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Decision

Matter of: Systems Made Simple, Inc.

File: B-412948.2

Date: July 20, 2016

Robert M. Moore, Esq., Richard O. Wolf, Esq., and Casey J. McKinnon, Esq., Moore & Lee, LLP; and Maryann P. Surrick, Esq., Lockheed Martin Corporation, for the protester.

Amy Laderberg O'Sullivan, Esq., Peter J. Eyre, Esq., James G. Peyster, Esq., Olivia L. Lynch, Esq., and Hart W. Wood, Esq., Crowell & Moring LLP; and Nicole O. Saunders, Esq., Accenture Federal Services, LLC, for ASM Research, LLC, an intervenor.

John W. Tangalos, Esq., and Frank V. DiNicola, Esq., Department of Veterans Affairs, for the agency.

Louis A. Chiarella, Esq., and Noah B. Bleicher, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency failed to give adequate consideration to awardee's potential organizational conflicts of interest is denied where the agency reasonably evaluated whether the awardee had the ability to shape the ground rules for the procurement or unequal access to information, and where the protester's assertions fail to present hard facts indicating the existence of a conflict.

2. Protest challenging the rating assigned to protester's technical proposal is denied where the protester fails to demonstrate that it was prejudiced by the alleged error; even if the protester had received a higher technical rating, the awardee would have remained both higher-rated and lower-priced than the protester.

DECISION

Systems Made Simple, Inc. (SMS), of Vienna, Virginia, protests the issuance of a task order to ASM Research, LLC (ASMR), of Fairfax, Virginia, under request for task execution plan (RTEP) No. T4-0800, issued by the Department of Veterans Affairs (VA) for National Service Desk (NSD) help desk services. SMS argues that the agency failed to reasonably analyze the awardee's organizational conflict of

interest, challenges the agency's technical evaluation, and contends that the resulting award decision was improper.

We deny the protest.

BACKGROUND

The RTEP was issued on January 25, 2016, to holders of the Transformation Twenty-One Total Technology (T4) multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) contracts, pursuant to the procedures set forth in Federal Acquisition Regulation (FAR) subpart 16.5.¹ The solicitation contemplated the issuance of a fixed-price task order for a 9-month base period with three 1-year options and one 3-month "transition out" option, for support services for the full range of functions performed by the VA NSD. In general terms, the performance work statement (PWS) required the contractor to deliver quality information technology service and support; realize continual service improvement; execute sound project management principles; and provide program support to effectively manage the variety of service desk-related activities performed by the NSD. Contracting Officer's Statement, June 10, 2016, at 1.

The solicitation established that task order award would be made on a best-value basis, based on three evaluation factors in descending order of importance: technical, past performance, and price. RTEP at 2. The technical factor was significantly more important than past performance, which in turn was slightly more important than price. Id.

Seven vendors, including ASMR and SMS, submitted quotations by the February 3 closing date. An agency technical evaluation team (TET) evaluated technical quotations using an adjectival rating scheme (outstanding, good, acceptable, susceptible to being made acceptable, and unacceptable), and past performance using a separate, point-scoring methodology (0-10). The final evaluation ratings and prices of those quotations found to be technically acceptable were as follows:

¹ For the sake of consistency, and because the distinction has no bearing on our analysis, we use the terms "RTEP," "quotations," and "vendors" throughout our decision.

	Technical	Past Performance	Price
ASMR	Good	8.21	\$286,786,196
SMS	Acceptable	5.95	\$296,138,382
Vendor B	Good	8.17	\$298,104,205

Agency Report (AR), Tab 5, Source Selection Briefing, Mar. 16, 2016, at 61; Tab 18, Source Selection Decision, Mar. 21, 2016, at 2.

The agency evaluators also made narrative findings (e.g., strengths, weaknesses) in support of the ratings assigned. For example, the TET identified two strengths and no weaknesses in SMS's technical proposal, and one significant strength and one strength in ASMR's technical proposal.² AR, Tab 18, Source Selection Decision, Mar. 21, 2016, at 10-11.

