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Decision

Matter of: Council for Logistics Research, Inc.

File: B-410089.2; B-410089.3

Date: February 9, 2015

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Heather Weiner, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency should have found the awardee's quotation unacceptable is denied where the awardee's quotation met the requirements of the solicitation regarding the awardee's proposed teaming partners and their Federal Supply Schedule (FSS) contracts, and the record establishes that the protester suffered no prejudice as a result of the termination of some of the FSS contracts held by the awardee's proposed teaming partners.

2. Protest challenging agency's analysis of potential or actual organizational conflicts of interest is denied where the contracting officer reasonably found that the issuance of the task order would not create any disqualifying conflicts.

DECISION

Council for Logistics Research, Inc. (CLR), of Arlington, Virginia, protests the issuance of a task order to Spectrum Comm Inc., of Newport News, Virginia, under request for quotations (RFQ) No. ID07130035, which was issued by the General Services Administration (GSA), on behalf of the Department of the Air Force, Office of the Assistant Secretary of the Air Force for Acquisition (SAFAQ), for technical and analytical support in professional services. CLR challenges the agency's evaluation of Spectrum's quotation because, the protester contends, the awardee's quotation included invalid Federal Supply Schedule (FSS) contracts, and proposed

“open market” items, in violation of the terms of the RFQ, and therefore should have been rejected as unacceptable. The protester also asserts that the agency failed to properly consider various alleged organizational conflicts of interest (OCIs).

We deny the protest.

BACKGROUND

On December 19, 2013, GSA posted a sources sought notice on GSA’s e-Buy website to vendors holding contracts under schedule No. 874, mission oriented business integrated services (MOBIS), special item number (SIN) 874-1--consulting services. Contracting Officer (CO) Statement at 2. Nineteen vendors responded to the agency’s sources sought notice. Id. On January 29, GSA issued the RFQ to the MOBIS vendors that responded to the sources sought notice and who also were registered in GSA’s information technology solutions shop. Id. The solicitation sought technical and analytical support, including personnel, material, and services, to assist the SAFAQ in its mission to develop, maintain, and integrate acquisition management policy, advance acquisition reform, facilitate strategic planning, and develop and train acquisition human resources. RFQ at 2.

The RFQ anticipated the issuance of a hybrid time-and-materials and fixed-price contract, for a base year and four 1-year options. Id. The solicitation provided for award on a best-value basis, considering the following factors: (1) past experience, (2) technical approach, and (3) price. Id., App. B, Evaluation Criteria, at 1. For purposes of award, the past experience factor was more important than the technical approach factor, and these two non-price factors, when combined, were more important than price. Id. The solicitation also stated, however, that “the Government will not make an award at a significantly higher price to achieve slightly superior non-price features,” and that “[w]hen competing quotes are determined to be substantially equal after evaluation of all non-price factors, the price and other price factors could become the controlling factor.” Id. In addition, the RFQ advised that proposals must receive a rating of at least acceptable in both of the non-price evaluation factors to be further evaluated and considered for award. Id. at 2.

The solicitation explained that the procurement was being conducted in accordance with Federal Acquisition Regulation (FAR) subpart 8.4, and that the task order would be placed against the following GSA federal supply schedule contracts: (1) MOBIS; (2) schedule No. 70, information technology (IT); and (3) schedule No. 571, advertising and integrated marketing solutions (AIMS). RFQ at 24. The RFQ specified that “[t]he contractor shall not quote any items or services under the terms of this order that are not awarded on the vendor’s schedule, or on their teaming partners’ schedule[s], and that “NO OPEN MARKET (i.e., items not formally awarded on a MAS [multiple award schedule] contract) SHALL BE OFFERED UNDER THE TERMS OF THIS TASK ORDER.” Id., App. B, Evaluation Criteria, at 3 (emphasis in original).

As relevant here, the RFQ stated that “Contractor Teaming Arrangements (CTA) are anticipated,” to allow vendors “[t]o meet the total solution required to ensure [that] all of the . . . labor categories are quoted in support of the task order.” Id. at 17. The solicitation also stated that, “[n]o work shall be completed in support of this task order that isn’t prepriced on the prime contractor or their subsequent CTA partner schedule contracts.” Id.

