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## Decision

**Matter of:** InfoPro, Inc.  
**File:** B-408642.2; B-408642.3  
**Date:** December 23, 2014

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### **DIGEST**

1. Protest that agency failed to engage in meaningful discussions with protester is denied where record shows that the contracting officer reasonably determined that discussion of the weaknesses first identified in a reevaluation of proposals would not materially enhance the proposal's potential for award.
  2. Protest challenging the agency's technical and past performance evaluations is denied where record shows that the evaluations were reasonable and consistent with the stated evaluation criteria.
  3. Protest that agency failed to give adequate consideration to awardee's potential organizational conflicts of interest (OCI) is denied, where record shows that agency extensively investigated potential OCIs and, after completing its investigation and concluding that there was a remote possibility of an OCI, reasonably concluded that awardee's mitigation would adequately avoid, neutralize, or mitigate the potential conflicts of interest with minimal impact on performance quality.
  4. Cost/technical tradeoff was proper where source selection authority reasonably identified relevant technical distinctions between offerors' competing proposals and adequately documented his conclusion that the higher technically-rated, higher cost proposal represented the best value to the government.
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## DECISION

InfoPro, Inc., of McLean, Virginia, protests the award of a contract to Unisys Corporation, of Reston, Virginia, under request for proposals (RFP) No. HSBP1012R0025, issued by the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP), for operational maintenance and software development support services for the CBP Office of Information and Technology (OIT), Border Enforcement and Management Systems (BEMS) Program Office. InfoPro, the incumbent contractor for this effort, argues that the agency's evaluation of offerors' proposals and the resulting award decision were improper.

We deny the protest.

## BACKGROUND

The CBP, a component of DHS, has responsibility for securing the nation's borders and ports of entry.<sup>1</sup> SOW § C.1. The OIT is the information technology component of CBP, and the BEMS Program Office is responsible for the full system development life cycle, from planning through deployment, of all CBP border enforcement, mission support, and web-based software application systems. Id.

The RFP, issued on April 27, 2012,<sup>2</sup> contemplated the award of a single indefinite-delivery, indefinite-quantity (ID/IQ) contract for a base year with four 1-year options under which cost-plus-fixed-fee task orders would be issued. RFP §§ B.1, L.7. In general terms, the statement of work required the contractor to provide technical support personnel to provide operational maintenance and software development services for the entire life cycle in planning, development, deployment, operations, and maintenance of BEMS' information technology (IT) systems.<sup>3</sup> SOW § C.2. In addition to the 5-year ordering period, the ID/IQ contract had a guaranteed minimum amount of \$100,000 and a maximum order amount of \$460 million. RFP § B.5.

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<sup>1</sup> This includes preventing terrorists and terrorist weapons from entering the United States; apprehending individuals attempting to enter the country illegally; stemming the flow of illegal drugs and other contraband; protecting agricultural and economic interests from harmful pests and diseases; protecting American businesses from the theft of intellectual property; regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws. Statement of Work (SOW) § C.1.

<sup>2</sup> The RFP was subsequently amended four times. Unless specified otherwise, all references are to the final, conformed version of the solicitation.

<sup>3</sup> The SOW also included a nonexclusive list of 46 mainframe applications and 93 non-mainframe applications that the contractor was required to support. SOW § C.3.

The solicitation stated that contract award would be made on a best-value basis, based on four evaluation factors: technical; past experience/past performance (hereinafter past performance); socio-economic performance; and cost/price.<sup>4</sup> RFP § M.5. The technical factor consisted of three subfactors in descending order of importance: technical approach/technical solution (hereinafter technical approach); management approach; and transition plan. Id. The technical factor was significantly more important than the past performance factor, which was more important than the socio-economic performance factor. Id. The noncost factors, when combined, were more important than cost. Id.

Five offerors, including InfoPro and Unisys, submitted proposals by the June 15 closing date. An agency technical evaluation team (TET) evaluated offerors' proposals using various adjectival rating schemes. For the technical factor, proposals were rated as to their quality as follows: outstanding; highly satisfactory; satisfactory; marginal; or unsatisfactory.<sup>5</sup> Past performance was rated using a separate risk rating scheme as follows: very low; low; moderate; high; very high; or neutral. Socio-economic performance was to be rated as either substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence.<sup>6</sup>

On September 28, following the initial evaluation of proposals, the agency established a competitive range consisting of the InfoPro and Unisys proposals. Contracting Officer's Statement, Oct. 31, 2014, at 2. On December 7, in accordance with the RFP, each offeror in the competitive range made an oral presentation to the agency evaluators addressing various technical scenarios. Id.

On January 25, 2013, the contracting officer held one round of discussions with InfoPro and Unisys. Id. at 3. The agency received offerors' discussions responses by February 4, and final proposal revisions (FPR) by February 13. The final evaluation ratings and costs of the InfoPro and Unisys proposals were as follows:

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<sup>4</sup> The record indicates, however, that no part of the contract was fixed-price in nature. Accordingly, we hereinafter refer to this evaluation factor as "cost."

<sup>5</sup> A separate proposal risk rating--low risk, medium risk, or high risk--was also to be assigned to offerors' technical submissions.

<sup>6</sup> The agency's various evaluation rating schemes, as well as narrative definitions of the ratings themselves, were set forth in the solicitation. RFP § M.5.

	InfoPro	Unisys
Technical		
Technical Approach	Highly Satisfactory	Outstanding
Management Approach	Satisfactory	Highly Satisfactory
Transition Plan	Highly Satisfactory	Outstanding
Overall	Highly Satisfactory/ Low Risk	Outstanding/ Low Risk
Past Performance	Low Risk	Very Low Risk
Socio-Economic Performance	Substantial Confidence	Substantial Confidence
Proposed Cost	\$298,209,750	\$306,456,647
Evaluated Cost	\$298,209,750	\$310,520,126

Agency Report (AR), Tab 64, TET Evaluation of Unisys, Mar. 22, 2013, at 1-18; Tab 65, TET Evaluation of InfoPro, June 19, 2013, at 1-16.

The agency source selection authority (SSA) subsequently concluded that the evaluated superiority of Unisys' proposal under the technical and past performance factors outweighed InfoPro's cost advantage and, on that basis, selected Unisys for award. Protest, Sept. 15, 2014, Exh. O, InfoPro Debriefing, July 26, 2013, at 1-8. A contract was awarded to Unisys on July 15.

On August 2, InfoPro filed a protest with our Office asserting that the agency's evaluation of offerors' proposals was unreasonable and the resulting best value tradeoff determination was improper. Protest, Aug. 2, 2013.

On August 21, the agency provided notice that it was taking corrective action in response to InfoPro's protest by reevaluating offerors' proposals, reopening discussions with offerors if necessary, and making a new source selection decision. Protest, Sept. 15, 2014, Exh. AA, CBP Email to GAO, Aug. 21, 2013. Based on the agency's announced corrective action, we dismissed InfoPro's August 2 protest as academic. InfoPro, Inc., B-408642, Aug. 21, 2013.

On May 9, 2014, the agency completed its corrective action reevaluation of offerors' proposals. The reevaluation resulted in the same adjectival ratings and evaluated costs as the agency's prior evaluation of the offerors' FPRs. AR, Tab 50, TET Evaluation of Unisys, Mar. 31, 2014, at 1-26; Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 1-21. The agency's evaluation also identified strengths, weaknesses, and risks in support of the adjectival ratings assigned to the offerors' proposals. Specifically, the TET identified a total of 66 strengths (including 1 significant strength), 2 weaknesses, and 16 risks in support of the ratings assigned to InfoPro's technical proposal, and a total of 104 strengths (including 6 significant strengths) in support of the ratings assigned to Unisys' technical

proposal.<sup>7</sup> Id., Tab 50, TET Evaluation of Unisys, Mar. 31, 2014, at 1-17; Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 1-15.

