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## Decision

**Matter of:** Networking & Engineering Technologies, Inc.

**File:** B-405062.4; B-405062.5; B-405062.6

**Date:** September 4, 2013

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Scott N. Flesch, Esq., and CPT Anthony V. Lenze, Department of the Army, for the agency.

Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Under a solicitation contemplating the award of a fixed-price contract, protest challenging an agency's price realism analysis is denied where the contracting officer reasonably evaluated the awardee's lower price.
  2. Protest that an agency unreasonably evaluated the compliance of the awardee's proposal with a material solicitation requirement is denied where the record shows that the agency's evaluation of the awardee's proposal was reasonable.
  3. Protest alleging that the awardee should have been excluded from the competition based on an organizational conflict of interest is denied where the agency's reasonable investigation revealed no evidence to indicate the existence of a potential conflict.
  4. Protest challenging an agency's selection of a lower-priced offer is denied where the source selection decision was consistent with the solicitation's best value award criteria.
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### DECISION

Networking & Engineering Technologies, Inc. (NET), of Woodbridge, Virginia, protests the award of a contract to Arrowpoint Corp., of Alexandria, Virginia, by the

Department of the Army under request for proposals (RFP) No. W81K04-10-R-0030, for life cycle management of the Army's Medical Operational Data System (MODS). NET challenges the agency's evaluation of the offerors' proposals, argues that the agency failed to properly consider the awardee's organizational conflict of interest, and contends that the best-value tradeoff decision was unreasonable.

We deny the protest.

## BACKGROUND

The Army issued the RFP on October 9, 2010, to obtain life cycle management of the Army's MODS software system, including administration, operations, service desk support, modification, and modernization services. The RFP anticipated the award of a contract for a base year and four option years. Award was to be made on a best value basis considering three factors: technical approach; past/present performance; and price. The technical approach factor was significantly more important than the past/present performance factor; the past/present performance factor was somewhat more important than the price factor; and the non-price factors, when combined were significantly more important than the price factor.

Concerning price, the RFP required offerors to submit fixed unit prices for each contract line item number (CLIN), except for CLIN x004, which provided for issuance of task orders on an indefinite-delivery/indefinite-quantity (IDIQ) basis. For CLIN x004, offerors were required to complete a "labor hour pricing sheet," for 18 labor categories using agency provided labor hour estimates. RFP at 162. Offerors were to enter their fixed-price labor rates for each of the 18 labor categories which, when multiplied by the total estimated labor hours, would become the evaluated CLIN price. The RFP advised that the estimated labor hours were "for evaluation purposes and are not guaranteed." Id.

Price proposals were required to also include detailed cost information, to include labor rate build-ups for all labor categories. RFP at 197. For the non-IDIQ CLINs, offerors were to provide a comprehensive breakout of proposed staffing by labor category, to include total proposed hours for each labor category. With respect to the price evaluation, the RFP provided that:

The price proposal will be reviewed for reasonableness. Review will pay particular attention to the direct labor rates and fringe benefits. Comparison to other proposals, the IGE, historical pricing and/or other techniques under FAR 15.404-1(b) will be used, at the discretion of the Contracting Officer, to perform pricing analysis of the offeror's total price proposal. Techniques under FAR 15.404-1(c) will be used to analyze the other cost and pricing data in the breakout and

rationality reviewed for excessive cost risk. Proposals found to have high cost risk will not be considered for award.

RFP at 203-204.

The RFP included a statement of work (SOW) describing the requirements for the MODS life cycle management effort. As it relates to the protest, the SOW discussed “modernization” objectives, which were to be funded with Research, Development, Testing and Evaluation (RDT&E) appropriations. According to the RFP, the actual employer (prime or subcontractor) of employees performing development work funded with RDT&E, had to possess, at a minimum, “Software Engineering Institute (SEI) Capability Management Maturity Integration-Development (CMMI DEV) Level 3 certification before performing any such development work.” RFP amend. 0008 at 1.

As relevant here, the RDT&E-funded work was to be performed under task orders issued under CLIN x004. In this regard, the RFP established four categories of labor related task orders under CLIN x004: (1) labor - software modification 1 (SW1); (2) labor - software modification 2 (SW2); (3) labor - software modification 3 (SW3); and (4) labor - other services (SVC). RFP at 134. Only the first category, labor - software modification 1 (SW1), related to “modernization” and would be funded with RDT&E appropriations, requiring performance by employees of a firm possessing CMMI Level 3 certification. Id. Further, among the anticipated tasks, only tasks consisting of “new developments” to the MODS system were to be labeled as “modernization” and specifically funded with RDT&E appropriations. Id. at 63.