With regard to the vendors’ GSA schedules, the solicitation stated that “[o]fferors must have a valid and approved GSA Schedule/SIN contract prior to submission of a quote,” and required that vendors “provide a Web link to [their] Schedule[s] in GSAAAdvantage!®,” as proof of the GSA schedule validity. RFQ, App. C, Quote Format, at 1. The RFQ advised: “If any Offeror’s GSA Schedule contracts are not valid . . . the quote will be considered unacceptable for consideration for this Task Order.” Id.

GSA received quotes from four offerors, including CLR and Spectrum, by the April 1 closing date. CO Statement at 4. CLR is the incumbent for the requirement.¹ Id. at 1. After an initial evaluation, the contracting officer sent clarifications letters to three of the offerors,² and requested additional discounts. Id. at 5. The agency received revised quotes from the three remaining offerors. Id. at 5-6. After an evaluation of the vendors’ revised quotes, the contracting officer sent “confer letters” to the three vendors “in an attempt to clarify remaining weaknesses and ambiguities found in the quotes . . . [and] increase the government’s confidence in the best value award determination.” Id. at 6. After receiving responses to the confer letters from all three offerors, the agency reevaluated the quotes. Id. The evaluation results were as follows:

	CLR	SPECTRUM
Past Experience	Excellent	Very Good
Technical Approach	Excellent	Very Good
Total Price	\$55,969,241.61	\$35,589,697.30

Agency Report (AR), Tab 18, Award Decision Document, at 8, 10.

¹ CLR is currently performing the requirement under two task orders, which GSA combined and redefined for the instant procurement. CO Statement at 1.

² One of the offerors was not included in clarifications because its quote was found unacceptable under one of the non-price factors, and was not evaluated further. CO Statement at 5.

The contracting officer determined that Spectrum's quote "met or exceeded all of the requirements of the solicitation," and "present[ed] low risk to the government." Id. at 13. In addition, the contracting officer found that Spectrum's proposed prices were "fair and reasonable based on adequate price competition, [and] a comparison with the MOBIS/IT 70/AIMS Schedules, the [independent government estimate], and other vendors on schedule." Id. In conducting the tradeoff analysis, the contracting officer stated that he was "unable to support a decision to pay a premium in price . . . to award to . . . CLR's higher-rated non-price [quote] versus Spectrum's 'Very Good' rated non-price quote at a substantially lower price." Id. The contracting officer concluded that Spectrum's quote provided the best value to the government, and awarded the task order to that firm on July 2. Id. at 13-14.

On July 14, CLR filed a protest with our Office. CO Statement at 10. CLR asserted that Spectrum had unmitigated OCIs as a result of Spectrum's performance under the following contracts: (1) contracted advisory & assistance services (CAAS IV); (2) acquisition of consolidated enterprise acquisition support services (ACCESS); and (3) network centric solutions-2 (NETCENTS-2). Id. GSA decided to take corrective action "to investigate the potential OCI issues," and our Office dismissed CLR's protest as academic on August 12. AR, Tab 26, GAO Dismissal, at 1.

Thereafter, GSA conducted an investigation, the results of which the agency documented in a determination and findings (D&F), dated October 15, 2014. CO Statement at 10. Based on the results of the investigation, the contracting officer "determined there to be no actual or potential OCIs that would prevent awarding the Task Order to Spectrum." Id. On October 24, the agency provided the D&F to CLR. Id. This protest followed.

DISCUSSION

CLR challenges GSA's evaluation of Spectrum's quotation because, the protester contends, the awardee's quotation included invalid federal supply schedule contracts, and proposed "open market" items, in violation of the terms of the RFQ, and therefore should have been rejected as unacceptable. The protester also asserts that the agency failed to properly consider various alleged conflicts of interest. For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26,

2009, 2009 CPD ¶ 33 at 4. A protester's mere disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, supra.

Technical Acceptability of Spectrum's Quote

CLR contends that Spectrum's quote was unacceptable based on the following alleged defects: (1) three of Spectrum's CTA partners' GSA schedule contracts were terminated either prior to award or during the timeframe of the agency's OCI investigation; and (2) Spectrum's teaming arrangement with one of its teaming partners resulted in Spectrum proposing labor categories as "open market" items, in violation of the terms of the RFQ. For the reasons discussed below, we find that neither of the protester's allegations provides a basis to sustain the protest.