The contracting officer then performed a detailed comparative (i.e., head-to-head) analysis of the InfoPro and Unisys proposals. Id., Tab 53, Comparative Analysis and Best-Value Tradeoff Recommendation, July 21, 2014, at 1-58. The contracting officer concluded that Unisys' proposal was superior to that of InfoPro under the technical and past performance factors, and, because Unisys' technical superiority outweighed InfoPro's cost advantage, the contracting officer recommended Unisys for contract award.<sup>8</sup> Id. at 56-58.

The SSA subsequently reviewed and accepted the ratings and findings of the agency evaluators, including the contracting officer's comparative analysis. Id., Tab 55, Source Selection Decision, Aug. 27, 2014, at 1-7. The SSA concluded that Unisys' proposal was superior to that of InfoPro under the technical and past performance factors. Id. at 1-5. Further, the SSA found that Unisys' noncost advantages outweighed InfoPro's \$12.3 million cost advantage, and that Unisys' proposal represented the best value to the government all factors considered. Id. at 5-7.

On August 29, the agency announced for a second time its decision that Unisys' proposal was the best value to the government and, therefore, was selected for contract award. Contracting Officer's Statement, Oct. 31, 2014, at 9. On September 15, after the agency provided InfoPro with a debriefing, InfoPro filed its current protest.

## DISCUSSION

InfoPro's protest raises numerous issues regarding the agency's evaluation and resulting award decision. First, the protester alleges the agency failed to provide InfoPro with meaningful and equal discussions. InfoPro also alleges that the agency's evaluation of offerors' technical and past performance proposals was improper. InfoPro contends that the agency's evaluation of Unisys' organizational conflict of interest was unreasonable and amounted to unequal discussions with the awardee. Lastly, InfoPro alleges that the agency's best value tradeoff decision was

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<sup>7</sup> The TET did not assign strengths and weaknesses to offerors' past performance, but developed narrative findings in support of the ratings assigned. See id., Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 16-19.

<sup>8</sup> The agency evaluators also provided a briefing to the SSA summarizing their evaluation findings and recommendations. Id., Tab 54, SSA Award Determination Briefing, July 22, 2014, at 1-23.

flawed and failed to give sufficient weight to InfoPro's cost advantage.<sup>9</sup> We have considered all the issues and arguments raised by the InfoPro protest and, although we do not address them all, find they provide no basis on which to sustain the protest.<sup>10</sup>

#### Discussions with InfoPro

InfoPro argues that the agency's discussions with it were inadequate because the agency failed to bring to InfoPro's attention various evaluated weaknesses that InfoPro maintains prevented it from having a reasonable chance of receiving contract award. In this regard, the protester alleges that as part of the agency's corrective action reevaluation, CBP identified weaknesses and risks that were apparent in its initial proposal that should have been--but were not--the subject of discussions.

As a general matter, where an agency engages in discussions, it must afford all offerors remaining in the competition an opportunity to engage in meaningful discussions. Presidio Networked Solutions, Inc., et al., B-408128.33 et al., Oct. 31, 2014, 2014 CPD ¶ 316 at 8. The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). Further, "[t]he contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award." Id. However, the contracting officer is not required to "spoon-feed" an offeror, or discuss every area where the proposal could be improved. CEdge Software Consultants, LLC, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6; FAR § 15.306(d)(3). "The scope and extent of discussions are a matter of contracting officer judgment." FAR § 15.306(d)(3).

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<sup>9</sup> The protester also presents the following allegations, which we do not address for the following reasons: (1) the protester withdrew its allegation that the agency failed to evaluate offerors' oral presentations as required by the solicitation, Protest, Nov. 3, 2014, at 1 n.1; (2) the protester abandoned its argument that the agency's technical evaluation improperly deviated from the RFP's stated evaluation rating scheme, see Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4; and (3) we dismissed as speculative InfoPro's allegations that the agency's evaluation of Unisys' technical risk, past performance, and cost realism were unreasonable, see GAO Email to Parties, Oct. 22, 2014.

<sup>10</sup> In resolving this protest, GAO conducted a 1-day hearing to receive testimony from various agency officials involved in this procurement.

The TET, in its initial evaluation, identified 20 weaknesses (one of which was deemed significant) in InfoPro's technical proposal, and 22 weaknesses in Unisys' technical proposal. AR, Tab 62, TET Initial Evaluation of InfoPro, at 5; Tab 63, TET Initial Evaluation of Unisys, at 1-4. After establishing the competitive range, the contracting officer held discussions with both InfoPro and Unisys. The discussions covered 16 of 20 weaknesses (including the significant one) in InfoPro's proposal, and 15 of the 22 weaknesses in Unisys' proposal. *Id.*, Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3-4; Tab 29, Discussions with Unisys, Jan. 25, 2013, at 3-4. When determining the scope of discussions for both offerors the contracting officer reviewed the weaknesses and, with input from the technical evaluators, identified those which in her opinion could be altered or explained to materially enhance the proposal's potential for award.<sup>11</sup> Hearing Transcript (Tr.) at 144-48, 154-56; Contracting Officer's Statement, Oct. 3, 2014, at 3.

The TET thereafter completed its post-FPR evaluation. With regard to InfoPro's technical proposal, the evaluators identified 65 strengths, 4 weaknesses, and 14 risks, and rated the offeror as Highly Satisfactory/Low Risk.<sup>12</sup> AR, Tab 65, TET Evaluation of InfoPro, June 19, 2013, at 1-16. Two of the weaknesses--competition among team members, and communication paths with other government agencies--were new concerns but based on language from InfoPro's initial proposal.<sup>13</sup> Also, many of the InfoPro initial weaknesses covered in discussions resulted in the elimination of the weakness but the subsequent assignment of a risk. Tr. at 191-93. For example, the TET found that InfoPro's initial discussion of its Enterprise Decision Portal was scarce and, after discussions, removed the weakness but assigned a risk instead. AR, Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3; Tab 65, TET Evaluation of InfoPro, June 19, 2013, at 3; Tr. at 194-95. Moreover, on various occasions the TET found an aspect of InfoPro's proposal to be both a strength and a risk, if the feature exceeded requirements but was not well-defined or the offeror evidenced no experience in its use. *See e.g.*, AR, Tab 65, TET Evaluation of InfoPro, June 19, 2013, at 3. Because the majority of InfoPro's risks

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<sup>11</sup> The contracting officer also held face-to-face discussions to ensure the offerors' understood the agency's concerns for each discussion item. Tr. at 151-52.

<sup>12</sup> The RFP defined "risk" as "the probability of an undesirable event occurring and the significance of the consequence of that occurrence . . . ," and "low risk" as "[h]as little or no potential to cause disruption of schedule, increases in cost, or degradation of performance. Normal contractor effort should overcome difficulties." RFP § M.5.

<sup>13</sup> A third InfoPro weakness (quality management) was raised in discussions, and the fourth weakness (Section 508 compliance) was identified initially but not made the subject of discussions. AR, Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3-4; Tab 63, TET Initial Evaluation of InfoPro, at 5.

were noted against strengths, the TET found the proposal's overall risk to be low. Id. at 1.

The contracting officer was aware that the TET had identified new weaknesses in InfoPro's proposal, although they were based on information in the offeror's initial submission. Tr. at 161-68. The contracting officer decided not to hold another round of discussions with InfoPro because she found the new weaknesses and risks to be minor ones that would not materially enhance the proposal's potential for award. Id. at 168-77. The contracting officer was also of the view that, even had these weaknesses been identified in the TET's initial evaluation, the weaknesses would not have been part of the discussions held. See id. at 172-76.

