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## Decision

**Matter of:** QinetiQ North America, Inc.

**File:** B-405008; B-405008.2

**Date:** July 27, 2011

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Matthew T. Crosby, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that awardee has “biased ground rules” type organizational conflict of interest (OCI) is denied where record does not establish that awardee’s prior contract performance put awardee in position to materially affect competition.
  2. Protest that awardee has “unequal access to information” type OCI is denied where record reflects that any advantage arising from awardee’s prior contract performance was normally occurring incumbent advantage.
  3. Protest that agency improperly evaluated protester’s technical proposal is denied where proposal ratings are supported by record and consistent with solicitation; protester’s arguments reflect mere disagreement with agency’s technical judgments.
  4. Protest that agency improperly evaluated protester’s cost proposal is denied where record supports agency’s determination that proposed reduction to indefinite-delivery/indefinite-quantity contract labor rates lacked sufficient detail to warrant cost proposal risk level rating of low.
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### DECISION

QinetiQ North America, Inc., of Waltham, Massachusetts, protests the award of a task order by the Department of Transportation (DOT), Research and Innovative Technology Administration, to Computer Sciences Corporation (CSC), of Lanham, Maryland, under request for proposals (RFP) No. DTRTV-T1002 for information

technology (IT) services in support of aviation management, modernization, and logistics projects at the John A. Volpe National Transportation Systems Center (Volpe Center). QinetiQ asserts that CSC's performance of a predecessor contract gave rise to organizational conflicts of interest (OCIs) that should have precluded CSC from award. QinetiQ also challenges various aspects of the agency's evaluation of the firm's technical and cost proposals, as well as the agency's best value determination.

We deny the protest.

## BACKGROUND

On December 7, 2010, the agency issued the solicitation to firms holding DOT Volpe-Transportation Information Project Support (V-TRIPS) multiple-award indefinite-delivery/indefinite-quantity (ID/IQ) contracts. Contracting Officer's Statement at 1. The solicitation contemplated the award of a single cost-plus-fixed-fee task order with a period of performance from the date of award through August 31, 2015. RFP §§ B.1, at 3, F.2, at 16. One fixed-price contract line item, however, was included in the solicitation for a 60-day transition of work from an existing DOT contract, known as the Transportation Information Project Support (TRIPS) contract, to the task order. *Id.* §§ B.1, at 3, C.2, at 5, F.1, at 16. CSC held and performed the TRIPS contract.

Under the solicitation, the successful offeror was to provide on-site IT services to the Volpe Center "largely . . . but not exclusively" in support of aviation management, modernization, and logistics projects sponsored by the Federal Aviation Administration (FAA).<sup>1</sup> *Id.* at 1. The solicitation included a statement of work (SOW) that described the following three functional task areas<sup>2</sup>: air traffic management system (ATMS) programs sponsored primarily by FAA; NextGen innovation and integration projects<sup>3</sup>; and aviation logistics programs sponsored primarily by the United States Air Force and the United Kingdom Ministry of Defense. *Id.* § C.3, at 7-11. For the three functional task areas, the SOW included descriptions of more than 125 activities that the contractor could be called to

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<sup>1</sup> The Volpe Center is a fee-for-service organization that performs projects for sponsoring agencies, such as FAA, pursuant to inter-agency agreements. Hearing Transcript (Tr.) at 115.

<sup>2</sup> The SOW also included an administrative task area for task order management. RFP § C.3, at 6-7.

<sup>3</sup> NextGen is an FAA-led effort to transition the national airspace system from a ground-based air traffic control system to a satellite-based system. *See* RFP § C.3, at 9; *see also* What Is NextGen?, [http://www.faa.gov/nextgen/why\\_nextgen\\_matters/what/](http://www.faa.gov/nextgen/why_nextgen_matters/what/) (last visited July 25, 2011).

perform. Id. at 7-14. Four of those activities referenced FAA's system wide integration management (SWIM) program<sup>4</sup> as follows:

- Architect System Wide Information Management (SWIM) compliant data sharing between current standalone systems and existing or proposed systems[.] . . .
- Develop new [air traffic management] software applications using SWIM methodology and Service Oriented Architecture (SOA) principles[.] . . .
- [Support SWIM] automation tools and concepts[.] . . .
- Design, develop, and integrate SWIM compliant automation applications that support the collection, processing, and distribution of information to [national airspace system] stakeholders[.]

Id. § C.3, at 8-10.

The solicitation provided that award would be made on the basis of best value and established the following three technical evaluation factors: technical understanding, staffing, and transition. RFP §§ M.1.A, at 59, M.2.A, at 59. The technical evaluation factors were described as being significantly more important than cost, and technical understanding and staffing were described as being of equal importance and significantly more important than transition. Id. §§ M.1.B, at 59, M.2.A, at 59. Offerors were advised that as differences between technical evaluation factor ratings decreased, the importance of cost would increase. Id. § M.2.A, at 59.

