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## Decision

**Matter of:** Cyberdata Technologies, Inc.  
**File:** B-411070; B-411070.2; B-411070.3  
**Date:** May 1, 2015

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Edward J. Tolchin, Esq., Offit Kurman, P.A., for the protester.  
Brian J. Hundertmark, Esq., and Eric S. Lammers, Esq., Garson Claxton LLC, for IDOX Solutions; and Stephanie D. Wilson, Esq., Terrence M. O'Connor, Esq., and Frank R. Gulino, Esq., Berenzweig Leonard, L.L.P., for Wexler Technical Solutions, Inc., the intervenors.  
Charles G. McCarthy, Esq., General Services Administration, for the agency.  
Katherine I. Riback, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Challenge to the agency's evaluation of the protester's quote as technically unacceptable is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest that the awards to two firms was tainted by an unequal access to information organization conflict of interest is denied where the protester fails to present hard facts indicating the existence of a conflict and where the contracting officer reasonably found that no conflict existed.
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### DECISION

Cyberdata Technologies, Inc., of Herndon, Virginia, protests the decision by the General Services Administration (GSA) to establish blanket purchase agreements (BPAs) with Wexler Technical Solutions, Inc. (WTS), of Rockville, Maryland, and IDOX Solutions Inc., of Bethesda, Maryland, under request for quotes (RFQ) No. QID09140051R for support in the development and the operations and maintenance of new Enterprise Data/Information Management environments. RFQ at 8. Cyberdata argues that the agency unreasonably found its quote technically unacceptable. The protester also contends that WTS and IDOX should have been eliminated from the competition due to organizational conflicts of interest (OCIs) that arose from an unfair competitive advantage that the awardee's received from their proposed subcontractor.

We deny the protest.

## BACKGROUND

The RFQ for this requirement was originally issued through the GSA eBuy system, on September 18, 2014, under a different solicitation number. Agency Report (AR) at 6. The RFQ was issued as a total small business set-aside pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding contracts under Federal Supply Schedule (FSS) 70, Information Technology Equipment, Software, and Services. The solicitation sought quotes to provide new Enterprise Data/Information Management environments, including a GSA-owned government-wide New Generation Logical Data Warehouse and Enterprise Information Management framework/platform known as “Data to Decision” (D2D), as well as its resident Domains, Data Marts applications and components.<sup>1</sup> Twelve firms submitted quotes in response to the RFQ. After an initial evaluation, the agency determined that all of the offers were technically unacceptable or non-responsive to the RFQ, and therefore decided to revise and re-issue the solicitation. Id.

On November 14, the agency re-issued the RFQ. RFQ at 21. The solicitation contemplated the establishment of multiple (up to three) BPAs, with ordering periods of 5 years under which the agency will issue task orders on either a fixed-price basis, or based on a hybrid of fixed-price and fixed-price units of service contract line items. RFQ at 13. The solicitation advised vendors that selection would be made on the basis of a best-value tradeoff considering four non-price (technical) factors, as well as price. The technical factors were as follows, listed in descending order of importance: (1) BPA level-corporate knowledge and experience;<sup>2</sup> (2) task order level-technical/management approach; (3) BPA

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<sup>1</sup> D2D was developed by GSA and designed as a multi-component platform capable of hosting multiple agency-centric domains, as well as multiple virtual and physical inter-agency and intra-agency data marts. The agency states that it envisions continued development of the foundation platform D2D. RFQ at 5. The D2D platform architecture represents a framework of “abstract and loosely-coupled components, that are state-of-the-art [commercial off the shelf] and open-source [software] products.” Id.; Supp. AR at 4. The platform allows agencies to utilize analytics and reporting capabilities for both an internal staging and external vetting service accessing an enhanced set of analytic artifacts in a controlled discoverable repository. RFQ at 5.

<sup>2</sup> The solicitation provided that for prime/subcontractor relationships, all corporate experience information must come from work performed by the prime contractor. RFQ at 33.

level-technical management approach; and (4) past performance. Id. at 30. When combined, the technical factors were significantly more important than price. Id. The first three technical evaluation factors were to be rated adjectivally (excellent, good, satisfactory and unacceptable). Id. at 30-31. The past performance factor was to be rated as low risk, moderate risk, high risk and unknown risk. Id. at 31. According to the solicitation, an evaluation rating of “unacceptable” under any of the first three factors, or “high risk” under the past performance factor, may result in a quote being found ineligible for award.<sup>3</sup> Id. at 30.

