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# Decision

**Matter of:** Verisys Corporation

**File:** B-413204.5; B-413204.6; B-413204.7

**Date:** October 2, 2017

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Charmaine A. Stevenson, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's evaluation of the protester's quotation as technically unacceptable is denied where the record establishes that the evaluation was reasonable and consistent with the terms of the solicitation.
  2. Protest alleging the awardee had an unfair competitive advantage due to the hiring of a former government employee and conflicts of interests due to proposed subcontractors' prior work is denied where the protester fails to present sufficient facts indicating the existence of any conflicts of interest, and where the contracting officer reasonably found that no unfair competitive advantage or conflicts existed.
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## DECISION

Verisys Corporation, a small business of Alexandria, Virginia, protests the issuance of a General Services Administration Federal Supply Schedule (FSS) task order to Solutions by Design II, LLC (SBD), a small business of Vienna, Virginia, under request for quotations (RFQ) No. 161144, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for software development and other services to establish a new version of CMS' electronic provider enrollment system. The protester challenges various aspects of the agency's evaluation process, including assertions that the agency failed to evaluate technical and price proposals in accordance with the solicitation; failed to identify and investigate an

unfair competitive advantage and conflicts of interest; engaged in unfair and inequitable discussions with only the awardee; and failed to properly implement the promised corrective action in response to its prior protest, resulting in prejudice to Verisys.

We deny the protest.

## BACKGROUND

The RFQ, issued on May 5, 2016, pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to acquire services under the FSS, contemplated the issuance of a hybrid fixed-price and time-and-materials task order.<sup>1</sup> Agency Report (AR), Tab 3, RFQ at 4. The purpose of the procurement is for CMS to obtain full software development lifecycle activities to redesign its provider enrollment chain ownership system (PECOS), and is known as PECOS 2.0. Id.; see also RFQ, attach. J.1, Statement of Objectives (SOO). The requirement was set aside for small business concerns under North American Industrial Classification System (NAICS) code 541512, computer system design services. RFQ at 4. The period of performance includes a 12-month base period and eight 6-month option periods. Id. at 12.

The RFQ provided for a two-stage process whereby the agency would evaluate stage one proposals and then select up to five firms to participate in stage two of the competition. RFQ, attach. J.2, Proposal Preparation Instructions/Evaluation Criteria, at 3. During stage one, vendors were required to prepare a two volume technical submission; volume one was to include the vendors' concept paper for PECOS 2.0 and relevant experience, and volume two was to include the vendors' disclosures regarding organizational conflicts of interest (business ethics, conflicts of interest, and compliance) for the prime and any proposed subcontractors. Id. at 4-7.

Stage two vendors would be invited to participate in a one-hour question and answer session to prepare for an oral presentation, and would then have two weeks to prepare and submit a written stage two proposal. RFQ, attach. J.2, Proposal Preparation Instructions/Evaluation Criteria, at 3. Stage two also required vendors to prepare a two volume submission, to include a technical volume and a price quotation. Id. at 8-15. The technical evaluation for stage two consisted of the agency's consideration of the following factors, listed in descending order of importance: (1) technical merit; (2) past performance; (3) management approach; and (4) 508 compliance.<sup>2</sup> Id. at 17. The evaluation of technical merit included the following five subfactors of equal importance:

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<sup>1</sup> The RFQ was amended four times. All citations to the RFQ are to the conformed copy provided by the agency.

<sup>2</sup> Section 508 of the Rehabilitation Act requires that when federal agencies procure electronic and information technology, they procure technology that allows individuals with disabilities the same access as non-disabled persons unless an undue burden would be imposed on the agency. 29 U.S.C. § 794d(a)(1)(A).

(1) oral presentation; (2) solutioning documents; (3) performance work statement (PWS); (4) agile development management plan; and (5) proposed quality assurance surveillance plan. Id. Regarding the evaluation of price, the RFQ provided that the agency would consider the level of effort, mix of labor, and total value quoted to determine price reasonableness and completeness. Id. at 20.