As a result of the agency's corrective action, the TET completed its reevaluation of the proposals. With regard to InfoPro's technical proposal, the agency evaluators identified 66 strengths, 2 weaknesses, and 16 risks, and again rated it as highly satisfactory/low risk.<sup>14</sup> AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 1-15. The TET again concluded that the noted shortcomings were minor and, because the majority of the risks related to proposal features also identified as strengths, InfoPro's overall risk was also low. Id. at 1-2.

The contracting officer was aware that the TET's corrective action reevaluation, like the post-RFP evaluation, had identified new weaknesses in InfoPro's proposal that were based on information in the offeror's initial submission. Tr. at 181. The contracting officer, however, decided not to hold another round of discussions with InfoPro because she remained of the view that the new weaknesses and risks were all minor ones that would not materially enhance the proposal's potential for award. Id. at 187-91.

InfoPro asserts that the TET's reevaluation included one new weakness and 15 new risks that were based on language from the offeror's initial proposal, and which were never made the subject of discussions. InfoPro maintains that the agency was required to discuss these shortcomings with the firm, citing to our decision in Lockheed Martin Simulation, Training & Support, B-292836.8 et al., Nov. 24, 2004, 2005 CPD ¶ 27 at 11.

The agency argues that the new weaknesses and risks in InfoPro's proposal were so minor that it was not required to discuss those shortcomings with the offeror, i.e., even if the new concerns had been identified before discussions were held, they did not have to be raised. AR, Dec. 3, 2014, at 2-3. Additionally, the intervenor asserts

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<sup>14</sup> The record reflects that two of the weaknesses found in the post-FPR evaluation (i.e., quality management, competition among team members) now become risks instead, while the remaining weaknesses and risks stayed the same. Id.

that 9 of the 16 risks in the TET's corrective action evaluation were raised with InfoPro during discussions. Intervenor Comments, Dec. 4, 2014, at 1-6.

We find no reason to object to the contracting officer's decision to limit discussions to those aspects of offerors' proposals that could, in her opinion, be altered or explained to enhance materially the proposal's potential for award. Agencies have broad discretion, as a general matter, to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. Advanced Sys. Dev., Inc., B-298411, B-298411.2, Sept. 19, 2006, 2006 CPD ¶ 137 at 5; Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7. Where an agency, during a reevaluation of proposals, identifies new concerns in a proposal and those concerns would have had to be raised had they been identified before discussions were held, the agency is required to reopen discussions and raise the new concerns with the offeror. Lockheed Martin Simulation, Training & Support, *supra* (agency must reopen discussions to address six significant weaknesses that contributed to the offeror's proposal receiving an overall marginal/high risk rating); DevTech Sys., Inc., B-284860.2, Dec. 20, 2000, 2001 CPD ¶ 11 at 4 (agency must reopen discussions to address new concerns that were "primary weaknesses" and deficiencies that contributed to the offeror receiving a considerably lower evaluation rating). As we have held many times, however, there is no requirement to spoon-feed, or to cover each and every area in which an offeror's proposal could be improved.<sup>15</sup>

Based upon our review, we find that there existed no requirement here for the agency's discussions to cover the new weakness and risks. In Lockheed Martin and DevTech, the new concerns were significant and contributed to the offerors' lower evaluation ratings. Here, by contrast, the new concerns identified in the TET's final evaluation of InfoPro were not shortcomings required to be raised had they been identified before discussions were held. The new concerns were not found to be significant weaknesses or deficiencies, nor were they ones which the contracting officer believed, if addressed, would materially enhance InfoPro's proposal, which is the same standard that the contracting officer applied to the discussions which were held.

The record also clearly demonstrates the agency considered the new shortcomings in InfoPro's proposal to be minor in nature: "[t]he weaknesses in the revised FPR are considered minor by the TET and do not increase the risk of unsuccessful

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<sup>15</sup> In fact, requiring the agency to discuss all weaknesses, even those that the contracting officer believed would not materially enhance the proposal's potential for award, is inconsistent with the FAR provision that "the contracting officer is not required to discuss every area where the proposal could be improved." FAR § 15.306(d)(3).

performance;” “any noted weakness was minor;” and “because the majority of the risks noted were related to areas identified as strengths in InfoPro’s proposal . . . the TET concluded on a Low Risk overall.” AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 1-2. Unlike the facts in the DevTech and Lockheed Martin decisions, the new concerns here had no effect on the evaluation ratings assigned to InfoPro’s highly satisfactory, technical proposal.

Similarly, the record reflects that the new minor shortcomings did not form the basis for InfoPro’s proposal not being selected for award. As detailed below, the contracting officer’s comparative analysis of the offerors’ proposals found Unisys to be technically superior primarily on the unique strengths identified in the awardee’s submission. Likewise, the SSA, when making his best value determination, relied almost entirely on the strengths identified in Unisys’ proposal to distinguish the offerors technically and support his determination that Unisys represented the overall best value. We do not dispute that there was some mention of InfoPro’s new weaknesses in these documents. AR, Tab 53, Comparative Assessment and Best-Value Tradeoff Recommendation, July 21, 2014, at 38, 41-42; Tab 55, Source Selection Decision, Aug. 27, 2014, at 5. However, the record clearly reflects that the minor weaknesses played a minor (or very minor) part in the agency’s best value determination. Compare Lockheed Martin Simulation, Training & Support, supra (discussions were not meaningful when new weaknesses played a large part in the best value determination). As the new weaknesses were continuously treated as minor ones, and did not form the basis for InfoPro’s nonselection for award, we find the agency’s discussions were meaningful.

InfoPro also alleges that the agency’s discussions with offerors were unequal. Among other things, the protester contends that the agency’s discussions permitted Unisys to provide missing detail and experience but failed to do so for InfoPro. Protest, Nov. 3, 2014, at 4-13.

The FAR requires that discussions not be conducted in a manner that favors one offeror over another, and offerors must be given an equal opportunity to revise their proposals. See FAR §§ 15.306(d)(1), (e)(1); Bannum, Inc., B-409831, July 30, 2014, 2014 CPD ¶ 232 at 4. However, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror’s proposal. Bannum, Inc., supra; WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6.

We find that the agency’s discussions with InfoPro and Unisys were properly equal. The record reflects that the agency’s discussions were quantitatively and qualitatively equal: for each offeror the contracting officer covered all significant weaknesses and other weaknesses which she believed, if altered or explained, could materially enhance the proposal’s potential for award. Contracting Officer’s Statement, Oct. 3, 2014, at 3. The agency’s discussions were also properly tailored to the unique aspects of each offeror’s proposal and the identified weaknesses. In

fact, in many instances the discussion topics recited the weaknesses verbatim. Compare AR, Tab 63, TET Initial Evaluation of InfoPro, at 2-5, with Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3-5. The record also demonstrates that the discussions requested additional detail from both InfoPro and Unisys in all areas where the evaluation which preceded discussions found detail lacking. See id., Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3-5; Tab 29, Discussions with Unisys, Jan. 25, 2013, at 3-4; Tab 62, TET Initial Evaluation of Unisys, at 2-4. The protester's comparison--of the discussions provided to Unisys to the TET's final evaluation findings for InfoPro--simply does not provide a valid basis for determining that the discussions provided to the offerors were unequal.<sup>16</sup>

### Technical Evaluation of InfoPro

InfoPro protests the agency's evaluation of its proposal under the technical factor. The protester alleges that the two weaknesses and certain of the risks identified in InfoPro's proposal were improper, and that the agency's evaluation was in other regards unreasonable and unequal. Protest, Sept. 15, 2014, at 18-46; Protest, Nov. 3, 2014, at 19-55.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Group/Fluor Fed. Solutions LLC, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's disagreement with an agency's judgment is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5. Although we do not address all of the protester's assertions here, we find they do not provide a basis on which to sustain the protest.