The Army received six proposals in response to the RFP, and conducted initial evaluations in May and June of 2012. The contracting officer established a competitive range limited to NET and Arrowpoint, and conducted four rounds of discussions. Both offerors submitted final proposal revisions by September 26.

Net’s and Arrowpoint’s final proposal revisions were evaluated as follows:

<b>Technical Approach</b>	<b>NET</b>	<b>Arrowpoint</b>
Transition Start-Up	Good	Good
Program Management	Good	Good
System Operations	Good	Good
Service Desk	Good	Good
Evolutionary Approach	Good	Good
Corporate Experience	Good	Good
Quality Control Plan	Good	Outstanding
<b>Overall Technical</b>	Good	Good
<b>Past/Present Performance</b>	Relevant/Satisfactory Confidence	Relevant/Satisfactory Confidence
<b>Price</b>	\$51,087,116.59	\$34,894,795.08

Agency Report (AR), Tab 37, Source Selection Decision (SSD) at 1-2. Based on a review of the evaluation record, the source selection authority (SSA) concluded that the proposals were “substantially equal” and that NET’s proposal “does not add any benefit (technical or past/present performance) for the additional price.” Id. at 2. Accordingly, the SSA determined that “Arrowpoint offers the best value to the Government.” Id. The Army held a contract review board on December 12, 2012, and the MODS contract was awarded to Arrowpoint on the same day.

On January 7, 2013, NET protested the award of the contract to our Office. Shortly thereafter, the Army informed our Office that it would take corrective action by conducting a new past performance evaluation and making a new award decision. We dismissed the protest as academic. Networking and Eng’g Techs., Inc., B-405062.3, Feb. 7, 2013.

From February 7 through May 17, the Army reevaluated the firms’ past performance. At the conclusion of the reevaluation, the Army raised NET’s past/present performance rating to “relevant/substantial confidence.” AR, Tab 41, Amended SSD at 6. The SSA then issued an amended SSD, in which the SSA again selected Arrowpoint for award. In the amended SSD, the SSA noted Arrowpoint’s slight technical advantage resulting from its outstanding rating under the quality control technical subfactor, and NET’s slight past performance advantage resulting from its “substantial confidence” rating. Id. However, in the final trade-off, the SSA again concluded that there was “nothing in [NET’s] technical proposal or their past performance history that warrants paying an additional \$16M.” Id. The Army notified NET that it was not the successful offeror on May 17. This protest followed.

## DISCUSSION

NET’s protest is premised on four main arguments. NET first alleges that the Army failed to conduct a reasonable price realism analysis of Arrowpoint’s proposal, specifically concerning price risk. NET repeatedly emphasizes its belief that Arrowpoint’s price was unrealistically low with high cost-related proposal risk, and should not have been considered for award. Second, NET alleges that Arrowpoint lacked the requisite CMMI Level 3 certification necessary to perform the modernization tasks under the SOW, and that Arrowpoint’s use of a subcontractor-- [DELETED]--with CMMI Level 3 certification to perform this work will cause Arrowpoint to violate the limitations on subcontracting contract clause referenced in the RFP. Third, NET alleges that Arrowpoint’s subcontractor [DELETED] has an actual or potential organizational conflict of interest (OCI) relating the RFP that the Army failed to identify or mitigate. Finally, NET alleges that the Army improperly converted this best value RFP to a lowest-priced technically-acceptable competition, and failed to identify and evaluate key non-price discriminators between the proposals.

## Price Realism

Using its own labor hours and labor rates as a baseline, NET alleges that Arrowpoint proposed insufficient labor hours to fulfill the requirements of the SOW, and insufficient labor rates to hire and retain skilled personnel necessary to perform. According to NET, the Army should have found Arrowpoint's price unrealistic, "indicative of substantial proposal and technical risk," as well as reflecting "a fundamental misunderstanding of the solicitation requirements," and therefore unacceptable. NET First Supplemental Protest at 23.