Regarding award, the RFQ stated:

Contract award shall be made to the responsible [vendor] whose offer, in conforming to this RFQ, provides an overall best value to the Government, with technical evaluation factors and price considered. Stage One and Stage Two are of equal importance when determining the overall best value to the Government. The Government's objective is to obtain the highest technical quality considered necessary to achieve the project objectives, with a realistic and reasonable price. Technical evaluation factors are more important than price. In the event quotes are evaluated as technically equal in quality, price will become a major consideration in selecting the successful [vendor].

RFQ, attach. J.2, Proposal Preparation Instructions/Evaluation Criteria, at 15.

The agency evaluated 19 proposals during stage one. AR, Tab 11, Pre-Award Decision Memorandum, at 11. The agency then invited four vendors, including SBD, to participate in the stage two competition, based on the fact that their stage one proposals had all been rated overall as excellent. Id. The agency did not invite Verisys to participate since its overall rating was satisfactory.<sup>3</sup> Verisys challenged the agency's evaluation of its stage one proposal and exclusion from stage two of the competition.<sup>4</sup> Our Office dismissed the protest when the agency stated it would take corrective action and invite Verisys to participate in stage two of the competition. Verisys Corp.,

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<sup>3</sup> Verisys was rated satisfactory for its concept paper and good for its relevant experience. AR, Tab 9B, Verisys Stage One Evaluation Report, at 3.

<sup>4</sup> Verisys previously filed two protests against the agency's conduct of this procurement. Verisys' first protest challenged the terms of the solicitation. Our Office dismissed the protest as academic following the agency's determination that it would take corrective action to amend the solicitation and accept revised proposals. Verisys Corp., B-413204, July 15, 2016 (unpublished decision). Our Office subsequently dismissed Verisys' request for costs in connection with this protest because the agency agreed to pay Verisys' costs without a recommendation from our Office. Verisys Corp., B-413204.2, Aug. 22, 2016 (unpublished decision). Verisys' second protest alleged that the agency had unreasonably rejected its certification that it was small under the NAICS code included in the RFQ. Our Office dismissed the protest as academic when the agency took corrective action and agreed to evaluate Verisys' stage one proposal. Verisys Corp., B-413204.3, Sept. 15, 2016 (unpublished decision).

B-413204.4, Dec. 12, 2016 (unpublished decision). Although the agency invited Verisys to participate in stage two of the competition as corrective action in response to Verisys' most recent protest, the agency did not reevaluate Verisys' stage one proposal, and Verisys' overall stage one proposal rating remained satisfactory. AR, Tab 11, Pre-Award Decision Memorandum, at 11.

Following its evaluation of stage two proposals, the agency rated Verisys' and SBD's technical proposals as follows:

	<b>Verisys</b>	<b>SBD</b>
<b>Technical Factor</b>	UNACCEPTABLE	EXCELLENT
<b>Technical Merit</b>	Unacceptable	Excellent
<b>Past Performance</b>	Satisfactory	Satisfactory
<b>Management Approach</b>	Good	Good
<b>508 Compliance</b>	Acceptable	Acceptable

AR, Tab 11, Pre-Award Decision Memorandum, at 12. The agency concluded that Verisys' quotation contained weaknesses, significant weaknesses and a deficiency in the technical merit subfactor that rendered the quotation unacceptable. Id. at 18. After determining that SBD had submitted the proposal with the highest technical quality, the agency evaluated SBD's proposed price of \$84,864,853 and concluded that it was "a realistic and reasonable price." Id. at 19-24. SBD was selected for award. Id. at 27.

Subsequently, the contracting officer e-mailed SBD a message captioned "Discussion points, Clarifications and Technical Questions" for SBD to address. AR, Tab 12, CMS Request for Price Reduction, Clarification, and Discussions, at 1. SBD responded to the agency by providing revisions to its technical proposal and reducing its price. AR, Tab 13, SBD Response to CMS. The agency evaluated SBD's responses to the agency's questions and decided that they were adequately addressed. AR, Tab 15, Award Decision Memorandum, at 27; see also Tab 14, Technical Evaluation Panel (TEP) Review of Revised SBD Quotation. The contracting officer concluded that SBD's quotation represented the best value to the agency because it provided "the highest technical quality considered necessary to achieve the project objectives, with a realistic and reasonable price" of \$74,298,836.89, and again selected SBD for award. AR, Tab 15, Award Decision Memorandum, at 28.