For purposes of the agency's evaluation under the staffing factor, the solicitation required offerors to provide résumés for nine key personnel. Id. § L.3.B.2, at 31. For purposes of the agency's evaluation under the technical understanding factor, the solicitation required offerors to respond to two technical questions. Id. § L.3.B.1, at 30-31. The first question stated: "Describe your team's experience and use of tools in working on SOA projects in regard to [Java programming and configuration of product suite] [and other items] . . . ." Id. § L.3.B.1, at 31. The second question stated:

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<sup>4</sup> The objective of this program is to facilitate--through application of the SWIM methodology--increased sharing of ATMS information, such as weather data, flight data, airport operational status, special use airspace status, and national airspace restrictions. See FAA SWIM Questions and Answers, [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/service\\_units/techops/atc\\_comms\\_services/swim/qanda/](http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/atc_comms_services/swim/qanda/) (last visited July 25, 2011).

Describe how your team would go about designing a research environment that would allow for prototypes to be developed to validate the feasibility of a concept, integrate the appropriate data, and capture the benefits. Include the top 10 data interfaces from Systems Operations, Terminal, and En Route domains that would be the most beneficial to a research environment and why.

Id.

The solicitation advised that proposed costs would be evaluated for realism and reasonableness and that cost proposals would be assessed to identify potential risk. Id. § M.3, at 60. The solicitation further advised that the agency's cost realism analysis would include calculation of an offeror's probable cost and that the probable cost would be used for the best value determination. Id. Additionally, offerors were required to provide an explanation for differences of 10 percent or more between the labor rates proposed in response to the solicitation and the labor rates established in the offerors' V-TRIPS contracts. RFP amend. 1, at 2.

On February 1, 2011, three offerors submitted proposals, including QinetiQ and CSC. Agency Report (AR), Tab 14, Source Selection Memorandum (SSM), at 2. Several of the key personnel résumés submitted with CSC's proposal referenced work that the individuals performed under the predecessor TRIPS contract. AR, Tab 9, CSC Technical Proposal, at 2-3 to 2-16. For example, four of the résumés described work in support of Volpe Center activities, including an FAA-sponsored SWIM/Integrated Terminal Weather Systems (ITWS) project. Id. at 2-3, 2-5, 2-7, 2-9. Further, one of the résumés described research and development of a "configure don't code" approach in SWIM.<sup>5</sup> Id. at 2-9. Several of the CSC résumés also discussed experience with "defining" and "analyzing" requirements for the SWIM/ITWS project and other FAA projects. Id. at 2-8, 2-9, 2-15, 2-16.

The agency evaluated the proposals, identified proposal strengths, weaknesses, and deficiencies, and assigned ratings to the proposals.<sup>6</sup> QinetiQ's and CSC's proposal ratings and evaluated costs were as follows:

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<sup>5</sup> The "configure don't code" approach was said to emphasize the re-use of "open source functionality" rather than the "creation of fresh code." AR, Tab 9, CSC Technical Proposal, at 2-9.

<sup>6</sup> In evaluating proposals, the agency used adjectival ratings of superior, acceptable, or marginal. These ratings corresponded to agency judgments regarding the degree to which a proposal demonstrated the potential for satisfactorily performing the solicitation's requirements. AR, Tab 10, Technical Evaluation Plan, at 10. In evaluating proposal risk, the agency assigned ratings of low, moderate, or high. These ratings corresponded to agency judgments regarding the degree to which a

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	<b><u>QINETIQ</u></b>	<b><u>CSC</u></b>
<b>Overall Technical</b>	<b>Acceptable</b>	<b>Superior</b>
Technical Understanding	Acceptable	Superior
Staffing	Marginal	Superior
Transition	Acceptable	Acceptable
<b>Overall Risk</b>	<b>Moderate</b>	<b>Low</b>
Technical Risk	Moderate	Low
Cost Risk	Moderate	Low
<b>Evaluated Cost</b>	<b>\$36,437,794</b>	<b>\$43,590,142</b>
<b>Overall Rating</b>	<b>Acceptable</b>	<b>Superior</b>

AR, Tab 14, SSM, at 2-3. The underlying bases for the ratings and evaluated costs were documented in a technical evaluation team (TET) report and a cost and business proposal evaluation report. AR, Tabs 11(a), 11(c), 22, TET Report Excerpts; AR, Tab 12, Cost and Business Proposal Evaluation Report.

With regard to the technical understanding evaluation factor, the TET identified 4 strengths, 3 weaknesses, and 2 significant weaknesses for QinetiQ's proposal, and 14 strengths and no weaknesses for CSC's proposal. AR, Tab 11(a), TET Report Excerpt--CSC, at 6-7; AR, Tab 11(c), TET Report Excerpt--QinetiQ, at 9-10. One of the strengths assigned to CSC's proposal pertained to Volpe Center SOA initiatives undertaken by CSC, including the SWIM/ITWS project. AR, Tab 11(a), TET Report Excerpt--CSC, at 6. Another strength assigned to CSC's proposal pertained to an emphasis on "applying out-of-the-box functionality whenever possible to minimize the need for custom code." Id.