While agencies are required to perform some sort of price analysis or cost analysis on negotiated contracts to ensure that the agreed-upon price is fair and reasonable, where the award of a fixed-price contract is contemplated, a proposal's price realism is not ordinarily considered, since a fixed-price contract places the risk and responsibility for contract costs and resulting profit or loss on the contractor. OMV Med., Inc.; Saratoga Med. Ctr., Inc., B-281387 et al., Feb. 3, 1999, 99-1 CPD ¶ 52 at 5. However, an agency may provide for price realism analysis in the solicitation for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit.<sup>1</sup> See The Cube Corp., B-277353, Oct. 2, 1997, 97-2 CPD ¶ 92 at 4; Ameriko, Inc., B-277068, Aug. 29, 1997, 97-2 CPD ¶ 76 at 3. The nature and extent of an agency's price realism analysis are matters within the sound exercise of the agency's discretion. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 5.

Here, the record includes substantial documentation of the agency's price analysis, consisting of price analyst and contracting officer reports on the initial price proposals, additional price analyst reports following the first and third rounds of discussions, a contracting officer price report on the final price proposals, and a contracting officer memorandum reconciling the price analyst's reports with the contracting officer's final price report.

In the final price report, the contracting officer recognized that Arrowpoint proposed fewer hours, as compared to NET, for the fixed-price CLINs. Specifically, Arrowpoint's proposal was based on [DELETED] total labor hours, whereas NET's proposal was based on [DELETED] hours. AR, Tab 35, Contracting Officer Price Report, Sept. 26, 2012, at 3. The contracting officer, however, noted that the source selection evaluation board's (SSEB) review of Arrowpoint's proposed staffing hours resulted in a "good" rating and a finding that Arrowpoint had a thorough understanding of staffing, with "viable staffing to perform the task

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<sup>1</sup> No party to the protest contends that the solicitation, as drafted, did not provide for a price realism evaluation.

identified.” Id. at 5. Based on the staffing findings in connection with the technical evaluation, the contracting officer concluded that the labor hours proposed by Arrowpoint, while lower than NET’s, were sufficient based on Arrowpoint’s proposed technical approach.

Next, the contracting officer considered Arrowpoint’s labor rates, and, again, recognized that they were lower than NET’s for most labor categories. The contracting officer also found, however, that all of Arrowpoint’s direct labor rates were higher than the relevant Service Contract Act wage determination and that Arrowpoint would be [DELETED]--noting that the cost “impact on hiring incumbent staff will be minimal.” Id. at 4. The contracting officer also considered that, in discussions, Arrowpoint explained that the work proposed under the RFP was similar to other work being performed for the Army using the same labor categories, and that based on Arrowpoint’s positive past performance, Arrowpoint was likely to be able to perform under the rates proposed, based on their past success. Accordingly, the contracting officer found that Arrowpoint’s labor rates were realistic.

In its protest, NET argues that the contracting officer’s final price report was unreasonable since it effectively ignored concerns expressed by the Army’s price analyst concerning the realism of Arrowpoint’s price, as well as the higher hours and rates in the Army’s own independent government estimate (IGE).

NET is correct that the price analyst identified concerns about the realism of Arrowpoint’s price, and that the IGE was based on higher hours and labor rates as compared to Arrowpoint’s proposal. In a final report following the third round of discussions, the price analyst concluded as follows:

[Arrowpoint’s] price proposal still may not be realistic, but that risk has lessened. There is still no evidence available that the IGE represents the minimum staffing or skill level necessary to perform the contract, and there is no evidence available that a [DELETED]. In other words, there is no substantial evidence that the proposed rates are too low.

AR, Tab 30, Price Analyst Report, Sept. 11, 2012, at 2.<sup>2</sup>

Subsequent to the preparation of this report, and the contracting officer’s preparation of a final price report, the contracting officer prepared a price memorandum specifically addressing the price analyst’s concerns. In the memorandum the contracting officer found that “the risk identified in the Price/Cost

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<sup>2</sup> The price analyst also found an “extreme range in pricing” among the initial proposals, and stated that “I recommend the IGE as an unreliable standard for determining price reasonableness or realism at this time.” AR, Tab 11, Price Analyst Report, June 14, 2012, at 3.

analyst's report" is based on concerns regarding Arrowpoint's direct labor rates. AR, Tab 38, Contracting Officer Price Memorandum, at 1.