On June 16, 2017, Verisys was advised that SBD had been selected for award, and was provided a brief explanation of the basis for award. AR, Tab 17, Verisys Award Notice & Explanation. This protest followed.

## DISCUSSION

Verisys raises multiple challenges to the agency's evaluation of proposals and conduct of the procurement. For example, Verisys protests: (1) the agency's technical evaluation of proposals; (2) the agency's price evaluation; (3) the agency's unfair competitive advantage and conflicts of interest determinations; (4) the agency's conduct

of price reduction exchanges; and (5) the manner in which the agency amended the RFQ during the procurement. As discussed below, we deny the protests.<sup>5</sup>

## Technical Evaluation

Verisys challenges two significant weaknesses and a deficiency identified by the agency in its stage two evaluation of Verisys' technical merit. Protest at 12-14. The protester argues that the agency unreasonably determined that its proposal warranted a rating of unacceptable under the technical merit factor. Comments & 2nd Supp. Protest at 31-35. The agency responds that it reasonably identified five weaknesses, two significant weaknesses, and one deficiency, and on that basis assigned a rating of unacceptable to the Verisys proposal under the technical merit factor. Contracting Officer's Statement (COS) at 6-9; Memorandum of Law (MOL) at 8-12.

In reviewing a protest against the propriety of an evaluation, it is not our role to independently evaluate proposals and substitute our judgment for that of the contracting activity. Sapient Gov't Servs., Inc., B-410636, Jan. 20, 2015, 2015 CPD ¶ 47 at 3. Rather, we review an evaluation to ensure that it was reasonable and consistent with the evaluation criteria and applicable procurement statutes and regulations; a protester's disagreement with the evaluation does not show it lacked a reasonable basis. Id. at 3-4. It is a vendor's responsibility to submit a proposal that responds to, and demonstrates a clear understanding of, the solicitation requirements; where a vendor fails to do so, the vendor runs the risk that the agency will evaluate its proposal unfavorably. United Contracting, LLC, B-408279, June 25, 2013, 2013 CPD ¶ 150 at 4; International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 8.

The first significant weakness identified by the agency concerned Verisys' failure to demonstrate Medicare provider enrollment knowledge. Specifically, section 7.1 of the SOO, regarding expanding the PECOS system to an enterprise enrollment system, stated the following objective with respect to a Medicaid service approach:

Medicare and Medicaid alignment will be a high priority addition to the enrollment pipeline within PECOS. CMS will partner with a contractor who maintains the proper staff and business relationships to ensure Medicare and Medicaid competency. This includes a broad, as well as deep understanding of the technical integration requirements, policies, and the day-to-day operations surrounding the majority of the different state Medicaid provider enrollment programs.

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<sup>5</sup> Verisys' protest and supplemental protests raised numerous allegations. While our decision here does not specifically discuss each and every argument and/or variations of the arguments, we have considered all of Verisys' assertions and find no basis to sustain the protest.

RFQ, attach. J.1, SOO at 6. Section 7.4 of the SOO set forth the government's enterprise and development objectives. This section also provided healthcare and fraud business knowledge objectives, stating in relevant part:

The contractor will be expected to maintain the proper staff and business relationships to have strong knowledge of Healthcare and Fraud Prevention as it relates to CMS objectives, including: reasonably comprehensive (broad and detailed) knowledge of Medicare Enrollment, CMS policy/procedures and provider credentialing.

Id. at 9. In addition, the RFQ included the Digital Services Playbook published by the U.S. Digital Service, which the agency followed to inform its evaluation of vendors' proposals; one recommendation in the playbook (play 7) is to "[b]ring in experienced teams." RFQ, attach. J.13, Digital Services Playbook, at 1 and 6 ("When outside help is needed, our teams should work with contracting officers who understand how to evaluate third-party technical competency so our teams can be paired with contractors who are good at both building and delivering effective digital services. The makeup and experience requirements of the team will vary depending on the scope of the project.").