On March 21, the agency source selection authority (SSA) determined that ASMR's quotation represented the overall best value to the government, as it was both higher-rated and lower-priced than the remaining, technically acceptable quotations. Id. at 11-12. On April 14, after SMS received notice of award and a debriefing, this protest followed.³

DISCUSSION

SMS raises two challenges to the agency's evaluation of quotations. SMS first alleges that ASMR had an organizational conflict of interest (OCI) which the contracting agency failed to properly evaluate and mitigate. The protester also contends the agency's evaluation of its technical quotation was improper. SMS argues that had the agency conducted a proper evaluation, it would have been the awardee. We have considered all of SMS's protest grounds and arguments, and although we do not address them all, find they provide no basis on which to sustain the protest.

² The significant strength identified by the evaluators in ASMR's technical quotation was comprised of several, separate findings. AR, Tab 18, Source Selection Decision, Mar. 21, 2016, at 10.

³ Because the value of the awarded task order is over \$10 million, our Office has jurisdiction to review this protest. 41 U.S.C. § 4106(f)(1)(B).

OCI Evaluation of ASMR

SMS protests that the agency's evaluation of ASMR's alleged OCI was improper. Specifically, SMS contends that ASMR's parent company, Accenture Federal Services, LLC, previously prepared a study regarding the NSD function which the agency allegedly used to prepare the PWS here. SMS argues that Accenture's previous work on behalf of VA allowed it to both shape the ground rules for this procurement on behalf of its subsidiary, and provided ASMR with unequal access to nonpublic information. SMS also argues that had the agency performed a proper evaluation, it would have found ASMR's OCI rendered the vendor ineligible for award. Protest, Apr. 14, 2016, at 9-15.

Agency Procedural Challenges

The VA raises two procedural challenges to SMS's OCI protest. First, the agency contends that SMS is not an interested party to challenge ASMR's alleged OCI, because SMS would not be in line for award even if the awardee were excluded from consideration (as part of its argument here, the agency presumes that its technical evaluation of SMS was reasonable). VA Dismissal Request, June 2, 2016, at 1-7. In order for a protest to be considered by our Office, a protester must be an interested party, which means that it must have a direct economic interest in the resolution of a protest issue. 4 C.F.R. § 21.0(a); Cattlemen's Meat Co., B-296616, Aug. 30, 2005, 2005 CPD ¶ 167 at 2 n.1. A protester is an interested party to challenge the evaluation of an awardee's quotation where there is a reasonable possibility that its quotation would be in line for award if the protest were sustained. Allied Tech. Group, Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 10 n.12. The agency's assertion that SMS was not second in line for award, however, is premised on a post hoc price/technical tradeoff between SMS's lower-priced quotation and Vendor B's higher-rated, higher-price quotation that was not part of the contemporaneous award determination.⁴ In this regard, we give little weight to revised evaluations made during the heat of litigation. See, e.g., Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 4; Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. We therefore find that SMS is an interested party to challenge ASMR's alleged OCI.

The agency also argues that SMS's challenge of ASMR's alleged OCI is untimely. The VA maintains that SMS knew or should have known that the solicitation was issued on an unrestricted basis; that SMS was aware prior to the RTEP closing date of the facts underlying the purportedly unmitigable OCI; and that SMS knew that the

⁴ In support of its dismissal request, the agency submitted a declaration from the SSA stating that she would have found that Vendor B's higher technical and past performance ratings outweighed SMS's slight price advantage.

agency considered ASMR eligible to compete for award. VA Dismissal Request, Apr. 29, 2016, at 2-3. The agency argues that SMS was thus required to file its OCI protest by the February 3 closing date for receipt of quotations, rather than wait to see if ASMR would be selected for award. Id., citing, inter alia, Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 6-7, and International Sci. & Tech. Inst., Inc., B-259648, Jan. 12, 1995, 95-1 CPD ¶ 16 at 3.

Subsequent to issuing the initial solicitation, the agency provided vendors with answers to submitted questions, including as follows:

Question: ASMR's parent company, Accenture, recently concluded a four month assessment of the VA's National Service Desk (NSD), and provided NSD leadership with a document entitled VA NSD Task 3 Deliverable, a business case model which identified potential cost savings from implementing various recommendations for improving NSD efficiencies. . . . Given Accenture's unequal access to non-public information, and the potential for biased ground rules concerns, will ASMR be eligible to submit a NSD [quotation]?

Answer: ASM should submit a Mitigation Plan with its [quotation].

