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**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Savannah River Alliance, LLC

File: B-311126, B-311126.2, B-311126.3, B-311126.4

Date: April 25, 2008

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H. Jack Shearer, Esq., Charmaine A. Howson, Esq., Timothy P. Fischer, Esq., and Jeffrey Galan, Esq., Department of Energy, for the agency.

Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's selection of higher-priced, higher-rated proposal for award is reasonable, where the key discriminator between proposals was under the key personnel factor, which was one of the most heavily weighted factors in the evaluation and was "critical" to successful performance, and where the agency reasonably concluded that awardee's superior key personnel were worth the additional price; protester's disagreement with the evaluation of multiple other factors and subfactors does not render the evaluation unreasonable.
2. Allegation that a key personnel reference had a personal conflict of interest that tainted the evaluation of key personnel is denied, where the reference was provided by the offeror and did not have an official role in the procurement, and the information provided by the reference had no impact on the evaluation.
3. Allegation that organizational conflicts of interest exist due to the employment of several of the awardee's key personnel is denied, where any conflict, if it exists, is personal to the employees, and not the organization, and is too speculative to impute to their employers.

DECISION

Savannah River Alliance, LLC (SRA) protests the award of a contract to Savannah River Nuclear Solutions, LLC (SRNS), issued by the Department of Energy (DOE) under request for proposals (RFP) No. DE-RFP09-06SR22470 for the management and operation of the Savannah River Site, a DOE-owned facility in South Carolina. SRA alleges myriad evaluation errors.

We deny the protest.

BACKGROUND

The Savannah River Site is a 310-square-mile industrial complex in the southern part of South Carolina adjacent to the Savannah River. The site is dedicated to environmental management cleanup, developing and deploying technologies to support the cleanup mission, providing capability for supporting the enduring nuclear weapons stockpile, and processing and storing nuclear materials in support of the United States' nuclear non-proliferation effort. RFP § C-1.1. DOE's Office of Environmental Management is the landlord for the site and, since 1989, has contracted with Washington Savannah River Company (WSRC) to manage and operate the site. Agency Report (AR), Tab B.2, Source Evaluation Board (SEB) Report, at 2.

The RFP sought to restructure the workscope of the predecessor contract and implement a performance-based contract, whereby the selected contractor would provide all of the "personnel, facilities, equipment, materials, supplies, and services" necessary to manage and operate the site and its mission activities. RFP § C-1.2. Included in the RFP's scope of work are environmental closure activities (soil and water remediation, deactivation and decommissioning, solid waste handling, and nuclear materials management), Savannah River National Laboratory (SRNL) activities,¹ National Nuclear Security Administration (NNSA) activities² (tritium³ operations, nuclear nonproliferation, and radiological assistance), and landlord/site services (environmental, safety, and health [ES&H], engineering and construction, operations support, and business services). RFP § C-3; AR, Tab E.1, Source Selection Decision, at 1. The RFP advised offerors to "challenge the status quo and existing paradigms in formulating and implementing safe, high quality, timely, and

¹ The SRNL is a DOE operated and federally funded research and development laboratory. RFP § C-1.1.

² The NNSA is responsible for supporting the nuclear weapons stockpile programs and nonproliferation activities on the site. RFP § C-1.1.

³ Tritium is a radioactive isotope of hydrogen.

cost-effective programs and operations” at the site and encouraged the use of “innovative methods of accomplishing this Scope of Work consistent with the most efficient and effective means of performance.” Safety, also, was identified as an “integral part of mission accomplishment” and offerors were advised to “systematically integrate safety, security, and environmental protection into management and work practices at all levels” of performance. RFP § C-1.2.

The RFP provided for the award of a cost-plus-award-fee contract for a 5-year base period with one 5-year option. *Id.* § B-2.3. Award was to be made on a best-value basis, considering key personnel (worth 25 percent of the non-price portion of the evaluation), organizational structure and management approach (25 percent), technical management approach (20 percent), ES&H (15 percent), past performance (7.5 percent), relevant experience (7.5 percent), and cost and fee. *Id.* § M-2. Key personnel, which was one of the most important evaluation factors, was to be evaluated based on written proposal submissions (including resumes, reference checks, and letters of commitment) and oral presentations during which the offerors’ key personnel would be asked to respond to three managerial problems. The remaining factors were to be evaluated based on written proposals. Cost and fee were to be evaluated for reasonableness and realism, based on the evaluated key personnel compensation costs for the first 2 years of contract performance and fee for the entire potential 10 years of contract performance. *Id.* The RFP stated that the non-price factors were “significantly more important than” price, and advised that DOE was “more concerned with obtaining a superior [m]anagement and [b]usiness proposal⁴ than making an award at the lowest evaluated price.” *Id.* § M-3.

The RFP required the selected contractor to be devoted entirely to this contract; the contractor was prohibited from performing any other commercial or government work for the duration of the contract, and was required to be established as a separate corporate entity from its parent company. *Id.* § H-41. To satisfy this requirement, SRA and SRNS were formed as new corporate entities. SRA was comprised of corporate affiliates of the incumbent WSRC team: Washington Group International, Inc.; Bechtel National, Inc.; CH2MHill Constructors, Inc.; BWXT Services, Inc.; and subcontractor Battelle-Savannah Rivers, LLC. SRNS was comprised of Fluor Federal Services, Inc.; Newport News Shipbuilding and Drydock Company (a Northrop Grumman Newport News business unit); Honeywell International, Inc.; subcontractor teaming partner Lockheed Martin Services, Inc.; and subcontractor Nuclear Fuel Services, Inc. Contracting Officer’s Statement at 1 n.1; AR, Tab B.2, SEB Report, at 14.

Both offerors submitted proposals in response to the RFP, and their key personnel participated in oral presentations. The SEB evaluated each offeror’s proposal under

⁴ The management and business proposals addressed the non-price factors. RFP § L-4.

each of the evaluation factors, noted a variety of “significant strengths,” “strengths,” and “weaknesses” for each proposal, and assigned proposals the following adjectival ratings:

		SRA	SRNS
Key Personnel (25%)		Good	Excellent
Organizational Structure & Management Approach (25%)		Good	Good
Technical Management Approach (20%) ⁵			
	EM Closure Activities	Good	Good
	SRNL Activities	Excellent	Excellent
	NNSA Activities	Good	Good
	Landlord Services & Site Support	Good	Good
ES&H (15%)		Good	Good
Past Performance (7.5%)		Good	Good
Relevant Experience (7.5%)		Excellent	Excellent
Evaluated Price		\$424,859,509	\$473,146,404

AR, Tab E.1, Source Selection Decision, at 4.

