offerors' strengths, significant strengths, weaknesses, and significant weaknesses under any of the factors or subfactors. Rather, the agency listed them as bullet points, many of which had extensive narrative.

<sup>7</sup> STARLIMS is the database management system used by Rutgers for the genetics repository.

<sup>8</sup> Under the understanding the requirement and technical approach factor, the agency assigned a total of 11 strengths, 7 weaknesses, and 1 significant weakness to Fisher's proposal across the three subfactors.

to have one repository, at one location, with one management group and proposed to streamline several specific processes at this location; that the offeror has the physical space, infrastructure, and controls in place to receive both repositories; and that Precision's proposal was "[o]verall, . . . very well organized, easy to read, messages well-crafted and clear," which showed "vast experience and understanding of the work to be done." Id. at 15-16.

Under the personnel technical evaluation factor, the agency assigned to Precision's proposal a total of 17 strengths, 2 significant strengths, and no weaknesses or significant weaknesses across the four subfactors.<sup>9</sup> In summarizing its overall rating of outstanding for this factor, the agency highlighted several notable points, including a finding that Precision's proposed personnel were "excellent," and exceeded many of the solicitation requirements, with an extremely low risk of unsuccessful performance. Id. 26. The agency further noted that the project director and project manager for biosample and genetics repositories "have outstanding qualifications," and the information systems manager, "would be a tremendous asset" given his "outstanding qualifications and experience with BSI . . . ." Id. at 26.

The contracting officer, who was also the source selection authority (SSA), reviewed the evaluators' results and conducted a comparative assessment of the proposals. AR, Tab 10a, SSDM, at 1-21. The SSA concurred with the TEP's findings in general, and conducted an independent best-value tradeoff analysis. The SSA ultimately concluded that the advantages associated with Precision's proposal warranted paying "a price premium of \$1,913,357, in total, over 5 years."<sup>10</sup> Id. at 20.

The agency made award to Precision, and this protest followed.

## DISCUSSION

The protester challenges multiple aspects of the agency's evaluation and award decision. The protester argues that the agency improperly evaluated its proposal and the awardee's proposal under the technical evaluation factors, challenges the agency's best-value decision, and asserts that the agency failed to mitigate an organizational conflict of interest. Although we do not specifically address all of the protester's arguments, we have fully considered all of them and find that none provides a basis on which to sustain the protest.

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<sup>9</sup> Under the understanding the requirement and technical approach factor, the agency assigned a total of 9 strengths, 2 significant strengths, and no weaknesses or significant weaknesses to Precision's proposal across the three subfactors.

<sup>10</sup> The agency also acknowledged that, if either incumbent were not selected, then there would be certain additional costs associated with moving the repositories. The agency found that, despite these additional costs, Precision still represented the best value to the agency. Id. at 20-21 n.3.

## Technical Evaluation Factors

The protester challenges the weaknesses identified by the agency in its evaluation of Fisher's technical proposal; argues that the agency improperly failed to identify multiple weaknesses, and improperly identified multiple strengths, in the awardee's technical proposal; and alleges that the agency disparately evaluated the two firms' technical proposals.<sup>11</sup>

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's disagreement with an agency's judgment in evaluating the relative merit of competing proposals is insufficient to establish that the agency acted unreasonably. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing protests of an agency's evaluation and source selection decision, we will not reevaluate proposals; rather, we will review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria, and applicable procurement laws and regulations. Jacobs Tech., Inc., B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 6-7. Finally, where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences in the proposals. See Northrop Grumman Sys. Corp., B-406411, B-406411.2, May 25, 2012, 2012 CPD ¶ 164 at 8.

## Fisher's Technical Proposal

Fisher challenges each of the 15 weaknesses and 2 significant weaknesses the agency assigned to its technical proposal. Protest at 11-28. We address a representative example below.