For example, InfoPro challenges the weakness assessed under the technical approach subfactor for Section 508 compliance, which pertains to electronic and information technology accessibility. The solicitation required offerors to describe their technical approach for completing specific work requirements, RFP §§ L.10,

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<sup>16</sup> We also find no merit to InfoPro's assertion that the agency improperly afforded only Unisys the opportunity to demonstrate experience lacking from its past performance proposal. The record shows that, for both offerors, the agency's discussions did not extend to past performance. AR, Tab 29, Discussions with Unisys, Jan. 25, 2013, at 3-4; Tab 34, Discussions with InfoPro, Jan. 23, 2013, at 3-5.

M.5, and the SOW set forth the applicable Section 508 requirements and standards. SOW § C.4.4. The TET assessed a weakness to InfoPro's proposal because it found there was no recognition of the Section 508 requirements, specifically, "[t]here is no direct mention of Section 508 compliancy, testing, or integration in the development process" of the offeror's proposal. AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 3. The TET also deemed this to be a minor weakness because it did not significantly increase the overall risk of unsuccessful performance. Id.

InfoPro does not dispute that its proposal did not specifically mention Section 508 compliance. Rather, the protester cites to an indirect reference in its proposal: "Team InfoPro understands the technical and compliance requirements in Section C.4 and we will comply with all the principles, policies, standards, and procedures."<sup>17</sup> AR, Tab 19, InfoPro Technical Proposal, Feb. 13, 2013, at II.1-22. The protester also argues that because it was previously performing identical SOW requirements, and the agency found that InfoPro had a strong overall technical understanding of BEMS requirements, the weakness was unwarranted. Protest, Nov. 3, 2014, at 33.

We find the agency's assessment of the weakness here to be reasonable. InfoPro's proposal failed to include any mention of the 508 compliance requirements. The agency evaluators reasonably concluded that InfoPro's failure to mention, and therefore to recognize, the existence of the Section 508 requirements was a proposal weakness. The agency evaluators were simply not required to accept InfoPro's statement of general compliance with all contract requirements as an adequate substitute.<sup>18</sup> An offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. Recon Optical, Inc., B-310436, B-310436.2, Dec. 27, 2007, 2008 CPD ¶ 10 at 6.

As another example, InfoPro protests that the risk assigned to its proposal for the quality management/quality control system (hereinafter quality management system) was unreasonable. Protest, Nov. 3, 2014, at 46-48. The RFP required offerors to describe their quality management systems, and stated it would evaluate the offeror's ability to manage all aspect of the work effort in an efficient and effective manner. RFP §§ L.10, M.5. The TET found InfoPro's quality assurance

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<sup>17</sup> SOW § C.4 contained many technical requirements and compliances, one of which was Section 508 compliance. The InfoPro proposal also included a table listing various § C.4 compliances, but not Section 508 compliance. Id. at II.1-23.

<sup>18</sup> We also find no evidence of disparate treatment as the protester alleges: Unisys' proposal recognized the existence of the solicitation's Section 508 compliance requirements in at least three separate instances. AR, Tab 9, Unisys Technical Proposal, Feb. 13, 2013, at II-1-3, II-1-5, II-2-7.

plan (QAP) to be a risk insofar as it lacked specificity about how it would align to the BEMS requirements. AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 10. The evaluators also found that InfoPro's proposal spoke only in general terms about quality assurance, and had "textbook descriptions" of quality management. Id. Because the quality management processes described were generic, did not include specific examples, and did not speak to implementation in the BEMS environment, the TET found there to be a potential for risk in their execution. Id.

We find the agency's evaluation reasonable, as the record reflects that InfoPro's quality management plan did consist largely of generic, textbook statements, such as: "[t]he purpose and value of Team InfoPro's QAP are to ensure that processes meet the highest standards;" "[o]ur approach will ensure that Project Managers are using the most current and best processes available;" "[o]ur executives are responsible for ensuring corrective action and process improvements are implemented immediately, when necessary;" and "[a]n independent [quality assurance] group is essential for an objective and valid assessment of project quality." AR, Tab 19, InfoPro Technical Proposal, Feb. 13, 2013, at II-2-10 to -11; Tab 35, InfoPro Discussion Responses, Feb. 4, 2013, at 8. While InfoPro argues that it was unreasonable for the evaluators to expect supporting examples, we find this amounts to mere disagreement with the evaluators' judgments.<sup>19</sup>

As a final example, InfoPro argues the agency unreasonably assessed several risks to InfoPro because the new concepts, tools, and approaches (e.g., [DELETED]) which, even though also identified as strengths, were untried. The protester alleges that the agency improperly and unequally "neutralized" its technical strengths by also identifying corresponding risks. Protest, Nov. 3, 2014, at 38. We disagree.

The record reflects that the agency identified as strengths those enhancements which were found to be of value to the government, and analyzed the risk associated with the successful implementation of the proposed enhancements, including whether the feature had been previously tried or contained sufficient detail. For example, InfoPro's proposed [DELETED] was found to be beneficial to BEMS management and was identified as a strength. AR, Tab 51, TET Evaluation of InfoPro, May 9, 2013, at 9. However, as this tool was essentially untried, and there was not enough detail provided in InfoPro's proposal to mitigate the risks surrounding its development, it was also found to be a minor risk. Id. We find the agency's assessment of risks in this manner, even against identified strengths, to be reasonable and consistent with the solicitation.

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<sup>19</sup> We also find the agency's evaluation was not unequal, as the record reflects that Unisys' quality management plan was not limited to generic principles as was InfoPro's. AR, Tab 9, Unisys' Technical Proposal, Feb. 13, 2013, at II-2-8 to II-2-9.

We also find no merit to InfoPro's assertion that the agency's risk assessments were unequal regarding the new concepts proposed by the offerors' recruiting and retention approaches. The record reflects that both offerors received similar strengths in this area. Id. at 11; Tab 50, TET Evaluation of Unisys, Mar. 31, 2014, at 12. However, regarding InfoPro, the TET found some risk associated with the new concepts being proposed (e.g., [DELETED]), and that the proposal did not contain sufficient detail to mitigate the risk that InfoPro may not be able to utilize these new approaches effectively. Id., Tab 51, TET Evaluation of InfoPro, May 9, 2013, at 11. While InfoPro alleges that Unisys had also proposed to create social media recruiting initiatives, and should have also received a risk, the record is clear that the number of new recruiting and retention concepts being proposed by InfoPro far exceeded that proposed by Unisys. As such, we find the agency's decision not to assign a risk to Unisys' proposal was reasonable.<sup>20</sup>

Moreover, InfoPro fails to demonstrate that it was prejudiced from the technical evaluation errors it alleges. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996).

Here, the record does not support InfoPro's assertion that elimination of each minor weakness would have affected the protester's technical approach rating (highly satisfactory), management approach rating (satisfactory), or the offeror's overall technical rating (highly satisfactory), all of which were lower than the ratings assigned to Unisys. Similarly, even if the risks which InfoPro disputes were removed, it would not alter InfoPro's best-possible, low risk rating. Moreover, the record reflects that it was the many unique strengths reasonably found in Unisys' technical proposal--and not the minor weaknesses and risks reasonably found in InfoPro's proposal--that were considered discriminators by the SSA in the award decision. See Systalex Corp., B-407761 et al., Feb. 12, 2013, 2013 CPD ¶ 75 at 5.

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<sup>20</sup> InfoPro also argues the agency treated offerors unequally when it credited Unisys with significant strengths for features that were "substantially similar" to those which InfoPro proposed and for which the protester received only strengths. Protest, Nov. 3, 2014, at 20. In our view, InfoPro's disparate treatment argument is premised on an improper "apples and oranges" comparison of the offerors' proposals. Quite simply, the record does not indicate that the offerors proposed the same features and were given different ratings. Rather, our review indicates that the offerors proposed different features and reasonably received different ratings. While InfoPro may believe that its proposal's features were substantially similar to those of Unisys, we find InfoPro's disagreement with the agency's judgment insufficient to establish that the agency acted unreasonably.