The agency assigned Verisys' proposal a significant weakness here and stated, in pertinent part:

[REDACTED], the [vendor] does not demonstrate proper staff and business relationships to provide a broad and deep understanding of the CMS policies and day-to-day operations surrounding provider enrollment, PECOS end users, and [Medicare administrative contractors (MACs)]. This also does not fulfill the evaluation criteria which calls for adhering to the plays of the Digital Services Playbook and this [significant weakness] is related directly to play #7 - 'Bring in experienced teams'.

AR, Tab 9D, Verisys Stage Two Evaluation Report, at 5. Verisys argues that this significant weakness is unfounded because Verisys' staff has extensive experience providing healthcare goods and services as well as expertise in healthcare and government compliance. Protest at 12-13. Verisys identifies multiple citations to its proposal that it argues the agency failed to consider and properly credit Verisys' proposal with demonstrating Medicare provider enrollment knowledge. Id. at 13; see also Comments & 2nd Supp. Protest at 31-33; 2nd Supp. Comments at 23.

The agency argues that the Verisys proposal included several general statements regarding its experience, but failed to detail how its experience or its staff provided the knowledge required by the SOO [REDACTED]. TEP Chair Statement at 2-3; see AR, Tab 9D, Verisys Stage Two Evaluation Report, at 5. Further, although the agency recognized that Verisys had experience with the collection and review of information related to credentialing providers and ensuring regulatory compliance, it did not demonstrate specific knowledge of CMS policies and day-to-day operations of provider enrollment, PECOS end users, and Medicare administrative contractors. Id. at 2; AR,

Tab 9D, Verisys Stage Two Evaluation Report, at 5. The agency explains that despite the fact that CMS personnel and Medicare administrative contractors will be available to the contractor during requirements development and periodic review of the delivered product, the rapid agile-based delivery cycle and scope of the product “requires the developer to independently maintain high levels of knowledge related to CMS Medicare and Medicaid Provider Enrollment and day-to-day operations surrounding PECOS end users and MACs in order to make timely and appropriate moment-to-moment technical and design decisions.” TEP Chair Statement at 3.

We find unpersuasive the protester’s challenge to this assessment of a significant weakness. Our review confirms that Verisys repeatedly stated that it had 20 or more years in healthcare compliance and technology, but nowhere in the proposal does Verisys identify [REDACTED] specific expertise in Medicare and Medicaid provider enrollment and the day-to-day operations of CMS, PECOS end users, and Medicare administrative contractors, that could provide daily input to the company’s development team. Accordingly, we have no basis to question the reasonableness of the agency’s evaluation in this regard.

The agency also identified as a significant weakness the lack of detail in Verisys’ proposal for how it would transition its proposed CheckMedic application, [REDACTED] to a CMS hosted environment. AR, Tab 9D, Verisys Stage Two Evaluation Report, at 5-6. The RFQ required that vendors describe in the PWS their approach to hosting as provided in the SOO. RFQ, attach. J.2, Instructions to Offerors, at 10. The SOO states that CMS has a preference for cloud-based hosting, and that “CMS will provide hosting to the developer and can offer both on-premises in Virtual Data Center as well as cloud-based on Amazon Web Services.” RFQ, attach. J.1, SOO at 15. In addition, the SOO identified a number of operating constraints that listed “laws, rules, regulations, standards, technology limitations and other constraints that the service and/or service provider must adhere to or work under,” including the requirement that “PECOS 2.0 must utilize CMS shared services and must be compliant with the CMS Technical Architecture Standards.” Id. at 16.

Verisys argues that the agency’s criticism is invalid and inconsistent because the agency stated a preference for cloud-based hosting, and [REDACTED]. Protest at 13-14. The agency acknowledges that Verisys [REDACTED], and that Verisys did in fact provide some information in its proposal regarding its architecture, but argues that the information provided did not adequately demonstrate that CheckMedic complies with CMS’ Technical Architecture Standards. MOL at 10. The agency explains that these standards govern the security, software design, infrastructure configuration, and operational interconnectivity of all systems within CMS, and the fact that [REDACTED] does not mean that it would comply with the CMS Technical Architecture Standards. Id.; see also TEP Chair Statement at 3-4.