The SEB compared proposals under the various factors and subfactors and described several areas of distinction, but concluded overall that the proposals were “substantially equivalent” under all but the key personnel factor. For that factor, the SEB concluded that while the two offerors proposed chief executives and laboratory directors who had “substantially equivalent” experience, the rest of SRNS’s key personnel had more “extensive experience,” which the SEB found “important” to meet the performance expectations in the contract. In addition, the SEB concluded that the SRNS team performed better during the oral presentation; as the SEB stated, “SRA did not function as an integrated team and overall was less interactive than the SRNS team,” whereas the SRNS team performed more “effectively, efficiently[,] and seamlessly together[,] with all personnel engaged in some aspect of problem solving, response development and/or presentation for all three [managerial] problems.” AR, Tab B.2, SEB Report, at 19-20.

The SEB reported its findings to the source selection authority (SSA), who agreed with most of the SEB’s conclusions. For example, the SSA found “no significant discriminators” between the two proposals under the organizational structure and management approach, technical management approach, ES&H, past performance, or relevant experience factors. The SSA acknowledged that while there were “differing technical approaches and strengths” in each proposal, as was documented

⁵ The SEB did not assign overall ratings for the technical management approach factor.

by the SEB, there were “no discernable advantages between offerors” under these evaluation factors. AR, Tab E.1., Source Selection Decision, at 5.

However, for the key personnel factor, the SSA disagreed in part with the SEB’s conclusions. Specifically, the SSA disagreed with the SEB’s finding that the experience of the offerors’ chief executives was substantially equivalent. The SSA found a “substantial difference in the magnitude of [the chief executives’] past responsibilities” that persuaded the SSA to conclude that SRNS’s chief executive provided a “greater range of demonstrated performance” when compared to SRA’s chief executive. This, coupled with the “extensive and diverse” experience of the other members of the SRNS key personnel team, and the superior performance of the SRNS team during oral presentations, led the SSA to conclude that the SRNS team would be better able to satisfy the scope of work and provide the best value to the government. Id. at 6. As the SSA stated:

It is my determination that the superior executive team proposed by SRNS, with their broader level of federal and commercial experience will challenge the status quo, drive innovation[,] and significantly improve overall site productivity. Based on my experience, a highly capable and high performing senior executive management team is a highly significant factor in achieving productivity improvements and successful problem solving on DOE sites. The SRNS leadership team’s ability to bring in relevant lessons learned as a result of their broader experience base increases the likelihood that innovative practices will be successfully implemented that will result in work being accomplished more efficiently.

The [Savannah River Site] is at a critical juncture in its evolution with the implementation of a program strategy that will increase the number of prime contractors on site as well as increase the performance risk for the [management and operations] contractor. Key personnel are critical to successfully and safely manag[ing] the various critical [site] programs and the change ahead for [the site] which requires the best and brightest management team. Consequently, that is why the key personnel criterion was assigned the relatively high weight of 25%. Therefore, I believe the advantages in leadership, innovation, efficiency, and productivity improvements possible through the superior SRNS Key Personnel team as compared to the SRA team more than outweigh the evaluated price differential of \$48.3 million over ten years or \$4.8 million per year.

Id. at 7-8. Award was made to SRNS and this protest followed.

DISCUSSION

SRA complains that the agency should have rated SRA's proposal higher, and SRNS's proposal lower, under each of the evaluation factors. SRA contends that the assessment of strengths and weaknesses in the SEB report was unreasonable, unfair, and inconsistent with the RFP. SRA asserts that the source selection decision is flawed because the SSA did not fully consider or document the numerous asserted advantages that SRA's proposal offers over SRNS's.⁶

In reviewing protests of an agency's evaluation, our Office does not reevaluate proposals, but instead examines the record to determine whether the agency acted reasonably and in accord with the solicitation's evaluation criteria and applicable procurement statutes and regulations. Cherry Road Techs.; Elec. Data Sys. Corp., B-296915 et al., Oct. 24, 2005, 2005 CPD ¶ 197 at 6. A protester's mere disagreement with the agency's judgment is not sufficient to establish that an agency acted unreasonably. Id.

In its protest, SRA selectively identifies some of the SEB's comments in the final report, or isolated comments of a technical advisor or evaluator, and contends that these comments should have resulted in lower ratings for SRNS's proposal and higher ratings for SRA's proposal. However, as discussed below, these arguments ignore the many other comments that support the agency's evaluation conclusions. In response to the protest, DOE provided a detailed record of its evaluation and source selection decision, which shows that the agency evaluated the relative merits of the proposals and assessed ratings in a fair and impartial manner consistent with RFP. Although the source selection decision may not have discussed each and every

⁶ Several of the protest grounds were raised as supplemental protests, based on information contained in the SEB report and source selection decision that the agency provided in response to the protest. The intervenor requested dismissal of these grounds, arguing that they were untimely raised. The intervenor asserts that SRA had reviewed unredacted copies of the SEB report and source selection decision during the debriefing, and thus SRA was required to raise its protest grounds based on these documents in its initial protest. SRNS's Request for Partial summary Dismissal, at 2. While it is true that SRA's representative were allowed to review unredacted copies of the SEB report and source selection decision during the debriefing, the agency limited the review to 3 hours and only permitted five representatives to review the documents. Those representatives were prohibited from taking notes; were not allowed to bring pens, pencils, recording devices, or personal belongings into the review room; and were not allowed to take any materials with them at the end of the 3-hour time frame. Considering that the two documents exceeded 135 single-spaced pages in length, we do not find that SRA was sufficiently on notice of its bases of protest contained in these documents, from the limited review allowed, so as to give rise to an obligation to protest within 10 days.

asserted strength and weakness as the protester would have liked, or agreed with the protester as to the significance of certain identified strengths or weaknesses, the record demonstrates that the SEB and SSA considered all of the information available, and issued a well-reasoned and rational SEB report and source selection decision that fairly highlighted the key discriminators among the offerors' proposals. SRA disagrees with the conclusions regarding key discriminators, but as noted above, mere disagreement with the agency's conclusions is insufficient to sustain a protest. Cherry Road Techs.; Elec. Data Sys. Corp., supra, at 6. Based on our review of the record, including the agency's discussion and assessment of relative advantages and disadvantages associated with the specific content of proposals, we find the evaluation to be reasonable. Specific challenges raised by SRA are discussed more fully below.⁷

Key Personnel Factor

SRA contends that its key personnel should have been rated superior to SRNS's. As stated above, the evaluation of key personnel included the evaluation of the offerors' written submissions (including resumes, reference checks, and letters of commitment) and the offerors' responses to three managerial problems during oral presentations. The RFP stated that the written submissions would be evaluated "for the extent of [the key personnel's] qualifications and experience with respect to the functions they are proposed to manage." Oral presentations were to be evaluated to determine, among other things, "[w]hether the Offeror's management team understands the management challenges created in the problems," the "observed interaction and participation of the Offeror's Key Personnel in dealing with the presented problems as an integrated team," and the "quality and effectiveness of communicating the response." RFP § M-2(a)(1) and (2).