AR, Tab 16, RTEP Questions and Answers, Jan. 29, 2016, at 4-5.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial quotations must be filed prior to that time; similarly, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of quotations following the incorporation. 4 C.F.R. § 21.2(a)(1). As a general rule, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. Liquidity Servs., Inc., B-409718 et al., July 23, 2014, 2014 CPD ¶ 221 at 9; REEP, Inc., B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. We have, however, applied a different rule where a solicitation is issued on an unrestricted basis, the protester is aware of the facts giving rise to the potential OCI, and the protester has been advised by the agency that it considers the potential offeror eligible for award. Honeywell Tech. Solutions, Inc., supra, at 6; Abt Assocs., Inc., B-294130, Aug. 11, 2004, 2004 CPD ¶ 174 at 2. In such cases, the protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must protest before the closing time for receipt of proposals. Abt Assocs., Inc., supra.

We find that unlike the Honeywell and International Science cases cited by the VA, the solicitation here, including its questions and answers, did not advise vendors that the agency had considered and resolved OCI concerns regarding ASMR, such that the protester was required to protest the terms of the solicitation in that regard.

See Liquidity Servs., Inc., *supra*. The agency's statement that ASMR "should submit a Mitigation Plan with its [quotation]," AR, Tab 16, RTEP Questions and Answers, Jan. 29, 2016, at 4, indicated the contracting officer had yet to make a final determination regarding ASMR's eligibility for award, and that the agency would evaluate the vendor's mitigation plan as part of making such a determination. Thus, we find SMS had no reason to conclude with any certainty--prior to the RTEP's closing--that the agency already considered ASMR eligible for award. In sum, as the solicitation did not expressly advise vendors that the agency considered ASMR eligible for award, SMS's protest here is timely.

Alleged Biased Ground Rules OCI

Next, we turn to the merits of SMS's OCI allegations. SMS first argues that ASMR had a biased ground rules OCI. Specifically, SMS alleges that the study which ASMR's parent company, Accenture, prepared for the VA formed the basis for the NSD PWS. The protester also contends that Accenture, at the least "in some sense set the ground rules" for the NSD competition. SMS Comments, June 20, 2016, at 19, citing Energy Sys. Group, B-402324, Feb. 26, 2010, 2010 CPD ¶ 73 at 4.

The situations in which OCIs arise, as described in FAR subpart 9.5 and decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. See McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, a biased ground rules OCI exists where a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications: the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself.⁵ FAR §§ 9.505-1, 9.505-2; International Bus. Machs. Corp., *supra*, at 6; CIGNA Gov't Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 10. Also of relevance, 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.⁶ FAR § 9.505-4; Cyberdata Techs., Inc., B-411070 *et al.*,

⁵ There is also no basis to distinguish between a firm and its affiliates, at least where concerns about potentially biased ground rules are at issue. International Bus. Machs. Corp., B-410639, B-410639.2, Jan. 15, 2015, 2015 CPD ¶ 41 at 9; L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 at 5 n.3.

⁶ Although not relevant to this protest, the third OCI group comprises cases where a firm's work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR § 9.505-3; L-3 Servs., Inc., *supra*, at 5. In these "impaired objectivity" cases, the concern is that the firm's ability to render impartial advice to

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May 1, 2015, 2015 CPD ¶ 150 at 6; CapRock Gov't Solutions, Inc., et al., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25.

We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable.⁷ McConnell Jones Lanier & Murphy, LLP, *supra*; Alliant Techsystems, Inc., B-410036, Oct. 14, 2014, 2014 CPD ¶ 324 at 4. In this regard, 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., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; *see* Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011).

As set forth below, the record reflects that the contracting officer reasonably investigated and considered whether an OCI exists, and SMS has failed to identify hard facts indicating the existence or potential existence of the alleged conflict. Thus, we have no basis to question the contracting officer's conclusion that ASMR's participation in this procurement does not raise potential OCI concerns.

On September 23, 2014, the VA issued Accenture⁸ a task order for an assessment study of the NSD.⁹ AR, Tab 9, Accenture Task Order, Sept. 23, 2014, at 1-35. The PWS for the Accenture task order required the contractor to "assess the current VA National Service Desk management, operations, procedures and processes and recommend comprehensive improvements in the form of a to-be-model. Additionally, the Contractor shall develop a business case model for the

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the government could appear to be undermined by its relationship with the entity whose work product is being evaluated. L-3 Servs., Inc., *supra*.

⁷ 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.