One of the significant weaknesses assigned to QinetiQ's proposal under the technical understanding evaluation factor reflected the TET's conclusion that QinetiQ's response to the technical question pertaining to SOA experience indicated that QinetiQ lacked "SOA experience across the SOA categories listed in [the] question[,] especially in the Java programming and configuration product category." AR, Tab 11(c), TET Report Excerpt--QinetiQ, at 10. Two of the weaknesses assigned to QinetiQ's proposal under the technical understanding evaluation factor pertained to the firm's response to the technical question that requested a list of the 10 most beneficial systems operations, terminal, and en route domain data interfaces for a research environment. Id. Specifically, QinetiQ's proposal received a weakness for listing [DELETED] in response to the question because, in the TET's view, [DELETED] information already was available through the traffic flow management

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proposal demonstrated the potential for schedule disruption, increases in cost or price, or degradation of performance. Id. at 11.

system (TFMS), and QinetiQ's proposal also had listed [DELETED] in response to the question. Id. In connection with the same technical question, QinetiQ's proposal received a separate weakness for listing [DELETED] because the TET believed that it reflected that "they were running out of interface ideas." Id.

With regard to the staffing evaluation factor, the TET identified four strengths, one significant weakness, and two deficiencies for QinetiQ's proposal, and six strengths and no weaknesses or deficiencies for CSC's proposal. Id. at 10-11; AR, Tab 11(a), TET Report Excerpt--CSC, at 7-8. One of the deficiencies assigned to QinetiQ's proposal was based on the TET's view that QinetiQ's proposed key personnel lacked "meaningful SOA experience." AR, Tab 11(c), TET Report Excerpt--QinetiQ, at 11. In contrast, CSC's proposal received a strength under the staffing evaluation factor based on the TET's view that CSC's key personnel demonstrated "impressive accomplishments in SOA based projects such as SWIM/ITWS." AR, Tab 11(a), TET Report Excerpt--CSC, at 8.

With regard to the transition evaluation factor, the TET identified three strengths and one weakness for QinetiQ's proposal. AR, Tab 22, TET Report Excerpt--QinetiQ, at 11. The weakness was described as follows:

[QinetiQ's] [t]ransition plan did not specifically address a backup plan for how the [DELETED] loss of incumbent personnel would be dealt with if some key personnel were in the [DELETED]. A [DELETED] projected personnel loss over a short time is a significant risk and should have been addressed.

Id.

With regard to the evaluation of QinetiQ's cost and business proposal, an agency cost analyst noted that QinetiQ had proposed a [DELETED] percent reduction to the direct labor rates provided in the firm's V-TRIPS contract. AR, Tab 12, Cost and Business Proposal Evaluation Report, at 10. QinetiQ's proposal explained the reduction as follows:

With the current economic climate, salaries and escalation rates have been trending downward. . . . The management staff reviewed the [V-TRIPS contract] rates based upon other programs and determined that a reduction of [DELETED] would result in a more reasonable and realistic labor estimate . . . . The reduced rates were then reviewed by [DELETED] and they were determined to be in line with [DELETED].

AR, Tab 8, QinetiQ Proposal, Vol. II, Cost and Business, at 13. The cost analyst did not consider the explanation "convincing," but could not identify a firm basis on which to make a probable cost adjustment. AR, Tab 12, Cost and Business Proposal Evaluation Report, at 39. The cost analyst ultimately concluded that the proposed rate reduction was indicative of a risk for increased cost and recommended that the

contracting officer consider this when assessing QinetiQ's proposal risk. Id. at 38, 41. The contracting officer later documented that QinetiQ's proposal received a moderate risk rating in part due to the risk of higher costs connected with a "lack of documentation for the basis of [the] proposed Direct Labor rates." AR, Tab 14, SSM, at 3.

Based on the TET report and the cost and business proposal evaluation report, the TET chairman conducted a cost/technical tradeoff analysis between the proposals of QinetiQ and CSC.<sup>7</sup> AR, Tab 13, Cost/Technical Tradeoff Report, at 3-7. After considering numerous specific relative strengths, weaknesses, and deficiencies that the TET had identified for QinetiQ's and CSC's proposals, the TET chairman concluded that award to QinetiQ would involve "substantial Government monitoring and intervention to bring it up to the technical quality and experience levels" offered by CSC. Id. at 6. The TET chairman therefore determined that CSC's higher-rated proposal represented the best value to the government, notwithstanding the nearly 20 percent cost premium associated with CSC's proposal. Id. at 6-7.

After reviewing the TET chairman's report, the contracting officer, who was also the source selection authority, prepared a source selection decision in which he adopted the TET chairman's recommendation and selected CSC for award. AR, Tab 14, SSM, at 3, 5. On April 12, the contracting officer conducted a post-award debriefing with QinetiQ. AR, Tab 17, QinetiQ Debriefing Memorandum, at 1. This protest followed.

## DISCUSSION

QinetiQ asserts that work performed by CSC under the predecessor TRIPS contract gave rise to OCIs that should have precluded CSC from award. QinetiQ also challenges various aspects of the agency's evaluation of the firm's technical and cost proposals and asserts that the agency's best value determination was flawed. For the reasons discussed below, we deny each ground of protest.