Fisher contends that it was improper for the agency to assign it a weakness under the first subfactor of the management plan and procedures factor because Fisher does not currently use BSI for the NIDDK Biosample Repository. AR, Tab 7a, TECR at 56. Specifically, the agency found a weakness because "[a]lthough the Offeror indicates on pages 8 and 16 [of its proposal] that it has experience with BSI and utilizes it for other

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<sup>11</sup> The protester also challenges the agency's evaluation of the technical evaluation subfactors. Specifically, the protester asserts that the agency improperly failed to assign adjectival ratings to the subfactors, as required by the solicitation. While the protester is correct that the agency did not assign adjectival ratings to the subfactors, we find that this does not provide a basis to sustain the protest. Point scores and adjectival ratings are mere guides to decision-making and the failure to assign adjectival ratings for certain aspects of the evaluation here is inconsequential where the evaluation otherwise provides meaningful narrative regarding the technical merit of the proposals. See Tessada & Assocs., Inc., B-293942, July 15, 2004, 2004 CPD ¶ 170 at 7-8 n.6.

government and commercial projects, the Offeror is currently not using BSI for the NIDDK Biosample repository.” AR ,Tab 7a, TECR, at 56. Fisher asserts that the firm’s current failure to use BSI cannot be a weakness, when Fisher proposes “to migrate data to BSI as required by the solicitation.” Protest at 16. Fisher also points out that data migration errors are possible with every offeror, given that the successful offeror will have to migrate the data from Fisher’s current database to BSI, and thus the weakness should not have been assigned only to Fisher. Finally, Fisher argues that its proposal states that it will [DELETED], that it will use “a very experienced [DELETED] to manage the project,” and that, if additional BSI support is necessary, it will use [DELETED]. Protest at 16.

Here, we find the agency’s concern to be reasonable. As the agency explains, the concern was not that Fisher was currently using an inventory system other than BSI, but that Fisher proposed a team and a facility that lack experience in BSI, and will have to learn a new system while at the same time undertaking “a large scale data migration.” Agency Legal Memorandum, at 28. According to the agency, this weakness took into account the fact that the incumbent personnel on the contract are not familiar with the new system, and thus there is an increased risk in the migration of data. With regard to the protester’s contention that every offeror would also have the same risk, the agency explains, and we agree, that Precision’s proposal demonstrated significant experience with BSI, and thus presented less risk for data migration errors. While the protester disagrees--and points to the proposed steps above to demonstrate what it believes will be a successful data migration--we find nothing unreasonable with the agency’s conclusion that the incumbent personnel’s lack of experience is a weakness.

#### Precision Technical Proposal

Fisher also challenges the agency’s assignment of numerous strengths to Precision’s proposal. For example, Fisher contends that the agency improperly assigned a significant strength to Precision’s proposal under the first subfactor (biorepository management plan) of the management plan and procedures technical evaluation factor. In this regard, the agency found a significant strength for Precision because

[t]he Offeror provides insight into adoption of future advances in biorepository management while giving consideration to the use of [DELETED] storage . . . and [DELETED] for enhanced, speedy and accurate processing . . . This is an important aspect in the discussion provided in this proposal, as it demonstrates knowledge and interest in potential future enhancements to the NIDDK repositories and denotes anticipation of needs for a continuous improved model for biorepository management and procedures. . . .

AR, Tab 7a, TECR, at 9. Fisher argues that it was improper to assign a significant strength here because there is no evidence that Precision is “capable of using, or actually proposing utilization of, hypothetical advances in performing” this contract; that the latest technologies will be sufficiently developed or appropriate for this contract; that use of these technologies would be effective; that use of such technologies would not



materially increase risk of performance; or that Precision will pay for these technologies. Fisher further argues that this strength lacks a rational connection to the actual work proposed by Precision. Protester's Supp. Comments, at 34. Moreover, Fisher argues that its proposal, also "demonstrates a long history of technological awareness and innovation that is not acknowledged in the Agency's evaluation of Fisher's proposal." Id. at 35.