The RFP identified two required key personnel (chief executive and SRNL director); the selection of all other key personnel was left to each offeror's discretion. Id. § M-2(a)(1). SRA proposed [REDACTED] key personnel, and SRNS proposed [REDACTED]. SRA's key personnel consisted of persons that possessed DOE and site-specific experience; some had worked at the site under the incumbent contract. SRNS's key personnel had a broader range of experience managing projects and programs with broad scopes and complexity, including projects at DOE, in the commercial sector, and other government agencies. AR, Tab B.2, SEB Report, at 20. In accordance with the RFP, the SEB evaluated each position and specifically discussed elements of each person's background and experience in its report. The SEB identified 6 significant strengths and 8 strengths for SRA's key personnel, and 11 significant strengths and 4 strengths for SRNS's key personnel. The SEB did not assess any formal weaknesses to either offeror's key personnel under this factor, but

⁷ Although we do not discuss each and every argument raised by SRA, we have considered all of SRA's arguments and find them to be without merit.

noted weaknesses throughout its report to explain why a particular key personnel position was rated only a strength instead of a significant strength.⁸

As stated above, the SSA concluded that, overall, SRNS' key personnel were superior to SRA's, largely because the agency determined that the broader, more diverse experience of SRNS's key personnel (especially with regard to SRNS's chief executive) was more advantageous to accomplishing the RFP's requirements, and the SRNS team performed better during the oral presentations. AR, Tab E.1, Source Selection Decision, at 6-8.

SRA protests the SSA's favorable recognition of the diverse backgrounds of the SRNS key personnel, especially with regard to the chief executive position. According to SRA, the SSA should have given more favorable consideration to DOE and site-specific experience; "diversity of experience," the protester argues, is an unstated evaluation criteria. Protest at 27-28. However, the RFP did not require DOE or site-specific experience, or suggest that incumbency would result in more advantageous evaluation ratings. Rather, the RFP contemplated a broad scope of work and encouraged offerors to be "innovative" in their technical approaches, "challenge the status quo and existing paradigms," and adopt practices that foster "continuous improvement." RFP §§ C-1.2; C-1.3. Specifically with regard to the chief executive, where the SSA found breadth of experience to be a significant discriminator between the proposals, the RFP required consideration of the "depth and breadth of his/her qualifications in the management and administration of organizations." *Id.* M-2(a). Thus, based on the RFP's expressed desire for innovation and improvement, rather than the status quo, coupled with the specific reference to broad experience (at least for the chief executive), we find reasonable the SSA's determination that the more diverse experience of SRNS's key personnel was deserving of a higher rating.⁹

SRA contends, also, that four of SRNS's proposed key personnel [REDACTED] lacked essential experience for their positions, which should have translated into weaknesses instead of strengths in the evaluation. In contrast, SRA argues that four of its proposed key personnel [REDACTED] should have been credited with significant strengths. Protest at 20-28; SRA's Comments at 13-44. In failing to assess SRNS's proposal weaknesses and SRA's proposal significant strengths, SRA

⁸ For example, the SEB assigned SRA's proposed [REDACTED] a strength and not a significant strength because, although he posed 25 years of experience in [REDACTED], including experience at the site, his experience "was for scopes of lesser complexity than that of the proposed position." AR, Tab B.2, SEB Report, app. A, at 4.

⁹ Based on our review of the record, we also find reasonable the SSA's determination that SRNS's proposed chief executive had broader, more diverse experience than SRA's proposed chief executive.

contends, the agency failed to take into account qualitative differences in the proposals,¹⁰ disregarded the evaluation criteria that required consideration of experience as it relates to the function each individual was proposed to manage, and evaluated offerors' key personnel disparately.

As an initial matter, we note that the record evidences that the agency took into account qualitative distinctions in the proposals. While it may be true that some of SRA's key personnel are more experienced than SRNS's in certain areas, in other areas, SRNS's personnel were found to be more experienced.¹¹ Although SRA focuses on a few positions in its protest, it does not challenge the many significant strengths and strengths assessed for the many other identified key personnel in both offerors' proposals, which resulted in SRNS's proposal receiving nearly twice as many significant strengths as SRA's proposal. Also, SRA does not challenge the agency's evaluation of the oral presentation, and the record shows that the SRNS team performed far better as an integrated unit in responding to the managerial problems than did SRA, thus demonstrating "superior leadership" capabilities to the agency.¹² AR, Tab E.1, SSA Decision, at 7. Based on our review of the record, including the oral presentations, we find the agency's evaluation of key personnel to be reasonable.

For example, SRA asserts that SRNS's [REDACTED] lacked [REDACTED] experience, which SRA argues should have translated to a weakness in the evaluation and not a strength. The agency disagreed, explaining in the SEB report that the individual had over 25 years of relevant experience, had managed large staffs with budgets [REDACTED], and had participated in [REDACTED]—all of which the SEB found advantageous to performing the functions he was proposed to manage. The SEB explained, nonetheless, that this experience did not rise to the level of a significant strength because most of the individual's experience was with [REDACTED]; his [REDACTED] experience, the SEB recognized, was "limited." AR, Tab B.2, SEB Report, app. A, at 10.

¹⁰ For example, SRA contends that its [REDACTED] is more experienced than SRNS's [REDACTED], its SRNL director is more experienced than SRNS's director, and its [REDACTED] is more experienced than SRNS's [REDACTED].

¹¹ For example, SRNS's proposed [REDACTED] was assessed a significant strength and SRA's proposed [REDACTED] was assessed a strength, based, in part, on the fact that SRA's manager comparatively had fewer years of relevant experience and his experience was for "scopes of lesser complexity" than that of the proposed effort. AR, Tab B.2, SEB Report, app. A, at 4, 9.

¹² Ultimately, as noted above, oral presentation performance (which was part of the stated evaluation criteria) became a key discriminator between proposals under the key personnel factor.

In comparison, the SEB assessed SRA's [REDACTED] a strength for possessing [REDACTED] experience, but also determined that this individual did not deserve a significant strength because he "does not have extensive experience with [REDACTED]." *Id.* at 5. Since the RFP expressly identified activities involving [REDACTED], see RFP § C-3.3(a), we find no error or inconsistency in the agency's evaluation of either offeror's proposed [REDACTED] key personnel under this factor.¹³

Similarly, the agency fairly evaluated both offerors' proposed SRNL directors. For this position, the RFP provided that, in addition to considering experience and qualifications, the agency would consider the individual's "recognition for scientific or engineering accomplishments and recognition for successfully managing a multidisciplinary nuclear research and development organization." RFP § M-2(a); see also id. § L-4(a)(1) (requiring key personnel to identify "Publications, Awards, Honors, and Professional Recognition"). Both offerors' proposals received strengths for these positions. For SRNS's director, the SEB favorably considered his PhD in nuclear engineering, his work experience successfully managing a multidisciplinary nuclear research and development organization, his experience establishing consortia with universities and industry, his strong research background, and the extensive professional recognition he had received for his work. However, the SEB did not assign this individual a significant strength because his experience managing a multidisciplinary organization was "at the division level." AR, Tab B.2, SEB Report, app. A, at 9-10.