Ten of the 12 vendors from the prior competition submitted quotes in response to the re-issued RFQ. AR at 6. The agency’s technical evaluation board (TEB) evaluated the quotes and developed for each vendor a consensus technical evaluation rating, which combined the ratings for the BPA level-corporate knowledge and experience, task order level-technical/management approach, and BPA level-technical management approach factors. The TEB also developed for each vendor a consensus past performance risk rating. The agency found that four quotes, including Cyberdata’s, were technically unacceptable. The remaining six vendors’ quotes were considered for award. Of relevance to this protest, the agency evaluated the quotes of WTS, IDOX and Cyberdata as follows:

	<b>WTS</b>	<b>IDOX</b>	<b>CYBERDATA</b>
Consensus Technical Evaluation	Excellent	Good	Unacceptable
Consensus Past Performance Risk	Low Risk	Low Risk	High Risk
Price	\$22,322,261	\$22,784,940	\$17,341,811

AR, Tab 2, BPA Final Evaluation, at 13, 31, 41, and 75; Cyberdata’s Quote, Attach. 1, CLIN Pricing Workbook, at 4. After an evaluation of the quotes, the agency awarded BPAs to WTS, IDOX, and another firm, SNAP, Inc.<sup>4</sup> Id. This protest to our Office followed.

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<sup>3</sup> Unacceptable is defined in the solicitation as follows: “[Quote] does not meet the Government’s requirements. Deficiencies exist and a major [quote] revision is necessary to make it acceptable. The [quote] represents high risk.” RFQ at 31.

<sup>4</sup> SNAP, Inc.’s proposed price was \$18,186,722.

## DISCUSSION

Cyberdata challenges the agency's evaluation of its quote as technically unacceptable, and ineligible for award. The protester also argues that WTS and IDOX have an unmitigated OCI, which was not considered by the agency prior to establishment of the BPAs with those firms. In this regard the protester argues that the agency expected a level of information from vendors that was not possible for vendors other than WTS and IDOX because of their improper competitive advantage.<sup>5</sup>

Because, as discussed below, we find that the agency reasonably found that Cyberdata's quote was unacceptable, and because we find no merit to the protester's arguments concerning the alleged OCIs, we conclude that the protester is not an interested party to raise its other challenges regarding the evaluation of the awardees and the evaluation of the its own past performance. We therefore find no basis to sustain the protest.

Where, as here, an agency issues an RFQ to FSS contractors 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.

### Cyberdata's Technical Acceptability

Cyberdata argues that GSA unreasonably found its quote technically unacceptable. The protester contends that all of GSA's criticisms of its quote were "unreasonable or otherwise inconsistent with what was to be evaluated pursuant to the solicitation and FAR." Protester's Comments (March 9, 2015) at 2. We have reviewed the protester's arguments and find that they do not provide a basis to sustain the protest. We discuss representative examples of the protester's challenges below.

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<sup>5</sup> Cyberdata's protest and supplemental protests raised numerous allegations, While our decision here does not specifically discuss each and every argument and/or variations of the arguments, we have considered all of the protester's assertions and find that none furnish a basis for sustaining the protests.

Under factor one, BPA level corporate knowledge and experience, Cyberdata's quote received four deficiencies, three significant weaknesses, two weaknesses, two strengths, and no significant strengths, for a rating of unacceptable.<sup>6</sup> AR, Tab 2, BPA Final Evaluation at 79-81.

One of the deficiencies identified by GSA under this factor was that Cyberdata's quote "does not mention anything about their knowledge and experience with [logical data warehousing (LDW)] approaches, implementations, methodologies, or [service level agreements (SLAs)]." AR, Tab 2, BPA Final Evaluation, at 80; citing AR, Cyberdata Technical Quote, § 6.1. The agency also noted in the evaluation summary for this factor that Cyberdata's quote did not "sufficiently demonstrate the offeror's understanding, knowledge and experience in the area of Advanced Analytics." Id.; see also Supp. AR, Decl. of TEB Lead Evaluator, at 5.

Cyberdata contends that its quote mentioned the terms "LDW" and "SLA" numerous times, and generally argues that section 6.1 of its quote was not required to address these requirements in depth. Protester's Comments (Mar. 9, 2015) at 2-3. As the agency explains, however, Cyberdata's quote failed to sufficiently explain Cyberdata's experience and knowledge of LDW approaches, implementations, methodologies, or SLAs. AR, Tab 2, BPA Final Evaluation, at 80; Supp. AR, Decl. of TEB Lead Evaluator, at 5. In this regard, the agency states that it understood that the protester's quote attempted to reflect the protester's understanding of various requirements, but that it failed to demonstrate experience regarding LDW and SLAs.