Here, only one of the evaluated shortcomings (subcontractor competition) challenged by InfoPro was considered a discriminator by the SSA. See AR, Tab 55, Source Selection Decision, Aug. 27, 2014, at 6. Quite simply, there is no basis for concluding that eliminating InfoPro's weaknesses and risks would eliminate the discriminators in favor of Unisys that were relied upon in the best-value determination, many of which, InfoPro does not challenge. In sum, we find the agency's evaluation of InfoPro's technical proposal provides no basis on which to sustain the protest.

#### Past Performance Evaluation of InfoPro

InfoPro challenges the evaluation of its past performance. The protester alleges it provided two past performance references, including its incumbent BEMS contract, that were both highly relevant and with excellent performance quality. Had CBP evaluated past performance reasonably and in a manner consistent with the solicitation, InfoPro argues, it should have received a very low risk rating. Protest, Sept. 15, 2014, at 51-57.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. Richen Mgmt., LLC, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65 at 19. Our review of the record leads us to conclude that the agency's past performance evaluation was unobjectionable, as described in further detail below.

The RFP instructed offerors to submit a minimum of two, and not more than four, prior contracts or task orders "of similar size, scope and complexity" to the requirements described in the SOW. RFP § L.10. Similarly, the solicitation established that the agency's past performance evaluation would consider both the relevance (i.e., "size, scope, and complexity") and the quality (e.g., "customer satisfaction, adherence to cost, schedule, and performance baselines") of the offeror's prior work. Id., § M.5.

InfoPro submitted two past performance references: (1) its incumbent BEMS contract; and (2) a Department of the Treasury contract for IT application systems support. AR, Tab 20, InfoPro Past Performance Proposal, at 1-9. The ongoing BEMS contract reference had a total dollar value of \$135 million over 3.5 years, while the completed Treasury Department contract reference had a total dollar

value of \$71.8 million over 8 years.<sup>21</sup> Id. at 2, 4, 8. By contrast, the contract being awarded here has a value of approximately \$300 million--as represented by the offerors' proposed and evaluated costs--over 5 years, and a maximum order amount of \$460 million.

The TET evaluated the relevance and quality of each InfoPro past performance reference. With regard to InfoPro's incumbent BEMS contract, the TET found the size of the reference was substantially relevant to the new requirement. AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 18. However, the agency evaluators found there to be differences in scope and complexity between InfoPro's incumbent contract and the current SOW requirement: "[t]wo major complex initiatives of the new requirement will be mainframe migration and relocation of current systems to the [DHS] Data Center, and InfoPro's experience at BEMS does not include modernizing large scale mainframe applications."<sup>22</sup> AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 19. The TET considered this gap in InfoPro's past performance to be a risk due to the critical nature and size of the tasks with which InfoPro had no relevant past performance. Id. at 16, 19.

For InfoPro's second past performance reference, "[w]hile there was some work performed under the Treasury contract that was relevant to the BEMS requirement," the TET determined there were "distinct differences in overall size, scope, and complexity" as compared to the current requirement. Id. at 17. In addition to finding the Treasury reference to be considerably smaller in dollar value,<sup>23</sup> the TET also found "[t]he size of the contractor workforce is significantly smaller at 45 versus

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<sup>21</sup> While the award amount of InfoPro's Treasury Department contract was \$89.8 million, the record reflects that the final (invoiced) amount was \$71.8 million. Id. at 8. Notwithstanding its completion at a considerably lower amount, InfoPro's proposal repeatedly represented this past performance reference by its initial award amount ("InfoPro supported . . . Treasury department offices on a \$89 million contract"). Id. at 4, 8.

<sup>22</sup> The SOW required, among other things, the contractor to support the agency's modernization and migration of IT systems, SOW §§ C.2, C.3.2, and offerors' technical proposals were to address their understanding of and approach to CBP's modernization and migration requirements. RFP §§ L.10, M.5. The record also contains agency declarations regarding how the BEMS modernization efforts to date were "smaller and easie[r]" than those still to be accomplished. AR, Tab 3, SSA Declaration, Oct. 17, 2014, at 2; Tab 2, TET Chair Declaration, Oct. 17, 2014, at 10-11.

<sup>23</sup> The evaluators' comparison was between the initial award amount of InfoPro's Treasury Department contract and the maximum order amount of the current BEMS requirement--a \$371 million difference. Id. at 17.

200 staff required at BEMS.”<sup>24</sup> Id., Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 17. Moreover, while the Treasury Department reference did involve certain applicable technologies, “this contract did not include Geospatial, Agile, Biometrics, Sensors, or Mobile Applications which [are] a significant portion of the scope of the BEMS requirement.”<sup>25</sup> Id., Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 17. Based on the differences in size, scope, and complexity of the Treasury Department reference, the TET found “some risk” and “some doubt” of the offeror’s ability to perform the BEMS requirement. Id.

The TET also found that, for both of InfoPro’s past performance references, the quality of performance was extremely positive. Id. at 16. Specifically, the agency evaluators found there to be “overall high customer satisfaction with no notable adverse performance in the evaluated areas, and a demonstration of the ability meet customer needs.” Id. Based on an overall assessment of the relevance and quality of InfoPro’s references, the TET rated the offeror’s past performance as “Low Risk.”<sup>26</sup> Id.

InfoPro alleges the agency has no reasonable basis for concluding that the incumbent contract was less complex than the solicited requirements, or that InfoPro lacked relevant experience supporting mainframe application migrations and relocations. Protest, Nov. 3, 2014, at 67-75. In support thereof, the protester points to its modernization efforts involving K9TS, a canine tracking system. Id.; Protest, Sept. 15, 2014, at 53-54.

The agency contends it fully considered InfoPro’s prior migration efforts and found they were not representative of the level of complexity required by the current SOW. AR, Oct. 22, 2014, at 31. The agency also asserts the evaluators were aware of and considered the specific migration experience cited by InfoPro. Id.

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<sup>24</sup> The past performance interviewee stated that InfoPro’s staffing of the Treasury Department contract was “approximately 35 to 45 people.” Id., Tab 22, CBP Interview with InfoPro Treasury Contract Reference, Jan. 30, 2014, at 2. The TET used the high end of the estimated staffing range in its evaluation.

<sup>25</sup> InfoPro’s own proposal stated that its Treasury Department contract was of “limited or no relevance” to geospatial, biometrics, sensors, and mobile applications, id., Tab 20, InfoPro Past Performance Proposal, at 4, while the contract’s reference stated that agile software development methodologies were not employed. Id., Tab 22, CBP Interview with InfoPro Treasury Contract Reference, Jan. 30, 2014, at 1.

<sup>26</sup> Low risk was defined in the solicitation as “[b]ased on the Offeror’s performance record, little doubt exists that the Offeror shall successfully perform the required effort.” RFP § M.5.III.B. By contrast, a rating of very low risk involved “no doubt” about the offeror’s ability to successfully perform. Id.