Likewise, SRA's proposed SRNL director was favorably recognized for his PhD in health sciences, his experience with several national laboratories, and his work in

¹³ Although SRA contends that tritium experience is more critical to performance than budget, real estate, and personnel experience, SRA's Comments at 30-31, the agency explains (and the RFP notes) that tritium operations must be operated as a "defined, severable cost center," and budget, real estate, and personnel experience are specifically identified in the RFP as being necessary to operating a center in this manner. Contracting Officer's Statement at 23; see also RFP § C-3.3(a). In addition, SRNS proposed [REDACTED], which the agency evaluated in accordance with the key personnel evaluation criteria. See AR, Tab B.2, SEB Report, app. A, at 7 (giving a significant strength to SRNS's proposed [REDACTED] for, in part, his "over 40 years of experience" in support of [REDACTED]); AR, Tab D.1, SRNS's Proposal, at 8 ([REDACTED]). SRA complains that the agency did not similarly evaluate, or give credit for, SRA's proposed [REDACTED], who possessed experience that SRA's key personnel lacked, e.g., First Supp. Protest at 14, 19-20; SRA's Comments at 31, but the RFP did not require the evaluation of [REDACTED] since they were not proposed as key personnel, and SRA did not provide the information required under the key personnel evaluation criteria for the agency to evaluate such individuals.

forming university alliances. However, the individual had received only “limited recognition for scientific or engineering accomplishments,” which was a criteria for evaluation of this factor as stated in the RFP.¹⁴ Id. at 4. Thus, even though SRA’s proposed SRNL director had managed multidisciplinary organizations above the division level, he had not received the scientific and engineering-related awards and recognition that SRNS’s proposed SRNL director had received, and thus the agency reasonably determined that SRA’s director also was not deserving of a significant strength under the evaluation criteria.¹⁵

The record also confirms that the agency properly assessed strengths, and not significant strengths or weaknesses, to SRNS’s proposed [REDACTED], and SRA’s proposed [REDACTED], based on each individual’s more limited experience as relevant to their proposed functions. Id. at 4, 10. SRA disagrees with the agency’s conclusions and contends that the areas where SRNS’s key personnel lack experience are more critical to performing “primary” functions than the areas where SRA’s key personnel lack experience, and that this should have resulted in discriminators in favor of SRA. E.g., SRA’s Comments at 23-24, 40. However, this reflects only SRA’s disagreement with the assessment of significant discriminators in the evaluation. The record here is well-reasoned and shows that the agency reasonably considered experience relative to proposed function and did not evaluate the offerors unequally.

Organizational Structure & Management Approach Factor

SRA contends that SRNS’s proposal should have received a lower rating under the organizational structure and management approach factor because [REDACTED] of SRNS’s proposed key personnel are not directly employed by SRNS, but remain employees of SRNS’s team members.

For evaluation under this factor, the RFP required each offeror to propose a “management approach (functional organization, lines of authority, roles and responsibilities, and interface with DOE and NNSA) to safely and seamlessly perform the Statement of Work . . . and to achieve the safe and efficient

¹⁴ Although SRA correctly notes that the resume of its SRNL director reflects some scientific accomplishments, we agree with the agency’s assessment that the vast majority of the accomplishments are “management focused.” Contracting Officer’s Statement at 18; AR, Tab C.2, SRA’s Key Personnel Resumes, at 32-34.

¹⁵ To the extent that SRA complains that the weakness assessed to its SRNL director was less critical to performance than the weakness assessed to SRNS’s director, this argument is contrary to the RFP, which specifically stated that SRNL directors would be evaluated for scientific accomplishments and recognitions in addition to their qualifications and experience. See RFP § M-2.2(a)(1).

accomplishment of [Savannah River Site] missions.” RFP § M-2(b). The RFP stated that the agency would evaluate each approach for, among other things, “the extent to which it provides an efficient and realistic approach to meet the general performance expectations.”¹⁶ *Id.* SRA contends that because SRNS’s key personnel are not directly employed by SRNS, they cannot “seamlessly” perform the work like SRA can, whose key personnel ([REDACTED])¹⁷ are directly employed by SRA. Protest at 29.

The RFP did not require that key personnel be direct employees of the offeror; it required only that each key personnel provide a 2-year commitment to the contract. RFP §§ L-4(a)(1), M(a)(1). All of SRNS’s key personnel provided a 2-year commitment to the contract without any “contingencies or constraints” on their employment.¹⁸ SRNS’s Second Supp. Comments, Tab 4, Key Personnel Commitment Letters. The RFP required, and SRNS provided, the “Name of [the] Company/Partner [each] Key Person will work for,” thus contemplating that entities other than SRNS could remain as the employer for the individual. RFP § L-4(a); see also *id.* § L-4(b) (contemplating that teaming arrangements will be used to perform the work). Although SRA contends that section H-41 of the solicitation, which required that a “separate corporate entity must be set up solely to perform this Contract,” mandates that personnel also be employed by the offeror, no such limitation is stated in section H-41 or elsewhere in the solicitation.

Here, in evaluating the organizational structure and management approach factor, the SEB evaluated each offeror’s management organization, lines of authority, roles and responsibilities, and how the team members would function together as a

¹⁶ Also evaluated under the organizational structure and management approach factor was the offeror’s approach to involving small businesses and implementing contractor assurance requirements. RFP § M-2(b).

¹⁷ [REDACTED].

¹⁸ We find no merit to SRA’s argument that SRNS’s Limited Liability Company Operating Agreement rendered meaningless the key personnel commitments and was inconsistent with the solicitation. SRA contends, in this regard, that the Operating Agreement allows for SRNS’s team members to “remove” key personnel from SRNS at any time “without approval of DOE.” SRA’s Third Supp. Protest and First Supp. Comments at 57-59. This is not the case. The operating agreement does not reflect an intention that key personnel will be removed from the contract, and does not suggest that removal can occur over the objection of DOE. To the contrary, we find nothing in the operating agreement that is inconsistent with the solicitation, which allows for the substitution of key personnel during performance with contracting officer approval.

seamless unit. AR, Tab B.2, SEB Report, at 21-22; *id.*, app. B. As part of this evaluation, the SEB considered the key personnel commitments, corporate guarantees, and the corporate governance structure proposed by SRNS. Contracting Officer's Statement at 29. Based on this, the SEB found no risks to seamless operation and, instead, reasonably concluded that SRNS's approach warranted many significant strengths and strengths in the evaluation. Among other things, the SEB found that SRNS's approach established clear "lines of authority," "detailed roles and responsibilities," and a "functional organizational structure" that the agency determined "increases the probability of successful contract performance."¹⁹ AR, Tab B.2, SEB Report, app. B, at 5. SRA disagrees with this assessment, but has not shown it to be unreasonable.²⁰

Technical Management Factor

SRA protests the evaluation of three of the equally-weighted subfactors under the technical management factor: EM closure activities, SRNL activities, and landlord services and site support.²¹

1. EM Closure Activities

EM closure activities, as described in the statement of work, include soil and water remediation efforts, deactivation and decommissioning of facilities and structures, solid waste handling and removal, and nuclear materials management. RFP § C-3. Offerors' overall technical management approaches were to be evaluated "to ensure EM Closure Activities are conducted in a safe, secure, environmentally sound and fiscally responsible manner and fully comply with all applicable law, regulations, DOE directives, and terms and conditions of the contract." *Id.* § M-2(c)(1). Under this subfactor, each offeror was required to propose two "innovative" approaches that were to "challenge the status quo" in performing EM closure activities; these

¹⁹ Although the key personnel oral presentation was not considered in evaluating the organizational structure and management approach factor, we note that SRA's management team was less "integrated" and performed less "efficiently and seamlessly" than SRNS's team during the oral presentation, which tends to contradict SRA's argument that direct employment by the contracting entity necessarily translates into more "seamless[]" performance. AR, Tab B.2, SEB Report, at 20.