In responding to the price analyst's concerns, the contracting officer found that for 14 labor categories proposed by both offerors, Arrowpoint's direct labor rates were higher for 2 categories. Id. at 2. Of the remaining 12 categories, 6 involved information technology activities, and 6 involved administrative or management activities. Id. Of the 6 information technology-related categories, the contracting office found that the differences between Arrowpoint's and NET's direct labor rates were much smaller than the differences between NET's rates and the direct rates used to calculate the IGE, and that all of Arrowpoint's rates were "significantly higher" than the SCA wage determination. Id. Concerning the other 6 categories, the contracting officer found that Arrowpoint's rates were above the SCA wage determination or were for management positions to which the SCA did not apply, and where there was a significant spread between the offerors and the IGE. Id. In his final analysis, the contracting officer took exception to the price analyst's statement that Arrowpoint's price proposal "still may not be realistic," concluding that "there is no basis for this vague statement in the analysis," and that "[t]he statements by the analyst are found to be non-definitive and unsupported." Id. at 1. The contracting officer also noted that, while NET's price was considerably higher than Arrowpoint's price, 27 percent of NET's price premium was attributable to NET's [DELETED]. Contracting Officer's Statement, June 28, 2013, at 15.

On this record we have no basis to question the contracting officer's ultimate conclusion that Arrowpoint's price proposal was realistic. The record demonstrates consideration of Arrowpoint's price by both the price analyst and the contracting officer, and a final memorandum addressing the divergence between the price analyst's concerns and the conclusions reached in the contracting officer's final report. We find no impropriety in the contracting officer's own reasoned consideration of Arrowpoint's price. Contracting officers are not bound by lower level evaluators, and may make their own judgments regarding the merits of a proposal. AllWorld Language Consultants, Inc., B-291409, B-291409.2, Dec. 16, 2002, 2003 CPD ¶ 13 at 3.<sup>3</sup>

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<sup>3</sup> NET also argues that, to the extent Arrowpoint's price was realistic, the Army conducted inadequate discussions where it failed to inform NET of its high price and labor hours. NET argues that the Army price analyst, in each of his reports, determined that NET's price "will not support a determination of price reasonableness at this point." AR, Tabs 11, 20, 30, Price Analyst Reports, June 14, 2012 at 11; Aug. 17, 2012 at 4; Sept. 11, 2012 at 2. The contracting officer, however, never found that NET's proposed price was unreasonably high. From the time of his initial price report, the contracting officer concluded that "it appears that there should be adequate competition to determine a fair and reasonable price after discussion are held." AR, Tab 12, Contracting Officer Price Report, June 19, 2012, (continued...)

### CMMI Level 3 Certification

NET next argues that Arrowpoint failed to demonstrate that it would comply with the RFP requirement that personnel “performing development work funded by Research, Development, Testing and Evaluation appropriations” be employed by a firm possessing CMMI Level 3 certification. The record shows, as noted above, that Arrowpoint proposed [DELETED], a CMMI Level 3 certified subcontractor, to perform this work.<sup>4</sup> In this regard, the record reflects that Arrowpoint’s proposal explicitly represented that “as required per the RFP, we will ensure that only employees of Teammate firms that possess CMMI DEV Level 3 SEI certification are authorized to perform actual development work.” Arrowpoint Final Proposal Revision, Volume II, at 46.

NET asserts, however, that Arrowpoint’s price proposal—specifically for CLIN x004—shows that Arrowpoint will be using its own employees, rather than [DELETED] employees to perform work requiring CMMI Level 3 certification. In this regard, NET highlights the fact that Arrowpoint’s price proposal for CLIN x004 reflects that [DELETED] is proposed to perform approximately [DELETED] percent of the work, which is insufficient since, according to NET, “[a] vast majority of the work will consist of Modernization,” funded by RDT&E appropriations, and thereby requiring CMMI Level 3 certification. NET First Supplemental Protest at 35. Additionally, NET argues that, to the extent Arrowpoint proposed [DELETED] to perform all RDT&E funded work under the contract, Arrowpoint’s proposal does not comply with the RFP’s limitations on subcontracting clause.