### OCI Allegations

The situations in which OCIs arise, as described in Federal Acquisition Regulation (FAR) subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups. The first group consists of situations in which a firm has access to nonpublic information as part of its performance of a government contract and that information provides a competitive advantage in a later competition (a "biased ground rules" OCI). FAR § 9.505-4. The second group consists of situations in which

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<sup>7</sup> The proposal of the third offeror received an overall rating of marginal with an evaluated cost that was higher than QinetiQ's evaluated cost. AR, Tab 13, Cost/Technical Tradeoff Report, at 2. The proposal of the third offeror therefore was not considered in the tradeoff analysis. Id.

a firm, as part of its performance of a government contract, has in some way set the ground rules for another contract competition, thereby skewing the competition in its own favor (an “unequal access to information” OCI). Id. §§ 9.505-1, 9.505-2. The third group consists of situations in which a firm’s ability to render impartial advice to the government would be undermined by the firm’s competing interests (an “impaired objectivity” OCI). Id. § 9.505-3.

QinetiQ contends that certain work performed by CSC under the predecessor contract created the first and second types of OCIs, i.e., “unequal access to information” and “biased ground rules” OCIs. QinetiQ also contends that the agency improperly failed to recognize or address the alleged OCIs. With respect to the alleged biased ground rules OCI, QinetiQ points out that certain key personnel résumés submitted with CSC’s proposal show that the individuals reviewed, analyzed, and defined FAA operational requirements under the predecessor contract. Comments and Supp. Protest at 14-17 (referencing AR, Tab 9, CSC Technical Proposal, at 2-8, 2-9, 2-15, 2-16). QinetiQ argues that CSC was therefore in a position to have skewed the competition in its own favor. Id.

The responsibility for determining whether an OCI exists rests with the procuring 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. In making the determination, the FAR expressly directs contracting officers to examine the particular facts associated with each situation, giving consideration to the nature of the contracts involved, and further directs contracting officers to obtain the advice of counsel and appropriate technical specialists before exercising their own sound discretion in determining whether an OCI exists. FAR §§ 9.504, 9.505. In reviewing bid protests that challenge an agency’s OCI determination, the Court of Appeals for the Federal Circuit has mandated application of the “arbitrary and capricious” standard established pursuant to the Administrative Procedures Act. See Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1381 (Fed. Cir. 2009). To demonstrate that an agency’s OCI determination is arbitrary or capricious, 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. Turner Constr. Co. v. United States, No. 2010-5146, slip. op. at 17-18 (Fed. Cir. July 14, 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). In Axiom, the court noted that “the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion.” Id. The standard of review employed by this Office in reviewing a contracting officer’s OCI determination mirrors the standard required by Axiom. In this regard, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. CIGNA Gov’t Servs., LLC, B-401068.4; B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 12.

In resolving this protest, our Office conducted a 2-day hearing on the record, during which testimony was provided by the contracting officer, the TET chairman, and a



QinetiQ vice president who serves as the program manager for QinetiQ's V-TRIPS contract. At the hearing, the contracting officer testified that he considered the existence of OCIs on an ongoing basis during the procurement, and that it was his view that CSC's prior work did not create an OCI. Hearing Tr. at 11, 30, 40-41, 110. The contracting officer stated that his OCI analysis included consideration of the circumstances described in FAR subpart 9.5. Hearing Tr. 11, 40-41. He stated that he also considered that all of the V-TRIPS contracts included a clause requiring the contractors to disclose any OCIs known before award, or discovered after award, and that CSC had made no disclosures. Id. at 260-63 (referencing AR, Tab 35, QinetiQ V-TRIPS Contract, § H.14(a), (e)).

With regard to CSC's work under the predecessor contract, the contracting officer testified that he knew that CSC had analyzed and defined agency requirements. Id. at 49, 92-93. He also testified that he had reviewed the résumés in CSC's proposal that described analysis and definition of requirements under the predecessor contract. Id. at 95-97. The contracting officer acknowledged, however, that he did not know, or inquire, whether CSC had participated in the preparation of the SOW for the protested task order, or whether those who prepared that SOW had used materials that CSC created under the predecessor contract.<sup>8</sup> Id. at 37-38, 62-65, 68-69.

At the hearing, the TET chairman, whose day-to-day responsibilities include management of projects supported by TRIPS and V-TRIPS contractors, testified that CSC's analysis and definition of requirements under the predecessor contract involved identifying system features that are required by system users. Id. at 113-14, 136-37, 194-95, 200. This work generally occurred, he explained, in connection with routine efforts to create enhancements to those systems.<sup>9</sup> Id. at 131, 200-01. The TET chairman further testified that he had responsibility over preparation of the

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<sup>8</sup> Although the contracting officer provided some contradictory testimony regarding his knowledge of whether CSC, under the predecessor contract, participated in the preparation of the SOW, see Hearing Tr. at 67, the totality of his testimony indicates that he was unaware as to whether CSC had, in fact, participated in this work, see id. at 37-38, 62-65. The contracting officer also testified that the references in the CSC résumés to defining requirements did not cause him OCI-related concerns because, in his experience, requirements definition is a typical qualification of individuals who perform the type of IT work that is the subject of this procurement. Id. at 106-08.