²⁰ To the extent that SRA contends that the key personnel evaluation also is flawed because the agency did not adequately consider the fact that [REDACTED] of SRNS's key personnel were not directly employed by SRNS, we similarly find the protest to be without merit.

²¹ SRA did not protest the fourth subfactor--NNSA activities.

proposed innovations were to be evaluated for “strategy for implementation,” “feasibility,” and “resultant benefits.”²² Id.

Each offeror’s proposal was rated “good” under this subfactor. The SEB found that both offerors’ proposed approaches, overall, were “substantially equivalent,” even though proposals “differ[ed] in some areas and in the level of detail provided.” For example, the SEB noted that both offerors “demonstrated excellent fiscal responsibility,” but that SRA’s proposal provided more detail than SRNS’s as to “how all current nuclear material activities will be conducted in a secure manner.” AR, Tab B.2, SEB Report, at 23-24. With regard to the offerors’ four proposed innovations, the SEB noted that all “had sound strategies for implementation,” but that SRA’s two innovations were “more feasible” than SRNS’s. The SEB noted, however, that SRNS’s [REDACTED] was an “order of magnitude higher [than SRA’s proposed innovations] with respect to challenging the status quo and could facilitate dramatic change at [the Savannah River Site].” Id. at 24.

SRA contends that the agency’s concerns regarding the “feasibility” of SRNS’s proposed innovations and the lack of detail in addressing how nuclear material activities will be conducted in a “secure” manner (both of which were reflected as weaknesses in the evaluation of SRNS’s proposal) should have resulted in SRNS’s proposal receiving a lower rating under the EM closure activities factor, given that feasibility and security were two elements of the evaluation criteria. Protest at 33-40. However, the agency convincingly explains that these weaknesses were not fatal to the viability of SRNS’s proposed approach. For example, contrary to SRA’s characterizations, SRNS’s proposal did not completely fail to address nuclear material security; the proposal simply was not as detailed as the agency would have liked and was less detailed than SRA’s proposal. SRNS’s proposal did, however, generally address security issues in connection with EM closure activities. See Contracting Officer’s Statement at 32; SRNS’s Comments at 68-69. With regard to the agency’s expressed concerns regarding the feasibility of SRNS’s proposed innovations, the agency explains that these concerns did not reflect a lack of viability of SRNS’s proposed innovations, but instead pertained to scheduling (whether SRNS’s [REDACTED] could be implemented “in the proposed timeframe”) or issues for which there were possible solutions (SRNS’s [REDACTED]).²³ Supp. Contracting Officer’s Statement at 14, 17; AR, Tab B.2, SEB Report, app. C, at 8-9.

²² SRA’s proposed innovations were its “[REDACTED]” and “[REDACTED].” SRNS’s proposed innovations were its “[REDACTED]” and “[REDACTED].” AR, Tab. B.2, SEB Report, at 24.

²³ The agency points out that SRA also received weaknesses for its proposed innovations. AR, Tab B.2, SEB Report, app. C, at 4, 6. Although SRA contends that the weaknesses its proposal received for innovations were less severe than SRNS’s proposal weaknesses, SRA’s arguments rely on a strict comparison of only weaknesses and omit any consideration of the variety of strengths and significant

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In any event, the agency considered these weaknesses and reasonably determined that they were outweighed by numerous other strengths and significant strengths identified in the evaluation of SRNS's proposal under this factor. For example, the SEB found numerous strengths because SRNS' proposed approach to EM closure activities was "safe and fiscally responsible," "safe and disciplined," "environmentally sound and compliant," and "cost effective"²⁴ AR, Tab B.2, SEB Report, app. C, at 6-7. In addition, SRNS's proposed innovations received significant strengths because they "significantly challeng[ed] the status quo"²⁵ and had "great potential to positively impact" the EM closure workscope.²⁶ *Id.* at 8. Similarly, the agency considered the numerous strengths, significant strengths, and weaknesses of SRA's different

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strengths that each offeror's proposal received, many of which the protester did not challenge. Considered together, the record supports the agency's conclusion that there were no significant discriminators between proposals under this evaluation subfactor.

²⁴ The record does not support SRA's complaint that the agency did not consider its proposed cost savings under the technical factor and subfactors, including EM closure activities. In myriad places, the agency gives credit to both offerors' proposals for proposed cost efficiencies or savings, except where the agency found the savings to be "speculative" or "unsubstantiated." *See* Contracting Officer's Statement at 51-55. The record further shows that both offerors' proposals were evaluated similarly in this regard.

²⁵ Although SRA contends that the agency should not have given SRNS's proposed innovations credit for challenging the status quo, especially since the agency identified weaknesses based on feasibility, as discussed above, challenging the status quo was an important objective of the statement of work, and thus was reasonably considered, and feasibility was only one aspect of the evaluation under the EM closure activities subfactor. RFP §§ C-1.2, M-2(c)(1).

²⁶ SRA contends that some of the touted benefits of SRNS's proposed innovations were unrelated to, or broader than, EM closure activities workscope, and therefore should not have been credited with strengths or significant strengths. Protest at 35-40; Second Supp. Protest at 33-38. However, the agency has explained, and our review of the record confirms, that each of the benefits credited in the evaluation are related in some way to the broad scope of work for EM closure activities, and thus these benefits were properly considered in the evaluation. To the extent that the agency also credited SRNS's innovations because, in addition to benefiting EM closure activities, they more broadly benefited other DOE activities, we find nothing in the solicitation that prohibits consideration of the additional benefits, especially where, as here, offerors were encouraged to be "innovative" and "challenge the status quo and existing paradigms" in implementing programs and operations. RFP § C-1.2.

approach and innovations, and concluded that any advantages or disadvantages between SRA's and SRNS's proposals were not significant. SRA has not shown that the agency's comprehensive evaluation was flawed.

2. SRNL Activities

As stated above, the SRNL is a DOE operated and federally funded research and development laboratory. RFP § C-1.1. The RFP provided that proposals would be evaluated under the SRNL subfactor for "completeness, balance, and feasibility" to develop the SRNL "into a multi-program world class National Laboratory while operating safely and maintaining the technical expertise to address emerging DOE scientific challenges." This evaluation was to include, among other things, consideration of the offeror's approach to "building external collaborations, and employing innovative or best-in-class approaches." RFP § M-2(c)(2).