In its comments, Verisys responds that the agency failed to evaluate the correct section of its proposal. Verisys states that it discussed its “cloud-first” policy in a different section of its proposal, and the agency failed to recognize its commitment to comply

with CMS technical standards. Comments & 2nd Supp. Protest at 33-34; see also 2nd Supp. Comments at 24. However, the single sentence in this section of its proposal regarding satisfaction of the Technical Architecture Standards states: “[REDACTED].” AR, Tab 8G, Verisys PWS, at 46. In its evaluation, the agency concluded that Verisys failed to provide sufficient “detail as to how [CheckMedic] will be transitioned to a CMS hosted environment.” AR, Tab 9D, Verisys Stage Two Evaluation Report, at 5. Verisys’ promise to comply with technical requirements did not provide details to demonstrate how it would actually comply with the technical requirements, as required by the RFQ. Consequently, the protester has not shown that the agency’s assessment of the significant weakness was unreasonable.

In addition, the agency identified as a deficiency the failure by Verisys to adequately describe full operations and maintenance and continuous improvement support for PECOS 2.0 beyond the redesign effort. AR, Tab 9D, Verisys Stage Two Evaluation Report, at 6-7. Section 7.4 of the SOO (Enterprise and Development Objectives) included as an objective full operations and maintenance and continuous improvement support for PECOS 2.0 beyond the redesign effort, to “support rapid, cost effective modification/upgrade/technology updates and additions and the ability to easily and inexpensively upgrade existing functionality and workflows.” RFQ, attach. J.3, SOO at 8. Verisys argues that its PWS not only included a section on full operations and maintenance, but that “full operations and maintenance [O&M] support and continuous improvement of PECOS 2.0 is built into Verisys’ proposed solution,” and provides multiple citations to its proposal for support. Protest at 14; see also Comments & 2nd Supp. Protest at 34.

The agency acknowledges that the Verisys PWS includes a section titled “Full O&M,” however, the TEP concluded that the proposal did not adequately address the full spectrum of operations and maintenance requirements, such as support for PECOS 2.0 data, infrastructure maintenance in a production environment, and monitoring. MOL at 11; see also TEP Chair Statement at 5. Our review of the record confirms that in this section of its PWS, Verisys identifies [REDACTED]. AR, Tab 8G, Verisys PWS, at 36. While the information in this section of the proposal addresses continuous improvement support for PECOS 2.0 beyond the redesign effort, neither this section nor the others cited by Verisys in its protest provide any detail about how Verisys will perform full operations and maintenance. The protester has not persuasively refuted the reasonableness of the agency’s identification of this deficiency.<sup>6</sup>

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<sup>6</sup> Verisys also argues that CMS was required to refer it to the Small Business Administration (SBA) for a certificate of competency determination upon determining that its proposal was unacceptable. Comments & 2nd Supp. Protest at 12-14. However, as discussed above, the agency’s finding that Verisys’ proposal was unacceptable under the technical merit subfactor was based upon Verisys’ failure to adequately explain or demonstrate the merit of its approach to fulfilling the PECOS 2.0 requirements. Where, as here, an agency rejects a proposal as technically unacceptable on the basis of factors not related to responsibility, referral to the SBA is  
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## Unfair Competitive Advantage

Verisys argues that the contracting officer failed to identify an unfair competitive advantage involving a former CMS employee proposed as a key person in the SBD proposal. Protest at 16-18. The protester alleges that publicly available information suggests that the former CMS employee may have provided SBD with an unfair competitive advantage because of the potential for unequal access to information. Id. at 17. The protester also argues that upon realizing that SBD had proposed a former CMS employee as a key person, the agency should have found SBD ineligible for award because it failed to disclose the matter as required by the solicitation. Comments & 2nd Supp. Protest at 8-9.