<sup>9</sup> The TET chairman elaborated on this work as follows: Before a system enhancement can be developed, the system's base requirements and new requirements must be identified; after the requirements are identified, software programmers "code" the requirements and then create an application that integrates the enhancement into the system. Hearing Tr. at 131, 196, 202-03.

SOW at issue in this protest.<sup>10</sup> *Id.* at 118-19, 127-28. No contractors, he testified, assisted with preparation of the SOW, and no contractor-prepared documents—including the system requirement definitions prepared by CSC—or contractor input were considered in connection with preparing the SOW. *Id.* at 120, 128, 131, 136, 142. Additionally, he testified that even if CSC had not performed the requirements definition work, portions of the SOW relevant to this protest would not have been changed from the way that they appear in the SOW. *Id.* at 198-99, 205, 219-20, 224.

Notwithstanding the TET chairman's testimony, QinetiQ argues that CSC shaped the SOW because, according to QinetiQ, the SOW includes requirements that were not included in the TRIPS contract SOW and that CSC allegedly defined. Post-Hearing Comments at 16. The only such requirement identified by QinetiQ, however, is compliance with the SWIM methodology. *Id.* at 12-14, 16. In this regard, QinetiQ points out that one of CSC's key personnel résumés reflects support of the FAA SWIM/ITWS program. *Id.* at 12-14 (referencing AR, Tab 9, CSC Technical Proposal, at 2-9).

As discussed above, FAA's SWIM program aims to increase the sharing of ATMS information. See FAA SWIM Questions and Answers, [http://www.faa.gov/about/office\\_org/headquarters\\_offices/ato/service\\_units/techops/atc\\_comms\\_services/swim/qanda/](http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/techops/atc_comms_services/swim/qanda/) (last visited July 25, 2011); see also CSC Hearing Exhibits, Exh. 1, at 23; Hearing Tr. at 185. As also discussed above, 4 of the more than 125 activities described in the SOW referenced compliance with the SWIM methodology. RFP § C.3, at 8-10. In his testimony, the TET chairman characterized the SOW references to SWIM as "very generic" and indicated that they were included in the SOW for the general purpose of informing offerors that the agency has adopted the SWIM methodology. Hearing Tr. at 167-70. The TET chairman also testified that there was no connection between CSC's work on the SWIM/ITWS program and the SOW.<sup>11</sup> *Id.* at 165. For these reasons, and because the record does not reflect hard facts to show that CSC's work under the predecessor contract put the firm in a position to materially affect the protested procurement—for example by influencing the agency's decision to structure its projects to comply with the SWIM methodology—QinetiQ's protest that CSC's prior work created a potential or actual biased ground rules OCI is denied.<sup>12</sup> See *DRS C3 Sys., LLC*, B-310825, B-310825.2, Feb. 26, 2008, 2008 CPD ¶ 103

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<sup>10</sup> The TET chairman stated that two individuals—both federal employees—assisted him with preparation of the SOW. Hearing Tr. at 118-20.

<sup>11</sup> The TET chairman described CSC's work on the SWIM/ITWS program as involving requirements definition, as explained in note 9, *supra*. Hearing Tr. at 165.

<sup>12</sup> The record reflects that the contracting officer was aware that CSC, under the predecessor contract, analyzed and defined agency requirements. Hearing Tr. at 49, 92-93. The record further reflects that he did not know, and failed to inquire, whether CSC had participated with preparation of the SOW for the protested task

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at 7-8; Operational Res. Consultants, Inc., B-299131.1, B-299131.2, Feb. 16, 2007, 2007 CPD ¶ 38 at 6; Mechanical Equip. Co., Inc. et al., B-292789.2 et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 26-27.

QinetiQ also argues that the award to CSC violates FAR § 9.505-1 because, as alleged by QinetiQ, the record reflects that under the protested task order, CSC will be developing and integrating system enhancements that are connected with the requirements defined by CSC under the predecessor contract. Post-Hearing Comments at 8-14. FAR § 9.505-1 requires that a contractor that provides systems engineering and technical direction for a system for which it does not have overall responsibility for development, integration, assembly, and checkout, or for its production, shall not be awarded a contract to supply the system. FAR § 9.505-1(a). The regulation states that systems engineering includes a combination of “substantially all” of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Id. § 9.505-1(b). It also states that technical direction includes a combination of “substantially all” of the following activities: developing work statements, determining parameters, directing other contractors’ operations, and resolving technical disputes. Id. According to the regulation, a contractor performing these activities occupies a highly influential position in determining a system’s basic concepts and supervising their execution, and thus should not be in a position to make decisions favoring its own products or capabilities. Id.

At the hearing, the contracting officer denied that CSC performed technical direction under the predecessor contract. Hearing Tr. at 41-42. Further, nothing in the record, and nothing offered by QinetiQ, demonstrates that CSC performed the technical direction activities described in FAR § 9.505-1(b), much less “substantially all” of those activities. Moreover, the basis for QinetiQ’s invocation of FAR § 9.505-1 is unclear given that FAR § 9.505-1 pertains to contracts for the “supply of [a] system or any of its major components,” and the SOW here does not call for the supply of a system or major components of a system. For these reasons, we see no merit in QinetiQ’s claim that the award to CSC violates FAR § 9.505-1.