Each offeror's proposal was rated "excellent" under this subfactor. Both were found to "provide a good plan for improving [the] SRNL and positioning it for the future," both "identified excellent potential external collaborations," and both proposed to position the SRNL as a "distinct business unit." Although the SEB noted differences in the management approaches, overall it determined that the proposals were "substantially equivalent" under the SRNL subfactor. AR, Tab B.2, SEB Report, at 25-26.

SRA contends that its proposal should have been rated superior to SRNS's under the SRNL subfactor because SRA's approach to "building external collaborations" included an "already existing university consortium" supported by [REDACTED]. First Supp. Protest at 33. In contrast, SRA argues, SRNS only offered "plans to form . . . consortiums in the future." *Id.* at 34. The SEB recognized this distinction and gave SRA's proposal a significant strength for its approach based on the existing relationships and [REDACTED], and gave SRNS's proposal a strength because it also proposed partnerships that were found to be advantageous to the government. AR, Tab B.2, SEB Report, at 26, app. C, at 10-11, 14. The record does not evidence that SRNS proposed only future plans to build collaborations as SRA contends; rather, SRNS's proposal identifies several "existing collaborative relationships," for which the agency properly gave SRNS credit. AR, Tab D.1. SRNS's Proposal, at 110-11. Thus, the record shows that, on the issue of forming collaborations, SRA's proposal was rated higher than SRNS's due, in part, to having [REDACTED]; but considering the other strengths and significant strengths identified in each offeror's proposal under this subfactor, the agency found no significant discriminator between proposals. Although SRA disagrees with this assessment, it has not shown it to be unreasonable.²⁷

²⁷ SRA complains that the agency failed to properly consider four items proposed by SRA under the SRNL subfactor: [REDACTED]. First Supp. Protest at 34 n.17.

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3. Landlord Services & Site Support

Landlord services and site support activities include providing engineering and construction management, operations support, and business services.²⁸ RFP § C-3.4. For this subfactor, the RFP stated that the agency would evaluate “the comprehensiveness and feasibility of the Offeror’s proposed plan to interface with other site contractors and tenant site entities both as it performs its own work and as it provides landlord services to others in accordance with Section C-4 of the [statement of work].” Id. § M-2(c)(4). Section C-4 required, “[w]ithin 60 days after the start of transition,” that the contractor develop a [site] “Interface Management Plan (IMP) to identify and manage all site interfaces and to provide site landlord services to DOE, NNSA, DOE/NNSA contractors, and tenant entities engaged in onsite activities” Id. § C-4.

Both proposals were rated “good” under this evaluation subfactor and were found to be “substantially equivalent.” Both were found to provide a “very well structured approach to interface with other site contractors and tenants,” and both reflected a “good understanding of the complexities of the [site] interfaces in the future as new DOE contracting strategies are implemented.” AR, Tab B.2, SEB Report, at 27-28. Both proposals received a significant strength and a strength, and only SRA’s proposal received a weakness. This weakness was assessed because SRA’s proposal “fail[ed] to discuss how it would fit DOE into” its interface plan, which was important because “SRA’s direct interface with DOE prime contractors will have to be coordinated with DOE.” Id., app. C, at 23.

SRA complains that the assessed weakness reflects consideration of unstated evaluation criteria. According to SRA, the RFP required only coordination with site contractors and did not specify that consideration would be given to “how DOE fit[s] into the interfacing process.” Protest at 48. However, the RFP, in section C-4, clearly contemplates DOE involvement, and thus we find no merit to this protest ground.

ES&H Factor

The RFP required offerors to “conduct a comprehensive ES&H program that provides for the protection of workers, the public, and the environment,” and to

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However, SRA does not explain, and we are unable to determine, why these should have resulted in a higher rating under the SRNL subfactor.

²⁸ Landlord services and site support also include ES&H activities, but these activities were evaluated under a separate evaluation factor in the solicitation.

implement a “program that will ensure that nuclear safety requirements are implemented consistently across [the site].” RFP § C-3.4(a)(1) and (2). Section M of the solicitation advised that the agency would evaluate each offeror’s proposed approach “to enhance the existing ISMS [Integrated Safety Management Systems] for all work on the [site] and ensure continual improvement in ES&H performance.” In addition, the agency would evaluate the offeror’s plan for managing the site’s “nuclear safety program.” *Id.* § M-2(d).

Both offerors’ proposals were rated “good” and were found to have “comparable good approaches” to enhancing the existing ISMS, implementing ES&H requirements across the site, and managing the site’s nuclear safety program. After considering the various strengths, significant strengths, and weaknesses associated with each proposal, the agency found both proposals to be “substantially equivalent.” AR, Tab B.2, SEB Report, at 28-29.

SRA complains that SRNS’s proposal should have been rated lower because the evaluators found that the proposal “lacked understanding” of the implementation of the ISMS and DOE’s hierarchy of controls for safety systems, which SRA asserts “inherently are basic elements of the evaluation criterion for the ES&H factor.” Protest at 54-55. However, SRA misinterprets and mischaracterizes both the evaluation record and SRNS’s proposal. As the agency explains, the SEB identified two weaknesses in SRNS’s proposal under the ES&H factor, both relating to proposal statements that were inconsistent with the RFP. This led the SEB to assess weaknesses because these proposal inconsistencies called into question the offeror’s “complete understanding” of the RFP requirements in particular areas. AR, Tab B.2, SEB Report, app. D, at 5-6. The agency further explains, however, that its review of SRNS’s entire proposal did not evidence a complete lack of understanding, as suggested by SRA. Rather, the proposal included “comprehensive details” and “demonstrated a good understanding” of the requirements, which in fact is reflected in the numerous assigned strengths and significant strengths. Contracting Officer’s Statement at 43-45; AR, Tab B.2, SEB Report, app. D, at 3-5. Nevertheless, the inconsistencies were found to pose a risk to performance, which was duly noted by the SEB in the evaluation.²⁹ AR, Tab B.2, SEB Report, app. D, at 5. Based on our review of the record, we find no error in the agency’s judgment.

SRA also contends that SRNS failed to provide a plan for managing the site nuclear safety program. Protest at 55. Again, SRA is factually inaccurate. The SEB report noted (as “[n]either a [s]trength nor a [w]eakness”) that SRNS’s proposal “will take

²⁹ SRA’s proposal was similarly assessed a weakness based on proposal inconsistencies with regard to contractor oversight. SRA contends that these inconsistencies were mere “clerical errors,” but the agency reasonably considered the proposal statements to be discrepancies in the proposal and not clerical errors. Contracting Officer’s Statement at 46-48.

the first 30 days of transition to evaluate the [incumbent contractor's] work scope to prepare a transition plan." AR, Tab B.2, SEB Report, app. D, at 6. However, contrary to SRA's characterization, the proposal did include a plan to ensure that nuclear safety work will continue without interruption or reduction of quality, as required by the solicitation. See AR, Tab D.1, SRNS's Proposal, at 166-69. Given that the contract transition period is 90 days and SRNS's proposal meets the RFP requirements, we see no reason why the agency was required to assess a weakness to SRNS's proposal.