As discussed above, the RFQ required that vendors hold three schedule contracts--MOBIS, IT, and AIMS--or enter into contractor teaming arrangements with teaming partners holding these schedules. RFQ, App. B, Evaluation Criteria, at 3. In this regard, the solicitation explained that contractor teaming arrangements were anticipated to ensure that all of the labor categories in the task order were quoted. Id. at 17. Spectrum itself holds a MOBIS schedule contract and IT schedule contract. AR, Tab 9, Spectrum Quote, pt. 2, at 1. In addition, Spectrum entered into CTA agreements with six teaming partners: A.T. Kearney; Decisive Analytics Corporation (DAC); Dar Public Relations, Inc.; Engility Corporation; Eventive Inc.; and Post Modern Company. AR, Tab 9, Spectrum Quote, pt. 2, at 3. These partners collectively held three MOBIS schedule contracts, four AIMS schedule contracts, and three IT schedule contracts. Id.

As relevant here, the RFQ specified that, "[n]o work shall be completed in support of this task order that isn't prepriced on the prime contractor or their subsequent CTA partner schedule contracts." RFQ at 17. The solicitation also stated that "[o]fferors must have a valid and approved GSA Schedule/SIN contract prior to submission of a quote," and advised: "If any Offeror's GSA Schedule contracts are not valid . . . the quote . . . will be considered unacceptable for consideration for this Task Order." RFQ, App. C, Quote Format, at 1.

In addition, the RFQ required that vendors provide a cross-walk between the labor categories identified in the performance work statement (PWS) for the requirements, and the labor categories from the vendor's proposed task order schedule contracts. RFQ at 16. In responding to this requirement, Spectrum's quote mapped the PWS labor categories and requirements to Spectrum's MOBIS and IT schedule contracts, as well as to the MOBIS schedule contract and IT schedule contract of one of Spectrum's CTA partners, DAC, and the AIMS schedule contract of another Spectrum CTA partner, Post Modern. AR, Tab 17, Spectrum Revised Quote, pt. 2, at 23. Spectrum's quote also used pricing from Spectrum's, DAC's and Post Modern's schedule contracts for its proposed labor categories and

mix. Id. In responding to the PWS task order requirements, Spectrum's quote did not specifically rely on any labor categories or pricing from any of the other teaming partners.³ Id.

CLR first argues that Spectrum's quotation was unacceptable because three of the FSS schedule contracts proposed by Spectrum's CTA partners were terminated either prior to award or during the timeframe of GSA's OCI investigation. Specifically, the protester contends that Spectrum's CTA partner, Engilty, did not possess a valid AIMS schedule contract at the time of award, and that another of Engilty's FSS contracts--its IT schedule contract--was terminated during the agency's OCI investigation, which took place during the agency's corrective action in response to CLR's initial protest.⁴ In addition, CLR asserts that the AIMS schedule contract of one of Spectrum's other CTA partners, Eventive, was also terminated during the agency's OCI investigation.

GSA does not dispute that these three GSA schedule contracts were terminated at the times indicated by the protester. Supp. AR (Dec. 22, 2014), at 2. GSA asserts, however, that based on the RFQ's requirements⁵ and the contents of Spectrum's proposal, it did not know, and could not have known, at the time of award or prior to this protest, that any of the GSA schedule contracts held by Spectrum's CTA partners had been terminated. GSA further argues that, because Spectrum's proposed solution and pricing relied solely on valid FSS schedule contracts--and not on any of the three terminated schedule contracts--the unavailability of the three terminated schedule contracts does not impact Spectrum's ability to provide its proposed solution at its proposed price.

The protester contends that Spectrum's failure to notify GSA regarding the terminated status of its CTA partners' schedule contracts was tantamount to an intentional misrepresentation. Protester's Comments (Dec. 15, 2014), at 7 n.4. We recognize that a vendor has a duty to notify an agency of material changes in proposed staffing and resources, even after submission of proposals. See

³ With regard to the RFQ's requirement for ancillary products and services, Spectrum's quote used pricing from the AIMS schedule contract of Spectrum's CTA partner, DAR Public Relations. AR, Tab 9, Spectrum Quote, pt. 1, at 1.

⁴ Engilty also holds a MOBIS schedule, which has not been terminated.