We find nothing unreasonable with the agency's evaluation. As an initial matter, while Fisher lists a variety of reasons as to why future advances in biorepository management might not come to pass under a contract awarded to Precision, we find nothing unreasonable with the agency assigning a significant strength to Precision's proposal for its knowledge and understanding of future technological improvements, and how those improvements may apply to the contract at issue here. Furthermore, Precision's proposal specifically explained how it has tested certain automation approaches, what it views as appropriate for the agency's repositories and why, and included a detailed plan for [DELETED] storage systems for use in the NIDDK repository in the future. AR, Tab 5a, Precision Proposal, at 30-31. In contrast, the agency explains, and we agree, that Fisher provided only a cursory discussion regarding storage systems and future automation possibilities. In this regard, the protester's proposal explained that "[g]iven the high number of samples that are currently in the NIDDK Biorepository, the Fisher BioServices team can explore possible [DELETED]." AR, Tab 4a, Fisher BioServices Proposal, at 37. While Fisher's proposal does suggest it will use [DELETED] that it has used in the past, Fisher's proposal does not indicate that it is considering or proposing to develop and use future technologies, in contrast to the specific plan laid out in Precision's proposal. Given the differences in the proposals, we find nothing unreasonable with the agency's evaluation.

Fisher also challenges the agency's assignment of another significant strength to Precision under the biorepository management plan subfactor of the management plan and procedures technical evaluation factor. In this area, the agency noted:

Particularly valuable aspects of the offeror's approach with regard to integration include:

- One team/one company all physically located in a single space, with a central laboratory residing between two wings of 66,000 sq. ft for biorepository use (p. 9)
- Physical space capabilities (access to 25 [sic] sq. ft. of continuous space), workflows, processes, and laboratory capabilities sufficient to handle expansion and combination of both Genetics and Biosample repositories in that single location (Frederick, Maryland) and under one informatics system. . . .

These features are expected to be extremely beneficial to NIH because both Genetics and Biosample repositories will be under one contract with a single management team, considerably reducing issues that may arise

with specimens, while facilitating solutions and making day-to-day interactions with NIH staff more efficient.

AR, Tab 7a, TECR, at 10. Fisher asserts that it too offered “a single integrated repository” and yet failed to receive a comparable significant strength. Fisher argues that it too offered one physical space, with space to handle the influx of samples from the genetics repository, and a single management team. Protester Supp. Comments, at 37-38.

While the protester correctly points out that the TEP does not list a separate significant strength for Fisher for its “integrated repository” in the TECR, we see no evidence that the SSA ignored Fisher’s proposed “single integrated repository” in the best-value tradeoff analysis. Rather, the record shows that the SSA was aware of Fisher’s attributes in this regard, and specifically considered them in her source selection. Specifically, the SSA stated in her selection memorandum, as part of her comparative assessment of Precision and Fisher, that Fisher had “notable positive points” for its “plan to integrate the genetics repository into the existing biosample repository,” that Fisher already had a majority of the samples at its Germantown, Maryland location, and that “there is also space available to integrate the stored samples from the NIDDK Genetics Repository.” The SSA further stated that “another important feature of Fisher’s approach is having the Biosample and Genetics repositories under one management group, which should provide streamlined processes and maximize efficiency, per the RFP.” AR, Tab 10a, SSDM, at 11. Given that the SSA was aware of these aspects of Fisher’s proposal, and specifically considered them in her selection decision, we find no reason to think that the TEP’s failure to list these aspects of Fisher’s proposal as a “significant strength” in the TECR prejudiced the protester. See Right Direction Tech. Solutions, LLC, B-414366.2, June 13, 2017, 2017 CPD ¶ 202 at 5 (As we have long noted, evaluation scores--whether they are numeric or adjectival ratings, or whether they involve the assignment of strengths--are merely guides to intelligent decision making.).