The evaluation of an offeror’s proposal is a matter within the agency’s discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency’s evaluation, our Office will not reevaluate proposals; instead,

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(...continued)

at 14. Consistent with this statement, the contracting officer did not question NET’s price reasonableness in his later reports, concluding that NET’s “proposed price is reasonable and the cost risk in this proposal is low.” Concerning NET’s labor hours, the contracting officer concluded that “[t]he hours in the cost proposal are . . . considered adequate based on their technical approach.” AR, Tab 35, Contracting Officer Price Report, Sept. 26, 2012, at 6. Based on this record, we see no error concerning the scope of the Army’s price discussions with NET. While an agency must advise an offeror during discussions if its proposed cost/price is considered unreasonably high, an agency need not advise an offeror that its cost/price is higher than those of its competitors if the higher cost/price is not viewed as unreasonable. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15.

<sup>4</sup> As is also noted above, Arrowpoint does not possess CMMI Level 3 certification.



we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13; Urban-Meridian Joint Venture, B-287168, B-287168.2, May 7, 2001, 2001 CPD ¶ 91 at 2. An offeror's mere disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

First, the record does not reflect that a "vast majority" of the work under this RFP will consist of modernization work funded by RDT&E appropriations. The RFP itself does not include an estimate of the amount of work to be funded by RDT&E appropriations. Pricing for the IDIQ CLIN (x004), under which modernization tasks would be ordered, was based solely on a "labor hour pricing sheet," with 18 stated labor categories and associated estimated annual hours. In this regard, the RFP did not further specify the basis of the estimates or include a break-out of the work to be performed by labor category.

Further, as noted above, under the IDIQ CLIN, only one of the four labor-related categories of work (labor - software modification 1) will be specifically funded with RDT&E appropriations. RFP at 28, 134. Similarly, when all of the agency's requirements for MODS tasks are considered, only the modernization tasks--those consisting of "new developments" to the MODS system--utilize RDT&E funding. RFP at 63. According to the Army, the procurement history shows that RDT&E funding has amounted to only "approximately 20 to 30 percent of the total funding available, with even less actually placed on the contract." Contracting Officer's Statement at 23. This historical funding amount is not inconsistent with Arrowpoint's price proposal for the IDIQ CLIN, which proposed [DELETED] personnel to perform approximately [DELETED] percent of the estimated hours provided by the agency. Accordingly, there is no basis for NET's assertion that Arrowpoint's price proposal shows that it will be unable to comply with the CMMI Level 3 certification requirements associated with performance of work ordered under the CLIN x004.

Second, NET's allegation that Arrowpoint's use of [DELETED] to perform RDT&E-funded tasks will cause Arrowpoint to violate the limitations on subcontracting clause of the RFP is without merit. As a general matter, the RFP's limitations on subcontracting provision, which is set forth in Federal Acquisition Regulation (FAR) clause 52.219-4, requires that a prime contractor perform at least 50 percent of the cost of the contract incurred for personnel with its own employees. As noted above, all indications in the record are that RDT&E funding will not be the primary source of funding on the contract, but rather, consistent with historical funding levels, will constitute only 20-30 percent of funds available for performance of the contract. More importantly, Arrowpoint's proposal shows that Arrowpoint will itself supply over [DELETED] percent of the labor hours, and over [DELETED] percent of the total cost of the contract. Intervenor's Comments at 10-11. Accordingly, there is no

basis to conclude that Arrowpoint's proposal indicates that it will not comply with the relevant limitation on subcontracting provisions.

### Organizational Conflict of Interest

NET contends that the Army failed to properly investigate and mitigate an actual or potential OCI concerning Arrowpoint's subcontractor, [DELETED]. According to NET, [DELETED] has at least a potential conflict of interest as a result of [DELETED]'s role as a contractor in the military health system medical readiness office, the Army Office of the Surgeon General, and in the post-deployment health readiness program. In these roles, NET asserts that [DELETED] employees were located in proximity to government personnel and could have overheard MODS-related discussions and pricing information under the prior MODS contract. NET also asserts that [DELETED] employees were involved in meetings concerning requirements determination and software development throughout the prior contract and attended meetings regarding MODS systems that could have provided nonpublic information on new work requirements and budgets, which may have provided a competitive advantage through an unequal access to information or biased ground rules OCI. In its protest, NET further specifically identified five [DELETED] employees, and four Army employees to whom the [DELETED] employees reported, who NET believes would have been aware of the potential OCIs.