⁵ The RFQ required that vendors provide a web link to their GSA schedules in GSAAAdvantage, and stated that the vendor's GSAAAdvantage Schedule documents would constitute proof of the validity of the vendor's GSA Schedules. RFQ, App. C, Quote Format, at 1. The contracting officer states that "[a]t the time of evaluation, Spectrum's proposed GSA schedule contracts were proven through GSAAAdvantage as the solicitation required, and all were thoroughly vetted and determined valid at that time." Supp. CO Statement (Dec. 22, 2014), at 1.

Greenleaf Constr. Co., Inc., B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 at 10; Dual, Inc., B-280719, Nov. 12, 1998, 98-2 CPD ¶ 133 at 5-6. Even if Spectrum was required to notify GSA of the changes to its CTA partners' FSS contracts, the protester has failed to demonstrate any prejudice based on the awardee's failure to do so. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (competitive prejudice is a necessary element of any viable bid protest).

While CLR argues that Spectrum's proposal was unacceptable because it incorporated the terminated schedule contracts, the protester fails to point to any evidence that Spectrum's proposed solution for performing the PWS requirements relied upon the now terminated schedule contracts.⁶ Rather, as discussed above, the record reflects that Spectrum's quotation did not map the PWS labor categories or requirements to the labor categories of any of the three terminated schedule contracts, and that Spectrum's quoted pricing did not rely on the pricing from any of the three terminated schedule contracts. AR, Tab 17, Spectrum Revised Quote, pt. 2, at 23. In addition, the protester does not argue, nor does the record reflect, that the selection decision was based on the terminated schedule contracts, or that removal of the terminated schedule contracts from Spectrum's quote would render any portion of Spectrum's quote infeasible, or in any way prevent the awardee from performing as proposed.

Although we agree with the protester that the RFQ stated that a quote would be considered unacceptable if the vendor's schedule contracts were not valid at the time of proposal submission, this provision must be read in conjunction with the RFQ's requirement that a vendor "must have a valid and approved GSA Schedule/SIN contract prior to submission of a quote in response to this RFQ." RFQ, App. C, Quote Format, at 1. As discussed above, the solicitation required only that the vendor, or a teaming partner, hold one of each of the three schedules identified in the RFQ. Id. Even removing the three terminated schedule contracts from consideration, Spectrum's quote still clearly met this RFQ requirement.⁷

⁶ In fact, the protester acknowledges, with regard to the terminated AIMS schedule contract, that "all labor categories would be covered [even] if Engility's AIMS Schedule was removed from award." Protester's Supp. Comments (Dec. 30, 2014), at 3.

⁷ The protester also argues that GSA's award to Spectrum was improper, due to the terminated FSS schedule contracts, because all of the CTA partners are "prime contractor awardees." Protester's Comments (Dec. 15, 2014), at 6. The RFQ itself, however, stated that the prime contractor would be the "team lead," and any CTA partners would be team members. RFQ at 20-21. This structure is further reflected in the agency's award document, which lists Spectrum as the awardee, but states that Spectrum is authorized to use the schedule contracts of its CTA partners. AR, Tab 19, Award Document, at 1-2.

Based on this record, the protester has failed to demonstrate prejudice, and therefore, we have no basis for sustaining CLR's protest on this ground.

Next, CLR contends that, based on the structure of Spectrum's CTA with its proposed partner, Decisive Analytics Corporation (DAC), Spectrum's quote improperly included "open market" items in violation of the terms of the RFQ, and therefore, should have been rejected as unacceptable. Specifically, CLR asserts that one of Spectrum's teaming arrangements does not "agree to be in direct privity with the government," which the protester contends, results in Spectrum proposing open market items. Protester's Supp. Comments (Dec. 30, 2014), at 14. Based on our review of the record, however, we find no merit to this argument.

As discussed above, the RFQ stated that vendors were permitted to use CTAs to enable vendors to include in their quotes all of the labor categories under the three schedule contracts. RFQ at 17. The RFQ also specified that vendors were not permitted to offer open market items, *i.e.*, items not formally awarded on FSS schedule contracts. *Id.*, App. B, Evaluation Criteria, at 3.