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR § 3.101-1; see VSE Corp., B-404833.4, Nov. 21, 2011, 2011 CPD ¶ 268 at 7. In this regard, where a firm may have gained an unfair competitive advantage through its hiring of a former government official based on the individual's knowledge of non-public information, the firm can be disqualified from a competition based on the appearance of impropriety which is created by this situation, that is, even if no actual impropriety can be shown, so long as the determination of an unfair competitive advantage is based on hard facts. Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 28. Whether the appearance of impropriety based on an alleged unfair competitive advantage exists depends on the circumstances in each case and ultimately, the responsibility for determining whether to continue to allow a vendor to compete in the face of such an alleged impropriety is a matter for the contracting agency, which will not be disturbed unless shown to be unreasonable. Id. at 29. While the disqualification of a vendor need not be based on actual impropriety, it must be based on more than mere innuendo or suspicion, and a person's familiarity with the work obtained via a prior position in the government is not, by itself, evidence of an unfair competitive advantage. Id.

On this record, we find that the contracting officer reasonably identified and investigated whether an unfair competitive advantage existed due to a former CMS employee being proposed as a key person by SBD. The agency explains that upon recognizing that SBD had proposed a former CMS employee as a key person, the contracting officer made inquiries with the TEP and determined that the individual had never been involved in the PECOS 2.0 procurement. COS at 11-12; MOL at 17-18. The agency further argues that this determination has been subsequently validated by the declaration

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not required. Tyonek Worldwide Servs., Inc.; DigiFlight, Inc., B-409326 et al., Mar. 11, 2014, 2014 CPD ¶ 97 at 12-13; Light-Pod, Inc., B-401739, B-401739.2, Nov. 12, 2009, 2009 CPD ¶ 238 at 5.

submitted by the former CMS employee wherein he confirms that he did not have any role in the PECOS 2.0 program or procurement.<sup>7</sup> MOL at 19; 2nd Supp. MOL at 9. In short, the protester has alleged no “hard facts” to show that the contracting officer’s investigation or conclusions were unreasonable. See McKissack-URS Partners, JV, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 4.

#### Conflicts of Interest

Verisys also argues that SBD’s principal subcontractor, Booz Allen Hamilton, has an unmitigated biased ground rules organizational conflict of interest that requires Booz Allen’s exclusion from the competition. Comments & 2nd Supp. Protest at 1-7. Specifically, Verisys alleges that Booz Allen “likely contributed to the development of concepts and future characteristics for PECOS 2.0 that were incorporated into the various solicitation documents, including the Concept of Operations.” Id. at 6. Verisys further argues that the contracting officer failed to perform and document any investigation of the conflicts of interest disclosures made by Booz Allen. Id. at 7.

The RFQ required that proposals include information regarding organizational conflicts of interest, to include information regarding contractor business ethics, conflicts of interest, and compliance programs, for the vendor and its proposed subcontractors. RFQ, attach. J.2, Instructions to Offerors, at 7-8. SBD identified Booz Allen as a subcontractor in its proposal, and included the required conflicts of interest information for Booz Allen in its stage one proposal. AR, Tab 5B, SBD Stage One Volume 2 Proposal, at 4. In its submission, Booz Allen disclosed that from May 2013 to March 2014, it had performed as a subcontractor to Tantus Technologies, Inc. under the contract that resulted in Tantus Technologies’ ineligibility to compete.<sup>8</sup> Booz Allen’s disclosure stated:

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<sup>7</sup> The former government official states in his declaration:

I did not have any role in the PECOS 2.0 program or procurement. I was not responsible or involved in any capacity in preparing or developing requirements for PECOS 2.0, or in any of the acquisition-related functions related to the program. At no time during my employment with CMS did I receive access to any confidential, proprietary, or source selection information related to either the original PECOS program or the PECOS 2.0 procurement. At the time I left CMS, the PECOS 2.0 solicitation had not been released, and I had no knowledge of its contents.

See Intervenor Req. for Dismissal, Exh. 1, Decl. of SBD Key Person, at 2.

<sup>8</sup> The RFQ excluded a contractor, Tantus Technologies, Inc., from competing for the task order, stating: “Tantus provided input on the details of the requirement for PECOS 2.0 system development. Tantus’ role in building the requirement would provide an unfair competitive advantage.” Id. at 7. The Tantus Technologies contract ended on March 31, 2014. 2nd Supp. COS at 2.

CMS - TO #4 - PECOS Redesign: In the interests of transparency, Booz Allen discloses that, as a subcontractor to Tantus under Task Order #0004, Booz Allen provided the following services in relationship to the overarching Prime task order contract referenced above: assisted in development of operational needs assessment, preparation of concept of operations, and definition of high-level concept definition and operational/business requirements, and creation of an overarching implementation strategy.