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order or whether those who prepared that SOW used materials created by CSC. Id. at 37-38, 62-65, 68-69. Accordingly, QinetiQ’s concern that the contracting officer failed to adequately analyze whether a potential or actual OCI existed is legitimate. To succeed in a protest, however, a protester must demonstrate not only that an agency failed to follow established procedures, but also that the failure could have materially affected the outcome of the competition. Lucent Tech. World Servs. Inc., B-295462, Mar. 2, 2005, 2005 CPD ¶ 55 at 9; McDonald Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. Here, as discussed above, the record does not reflect hard facts to show that CSC’s work under the predecessor contract put CSC in a position to materially affect the competition.

With respect to the alleged unequal access to information OCI, QinetiQ asserts that certain résumés included with CSC's proposal demonstrate that CSC had access to nonpublic information under the predecessor contract that gave CSC an unfair competitive advantage. Comments and Supp. Protest at 6, 9. The only specific information to which QinetiQ alleges CSC had access, however, is the agency's preference for minimizing custom coding. *Id.* at 11. QinetiQ argues that the agency's determination to assign a strength to CSC's proposal for an emphasis on minimizing custom coding demonstrates that QinetiQ suffered prejudice as a result of the role that CSC played in developing the "configure don't code" approach. *Id.* at 10 (referencing AR, Tab 11(a), TET Report Excerpt--CSC, at 6).

At base, QinetiQ's position is that an unequal access to information OCI arose because, in QinetiQ's words, QinetiQ's personnel did not "have nearly the same level of inside knowledge and experience that [CSC's personnel] enjoy[ed] through [their] roles at the Volpe Center." Supp. Comments at 21. It is well-settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. *See* FAR § 9.505-2(a)(3); *CACI, Inc.--Fed.*, B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; *MASAI Tech. Corp.*, B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. *Council for Adult & Experiential Learning*, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; *Government Bus. Servs. Group*, B-287052 *et al.*, Mar. 27, 2001, 2001 CPD ¶ 58 at 10.

The portions of the CSC résumés on which QinetiQ's argument hinges reflect that CSC personnel had experience with supporting various Volpe Center activities, including development of a "configure don't code" approach in connection with SWIM. *See* AR, Tab 9, CSC Technical Proposal, at 2-3, 2-5, 2-7, 2-9. The agency's determination to credit CSC's proposal for demonstrating that experience--together with the absence of evidence of any preferential treatment or unfair action by the agency--amounts to no more than a reflection of the normally occurring advantage that an incumbent may possess. *See CACI, Inc.--Fed.*, *supra*; *Council for Adult & Experiential Learning*, *supra*.

#### Technical Proposal Evaluation Allegations

QinetiQ challenges various aspects of the agency's evaluation of the firm's technical proposal. As discussed above, offerors' proposals were to include responses to two technical questions, one of which requested a list of the "top 10" most beneficial systems operations, terminal, and en route domain data interfaces for a research environment. RFP § L.3.B.1, at 31. As also discussed above, QinetiQ's proposal was assigned two weaknesses under the technical understanding evaluation factor because the firm's response to this question listed [DELETED] and [DELETED]. AR,

Tab 11(c), TET Report Excerpt--QinetiQ, at 10. QinetiQ claims that those weaknesses lacked a reasonable basis. Protest at 20-21; Comments and Supp. Protest at 27-28, 32-33; Post-Hearing Comments at 26-29.

The evaluation of technical proposals is a matter within an agency's discretion since an agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. Our Office will not reevaluate technical proposals; rather, we review a challenge to an evaluation to determine whether the agency acted reasonably and in accordance with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Id. A protester's mere disagreement with the agency's judgments does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

At the hearing, the TET chairman testified that [DELETED] information is included within TFMS and that QinetiQ's proposal separately had listed [DELETED] in response to the technical question at issue. Hearing Tr. at 281-82, 343 (referencing AR, Tab 8, QinetiQ Proposal, Vol. 1, Technical, at 1-5). He further testified that in his view, QinetiQ's decision to list [DELETED] in response to the technical question reflected a lack of insight because use of such data in a research environment could result in otherwise unneeded analysis. Id. at 350-354.

With regard to [DELETED], the TET chairman testified that FAA already has analyzed [DELETED] and drawn conclusions regarding potential operational improvements. Id. at 298-99. For that reason, the TET chairman stated that [DELETED] data was not necessarily beneficial for a research environment. Id. He also identified domain interface data information that he thought would be more beneficial to a research environment and that was not listed in QinetiQ's proposal. Id. at 286-87. Additionally, the TET chairman indicated that QinetiQ's failure to elaborate in its proposal on the benefits of the data interfaces listed contributed to the TET's determination to assign the challenged weaknesses. Id. at 288-90.