The teaming agreement between Spectrum and DAC challenged by the protester is entitled, "Contractor Teaming Arrangement (CTA)." AR, Tab 9, Spectrum Proposal, attach. 1, DAC CTA, at 1. This CTA states that Spectrum is the team lead, and that the other company, as the teaming partner, is providing pricing, and will provide services to the government utilizing the teaming partner's MOBIS and IT schedule contracts. *Id.* at 1-2. As relevant here, the CTA states that, "[in the event of contract award, Team Lead will endeavor to award Team Member [DELETED] percent ([DELETED]%) of total work share." *Id.* at 2. The protester asserts that, because the CTA includes an "open issue" to be negotiated in the future, the partnership agreement does not include the privity required by a CTA, and therefore results in Spectrum proposing open market items.

Based on our review of the record, the protester fails to demonstrate that the CTA between Spectrum and DAC caused the quote to include open market items, that is, any labor categories that were not included on DAC's FSS contracts. To the contrary, the terms of Spectrum's CTA reflect that the teaming partner would provide its services directly to the government via DAC's two existing FSS schedule contracts. For example, as mentioned above, the CTA states that DAC's pricing and services are based on the teaming partner's MOBIS and IT schedule contracts. *Id.* at 1. In addition, the CTA specifies that the teaming partner is responsible for reporting its schedule sales to GSA and remitting the industrial funding fee (IFF). *Id.* at 3. Although the team members may have been planning to negotiate post-award the percentage of work that this particular team member would contribute under the task order, we find no basis to conclude that this approach converted the CTA into a subcontract, or transformed the FSS services into open market items, as the protester contends. As such, the protester's arguments provide no basis to sustain the protest.

Organizational Conflicts of Interest

CLR argues that the agency's OCI investigation was incomplete or otherwise unreasonable. Specifically, the protester contends that GSA failed to properly consider whether Spectrum's performance under the task order will create impaired objectivity and unequal access to information OCIs with regard to Spectrum's performance under its CAAS IV, ACCESS, OASIS, and PASS contracts.⁸ CLR also argues that GSA's OCI analysis was unreasonable because it failed to consider any potential OCIs concerning Spectrum's teaming partners. Based on our review of the record, as discussed below, we find the agency's OCI determinations reasonable.

The FAR requires that contracting officers avoid, neutralize, or mitigate potential significant OCIs so as to prevent an unfair competitive advantage or the existence of conflicting roles that might bias a contractor's judgment or impair its objectivity. 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 agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12.

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. Organizational Strategies, Inc., B-406155, Feb. 17, 2012, 2012 CPD ¶ 100 at 5. As relevant here, an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR § 9.505-3; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra at 13. As also relevant, an unequal access to nonpublic information OCI arises where, as part of its performance of a government contract,

⁸ The CAAS IV program is a strategic initiative between the Air Combat Acquisition Management and Integration Center, and the Air Force District of Washington Contracting Directorate, for management and professional support services. AR, Tab 27, D&F, at 4. The ACCESS contract provides the Air Force with advisory and assistance services to support the missions of the organizations at Wright-Patterson Air Force Base. Id. at 5. The OASIS small business program provides agencies with total integrated solutions for a multitude of professional service-based requirements. Id. at 6. PASS II is for advisory and assistance services, and acquisition support services, for the Air Force Life Cycle Management Center and Hanscom Air Force Base and Foreign Military Sales program offices and functional staff. Id.

a firm has access to information that may provide the firm an unfair competitive advantage in a competition for another government contract. FAR § 9.505-4.

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; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). An agency's evaluation of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion by the agency. 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). We review an agency's OCI investigation for reasonableness, 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. See TeleCommunication Sys. Inc., supra, at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17.

Impaired Objectivity OCI

CLR first asserts that GSA's OCI analysis was unreasonable because, under the AFTAS PRO task order awarded here, Spectrum will be required to evaluate its own or its competitors' proposals or performance. Specifically, CLR challenges the agency's assessment of the responsibilities being performed by one of CLR's employees under the predecessor AFTAS PRO task orders. The protester contends that, although this employee does not actually perform the evaluations or render source selection determinations, the employee will be in a unique position to influence source selection outcomes by virtue of her role in assisting in the preparation of the underlying documentation.