⁸ ASMR is a wholly-owned subsidiary of Accenture. *See* <https://www.asmr.com/about-us/a-brief-history> (last visited July 10, 2016).

⁹ The task order was issued against Accenture's General Services Administration Federal Supply Schedule contract, and not under VA's T4 IDIQ contract.

transformation of the service desk to a centralized structure.” Id. at 11. As part of its performance of the NSD assessment task order, Accenture prepared and submitted an OCI mitigation plan so as to prevent organizational conflicts with future VA requirements. AR, Tab 14, VA Correspondence with ASMR, Accenture OCI Mitigation Plan, Nov. 25, 2014, at 1-10. The mitigation plan included a firewall of the specific Accenture employees involved in the NSD assessment effort; prohibited the transfer of information from the assessment project team to non-project personnel; and contained provisions regarding OCI training, management oversight, and disciplinary action in the event of a violation. Id. at 5-8; AR, Tab 4, OCI Mitigation Plan Review, Mar. 15, 2016, at 2.

On February 20, 2015, Accenture delivered its assessment of the NSD to the VA. The Accenture study consisted of an “as-in” assessment, “to-be” recommendations, implementation roadmap and business case model, and end state vision. AR, Tab 10, Accenture NSD Executive Summary, Feb. 20, 2015, at 1-52; Tab 11, Accenture NSD Final Presentation, Feb. 20, 2015, at 1-77. As part of its assessment, Accenture examined VA’s current NSD productivity in comparison to industry benchmarks, e.g., contacts handled annually per full time equivalent employee, cost per contact, average speed to answer, average handle time, and abandon rate. AR, Tab 10, Accenture NSD Executive Summary, Feb. 20, 2015, at 8-15. Accenture’s “end state” vision also set forth performance measurements that it suggested the VA attempt to achieve.¹⁰ AR, Tab 11, Accenture NSD Final Presentation, Feb. 20, 2015, at 50-59. Notably, however, Accenture did not prepare a set of requirements, or work statement, for performance of the NSD function.

The Accenture assessment was not the only study regarding the VA NSD function. From July to November 2014, the VA Office of Information and Technology conducted a study and analysis of the agency’s service delivery and engineering enterprise operations data center operations. AR, Tab 21, McKinsey Task Order Amend. 1, May 29, 2015, at 8. Also, on May 29, 2015, the agency contracted with McKinsey & Company, Inc., to perform an independent, programmatic study of the NSD function. Id. at 1-38. The contracting officer explains the VA ordered the McKinsey study of the NSD function because it found the earlier Accenture study to be “so generic in nature,” and “to obtain the assistance it needed to generate [the]

¹⁰ The record also reflects that various Accenture recommendations regarding NSD performance (e.g., location consolidation, enhanced training program, knowledge-based self service, performance-based requirement) were already present in VA policy documents, draft versions of the PWS, or the existing NSD task order. Compare AR, Tab 11, Accenture NSD Final Presentation, Feb. 20, 2015, at 19-41, with AR, June 28, 2016, attach. A, VA NSD Help Desk Consolidation Memorandum, Mar. 25, 2011, attach. B, NSD Task Order with Adams Communication and Engineering Technology, Inc., Sept. 28, 2012, at 2, 42-43; SMS Comments, June 20, 2016, exh. 1, NSD Draft PWS, Sept. 16, 2014, at 17-20, 36-37.

PWS for the NSD re-compete effort.” Contracting Officer’s Statement, June 10, 2016, at 7; see also AR, June 28, 2016, attach. C, Declaration of VA NSD Director of Service Support Operations, June 28, 2016, at 1-2 (the agency was dissatisfied with the generic nature of the Accenture study results, and required McKinsey’s assistance to perform a “gap” analysis study and to provide recommendations for the NSD procurement).