Past Performance & Relevant Experience Factors

SRA challenges the evaluation of past performance and relevant experience, essentially arguing that its performance history and experience were deserving of higher ratings than SRNS's.

The RFP provided that the agency would evaluate each offeror's past performance "to determine the degree to which the quality of the past performance demonstrates [the offeror's] ability to successfully perform the [statement of work]." RFP § M-2(e). Relevant experience was to be evaluated "to determine the degree to which the similarity and extent of that experience demonstrates the ability to successfully perform the mission areas of the [statement of work]." Id. § M-2(f). The RFP further stated, however, that "experience need not be directly associated with DOE programs and facilities" to be favorably considered. Rather, "[o]perational, engineering, research and development, facilities and business experience that from a technical perspective is reasonably similar to the types of work identified in the [statement of work] is acceptable." Id. § L-4(f).

Because both SRA and SRNS are newly formed entities, the agency considered the past performance and relevant experience of each of the team members and, where relevant, their corporate parents. For past performance, the SEB considered ES&H data (e.g., information on workplace fatalities, and accident and injury data), past performance questionnaire responses, performance history in achieving socioeconomic goals, whether prior contracts had been terminated, and performance evaluations. The SEB considered both the positive and negative past performance of all of the team members, and documented its analysis in the SEB report. For relevant experience, the SEB noted differences in the types of experience for individual team members and major subcontractors, but concluded that "cumulatively both Offerors overall have demonstrated extensive experience managing contracts similar to or greater in size to" the contract requirements here. AR, Tab B.2, SEB Report, at 33.

With regard to the evaluation of past performance, SRA complains that the agency failed to recognize SRA's superior team record of ES&H performance as a discriminator in favor of SRA. Second Supp. Protest at 41-47. However, the SEB did, in fact, recognize that SRA's safety data was superior to SRNS's. AR, Tab B.2, SEB

Report, at 30. Although both offerors' proposals received strengths for ES&H data because both offerors' records were "trending positively toward the DOE averages," Id. at 30; id., app. E, at 2,6, SRNS also received a weakness in recognition of the unfavorable ES&H data concerning one of its team members. AR, Tab B.2, SEB Report, app. E, at 7. Thus, the record shows that the agency recognized differences in ES&H data in the evaluation. In any event, there were numerous other aspects of the agency's comprehensive past performance evaluation that revealed strengths and weaknesses and an overall record of performance that was "more favorable than unfavorable" for both offerors. AR, Tab B.2, SEB Report, at 33. When all of this information was considered, the agency reasonably found no significant discriminator between proposals under the past performance factor.³⁰

With regard to the evaluation of relevant experience, SRA contends that it has more extensive experience than SRNS in each of the mission areas of the statement of work, based on the SRA team members' experience on the incumbent contract. Protest at 65. The SEB recognized several significant strengths in the evaluation of SRA's proposal based on the site-specific experience of SRA's team members from the incumbent contract. AR, Tab B.2, SEB Report, app. F, at 1-4. However, since site-specific experience was not required by the RFP, see RFP § L-4(f), the agency reasonably found that the experience of SRNS's team members was also "highly relevant," of "similar scale," reflected experience in "core competencies," and thus was deserving of significant strengths in the evaluation. AR, Tab B.2, SEB Report, app. F, at 5-6. These conclusions were reasonably supported by detailed explanations in the SEB report identifying the relevant experience of both offerors' team members and explaining why the agency believed that the experience increased the probability of successful performance. Id. at 5-8, see also Contracting Officer's Statement at 33-42. Again, SRA disagrees with the agency's assessment, but has not shown it to be unreasonable.³¹

³⁰ SRA also complains that the agency improperly considered negative past performance of one of SRA's team members regarding allegations of [REDACTED], failed to consider negative past performance of one of SRNS's team members with regard to a licensing issue, and did not sufficiently downgrade SRNS's proposal for the negative past performance of one of its team members relating to socioeconomic programs. The record shows that the agency reasonably considered the information before it; we find no error in these aspects of the evaluation.

³¹ SRA points to two tables attached to the SEB report that, for each offeror, listed the team members' prior contracts and then identified how many of the statement of work activities that each of those contracts had covered. Protest at 65. Because the SRA team members comprised the incumbent contractor, SRA had more "checked boxes" than SRNS in the tables. However, as the agency reasonably explains, the number of checked boxes is not indicative of who has more relevant experience. In this regard, the agency looked at each prior contract to determine whether it was relevant to the activities that the team member was proposed to perform. Where, for
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SRA also asserts that the agency improperly considered the “corporate resources, experience, and past performance” of [REDACTED], because neither company is a member of the SRNS team.³² Second Supp. Protest at 64-65; SRA’s First Supp. Comments at 46-49; SRA’s Second Supp. Comments at 10-16. This argument is a red herring. While it is true that [REDACTED] is the signatory to the operating agreement that formed SRNS, SRNS’s proposal makes clear that [REDACTED] play significant roles in providing resources and performing work for this contract. Accordingly, the agency properly considered the experience of both. Cobra Techs., Inc., B-280475 et al., Oct. 6, 1998, 98-2 CPD ¶ 98 at 4-5.

Alleged Conflicts of Interest

SRA contends that the key personnel evaluation is tainted by personal and organizational conflicts of interest (OCI) involving an evaluation reference, SRNS’s proposed SRNL director, and several of SRNS’s other key personnel.

SRA first argues that the evaluation was tainted in that one of the individuals who provided references to the SEB in connection with two proposed key personnel provided biased information because she had a personal conflict of interest: at the time of the evaluation, she was married to an employee of one of SRNS’s team members.

The RFP required each proposed key personnel to provide a reference, and stated that these “reference checks” would be part of the key personnel evaluation. RFP § M-2(a)(1). One of SRA’s key personnel and one of SRNS’s key personnel identified a DOE employee as a reference. As was known by SRA at the time of its proposal submission and during the evaluation, but was not known to the SEB or SSA, this DOE employee was married to an employee of one of SRNS’s team members. Supp. Contracting Officer’s Statement at 2-3. The evaluators had no reason to suspect bias

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example, a team member of SRNS was proposed only to perform a specific activity, it was not penalized because its prior experience did not include other statement of work activities for which it was not proposed. Thus, even though many of SRA’s team member contracts encompassed multiple areas to a greater extent than SRNS’s team member contracts, this properly was not considered to indicate that SRNS’s team members had less relevant experience. See Supp. Contracting Officer’s Statement at 37-38.

³² [REDACTED]. E-Mail from Agency Counsel to GAO (Mar. 28, 2008). The RFP specifically contemplated consideration of the past performance and corporate guarantees of parent corporations where, as here, the offeror was a new entity formed solely to perform this contract. RFP § L-4(e).

on the part of this reference, given that it was SRA that identified this DOE individual as a key personnel reference, and presumably SRA would not have identified a reference that could be biased against it. *Id.* at 5. The DOE employee reference gave the SRA individual a somewhat negative reference, and gave the SRNS individual a positive reference.