On October 15, the contracting officer concluded his OCI investigation and memorialized his analysis of actual or potential OCIs. As relevant here, the contracting officer's assessment concluded that "Spectrum does not have [an] impaired objectivity OCI." AR, Tab 27, D&F, at 9. Specifically, the contracting officer found that Spectrum will not be required to evaluate the performance or proposals of itself or its competitors under the CAAS IV or ACCESS contracts, or make recommendations to the government in relation to the listed contracts, as part of its performance of the AFTAS PRO task order. Id. In reaching this conclusion, the contracting officer reviewed the requirements of the AFTAS PRO task order, as well as the work performed under the predecessor AFTAS PRO task orders, currently being performed by CLR. Id. at 6-7.

Specifically, the contracting officer identified a CLR employee whose work under the predecessor AFTAS PRO task orders requires that she provide, as relevant here,

“source selection evaluations support to include preparing the Source Selection Decision Documentation (SSDD) and other award decision documents associated with the CAAS IV and ACCESS contracts.” Id. at 7. The contracting officer concluded that support similar to that being provided by the CLR employee “may be required of Spectrum under AFTAS PRO.” Id. The contracting officer also concluded, however, that “[a]lthough [this individual] assists in preparing the [source selection decision] document, she does not evaluate or make recommendations to the [contracting officer] regarding the award decision or other contract actions.” Id. The contracting officer based this conclusion on statements from the CLR employee discussing her responsibilities in performing this position, which she described as follows:

I facilitate the source selection evaluations if that contract or task order is assigned to me. I prepare, work with the customer and panel members under the direction of the [contracting officer]. I do not evaluate or vote and am under a [non-disclosure agreement] for all information that is reviewed by the Government panel members.

AR, Tab 32, D&F, attach. 1 at 1.

The contracting officer also relied on statements from the Division Chief for the Acquisition Division of the Air Force District of Washington (AFDW), who oversees all advisory and assistance contracts and task orders for the Air Force, including the AFTAS PRO task order, and CAAS IV and ACCESS contracts. Supp. CO Statement (Dec. 22, 2014) at 6. The Division Chief stated: “[This individual] does not evaluate [the] performance of other [Air Force] contractors such as . . . CAAS IV or OASIS contract holders under AFTAS PRO task order.” AR, Tab 29, AFDW-PK Division Chief Decl. (Nov. 26, 2014), at 1. He also stated that “[t]his office will not require Spectrum to evaluate the performance of other [Air Force] contractors such as CAAS IV or OASIS contract holders under AFTAS PRO task order.” Id.

Based upon the contracting officer’s analysis of the task order, and the work being performed under the predecessor task orders by the CLR employee, the contracting officer concluded that Spectrum does not have an impaired objectivity OCI because Spectrum will not be required to evaluate the performance or proposals of itself or its competitors, or be required to make recommendations to the government in relation to any of the listed contracts. AR, Tab 27, D&F, at 9. Instead, the contracting officer concluded that “Spectrum will assist the government by collecting data and drafting reports, but the tasks will not involve use of subjective judgment” that Spectrum would be unable to perform objectively. Id.

We find nothing unreasonable regarding the agency’s OCI analysis and conclusion that Spectrum does not have an impaired objectivity OCI. The record reflects that the contracting officer conducted a thorough investigation of CLR’s impaired objectivity allegation, including reviewing the task order requirements and

questioning agency officials and the CLR employee. As the contracting officer's analysis explained, although Spectrum will be required to provide source selection support and assist in preparing source selection decision documentation, the individual currently performing this work "does not evaluate or make recommendations to the [contracting officer] regarding the award decision or other contract actions." AR, Tab 27, D&F, at 7. While Spectrum will have access to proprietary information--an issue that is addressed separately below--an impaired objectivity OCI concerns whether a contractor's judgment will be impaired. See Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra. To the extent CLR disagrees with the agency's assessment, and contends that this individual is in a unique position to influence source selection outcomes, the protester's disagreement with the agency's judgment is not sufficient to render the agency's overall conclusions unreasonable. See Alion Sci. & Tech. Corp., B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 5 (protester's disagreement with an agency's judgment does not establish that the judgment was unreasonable).

OCIs of Spectrum's CTA Partners

CLR next contends that GSA's OCI analysis was unreasonable because it failed to consider any potential OCIs concerning Spectrum's teaming partners. As discussed above, Spectrum's quote included 6 CTA partners. CLR's protest, however, only alleges an actual conflict of interest with respect to one of Spectrum's CTA partners, DAC, which is an AIMS schedule contract holder.⁹ Specifically, CLR asserts: "DAC appears to have provided Acquisition, Training and Logistics services to the Office of the Under Secretary of Defense . . . GSA should have considered whether a potential OCI was posed by [this teaming partner's] seemingly similar scope of work under the contract." Protester's Comments (Dec. 15, 2014), at 10.