On August 23, 2015, McKinsey delivered its study of the NSD function--a document entitled “NSD re-compete RFP.” AR, Tab 20, McKinsey NSD Study Report, Aug. 23, 2015, at 1-16. McKinsey analyzed the draft NSD PWS that the VA had developed, and its study made recommendations regarding PWS language--in the areas of service level agreement (SLA) content, performance reviews, SLA structure, penalties, gain-sharing continuous improvement, and movement to end state--that the VA should use to improve contractor accountability.¹¹ AR, Tab 20, McKinsey NSD Study Report, Aug. 23, 2015, at 1-2, 13-16. The McKinsey study also included recommendations regarding contract structure in the areas of pricing, duration, single or multiple contract awards, and the degree of outsourcing. Id. at 3, 8-12. In addition to the recommendations included in its study, McKinsey also drafted proposed PWS language for the VA’s consideration for use in the subsequent NSD solicitation. Contracting Officer’s Statement, June 10, 2016, at 7. Moreover, the contracting officer for the procurement at issue was personally aware of McKinsey’s degree of involvement in recommending and drafting the NSD PWS requirements. Id. at 7-8.

After issuance of the NSD solicitation, the contracting officer received additional information directly from ASMR regarding any possible OCI. Specifically, the awardee submitted its OCI mitigation plan as part of its quotation. AR, Tab 6, ASMR OCI Mitigation Plan, Jan. 21, 2016, at 1-9. ASMR also submitted signed declarations indicating the firewalls previously established by Accenture had been implemented and maintained; the Accenture employees involved in the NSD assessment study had not disclosed the information which they reviewed with other Accenture or ASMR employees, nor were they involved in preparing the ASMR quotation. AR, Tab 14, VA Correspondence with ASMR, Accenture Compliance with OCI Mitigation Plan Declarations, at 26-32; Contracting Officer’s Statement, June 10, 2016, at 10.

¹¹ As part of performing its study, McKinsey collected and reviewed data and reports of the current NSD organizational structure, workloads, and operating practices; examined NSD performance metrics, budget, and vision documents; discussed NSD needs with agency leadership and stakeholders; and helped identify key contract performance indicators that would optimize customer support performance. AR, June 28, 2016, attach. C, Declaration of VA NSD Director of Service Support Operations, June 28, 2016, at 2.

The contracting officer thereafter conducted her review of ASMR's OCI mitigation plan. AR, Tab 4, OCI Mitigation Plan Review, Mar. 15, 2016, at 1-4. As part of her review the contracting officer considered:

- the scope of Accenture's NSD study assessment task order;
- the study products that Accenture provided to the VA;
- Accenture's OCI mitigation plan;
- the Accenture declarations indicating compliance with the OCI mitigation plan;
- the scope of McKinsey's NSD study contract;
- the final study product that McKinsey prepared for the VA ("NSD re-compete RFP");
- the NSD PWS and RTEP;
- ASMR's OCI mitigation plan; and
- Other correspondence with ASMR regarding its OCI mitigation plan.

Id. at 1-3; Contracting Officer's Statement, June 10, 2016, at 6-13.

The contracting officer also held discussions with other agency technical and program personnel, who stated that the Accenture task order did not require the firm to provide a statement of work, requirements, or specifications to be used in the NSD procurement; further, it was the McKinsey study (and not the Accenture study) which agency personnel used to create the PWS for the NSD re-compete effort. AR, Tab 4, OCI Mitigation Plan Review, Mar. 15, 2016, at 1-3; Contracting Officer's Statement, June 10, 2016, at 5-13.

The contracting officer thereafter concluded that:

[Accenture], ASM[R]'s parent company, did not have access to any privileged data that would provide it with a competitive advantage under the current NSD re-compete requirement as a result of performing [the NSD assessment task order]. Further, the work product/assessment deliverables under [Accenture's] prior Order did not result in or contribute to the stated PWS requirements for the current NSD re-compete effort. Instead, the findings reached/ recommendations made under a subsequent (and independent) assessment contract performed by McKinsey & Company gave rise to actual contract requirements which were incorporated into/made part of the NSD re-compete PWS.

It is also my determination that were there to be a finding and/or appearance of a potential or actual conflict due to [Accenture's] prior Order, ASM[R]'s proposed mitigation plan, which I find acceptable, properly addresses such concerns and in my opinion mitigates any conflict concerns that may arise due to performance of the instant

NSD re-compete effort should ASM[R] be selected for award. [Accenture], ASM[R]'s parent company, carried out advanced measures under its stated OCI Mitigation Plan . . . specifically designed to avoid any potential or actual future conflict concerns under subsequent NSD requirements. ASM[R] itself was diligent in adhering to and maintaining the established firewall between itself and its parent company while preparing its response for the current NSD re-compete. ASM[R]'s proactive steps ensured that designated personnel under each area of concern were (and remain) segregated by firewall, and that none of the work product/efforts under the prior NSD [assessment study] crossed over into any of ASM[R]'s efforts to prepare and submit its proposal under the current RTEP for the current NSD re-compete RTEP.