During the evaluation, the SEB noted that, with regard to the one SRA key personnel, the negative reference was inconsistent with the other positive references, and thus the agency requested additional references, all of which were positive. As a result, the SEB “discounted” the negative reference, concluded that the reference checks for this SRA individual were “[f]avorable,” and rated this SRA individual a strength in the key personnel evaluation. Supp. Contracting Officer’s Statement at 6; AR, Tab B.2, SEB Report, app. A, at 5, 11. With regard to the one SRNS key personnel, the DOE reference was found to be consistent with other “[f]avorable” references, and the SRNS individual was also given a strength in the evaluation. Supp. Contracting Officer’s Statement at 6; Tab B.2, SEB Report, app. A, at 5, 11.

We have recognized that an actual or apparent conflict of interest may arise when an agency employee has both an “official role in the procurement” and a “personal stake in the outcome.” *TPL, Inc.*, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 8 (citing examples). Here, however, the DOE reference in question did not have an official role in the procurement—she was not involved in drafting, reviewing or approving the RFP; evaluating proposals; or reviewing or approving the award. She merely provided a personnel reference for two individuals because she was identified by the offerors as a person to contact as a reference check. We have found that a conflict of interest does not necessarily exist, even where the same agency employee provides a reference and performs the evaluation, absent a showing (which has not been made here) of improper influence on the evaluation. *Id.* at 9. Based on this record, we find that the evaluators acted reasonably in dealing with this reference’s comments.³³ In any event, even if the DOE reference were biased or had a conflict of interest, the record shows that this had no impact on the evaluation and thus SRA was not prejudiced as a result. See *Laerdal Med. Corp.*, B-297321, B-297321.2, Dec. 23, 2005, 2005 CPD ¶ 12 at 7 (prejudice is not established where, even if a conflict of interest or bias exists, it has no impact on the evaluation).

³³ Another favorable reference for one of SRNS’s proposed key personnel mentioned to the agency that he was “somewhat concerned about a potential conflict of interest between himself and the proposing contractors.” AR, Tab B.6, Key Personnel Reference Worksheet, at 59. However, we agree with the agency that no conflict existed since the reference was not a federal employee or evaluator, and he did not have a role in the procurement. The information provided was consistent with all other references for this key personnel, does not evidence bias, and was properly considered by the agency.

SRA also complains that several of SRNS's proposed key personnel create the potential for OCIs. Specifically, it contends that the SRNL director's role as the president and owner of a consulting firm "conflicts" with his role as SRNL director for SRNS, and that the director could use information obtained during performance for the competitive advantage of his company and clients in the future. SRA's Comments at 87. SRA also contends that [REDACTED] of SRNS's proposed key personnel have "divided loyalty" because they are employed by SRNS's member companies and not SRNS itself. SRA's Comments at 83. As discussed below, we do not agree with SRA that the situations it describes with regard to SRNS's key personnel present the potential for OCIs.

It is true that contracting officers have a duty to avoid, neutralize, or mitigate potential significant OCIs so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. Federal Acquisition Regulation (FAR) §§ 9.504(a), 9.505; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12-13. As FAR Subpart 9.5 explains, OCIs that must be avoided include situations where a company has divided loyalties that impair its ability to render impartial advise to the government ("impaired objectivity"), or where the company has access to information that its competitors do not that could lead to a competitive advantage for the firm ("unequal access to information").³⁴ FAR § 9.5; Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., *supra*, at 12-13. It must be noted, however, that there is a distinction between an OCI and a personal conflict of interest: with an OCI, the conflicted party is the organization; with a personal conflict of interest, the conflict is with the individual. See Daniel I. Gordon, Organizational Conflicts of Interest: A Growing Integrity Challenge, 35 Pub. Cont. L.J. 25, 29 (Fall 2005) (distinguishing personal from organizational conflicts of interests); see also FAR §§ 3.101-1, 9.505, 9.508. The facts here, at most, give rise to personal conflicts of the individual SRNS employees and are not OCIs.

SRA has not alleged, nor does the record evidence, any facts showing that SRNS or its team member organizations have impaired objectivity or that these entities serve multiple, or conflicting, roles that could lead to an impaired objectivity OCI; nor has SRA alleged that SRNS or its team member organizations had unequal access to information that would render this competition unfair. Rather, SRA argues merely that the individual employees are not adequately committed to SRNS and may use their positions to benefit their employing team member companies, or, in the case of the SRNL director, that he will use information in the future that will benefit his own company.

³⁴ A third type of OCI involves "biased ground rules," which is not at issue in this case.

With regard to the SRNL director, the individual's ownership of a consulting business does not appear to "conflict" with his role as SRNS's proposed SRNL director, as SRA asserts. The individual has divested himself of all of his consulting work, except for one unrelated contract which he is performing as a means of income until this protest is resolved. Declaration of SRNS's SRNL director ¶ 5. He and the other [REDACTED] key personnel have signed commitment letters to work solely on the Savannah River Site project without any "contingencies or constraints" on their positions. SRNS's Second Supp. Comments, exh. 4, SRNS Key Personnel Commitment Letters. To the extent that SRA asserts that the SRNL director or others may use information learned during performance to benefit themselves or their employers in future endeavors, this is speculative and insufficient to impute any conflict of interest on these individuals or their employers. See American Mgmt. Sys., Inc., B-285645, Sept. 8, 2000, 2000 CPD ¶ 163 at 6 (possible benefit from current procurement to a contractor is too speculative and remote to establish a significant OCI).

In addition, we see no significant potential for OCIs arising out of the fact that [REDACTED] of SRNS's key personnel will remain employees of the team member companies rather than become direct employees of SRNS. Given that the employers are team members of SRNS working together to perform the site work, we agree with the agency that there is unlikely to be any divergence of interest. Under the incumbent contract, currently performed by SRA's team members, the key personnel are employed by the team members and not the prime contractor, WSRC. OCIs have not arisen under that situation, and as the agency reasonably explains, OCIs are unlikely to happen here. Contracting Officer's Statement at 56. The contracting officer here reviewed SRNS's disclosures regarding potential OCIs, and reasonably determined that there was no basis to question these disclosures. Id. SRA's arguments do not call into question the reasonableness of the contracting officer's judgment.

In sum, the evaluation record evidences a comprehensive and well-documented analysis of proposals under each of the evaluation factors, which supports the SSA's determination that SRNS's proposal presented the best value to the government, notwithstanding its higher evaluated price. As the SSA explained, key personnel were "critical" to successful performance and implementation of program strategy, which is why SRNS's superior-rated key personnel were worth the additional cost.

AR, Tab E.1, Source Selection Decision, at 8. Based on our review of the record, we find the SSA's determination to be reasonable.

The protest is denied.

Gary L. Kepplinger
General Counsel