In response to this allegation, the contracting officer states that the contract at issue "is with the Department of [the] Assistant Secretary [of] Defense System Engineering Office of Major Program Support," which falls under "the Under Secretary of Defense for Acquisition, Technology and Logistics." Supp. CO Statement (Dec. 22, 2014), at 6. The contracting officer explains that, "[b]ecause this contract is not with the [Air Force], [he found] that OCI concerns do not exist in relation to the current procurement." Id. The contracting officer also "confirmed that

⁹ With regard to CLR's allegation regarding Spectrum's other CTA partners, because CLR does not identify hard facts that indicate the existence or potential existence of a conflict, the protester has failed to state a valid basis of protest. Science Applications Int'l Corp., B-406899, Sept. 26, 2012, 2012 CPD ¶ 282 at 8-9 (hard facts are necessary to show actual or potential conflict; mere inference or suspicion of an actual or potential conflict is not enough).

[the teaming partner] has not performed any [Air Force] acquisition support contracts in the past.” Id. In addition, the contracting officer states that he reviewed “the current AIMS 541-1000 requirements under the [task order (which include providing ancillary materials and hardware for event planning and meeting support),” and concluded that any “potential OCI concerns do not exist for Spectrum’s CTA partners proposed for the AIMS requirement.” Id. at 7. In this regard, the contracting officer also noted that, although his investigation “did not reveal any OCI concerns in relation to Spectrum’s AIMS CTA partners,” to the extent any OCI concerns may come to light during the performance of the task order, such concerns “can be effectively avoided or mitigated” because Spectrum proposed three AIMS CTA partners. Id. We find nothing unreasonable regarding the contracting officer’s assessment that no OCI exists with regard to this CTA partner.

Unequal Access to Information

Finally, CLR contends that GSA’s determination that Spectrum did not have an unequal access to information OCI was unreasonable because Spectrum will obtain proprietary information during its performance of the AFTAS PRO task order which will provide Spectrum with an unfair competitive advantage in competing on future task orders under Spectrum’s ACCESS and CAAS IV contracts.

As an initial matter, with regard to the AFTAS PRO task order, the contracting officer’s OCI analysis found that there was no unequal access to information that tainted the competition here, stating: “Spectrum did not have ‘unequal access to information’ that provided it with unfair competitive advantage in proposing for this AFTAS PRO solicitation as a result of its performance under other federal contracts.” AR, Tab 27, D&F, at 8. However, with regard to Spectrum’s future performance of the AFTAS PRO task order requirements, the OCI analysis found that Spectrum’s performance of the AFTAS PRO task order could create future conflicts when Spectrum competes for subsequent awards under its other contracts. Specifically, the OCI analysis stated that Spectrum’s future performance of the AFTAS PRO requirements “most likely will have ‘unequal access to information’ that may provide it with an unfair competitive advantage in the competition for task orders under CAAS IV, ACCESS, OASIS, and PASS.” Id.

The contracting officer found, however, that Spectrum’s response to the solicitation and mitigation plan demonstrated that Spectrum is aware of the potential for future OCI issues in relation to its other federal contracts. Id. at 9. Accordingly, the contracting officer concluded that “[a]ny potential future OCI issues should be investigated in the future by the appropriate [contracting officer] if and when Spectrum submits a proposal for a particular [Air Force] requirement that Spectrum may have OCI concerns with.” Id. We find nothing unreasonable regarding the agency’s analysis. In this regard, we note that the protester’s allegations do not involve conflicts that arise from the award of the instant task order to Spectrum, but

from conflicts from subsequent awards. As our Office has expressly concluded, OCIs that may arise under subsequent awards are properly analyzed at the time of those subsequent actions. Axiom Res. Mgmt., Inc., B-298870.3, B-298870.4, July 12, 2007, 2007 CPD ¶ 117 at 6-7; Overlook Sys. Techs., Inc., B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 17-18; see also QinetiQ N. Am., Inc., B-405008, B-405008.2, July 27, 2011, 2011 CPD ¶ 154 at 7-12.

The protest is denied.

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