Fisher next challenges the agency’s evaluation of Precision’s proposal under the personnel evaluation factor. In this regard, the RFP required that “[t]he Project Director must specifically demonstrate extensive successful experience in directing a facility . . . [that] stores more than 400,000 biosamples, genetic samples, or cell lines.” RFP, amend. 5, at 87. The RFP also stated that the project director “should” have “5 or more years’ successful experience in . . . [d]irecting a facility that provides biosample archiving and genetics services to a large and diverse group of investigators.” Id. Fisher alleges that the awardee’s project director’s resume (provided as an attachment to the proposal) demonstrates that he meets neither of these requirements, and yet Precision’s proposal was neither found unacceptable nor assigned a weakness under this evaluation subfactor. We find nothing improper with the agency’s evaluation.

With regard to the requirement that the Project Director “must specifically demonstrate extensive successful experience in directing a facility . . . [that] stores more than 400,000 biosamples, genetic samples, or cell lines,” the agency found that Precision’s project director had overseen biorepositories averaging between 500,000 and 2 million

samples, and that he had directly managed a biorepository team that serviced a 4 million sample collection from 70 study collections. Id.; AR, Tab 10a, TERC, at 21. Even Fisher acknowledges that this individual has up to 3 years of experience directing facilities which, according to Precision's proposal, contain samples well in excess of the amount required by the solicitation. While Fisher may disagree as to whether this constitutes "extensive" experience, we find the agency reasonably concluded that such experience was sufficient to meet the solicitation requirement. Furthermore, given this, we find nothing improper about the agency's decision not to assign a weakness to Precision's project director for his experience.

With regard to the requirement that a project director "should" have "5 or more years' successful experience in . . . directing a facility that provides biosample archiving and genetics services to a large and diverse group of investigators," Precision's proposal specifically stated that the project director had "nearly a 20 year history in directly managing all laboratory and biorepository activities and over a 10 year history of directly managing biorepositories." AR, Tab 5a, Precision's Proposal, at 89. It also stated that the project director was "specifically recruited to Precision because of his extensive experience with biobanking and managing large repositories, such as those that are housed at Precision for Medicine." Id.

Furthermore, the proposal shows that the project director "functioned as a subject matter expert" in biorepository databases and operations while working for a network funded by NIH that performed multiple clinical trials, and "was responsible for directing all work in specimen management, data, logistics and other operational aspects" while with this network. Id. at 90. In addition, Precision's proposal also included a chart which explained that the project director had greater than 5 years' experience in "directing a facility that provides biosample archiving and genetics services to a large and diverse group of investigators" through managing sample repositories of more than 500,000 biospecimens while at Precision and while working with the network. Id. at 91. While the protester asserts that the project director's resume does not ultimately support a finding that this individual had "5 or more years" directing a facility, we find nothing unreasonable about the agency's evaluation of Precision's project director.

### Best-Value Decision

Fisher challenges the agency's determination that Precision's proposal provided the best value to the agency. First, the protester alleges that the agency's decision was improperly based on a quantitative assessment of the number of strengths, significant strengths, weaknesses, and significant weaknesses assessed against each offeror's proposal. The protester also alleges that the tradeoff does not reflect proper discriminators between the two proposals. Finally, the protester asserts that the multiple evaluation errors in the decision resulted in a flawed selection decision.

With respect to Fisher's allegation that the SSA improperly used a quantitative assessment of the offerors' strengths and weaknesses in making her selection, we find that the SSA's selection decision was not based on a simple mechanical comparison of

which offeror had more strengths and weaknesses, but instead demonstrates that the SSA looked at the underlying merit of the proposals. For example, the SSA noted in particular that Precision's plan to integrate the two facilities was superior, its plans for data management were superior, and that, while Fisher's "approach contained several strengths as well as a significant strength . . . it also had a number of weaknesses." AR, Tab 10a, SSDM, at 20.