A related concern arose from Cyberdata's description of its experience with the GSA Public Building Service Business Intelligence (PBS BI) framework program to demonstrate its LDW knowledge and experience. AR, Tab 2, BPA Final Evaluation, at 80. According to the GSA lead technical evaluator, who designed, executed and managed the PBS BI framework program, this program is not a LDW and does not involve advanced analytics capabilities. Supp. AR, Decl. of TEB Lead Evaluator, at 5. Rather, the agency determined that the PBS BI framework program is a traditional enterprise data warehouse with a BI layer, as opposed to a more complex and advanced LDW architecture. Id. Although Cyberdata disagrees with the agency's evaluation findings under this factor, we have no basis to question the agency's evaluation regarding this deficiency.

Under factor two, task order level-technical/management approach, Cyberdata's quote received two deficiencies, four significant weaknesses, four weaknesses, and no strengths or significant strengths for a rating of unacceptable for the factor. AR, Tab 2, BPA Final Evaluation at 84-86.

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<sup>6</sup> The RFQ defines a deficiency as a "flaw in the [quote] that significantly increases the risk of unsuccessful contract performance." RFQ at 31.

GSA identified a deficiency based on Cyberdata's proposal to provide a database administrator (DBA) to fulfill the role of a LDW specialist. AR, Tab 2, BPA Final Evaluation at 86. Cyberdata claims that "by definition, a logical data warehouse [specialist] requires a data administrator's skill set, among others." Protester's Comments (March 9, 2015) at 9. However the agency responds that while the skillset of a traditional database administrator is a requirement for a LDW warehouse specialist, it is not sufficient, given the greater complexity of LDW requirements. Supp. AR at 21. The agency further explains that a LDW has skills "far outside and above the skillset of a traditional DBA." Supp. AR, Decl. of TEB Lead Evaluator, at 7. We find the agency's evaluation under this factor to be reasonable and consistent with the solicitation. In light of GSA assessment of deficiencies in Cyberdata's quote, we conclude that the agency reasonably found the quote to be technically unacceptable.

#### Organizational Conflicts of Interest

Next, Cyberdata argues that WTS and IDOX have an unmitigated OCI, which was not considered by the agency prior to establishment of the BPAs. Although, as discussed above, we conclude that GSA reasonably found Cyberdata's quote technically unacceptable, and therefore ineligible for award, the protester argues that the agency's evaluation was based, in part, on an unreasonable expectation of the level of detail to be provided in vendors' quotes. In this regard, the protester argues that WTS and IDOX had unequal access to information that permitted them to meet requirements that no other vendor could meet. See Protester's Supp. Comments (Mar. 25, 2015) at 11. Specifically, Cyberdata contends that a subcontractor proposed by both WTS and IDOX, Acuity Systems, designed and developed the current D2D platform that is the subject of this procurement. For the reasons discussed below, we find no merit to this argument.

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 for a government contract. FAR § 9.505(b); CapRock Gov't Solutions, Inc., et al., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25.

We review agencies' OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest

exists, even when this consideration is given after award, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. TISTA Sci. and Tech. Corp. Inc., B-408175.4, Dec. 30, 2013, 2014 CPD ¶ 17 at 6; TeleCommunication Sys., Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. 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.

Cyberdata contends that the OCI arose because of Acuity's knowledge of non-public information concerning the D2D platform. The protester further contends that there is no public information about the D2D platform other than what is contained in the RFQ, and that that information was "scant." For this reason, Cyberdata argues that only Acuity Systems has the inside information concerning this system, which is "critical" to responding to this solicitation. Protester's Supp. Comments (Mar. 24, 2015) at 5. The protester contends that the quotes of both IDOX and WTS both acknowledged this fact and "proclaimed the *unique knowledge* that only Acuity Systems had as the *developer* of the D2D." *Id.* at 3 (italics in original). The protester further notes that the quotes of WTS and IDOX contain many identical sections, which the protester argues, may have been written by Acuity. Supp. Protest (Mar. 9, 2015) at 4; Protester's Supp. Comments (Mar. 24, 2015), at 11. Accordingly, Cyberdata argues that WTS and IDOX should have been disqualified from receiving the award because the OCI "tainted" the evaluation. Protester's Supp. Comments (Mar. 24, 2015) at 13.

In response to the protest, the contracting officer investigated the protester's OCI allegations concerning the role of Acuity and the awards of WTS and IDOX. Based on the contracting officer's review, he concluded that an OCI did not exist.<sup>7</sup> OCI Determination and Findings (Mar. 17, 2105) at 1.