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be 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 unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR §§ 9.505(b), 9.505-4; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8; see also McCarthy/Hunt, JV, B-402229.2, Feb. 16, 2010, 2010 CPD ¶ 68 at 5. A biased ground rules OCI arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the statement of work or providing materials upon which a statement of work was based. FAR §§ 9.505-1, 9.505-2.

We review an 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., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17. 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., supra, 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).

The record shows that upon receiving NET's protest, the agency thoroughly investigated the OCI allegations. Specifically, the contracting officer conducted interviews with two of the government employees identified by NET's protest, and three additional government employees not named in the protest, but who were involved in development of the MODS requirements. AR, Tab 46, OCI Determination at 3-4. The contracting officer also interviewed two of the [DELETED] employees identified in NET's protest, and received a written response from [DELETED] concerning NET's allegations. Id. at 5. Based on this review, the contracting officer concluded that "there is no indication that [DELETED] participated in any development work leading to the development of the MODS requirement, or any language in the solicitation that would have favored Arrowpoint," and that "[t]here is no basis to determine participation by [DELETED] in any meetings or non-public information given to [DELETED] resulting in an OCI . . . as alleged by the [NET] protest." Id. at 6.

First, concerning NET's allegation of a biased ground rules OCI, the contracting officer's interviews with the three government personnel involved in MODS requirements revealed that two of the three individuals were not aware of any involvement by, meetings with, or input from [DELETED] in the MODS procurement. Id. at 3-4. The third individual stated that he did attend a meeting in 2011 in which [DELETED] presented a capabilities briefing, however, no nonpublic information was provided to [DELETED]. Id. at 4. The contracting officer also states--from his own experience in the development of MODS requirements, work statement, IGE, and quality assurance surveillance plan--that [DELETED] was in no way involved in solicitation development. Contracting Officer's Supplemental Statement at 18. On this record, we see no basis to conclude that the contracting officer failed to conduct a sufficient investigation of the alleged OCI, or unreasonably determined that no biased ground rules OCI existed.

Second, concerning the allegation of an unequal access to information OCI, the contracting officer notes that the [DELETED] personnel named in NET's protest were not contractors to the MODS program directly, but to programs that used data

from various MODS systems--for example the deployment health assessment program, and post-deployment health readiness program--or in support of the medical readiness office or the Army Office of the Surgeon General. Further, to the extent these offices were involved in preparing recommendations that could form the basis of future MODS task orders, or engaged in conversations relating to pricing of task orders under the prior MODS contract, there is no indication that [DELETED] or Arrowpoint would have benefitted from such information in the development of Arrowpoint's proposal.

Specifically, the contracting officer's investigation revealed that the [DELETED] personnel named in NET's protest had all signed client non-disclosure agreements, did not report to any [DELETED] proposal leaders or proposal writers, and were restricted from participation in the preparation of proposals. AR, Tab 47, [DELETED] OCI Response, at 1, 4-11. Further, it is not apparent that the information to which [DELETED] is alleged to have had access, such as MODS enhancement information or task order pricing information, would have been competitively useful in the preparation of Arrowpoint's proposal. In this case, offerors were not required to provide technical proposals or pricing information responsive to potential future task order service requests under the terms of the RFP. Rather, as it relates to MODS task orders, offerors were simply required to provide fixed-price labor rates for labor categories specified by the agency, using agency-provided labor hour estimates. It is therefore unclear, and NET has not explained, how knowledge of future potential MODS enhancement task orders, or price information on previously issued task orders, would provide a competitive advantage in proposing the required labor rates under the RFP.

In fact, the agency and intervenor both point out that NET's own subcontractor, ASM Research, Inc., is the 20-year incumbent contractor for the actual MODS requirement and thus provided contract direct support to the MODS enhancement process at a higher level than did [DELETED]. Contracting Officer's Supplemental Statement at 18; AR, Tab 47, [DELETED] OCI Response, at 3. Thus, assuming the information at issue could have been used by Arrowpoint, it is unclear how Arrowpoint would have held a competitive advantage over that held by NET, through its subcontractor ASM Research, Inc.

Where there is no apparent connection between the [DELETED] contractors identified in NET's protest and the [DELETED] employees involved in Arrowpoint's proposal preparation, and where the protester has not identified how the alleged nonpublic information would be competitively useful, we see no basis on which to conclude that the contracting officer's conclusions here were unreasonable.