AR, Tab 4, OCI Mitigation Plan Review, Mar. 15, 2016, at 4.

Based on our review, we find that the contracting officer reasonably concluded that ASMR did not have a biased ground rules OCI. Central to SMS's contentions, the record reflects that Accenture did not prepare the PWS requirements here. Instead, the record shows that Accenture prepared a fairly generic study regarding VA's NSD function as compared to industry benchmarks, with general improvement recommendations and end-state performance metrics. Given the non-specific nature of the Accenture recommendations, the VA then contracted with McKinsey to prepare another study, which was directly used in developing the NSD PWS and solicitation. The fact that certain recommendations within the Accenture study can also be found in the NSD PWS (e.g., enhanced training program, location consolidation) simply does not support the protester's assertion that Accenture shaped, or skewed, the PWS requirements such that its subsidiary, ASMR, had an unfair competitive advantage in the procurement at issue.

We also find that the agency here performed a textbook OCI review. The record reflects that in performing her OCI review, the contracting officer reasonably reviewed all pertinent information. The contracting officer also reasonably gained input from other VA program and technical personnel regarding Accenture's assessment study and whether that firm had any role in developing the NSD PWS requirements. Based on the gathered information, the contracting officer reasonably found that Accenture did not have the ability to shape the playing field of later procurements on behalf of ASMR, because Accenture had prepared a generic assessment regarding the NSD function--not the NSD requirements--and the Accenture study did not in fact become the basis of the agency's requirements.¹²

¹² Indeed, the record reflects that many (if not most) of the PWS provisions that SMS highlights as stemming from the Accenture study were already present in

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Moreover, in addition to the reasonableness of the contracting officer's OCI investigation regarding ASMR, the record reflects that the McKinsey study provided recommendations on NSD PWS requirements and contract structure.¹³ Thus, even assuming the facts as SMS alleges regarding Accenture, there were then two contractors involved in preparing the VA's NSD requirements. Our Office has repeatedly denied biased ground rules OCI protests where the procuring agency has employed more than one contractor as a source for recommendations and input that eventually shaped the solicitation requirements.¹⁴ See, e.g., American Artisan Prods., Inc., B-292559, B-292559.2, Oct. 7, 2003, 2003 CPD ¶ 176 at 8; S.T. Research Corp., B-233115.2, Mar. 30, 1989, 89-1 CPD ¶ 332 at 5; see also FAR § 9.505-2(b)(1)(iii) (OCI does not exist where "[m]ore than one contractor has been involved in preparing the work statement").¹⁵

Alleged Unequal Access to Information OCI

SMS also alleges that ASMR had unequal access to information. In support thereof, the protester argues that "[t]here is no doubt that Accenture had access to non-public information" as a result of performing the NSD assessment study, and that "the information may have provided Accenture and ASMR a competitive advantage in the NSD procurement." SMS Comments, June 20, 2016, at 23. SMS also contends the contracting officer's OCI review was unreasonable for concluding

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agency policy documents, draft versions of the PWS, or the existing NSD task order.

¹³ SMS appears to dispute the contracting officer's statement that McKinsey was substantially involved in preparing the PWS and RTEP, see SMS Comments, June 10, 2016, at 21, but provides no basis to refute the agency's assertions in this regard.

¹⁴ We also find SMS's reliance on our decision in Energy Systems misplaced. In Energy Systems, there was no dispute that 80 percent of the agency's statement of work requirements were based on the protester's feasibility study, such that the agency reasonably found the firm had the ability to skew the competition to its advantage, whether intentional or not. Here, by contrast, the protester essentially engages in an exercise of creative writing to find that certain Accenture study recommendations became the basis for subsequent NSD PWS requirements.

¹⁵ We also find SMS's argument regarding the relative length (and thus allegedly the impact on shaping the NSD requirements) of the Accenture and McKinsey studies to be wholly irrelevant. In this regard, the contracting officer's OCI review must properly consider what each study represents, and it is simply immaterial how many pages were in each study, as SMS suggests. See generally L-3 Commc'ns, L-3 Link Simulations & Training, B-410644.2, Jan. 20, 2016, 2016 CPD ¶ 44 at 5.

that Accenture did not have access to privileged data that would provide it with a competitive advantage. Id. We find no merit to the protester's challenge here.