We find the agency's evaluation of InfoPro's past performance to be reasonable, consistent with the solicitation, and adequately documented. The record demonstrates that, in accordance with the RFP, the agency evaluated both the relevance and quality of each InfoPro past performance reference. The TET reasonably found that InfoPro's incumbent BEMS contract differed in scope and complexity from the current requirement insofar as it did not include modernizing large scale mainframe applications.<sup>27</sup> Moreover, the TET reasonably found that InfoPro's Treasury Department contract differed significantly in size, scope, and complexity from the current requirement. As detailed above, the evaluators found that the Treasury Department contract failed to encompass significant portions of the current BEMS SOW, including large-scale mainframe application migration efforts. While InfoPro argues that its Treasury Department contract involved "highly complex" work, Protest, Nov. 3, 2014, at 73-75, the protester does not dispute the evaluators' conclusions that the reference's size and scope were substantially different, nor that the reference also lacked large mainframe application migrations. As InfoPro's two past performance references were each found to be only somewhat relevant to the requirements here, the TET reasonably rated the offeror's past performance as "Low Risk."<sup>28</sup>

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<sup>27</sup> We also find no merit to InfoPro's alternative assertion that the solicitation did not sufficiently alert the offeror that the new migration efforts would be substantially different from those previously performed. Protest, Nov. 3, 2014, at 68-69. After touting its 14-year incumbency and intimate familiarity with CBP's data center migration requirements, AR, Tab 19, InfoPro Technical Proposal, Feb. 13, 2013, at II.1-1, -16, -18, -24, we find it highly doubtful that InfoPro was unaware of the relative complexity of the application migration efforts that it had performed to date and those yet to occur. In any event, we find the RFP adequately apprised offerors of the SOW requirements.

<sup>28</sup> While the protester maintains that its performance of the K9TS migration was highly successful, Protest, Nov. 3, 2014, at 71-72, it has simply not shown the work to be similar to the large-scale mainframe application migration efforts to be completed under the new contract. The K9TS application involves: a few hundred users at three offices; no internal or external interfaces; 170 program modules; and 20 tables. By contrast, the CBP Overtime Schedule System (COSS), one of the mainframe applications to be migrated, involves: 60,000 users in all CBP offices nationwide, internal and external interfaces containing privacy data, 1,200 program modules, and 128 tables. AR, Tab 2, TET Chair Declaration, Oct. 17, 2014, at 11. The record reflects that the TET additionally considered that InfoPro had implemented a new system at the DHS data center (*i.e.*, TRIREGA), but that this work also differed in complexity from the migration of an existing, operational system. AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 19.

InfoPro also protests that it was not afforded the opportunity to address certain adverse past performance through discussions. Specifically, the protester alleges that the agency official who provided the InfoPro reference for its incumbent BEMS contract--and then doubled as the SSA--provided adverse comments that InfoPro was never given the opportunity to address. Protest, Nov. 3, 2014, at 13-15.

It is a fundamental precept of negotiated procurements that discussions, when conducted, must be meaningful, equitable, and not misleading. ACS Gov't Solutions Group, Inc., B-282098 et al., June 2, 1999, 99-1 CPD ¶ 106 at 13-14. Agencies are also required to provide an offeror with an opportunity to address adverse past performance information to which the offeror has not previously had an opportunity to respond. FAR § 15.306(d)(3); Wisconsin Physicians Serv. Ins. Corp., B-401063, May 4, 2009, 2012 CPD ¶ 35 at 19.

The evaluation of InfoPro's past performance included an interview with one of the agency officials listed by InfoPro on its BEMS contract reference. AR, Tab 20, InfoPro Past Performance Proposal, Feb. 13, 2013, at III-2; Tab 21, CBP Interview with BEMS Contract Reference, Feb. 12, 2014, at 1-2. The agency official found that InfoPro had always performed well, had been very good at maintaining the current state, and had met or exceeded contract requirements. Id. at 1. However, the agency official also stated that InfoPro had experienced "major problems" with hiring ("[s]kill sets for these [BEMS] products are in high demand and it can be hard to find people, hence the hiring challenges"), and had been late on some projects but not the total requirement.<sup>29</sup> Id.

The TET thereafter concluded that the overall quality of InfoPro's past performance was exceedingly high: "[t]his determination was based upon evidence of overall high customer satisfaction with no notable adverse performance in the evaluated areas, and a demonstration of the ability to meet customer needs." AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 16. The agency's subsequent comparative evaluation found that both InfoPro and Unisys had "received consistently strong customer satisfaction," and distinguished the offerors based on the relevance of their past performance. Id., Tab 53, Comparative Analysis and Best-Value Tradeoff Recommendation, July 21, 2014, at 53-55. Likewise, when making his source selection decision, the SSA found that Unisys' superior past performance was based on the relevance, and not the quality, of the offeror's prior work. Id., Tab 55, Source Selection Decision, Aug. 27, 2014, at 3-5; Tr. at 29-32, 44-45.

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<sup>29</sup> The agency official subsequently provided both a written declaration and hearing testimony elaborating on those specific instances where he believed InfoPro had experienced hiring/staffing challenges. AR, Tab 3, SSA Declaration, Oct. 17, 2014, at 2-3; Tr. at 39-43.

The protester argues that the agency failed to afford it the opportunity in discussions to address the adverse past performance information raised in the BEMS contract reference interview. Protest, Nov. 3, 2014, at 13-15. The agency argues that the information contained in the BEMS contract reference interview did not need to be raised in discussions because the evaluators did not consider it to be adverse, citing to our decision in Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 25; AR, Nov. 13, 2014, at 9. The agency also asserts that the allegedly adverse information did not impact the evaluation of InfoPro's past performance. Id.

Here, we need not reach the question of whether the past performance information regarding InfoPro's incumbent BEMS contract was adverse, or whether the information had to be raised in discussions, because InfoPro has not demonstrated that it was prejudiced by any such error. As detailed above, the record reflects the allegedly adverse information from the BEMS contract interview was not included in the TET's final evaluation, which instead found "overall high customer satisfaction." AR, Tab 51, TET Evaluation of InfoPro, May 9, 2014, at 16. The record also reflects that InfoPro's past performance rating was based on concerns regarding the relevance, and not the quality, of its prior work. Similarly, the agency's comparative analysis found both offerors had exceptional past performance quality, and that the difference was in the area of past performance relevance. Lastly, the record establishes that the SSA's determination that Unisys' past performance was superior to that of InfoPro was based only on the greater relevance of the awardee's past contracts, and not the quality of InfoPro's prior performance. AR, Tab 55, Source Selection Decision, Aug. 27, 2014, at 3-5; see also Tr. at 29-32. While we recognize the unique facts present here--that the agency official who provided the allegedly adverse past performance information was then also the SSA--the record reflects that it was the relevance of Unisys' prior work that was considered to be the discriminator between the offerors' past performance on which the contract award decision was based. Thus, even if the agency had discussed the alleged adverse past performance with InfoPro--as the protester requests--the project's relevance would remain unchanged.

#### OCI Evaluation of Unisys

InfoPro protests that the agency's evaluation of Unisys' organizational conflict of interest (OCI) was improper. Specifically, the protester contends that Unisys is a major supplier of both IT services and products that will prevent it from objectively recommending emerging technologies to CBP, as required by the SOW, during performance of the BEMS contract. InfoPro also alleges the agency's assessment of Unisys' OCI was unreasonable, and that the agency failed to evaluate the full extent of Unisys' OCI. Protest, Sept. 15, 2014, at 61-65; Protest, Nov. 3, 2014, at 55-67.

The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. See Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5. As relevant here, an impaired objectivity OCI exists where a firm's ability to render impartial advice to the government will be undermined by the firm's competing interests, such as a relationship to the product or service being evaluated. FAR § 9.505-3; see also FAR § 2.101 (OCI definition); Pragmatics Inc., B-407320.2, B-407320.3, Mar. 26, 2013, 2013 CPD ¶ 83 at 3; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

Contracting officers are required to identify and evaluate potential OCIs as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts of interest before contract award. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting officer. Alliant Techsystems, Inc., B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4; PricewaterhouseCoopers LLP; IBM U.S. Fed., B-409885 et al., Sept. 5, 2014, 2014 CPD ¶ 289 at 19.

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. Alliant Techsystems, Inc., supra. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Guident Techs., Inc., B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; 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. TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011). As set forth below, we have no basis to question the contracting officers' investigation or conclusion with regard to the alleged impaired objectivity OCI concerns.