The SSA also found that, while both offerors proposed the use of BSI within their data management plan, Precision's "approach was far superior in that they have a long-standing history using BSI, the database system used by the NIDDK Data Repository, which is a valuable asset," among other things. Id. The SSA further noted that

Fisher, although having a good understanding of the requirements and technical approach, [has] limited expertise in genetics, which is a significant area of importance of this requirement in which the overall objective is to integrate both biosample and genetics into a single repository.

Id. The SSA further found that, "while Fisher's proposed team is strong as well," Precision proposed a very strong team, including Precision's information systems manager who "would be a tremendous asset because of his outstanding qualifications and experience with BSI." Id. The record shows that the SSA identified specific strengths of Precision's proposal, and concluded that such strengths offer greater value to the agency, "notwithstanding the lower price proposed by Fisher." Id. Given this, we find no basis to conclude that the tradeoff analysis was based on an improper quantitative assessment of strengths.

Similarly, with regard to the protester's allegations that the agency based its selection decision on improper discriminators, the record supports the agency's underlying determinations. As such, the protester's contentions represent nothing more than mere disagreement with the SSA's conclusions and do not provide a valid basis to sustain the protest. Finally, with regard to the protester's contention that the multiple evaluation errors led to an improper selection decision, we found no such evaluation errors, as stated above, and nothing improper about the agency's selection decision.

#### Organizational Conflict of Interest

Finally, Fisher alleges that there is an "unequal access to information" organizational conflict of interest (OCI). Fisher argues that the government--after the initial award of the contract to Precision--directed Fisher to provide certain data pertaining to the location of samples in its repository to IMS, which then provided the data to Precision as part of the transition to a new contractor. As a result, when Fisher filed its earlier protest, which led to corrective action by the agency, Precision had access to Fisher's data during the subsequent corrective action competition. However, Fisher does not contend that the data itself was proprietary, but that the data revealed Fisher's proprietary methodology for storing and organizing the samples, and that the disclosure of this methodology gives rise to an OCI.

In response, the agency explains that, upon learning of the OCI allegations, it conducted an investigation to determine whether Precision had access to competitively useful information, including Fisher's proprietary information. The agency explains that it was never advised by the protester that this data was proprietary or confidential, and that this information was submitted in accordance with the protester's incumbent contract, which "contained a clause stating that data under that contract was the property of the Agency." Agency Response to OCI Comments, Nov. 1, 2017, at 1. In this regard, the contracting officer states that this information was requested from Fisher pursuant to Fisher's incumbent contract for the biosample repository, and that there was no indication that this information is proprietary information. Agency Responses to OCI Comments, Nov. 1, 2017, Decl. of Contracting Officer, at 2. The agency maintains that, given this, the information was not improperly provided to Precision. We agree.

Federal Acquisition Regulation subpart 9.5, and decisions of our Office, broadly identify three categories of OCIs, biased ground rules, unequal access to information, and impaired objectivity. McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, October 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information, and that information may provide the firm a competitive advantage in a competition for a government contract. Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. We review the reasonableness of a contracting officer's OCI 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. Id. at 7.

Fisher argues, in essence, that providing the data, in which the government had unlimited rights, to IMS, who in turn provided it to Precision as part of the contract transition activities, allowed Precision to derive its proprietary methodology resulting in an unequal access to information OCI. However, Fisher fails to provide any explanation for how its methodology is evident from the face of the data. Furthermore, Fisher failed to notify any party that it viewed this information as proprietary.<sup>12</sup> Finally, the agency

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<sup>12</sup> While the protester responds that it was not able to mark this information, there is nothing in the record indicating that Fisher made any attempt to notify anyone involved with the transition that it viewed this information as proprietary. In this regard, there is no evidence in the record that Fisher sent an email, or any other form of communication, explaining that it viewed the data files as containing or providing an avenue for deriving information that it viewed as proprietary.

maintains, and the protester does not dispute, that the data was owned by the agency. Given this, the protester has failed to provide a sufficient basis for our Office to conclude that the agency's actions were improper.

The protest is denied.

Susan A. Poling  
General Counsel