#### Best Value Tradeoff Decision

Finally, NET argues that the Army failed to identify key discriminators between the proposals and made an irrational determination that the proposals were "essentially

equal.” NET contends that this error resulted in the Army ignoring the the award criteria set forth in the RFP, and instead making award on a low-priced, technically-acceptable basis.<sup>5</sup>

We disagree. As a general matter, where price is secondary to technical considerations under a solicitation’s evaluation scheme, the selection of a lower-priced proposal over a proposal with a higher technical rating requires an adequate justification, *i.e.*, one showing the agency reasonably concluded that notwithstanding the point or adjectival differential between the two proposals, they were essentially equal in technical merit, or that the differential in the evaluation ratings between the proposals was not worth the cost premium associated with selection of the higher technically rated proposal. Wackenhut Services, Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 12. In making these determinations, the propriety of a price/technical tradeoff turns not on the difference in technical scores per se, but on whether the contracting agency’s judgment concerning the significance of that difference was reasonable in light of the solicitation’s evaluation scheme. In this regard, adjectival ratings and point scores are but guides to, and not substitutes for, intelligent decision making. SAMS EI Segundo, LLC, B-291620, B-291620.2, Feb. 3, 2003, 2003 CPD ¶ 44 at 17. Source selection officials have broad discretion in determining the manner and extent to which they will make use of, not only the adjectival ratings or point scores, but also the written narrative justification underlying those technical results, subject only to

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<sup>5</sup> NET also alleges that the tradeoff decision was flawed based on other errors in the technical evaluation. In this connection, NET asserts that, based on the definitions for “good” and “outstanding” in the RFP, the Army was required to rate its proposal “outstanding” under each of the technical factors. NET primarily argues that the outstanding ratings were required because its proposal “had no weaknesses or deficiencies” under the subfactors. NET Protest at 35, 37, 41, 44, 46, 50, 53. NET also expends significant effort reviewing elements of its proposal that it considers outstanding. However, in reviewing an agency’s evaluation, we will not reevaluate technical proposals, but instead will examine the agency’s evaluation to ensure that it was reasonable and consistent with the solicitation’s stated evaluation criteria and procurement statutes and regulations. The Kenjya Group, Inc.; Academy Solutions Group, LLC, B-406314, B-406314.2, Apr. 11, 2012, 2012 CPD ¶ 141 at 4. Moreover, there is no requirement that an agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths and/or is not evaluated as having any weaknesses. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. In this case, NET’s arguments do not support a conclusion that the agency’s technical evaluation was unreasonable. An offeror’s mere disagreement with an agency’s evaluation judgments does not demonstrate that those judgments are unreasonable. Glenn Def. Marine-Asia PTE, Ltd., B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7.

the tests of rationality and consistency with the evaluation criteria. Development Alternatives, Inc., B-279920, Aug. 6, 1998, 98-2 CPD ¶ 54 at 9; Midwest Research Inst., B-240268, Nov. 5, 1990, 90-2 CPD ¶ 364 at 4.

Here, the record reflects the SSEB's conclusion that NET's and Arrowpoint's proposals were both "good" under six of seven technical subfactors, including the two most significantly weighted subfactors, with Arrowpoint possessing an advantage under the seventh subfactor--quality control plan--due to an outstanding subfactor rating. The record also reflects the evaluators' conclusion that NET enjoyed an advantage under the past/present performance factor by virtue of its "substantial confidence" rating.

In the final SSD, the SSA determined that:

Arrowpoint has a slight technical advantage in [the quality control subfactor] based on assessment of the technical evaluation board, with Arrowpoint's past/present performance rating being slightly lower than [NET's], and Arrowpoint's proposed price being Significantly lower than the [NET] proposal.

AR, Tab 41, Amended SSD at 6. Ultimately, the SSA concluded that "[w]hile [NET] has a slight past performance advantage over Arrowpoint, I find nothing in [NET's] technical proposal or their past performance history that warrants paying an additional \$16M." Id.

We have no basis to find the SSA's conclusions unreasonable, or otherwise inconsistent with the RFP's stated basis for award. While the RFP advised that the non-price factors, when combined, were significantly more important than the price factor, the record reflects that neither offeror here enjoyed a significant non-price advantage over the other. In this context, we see no error whatsoever in the SSA's determination that nothing in NET's proposal warranted the payment of a \$16 million price premium.

The protest is denied.

Susan A. Poling  
General Counsel