The SOW requires, among other things, the contractor to "[i]nvestigate and evaluate emerging technologies that have the potential to improve business processes and system/facility operations, as well as addressing the viability of the technologies to BEMS portfolio of system applications along with recommendations on how assessed technologies fulfill BEMS technical requirements." SOW § C.3.5. The "evaluating emerging technologies" requirement represented a "very minimal" part of the total SOW requirement--one of approximately 141 substantive tasks to be performed under the BEMS contract. SOW § C.3; AR, Oct. 22, 2014, at 36; Tr. at 202.

On June 6, 2014, the contracting officer requested that Unisys address the potential for an OCI, and specifically required the offeror to address the “evaluate emerging technologies” task in light of the fact that Unisys and its partners provided a variety of IT products. AR, Tab 41, CBP Letter to Unisys, June 14, 2014, at 1-3. Unisys responded by submitting its OCI mitigation plan. Id., Tab 42, Unisys OCI Mitigation Plan, June 18, 2014. Among other things, Unisys stated that it had little technology of its own that competes with the technology that would likely be assessed for potential use on the BEMS program. Id. at 2. “Instead, as a system integrator, Unisys’ primary service is to evaluate technologies available in the marketplace and to provide impartial recommendations for solutions in which Unisys has no financial or other interest that would impair its objectivity in the advice that it gives.” Id. Unisys additionally responded that, if the situation arose where Unisys developed a solution that could be one choice for fulfilling BEMS’ needs, it would mitigate the potential OCI by, among other things, the use of “firewalled” (i.e., independent) subcontractors. Id. at 2-5.

Thereafter Unisys clarified aspects of its OCI assessment and plan in response to an additional contracting officer request. Here Unisys detailed its various infrastructure technologies and stated that, “[t]he infrastructure products we offer would likely not be part of the BEMS scope for evaluation, as the BEMS contract does not include infrastructure products or solutions . . . .” Id., Tab 45, Unisys’ OCI Assessment, June 30, 2014, at 1. Unisys also identified two software products that could create a future OCI risk, and “only if BEMS should have a requirement for either a [commercial-off-the-shelf] product related to law enforcement case management or to biometric enrollment.” Id. at 2. Unisys then addressed the specific InfoPro allegations raised in the August 2, 2013, protest, and how the assertions were factually incorrect. Id. at 4.

The contracting officer then performed an extensive assessment of potential OCIs under the BEMS contract. AR, Tab 49, OCI Determination, at 1-24. First, the contracting officer identified all SOW areas of potential risk in performing the BEMS requirement, including the “evaluate emerging technologies” allegation of InfoPro.<sup>30</sup> The contracting officer then considered Unisys’ responses, and found that while there was a potential OCI risk (because Unisys may possibly have a future product offering suitable for the requirement), there was presently no known conflict. Id. at 21-22; Tr. at 208-10. Because no further OCI assessment could be made at this time, and because Unisys’ plan prepared for the identification and mitigation of OCIs in the event of a conflict with the evaluating emerging technologies task, the

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<sup>30</sup> The other four SOW areas were determined to be of insignificant risk to the immediately-known performance requirements, id. at 2, 6-19, and InfoPro does not directly challenge these other four SOW areas.

contracting officer determined both that the OCI risk was low and the offeror's mitigation plan was acceptable. Id. at 23-24; Tr. at 210-13, 219-21.

Based on the record before us, we find the agency's evaluation of Unisys' OCI to be wholly reasonable. As a preliminary matter, the contracting officer reasonably determined that the OCI potential was not a significant one. The contract was not one where the task in question--evaluating emerging technologies--was the sole or principal portion of the total effort. Rather, the primary task of the contract was to provide operational maintenance of BEMS' IT systems. In fact, as detailed above, the "evaluate emerging technologies" task represents but one of 141 SOW requirements. While InfoPro argues that "all tasks are not created equal," Protest, Nov. 3, 2014, at 57, it does not dispute that the task in question was a small part of the total statement of work.

The contracting officer also reasonably determined, based on the information possessed, that no known OCI conflict presently existed with Unisys. While Unisys was a provider of both products and services, none of Unisys' current products were ones that were likely to be assessed for potential use on the BEMS program. While InfoPro argues that Unisys is developing new products that could potentially conflict with its contract requirements, Protest, Nov. 3, 2014, at 59, it has not shown, or even alleged, that Unisys presently makes any products that would be considered as part of the BEMS IT portfolio. Further, in the event of a potential, future conflict, Unisys' submitted an OCI mitigation plan which the contracting officer reasonably found acceptable. As the record demonstrates that the agency gave meaningful consideration to whether a significant conflict of interest exists, and reasonably concluded that Unisys' plan for any potential OCI was acceptable, we will not substitute our judgment for the agency's.

InfoPro also alleges that the agency's OCI assessment of Unisys was incomplete, insofar as the agency did not evaluate the OCI risk arising from the additional technology innovation activities that Unisys proposed in its technical approach. Protest, Nov. 3, 2014, at 63-64.

In its technical proposal, Unisys stated that:

[DELETED].

AR, Tab 9, Unisys' Technical Proposal, at II-1-20.

Unisys' proposed [DELETED] and [DELETED] were essentially a means by which the offeror would perform the "evaluate emerging technologies" requirement. Accordingly, to the extent the [DELETED] solutions involved Unisys' (or a subcontractor's) products, InfoPro contends that the same potential impaired objectivity OCI concerns would exist here. Protest, Nov. 3, 2014, at 64. The record reflects, however, that the contracting officer also considered this aspect of Unisys'

proposal when performing her OCI assessment. Tr. at 285, 308-09. Again, as there were no known actual conflicts of interest, the contracting officer reasonably determined that Unisys' mitigation plan was equally applicable and adequate to this aspect of the offeror's proposal.<sup>31</sup>

In sum, while InfoPro characterizes Unisys' OCI as a "severe" one, the record reflects that the conflict of interest is only a potential one, that would affect a very small aspect of the total work requirements, and for which Unisys offered a mitigation plan that the contracting officer reasonably evaluated and accepted.

### Best Value Decision

Lastly, InfoPro protests that the agency's best value tradeoff decision was flawed. The protester alleges that the SSA failed to identify the noncost advantages present in Unisys' proposal, to explain why those advantages merited the cost premium associated with Unisys' proposal, and to give meaningful consideration to InfoPro's lower cost in his award determination. InfoPro Protest, Nov. 3, 2014, at 75-81.

Source selection officials in negotiated best-value procurements have broad discretion in making cost/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. PricewaterhouseCoopers LLP; IBM U.S. Fed., supra, at 20. Source selection decisions must be documented, and the documentation must include the rationale for any business judgments and cost/technical tradeoffs made, including the benefits associated with the additional costs.<sup>32</sup> FAR § 15.308; General Dynamics Info. Tech., Inc., B-406059.2, Mar. 30,

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<sup>31</sup> InfoPro also argues that the agency's acceptance of Unisys' OCI mitigation plan constituted unequal discussions, because it required material changes to Unisys' role as the prime contractor and substantially changed Unisys' technical approach. Protest, Nov. 3, 2014, at 65, citing Cahaba Safeguard Adm'rs, LLC, B-401842.2, Jan. 25, 2010, 2010 CPD ¶ 39. Specifically, the protester contends that Unisys' plan for a firewalled subcontractor was entirely inconsistent with Unisys' "badgeless, 'leave logos at the door,' single team approach" set forth in the offeror's technical proposal. Protest, Nov. 3, 2014, at 66. The contracting officer found that Unisys' use of a firewalled subcontractor did not alter the offeror's general technical and management approaches, because of the seldomness of the potential occurrence. Tr. at 213-18. We find that Unisys' use of firewalled subcontractors--on those potential, future occasions to avoid an impaired objectivity--simply does not present a material change to the offeror's proposal in terms of its technical approach or price.