Even assuming that Accenture did have access to non-public information as a result of performing the NSD assessment study, SMS has failed to present any facts--hard or otherwise--that this information provided ASMR with a competitive advantage. See DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 9. Regardless, the record reflects that Accenture's OCI mitigation plan firewalled the employees involved in performing the NSD assessment study. ASMR's OCI mitigation plan thereafter included signed declarations from the affected Accenture employees, stating that they had not disclosed the information which they reviewed to any other Accenture or ASMR employees. Further, the contracting officer reasonably found that ASMR was "diligent in adhering to and maintaining the established firewall," such that "none of the work product/efforts under the prior NSD [assessment study] crossed over into any of ASM[R]'s efforts to prepare and submit its proposal under the current RTEP" AR, Tab 4, OCI Mitigation Plan Review, Mar. 15, 2016, at 4. As SMS has not established that Accenture's access to information, even if non-public, provided ASMR with any kind of competitive advantage in the later NSD competition, there is no basis to find that ASMR had an unequal access to information OCI. See ITT Corp.-Elec. Sys., B-402808, Aug. 6, 2010, 2010 CPD ¶ 178 at 5-6.

In sum, the protester fails to show that the contracting officer was unaware of, or failed to consider, all relevant information when reviewing ASMR's potential OCIs. The protester essentially expresses disagreement with the contracting officer's judgments regarding the reasonableness of ASMR's mitigation strategy; such mere disagreement does not rise to the hard facts necessary to support a valid challenge. See Liquidity Servs., Inc., supra, at 10.

Technical Evaluation of SMS

SMS also protests the agency's technical evaluation of its quotation. Specifically, SMS alleges that because it had two strengths and no weaknesses, it should have received a "good," rather than "acceptable," rating (SMS does not challenge any of the underlying evaluation findings--just the assigned rating).¹⁶ SMS also contends

¹⁶ SMS also states the RTEP failed to include the agency's adjectival rating scheme. SMS Protest, Apr. 14, 2016, at 15. To the extent SMS challenges the terms of the solicitation, we find this to be untimely. See 4 C.F.R. § 21.2(a)(1). In any event, while agencies are required to disclose the evaluation criteria and their relative importance, FAR § 16.505(b)(1)(iv)(C), they need not state in the solicitation the rating method to be employed in evaluating quotations. See American Env'tl. Servs., Inc., B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 6 n.7; Borders Consulting, Inc., B-281606, Mar. 10, 1999, 99-1 CPD ¶ 56 at 2 n.1.

that based on the number of evaluation strengths identified in other T4 task order competitions, it should have been rated as “good” here.

As a preliminary matter, we have previously held that each procurement “stands on its own.” Complete Packaging & Shipping Supplies, Inc., B-412392 et al., Feb. 1, 2016, 2016 CPD ¶ 28 at 7. Thus, the fact that SMS quotations garnered more strengths, or higher ratings, in other competitions has no bearing on the reasonableness of the agency’s evaluation here. See Parmatic Filter Corp., B-285288, B-285288.2, Aug. 14, 2000, 2000 CPD ¶ 185 at 7.

Regardless, we find that SMS has also failed to establish that it was in any way prejudiced by the agency’s evaluation. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest. Swets Info. Servs., B-410078, Oct. 20, 2014, 2014 CPD ¶ 311 at 14; see Statistica, Inc. v. Christopher, 102 F.3d 1577 (Fed. Cir. 1996). Here the record reflects that even if SMS were also to have received the “good” rating it argues for under the technical factor--the same rating assigned to ASMR’s quotation--ASMR would remain both significantly higher-ranked under the past performance factor and lower-priced (SMS does not challenge the evaluation of vendors’ quotations under these other factors). Thus, the record does not support SMS’s position that it would have been issued the task order but for the alleged evaluation improprieties. In any event, in contrast to SMS’s misplaced fixation on its assigned adjectival rating, the SSA’s best-value determination properly looked behind the ratings and determined that it was the underlying strengths which made ASMR’s quotation technically superior to that of the other vendors, including the protester. In sum, even if SMS were to prevail in its challenge to the assigned technical evaluation rating, ASMR’s quotation would remain the overall best value.

The protest is denied.

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