QinetiQ offers various arguments in response to the TET chairman's testimony. For example, QinetiQ takes the position that [DELETED] and [DELETED] have relevance and utility in a research environment. Post-Hearing Comments at 26-29. QinetiQ's arguments amount to mere disagreement with the agency's judgment, and they provide no basis on which to sustain this ground of protest.

QinetiQ also challenges the weakness assigned to its proposal for a lack of SOA experience. In this regard, QinetiQ points out that during the hearing the TET chairman clarified that the weakness reflected the TET's perception that QinetiQ lacked SOA experience relevant to FAA projects, rather than SOA experience generally. Post-Hearing Comments at 30-31; see also Hearing Tr. at 318-20, 386. According to QinetiQ, the agency's focus on FAA SOA experience constitutes the application of an unstated evaluation criterion. Post-Hearing Comments at 31.

The solicitation here sought IT services “largely . . . but not exclusively” in support of FAA-sponsored projects, RFP at 1, and two of the SOW’s three functional areas pertained almost exclusively to FAA projects,<sup>13</sup> id. § C.3, at 7-11. Agencies properly may take into consideration specific experience in making qualitative distinctions between proposals, so long as the specific experience is logically encompassed by or related to the solicitation’s requirements and stated basis for evaluation. Bulltrack--Watts II, JV, B-403032.2, B-403032.4, Dec. 16, 2010, 2011 CPD ¶ 10 at 6. Accordingly, we do not find objectionable the agency’s consideration of the degree to which QinetiQ’s proposal evinced FAA-related SOA experience.

QinetiQ similarly argues that the agency applied an unstated evaluation criterion when evaluating the firm’s SOA experience because, according to QinetiQ, the agency’s evaluation focused on an offeror’s proposed approach, rather than experience. Comments and Supp. Protest at 28-31; Post-Hearing Comments at 31-32. As relevant to this claim, and as discussed above, QinetiQ’s proposal received a weakness for a lack of SOA experience in the area of Java programming and product configuration. AR, Tab 11(c), TET Report Excerpt--QinetiQ, at 10. At the hearing, the TET Chairman explained that this weakness stemmed from a reference in QinetiQ’s proposal to “frequent incremental deployments” that appeared under the heading “Java programming and configuration of product suite.” Hearing Tr. at 273-74, 324-25 (referencing AR, Tab 8, QinetiQ Proposal, Vol. I, Technical, at 1-3). He further explained that the proposal’s reference to frequent incremental deployments caused concern regarding QinetiQ’s SOA experience because each deployment requires testing, which, in turn, requires scheduling, time, and funding. Id. at 274-75, 377-78, 384. Based on the record here, we find QinetiQ’s attempt to distinguish approach from experience unavailing. Further, in light of the TET chairman’s testimony, we do not find the challenged evaluation rating unreasonable.

With regard to the agency’s evaluation under the staffing factor, QinetiQ alleges that the firm’s proposal improperly received a rating of marginal because the agency unreasonably deemed QinetiQ’s experience with SWIM to be lacking. Protest at 16-18. QinetiQ asserts that this rating was unreasonable because the firm’s proposal reflected SWIM experience. Id. QinetiQ also asserts that the agency unequally evaluated CSC’s staffing relative to QinetiQ’s staffing because CSC’s proposal received a strength for experience with SWIM/ITWS. Id. at 19; Comments and Supp. Protest at 24-26.

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<sup>13</sup> Those two task areas were ATMS and NextGen. See RFP § C.3, at 7-11; see also Hearing Tr. at 386-90 (testimony that examples of projects listed in the ATMS and NextGen task areas were FAA projects).

None of the weaknesses assigned to QinetiQ's proposal under the staffing evaluation factor reference a lack of experience with SWIM, see AR, Tab 11(c), TET Report Excerpt--QinetiQ, at 10-11; see also AR, Tab 11(d), TET Evaluation Worksheets--QinetiQ, and QinetiQ has not shown that the agency was concerned that QinetiQ's staff lacked SWIM experience. With regard to the strength assigned CSC's proposal relating to SWIM, the record reflects that CSC's proposal demonstrated support of the SWIM/ITWS project. See AR, Tab 11(a), TET Report Excerpt--CSC, at 8; AR, Tab 9, CSC Technical Proposal, at 2-9. Based on the foregoing, we see no merit to QinetiQ's arguments regarding the agency's evaluation under the staffing factor.

Finally, QinetiQ asserts that the agency improperly assigned a weakness to its proposal under the transition evaluation factor. Comments and Supp. Protest at 33-34. As noted above, the TET identified the following weakness with regard to QinetiQ's proposed transition plan:

[The] [t]ransition plan did not specifically address a backup plan for how the [DELETED] loss of incumbent personnel would be dealt with if some key personnel were in the [DELETED]. A [DELETED] projected personnel loss over a short time is a significant risk and should have been addressed.

AR, Tab 22, TET Report Excerpt--QinetiQ, at 11. QinetiQ argues that this weakness was unwarranted because the firm's proposal included the résumés of nine committed key personnel. Comments and Supp. Protest at 33-34.