<sup>32</sup> This explanation can be given in the award decision itself or evidenced from the documents on which the source selection decision is based. Geo-Seis Helicopters,  
(continued...)

2012, 2012 CPD ¶ 138 at 4. However, there is no need for extensive documentation of every consideration factored into a tradeoff decision; rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. Wyle Labs., Inc., B-407784, Feb. 19, 2013, 2013 CPD ¶ 63 at 11.

As set forth above, the TET's evaluation of offerors' proposals included the identification of strengths, weaknesses, and risks in support of the adjectival ratings assigned. Thereafter, the contracting officer reviewed the technical evaluation results and performed an extensive comparative analysis of the offerors' strengths, weaknesses, and risks under each factor, subfactor, and element.<sup>33</sup> AR, Tab 53, Comparative Analysis and Best-Value Tradeoff Recommendation, July 21, 2014, at 31-56. In some instances the contracting officer found the offerors equal to each other, or InfoPro superior to Unisys. See, e.g., id. at 34-35, 39-40. However, in many more instances, the contracting officer found, based primarily on the strengths identified in the awardee's proposal, Unisys to be superior to InfoPro. Id. at 31-55.

For example, under the technical approach subfactor, the contractor officer summarized in part as follows:

In addition, the Unisys [DELETED] was distinct from InfoPro's risk approach in that it was more comprehensive, well-defined, program-wide, with strong contingency planning, and showing clear alignment to development and maintenance benefits. While the evaluation of InfoPro's risk management solution highlighted strengths, the process is more vague, is not comprehensive to the whole [BEMS Directorate] program, and lacks contingency planning if the identified risks are not mitigated.

Id. at 41.

The contracting officer further concluded that Unisys' technical and past performance advantages outweighed the offeror's cost premium, and recommended award to the firm. Id. at 57-58. In this regard, the contracting officer found that "[t]he benefits of the Unisys proposal are significant enough to create potential

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(...continued)

Inc., B-299175, B-299175.2, Mar. 5, 2007, 2007 CPD ¶ 135 at 6; TPL, Inc., B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 19 n.17.

<sup>33</sup> The solicitation set forth six elements under the technical approach subfactor, nine elements under the management approach subfactor, and two elements under the transition plan subfactor. RFP § M.5.

efficiencies and produce quality results so as to supersede the benefits of InfoPro's lower priced alternative." Id. at 57.

The SSA reviewed the TET's evaluation reports and accepted the contracting officer's comparative analysis findings when preparing his source selection decision. AR, Tab 55, Source Selection Decision, Aug. 27, 2014, at 2, 7. In this regard, the SSA highlighted the evaluators' findings under each of the factors. With respect to the technical factor, the SSA noted that Unisys' approach was superior to that offered by InfoPro, and provided a number of significant strengths that would greatly benefit BEMS: its roadmap (strategy) to modernize legacy applications; continuous prototyping; tailored Agile software development methodologies; innovative hiring and retention practices such as [DELETED] to identify specific lists of needed skills and technologies; a risk register; comprehensive contingency planning; transition metrics; and CBP-cleared personnel responsible for transition.<sup>34</sup> Id. at 2-3. Also, under the past performance factor, the SSA concluded that Unisys' proposal was superior to InfoPro's insofar as Unisys possessed "highly relevant experience supporting high-risk operations which are critical to [BEMS Directorate] migration and modernization initiatives," which InfoPro did not ("InfoPro's lack of experience in supporting [migration] efforts at this scale [of complexity] represents a notable gap in relevance to the [BEMS Directorate] requirement)."<sup>35</sup> Id. at 4; see Tr. at 24-26.

Ultimately, the SSA determined that Unisys' proposal represented the best value to the agency. Id. at 7. In reaching his conclusion, the SSA explained as follows:

[T]he [most probable cost] difference . . . between Unisys' proposed solution and InfoPro's proposed solution is approximately \$12.3 million over the course of the five year IDIQ. However, as outlined above, Unisys' proposal presents significant benefits and tailored approaches which I and the TET believe will enhance the quality of [BEMS Directorate] systems and operations. It is my belief, in alignment with that of the TET's findings, that the proposed methods and tools such as the high level function target, roadmap implementation, the use of prototypes, subcontractor competition, management dashboards, the risk register, comprehensive contingency planning, transition metrics, employee hiring and retention efforts, and outstanding past performance in the Unisys solution demonstrate the potential to considerably minimize risk and enhance efficiencies to quality,

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<sup>34</sup> The SSA also documented the benefits to the agency associated with Unisys' various technical advantages. Id. at 2-3.

<sup>35</sup> Like the TET, the SSA found the Unisys and InfoPro proposals to be equal under the socio-economic performance factor. Id. at 5.

schedule, and cost for the [BEMS Directorate] initiatives. Therefore, it is my assessment that these benefits outweigh the cost savings in the InfoPro solution and justify the payment of a [cost] premium for Unisys' superior technical proposal.

Based on my review, the benefits of Unisys' proposed technical solution, management approach, transition approach and past performance outweigh the price difference of \$12,310,376.51 for all five years of the proposed contract effort. . . . Because the combination of Technical, . . . Past Performance, and Socio-Economic Performance is more important than Cost, as stated in the RFP, paying the price premium for Unisys' technically superior proposal is in the best interest of the Government.

Id. at 6.

We find that the agency's source selection decision was reasonable and consistent with the solicitation's evaluation criteria, and documented in textbook fashion, i.e., the decision sets forth in extensive detail the SSA's rationale for the tradeoff between cost and noncost considerations in making the award decision. As the record demonstrates here, the SSA reviewed the relative importance of the RFP's stated evaluation criteria and the size of the cost difference between the InfoPro and Unisys proposals. The SSA also looked behind the assigned adjectival ratings and concentrated on the actual differences between the offerors' proposals under the noncost factors. The SSA then detailed why, in his judgment, Unisys' superiority under the technical and past performance factors outweighed the additional cost, and adequately documented the rationale for this determination.

InfoPro argues that the SSA failed to identify Unisys' specific advantages and explain why those advantages merited the associated cost premium. Protest, Nov. 3, 2014, at 76. InfoPro also alleges the SSA failed to accord meaningful weight to InfoPro's \$12 million cost advantage. Id. We disagree.

There is no requirement that the SSA, in performing the cost/technical tradeoff, to "dollarize" (i.e., calculate a precise value) the technical advantages found to outweigh the associated cost premium. WingGate Travel, Inc.--Recon., B-405007.17, May 23, 2013, 2013 CPD ¶ 124 at 4. Moreover, as detailed above, the SSA clearly identified Unisys' specific advantages and why those advantages were of benefit to the agency. The SSA then detailed why those benefits outweighed InfoPro's \$12.3 million cost advantage: Unisys' "significant benefits and tailored approaches . . . will enhance the quality of [BEMS Directorate] systems and operations," and "demonstrate the potential to considerably minimize risk and enhance efficiencies to quality, schedule, and cost for the [BEMS Directorate] initiatives." AR, Tab 55, Source Selection Decision, Aug. 27, 2014, at 6. As the SSA was also fully aware of the amount of InfoPro's cost advantage, we find no

merit to the assertion that the SSA failed to meaningfully consider this cost advantage by not discussing it further.<sup>36</sup>

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>36</sup> We also find no merit in the protester's assertion that the SSA failed to consider all of InfoPro's identified strengths. Protest, Nov. 3, 2014, at 80. There is no requirement that an SSA restate each of an offeror's strengths or weaknesses when comparing proposals and making an award determination. See Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 10 n.17. To the extent the SSA mentioned more of Unisys' strengths than InfoPro's, it was simply because there were more of them, as well as because it was part of the SSA's rationale for reasonably selecting the higher technically-rated, higher-cost proposal submitted by Unisys.