The agency first notes that the protester's contention that only Acuity had "inside information" that was "critical to responding" to this requirement, is belied by the agency's award of a contract to SNAP, Inc. Protester's Supp. Comments (Mar. 24, 2015) at 5. In this regard, the agency notes that SNAP, Inc. did not use Acuity as a

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<sup>7</sup> To the extent that the protester objects that the agency conducted this aspect of its OCI analysis during the pendency of this protest, both our Office and the Court of Federal Claims have recognized that an agency may investigate possible OCIs after the filing of bid protests. See, e.g., Q2 Admins., LLC, B-410028, Oct. 14, 2014, 2014 CPD ¶ 305; NETSTAR-1 Gov't Consulting, Inc. v. United States, 101 Fed. Cl. 511, 521 (Oct. 17, 2011).

subcontractor, and made no reference to Acuity anywhere in its quote. OCI Determination and Findings (Mar. 17, 2015) at 1; Supp. AR at 2. The protester does not dispute that SNAP, Inc. did not rely on Acuity and does not otherwise contend that this awardee was able to submit an acceptable quote without the benefit of the alleged OCI concerning Acuity.

Next, the contracting officer found that Acuity did not assist in the D2D effort which is the subject of this procurement; rather, it was a subcontractor to Business Solutions Group, Inc. (BSG), which was responsible for the development of the Performance Management Line of Business (PMLoB) Platform with Department of Defense (DoD) Domain. OCI Determination and Findings (Mar. 17, 2015), Exh. 3, PMLoB/DoD Domain Comparison with D2D Framework, at 1-2, 4. The contracting officer explained that the PMLoB DoD Domain is a specialized software application, while the D2D approach (the subject of this procurement) is a framework that collects software products that can be used to create other software products and applications. Id. at 4. The contracting officer stated that Acuity's knowledge and experience regarding the PMLoB Platform did not provide competitive advantages outside the DoD Domain. Id. at 5. As a consequence, the contracting officer concluded that Acuity's role did not provide any improper competitive advantage to WTS or IDOX. Id. at 1.

Cyberdata also contends that passages in WTS's and IDOX's quotes concerning certain requirements, such as D2D, were similar or identical, thereby demonstrating that Acuity must have provided an improper competitive advantage to the awardees. The protester also argues that numerous claims in the awardee's quotes about Acuity's "unique" experience and "intimate knowledge" regarding D2D demonstrate that Acuity must have had unequal access to nonpublic information. The agency acknowledges that while the language that was common to the quotes of WTS and IDOX "might have been contributed by Acuity," the language in question included "absolutely no knowledge/know how that would be uniquely/exclusively" known by Acuity and that would have conferred an improper advantage on WTS and IDOX. Supp. AR at 3. As discussed above, the contracting officer reasonably concluded that Acuity's role as a subcontractor to WTS and IDOX did not afford these awardees an improper competitive advantage. We also conclude that the awardee's characterization of Acuity's role for purposes of a quote does not demonstrate the existence of an OCI where, as here, the contracting officer has reasonably considered the claims and concluded that no OCI in fact exists.

In sum, we see nothing to indicate that Acuity's prior work as BSG's subcontractor with the agency on the PMLoB platform involved establishing the specifications for the current RFQ, or provided WTS and IDOX with access to nonpublic information concerning the current requirement. In this regard, Cyberdata has not shown sufficient facts to demonstrate the existence or potential existence of an OCI, nor



has it shown that the contracting officer unreasonably concluded that an OCI did not exist.<sup>8</sup> See TeleCommunication Sys. Inc., supra.

#### Other Arguments

Finally, Cyberdata raises two additional arguments: (1) GSA improperly evaluated the corporate experience of WTS and IDOX, and (2) the agency improperly rated its quote “high risk,” rather than “unknown risk” under the past performance factor. As discussed above, we conclude that the agency reasonably concluded that the protester’s quote was technically unacceptable. For that reason, we conclude that the protester is not an interested party to raise these additional challenges.

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. See 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party’s status in relation to the procurement. Four Winds Servs., Inc., B-280714, Aug. 28, 1998, 98-2 CPD ¶ 57. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. Id.

We note that the solicitation provided for the award of up to three BPAs. As discussed above the protester does not challenge the award to SNAP, Inc. We find that even if the protester’s arguments concerning the evaluation of WTS’s and IDOX’s corporate experience had merit, and those vendors were eliminated from the competition, there is no basis to conclude that the agency would be required to award a BPA to Cyberdata, based on its unacceptable quote. Similarly, even if the protester’s argument concerning its past performance had merit, a past performance rating of unknown risk, rather than high risk, would not create a reasonable possibility for award based on its unacceptable rating.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>8</sup> The agency also contends that if the protester had concerns regarding the lack of information in the RFQ concerning D2D, it should have filed a pre-award protest contesting the terms of the solicitation. We agree. Under our Bid Protest Regulations, a protest based on alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of quotes must be filed before that time. 4 C.F.R. § 21.2(a)(1).