During the hearing, the TET chairman testified that the phrase "key personnel," as used in describing the weakness in the TET report and the cost/technical tradeoff report, was intended to refer to incumbent personnel who are "important" to a project, and not to QinetiQ's proposed key personnel. Hearing Tr. at 444-46, 468. Also at the hearing, the contracting officer testified that although he did not have a specific recollection, he believed that when he read the phrase "key personnel" as it appeared in the in TET report and cost/technical tradeoff report, he understood it to mean "important" incumbent personnel--and not QinetiQ's key personnel--because of the context in which the term appeared. Id. at 480, 484-85. QinetiQ responds that the term as it appeared in the TET report and cost/technical tradeoff report was misleading and tainted the source selection. Post-Hearing Comments at 33-34.

Prejudice is an essential element of every viable protest; we will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions. Armorworks Enters., LLC, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. We observe that the solicitation here established that transition was the least important technical evaluation factor, and that overall, CSC's proposal received a substantially higher number of evaluation strengths and a substantially lower number of evaluation weaknesses and deficiencies than did QinetiQ's proposal. Accordingly, we fail to see how any confusion--to the extent that there was confusion--over the weakness assigned to QinetiQ's proposal under the transition

evaluation factor could have caused competitive prejudice to the firm. This basis of protest therefore is denied.

### Cost and Business Proposal Evaluation Allegations

QinetiQ challenges the agency's determination to assign a risk rating of moderate to the firm's cost and business proposal. Protest at 25-27. As discussed above, the agency assigned QinetiQ's proposal a risk rating of moderate in part because the agency found inadequate QinetiQ's explanation of proposed reductions to the labor rates established in QinetiQ's V-TRIPS contract. AR, Tab 14, SSM, at 3. QinetiQ points out that the solicitation required offerors to provide an explanation for differences of 10 percent or more between the labor rates proposed in response to the solicitation and the labor rates established in the V-TRIPS contracts. Protest at 26-27 (referencing RFP amend. 1, at 2). QinetiQ argues that the agency deviated from this solicitation term by downgrading QinetiQ's proposal based on information regarding rate reductions that were below the 10 percent threshold.<sup>14</sup> Comments and Supp. Protest at 36; Post-Hearing Comments at 37-38.

QinetiQ is in essence arguing that an agency may not downgrade a proposal based on information that was not required to be included in the proposal. This argument is unavailing, and we decline to find that the agency here acted unreasonably by considering, for the purpose of evaluating proposal risk, the explanation for the [DELETED] percent rate reductions offered in QinetiQ's proposal. See Potomac Elec. Corp., B-311060, Apr. 2, 2008, 2008 CPD ¶ 63 at 2-3 (agency properly rejected proposal as unacceptable based on extraneous information submitted with proposal); see also Xerox Corp., B-241554, Feb. 14, 1991, 91-1 CPD ¶ 171 at 9 (agency properly rejected proposal based on extraneous marketing information).

QinetiQ further argues that the agency's evaluation of the firm's cost proposal was unreasonable because the record does not reflect what information QinetiQ could have provided in order for its explanation of the rate reductions to have been considered adequate. Post-Hearing Comments at 38-40. While it is true that neither the cost analyst nor the contracting officer articulated specific information that would have remedied their concerns, the record reflects that in the judgment of both individuals, the absence of additional supporting data or a more detailed explanation regarding the basis for the rate reductions indicated that an award to QinetiQ would involve a risk of increased cost. AR, Tab 12, Cost and Business Proposal Evaluation

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<sup>14</sup> As discussed above, QinetiQ's proposal offered reductions of [DELETED] percent to labor rates established in the firm's V-TRIPS contract. AR, Tab 8, QinetiQ Proposal, Vol. II, Cost and Business, at 13.



Report, at 38-39, 41; AR, Tab 14, SSM, at 3; Hearing Tr. at 548-49, 552, 557-59. We do not find those judgments unreasonable.<sup>15</sup>

#### Best Value Determination Allegation

Finally, QinetiQ asserts that the agency's best value determination was flawed because the determination was based on proposal ratings that, according to the arguments described above, were erroneous. Protest at 27-28; Comments and Supp. Protest at 38-39. As the foregoing discussion explains, we see no merit in QinetiQ's arguments regarding the agency's evaluation. Moreover, the record reflects that the agency's best value determination involved a comparison of the specific strengths, weaknesses, and deficiencies that the agency identified for QinetiQ's and CSC's proposals. AR, Tab 13, Cost/Technical Tradeoff Report, at 3-7; AR, Tab 14, SSM, at 2-3. The record further reflects that based on this comparison, the agency reasonably determined that CSC's higher-rated proposal represented the best value to the government, notwithstanding the nearly 20 percent cost premium associated with CSC's proposal. AR, Tab 13, Cost/Technical Tradeoff Report, at 6-7; AR, Tab 14, SSM, at 2-3. Accordingly, there is no basis to sustain QinetiQ's challenge to the agency's best value determination.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>15</sup> In addition to the specific assertions discussed above, QinetiQ raises other arguments challenging the moderate risk rating assigned to the firm's cost and business proposal. Post-Hearing Comments at 40-47. We have considered those arguments and find that they provide no basis for sustaining the protest.