**ASSESSMENT REGARDING ABSENCE OF ACTUAL OCI:** Booz Allen, however, does not believe that this work gives rise to an actual or potential conflict of interest in relation to this opportunity, because it did not provide any support [to the] Prime's Optional Task 8, "Acquisition Support". Specifically, Booz Allen had no access or input into [request for information (RFI)] development or review of RFI response; had no access to any pre-decisional acquisition package documentation (e.g., [independent government cost estimates], SOOs/SOWs, or any other materials related to [the] instant acquisition package); and did not contribute to the development of any technical requirements, statement of work [SOW], or other acquisition package related materials developed by Prime under the Prime's Task Order.

AR, Tab 5B, SBD Stage One Volume 2 Proposal, attach. J-7, Booz Allen Submission, at 14. Booz Allen concluded that there was no organizational conflict of interest. Id. The contracting officer states that he reviewed Booz Allen's submission as part of his evaluation of SBD's proposal in the stage one evaluation, and again before award, and concluded that there were no conflicts of interest that would preclude SBD or Booz Allen from award of the PECOS 2.0 task order. 2nd Supp. COS at 2; see also AR, Tab 15, Award Decision Memorandum, at 19.

Further, the agency submitted a statement from the TEP Member that authored the Concept of Operations document provided in the RFQ. The TEP Member stated that the Concept of Operations was created in collaboration with internal CMS partners, beginning approximately in October 2014, and ending in December 2015.<sup>9</sup> TEP Member Statement at 1-2. The TEP Member further stated that the document he created was not a revision to the Concept of Operations document created by Tantus Technologies, and that the Tantus Technologies document was "significantly out of date." Id. at 2. Although the TEP Member did incorporate some information from Tantus Technologies' Concept of Operations document, he also incorporated

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<sup>9</sup> The TEP Member also stated that his involvement in the PECOS 2.0 procurement began after Tantus Technologies' contract had concluded, that he was unaware that Booz Allen was a subcontractor to Tantus Technologies, and that he did not know of Booz Allen's level of involvement during the performance of the contract. TEP Member Statement at 1.

information and suggestions from “many” of the 24 contractor submissions received in response to an RFI issued by CMS in March 2015. Id.

A biased ground rules organizational conflict of interest arises where a firm, as part of its performance of a government contract, has in some sense set the ground rules for the competition for another government contract by, for example, writing the statement of work or providing materials upon which a statement of work was based. FAR §§ 9.505-1, 9.505-2; Networking & Eng’g Techs., Inc., B-405062.4 et al., Sept. 4, 2013, 2013 CPD ¶ 219 at 10. 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. BAE Sys. Tech. Solutions & Servs., Inc., B-411810.3, June 24, 2016, 2016 CPD ¶ 174 at 7-8. Here, the record does not support the protester’s allegation that Booz Allen participated in the creation of the Concept of Operations document, or any other requirements, included in the solicitation. We find reasonable the contracting officer’s conclusion that no conflicts of interest precluded award to SBD.<sup>10</sup>

## Prejudice

Verisys raises a variety of other challenges to the agency’s evaluation and conduct of the procurement. However, none of these other challenges, even were we to find any merit in them, establish that the protester would have had a substantial chance for award. Competitive prejudice is an essential element of every 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, even if deficiencies in the procurement are found. DynCorp Int’l, LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13.

For example, Verisys argues that the agency engaged in unfair and unequal discussions with only SBD, and “spoon-fed” to SBD revisions to its technical proposal to make its deficient offer awardable.<sup>11</sup> Supp. Protest at 4-7. The agency argues that it

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<sup>10</sup> Verisys also argues that another subcontractor proposed by SBD, Oran, Inc., has a conflict of interest because it previously performed a subcontract under which it provided design, development, and maintenance support for the PECOS program. Comments & 2nd Supp. Protest at 7-8. The agency responds that the contracting officer reasonably evaluated conflicts of interest and determined that none existed, and that work performed under the prior PECOS contract that provided support to the current PECOS system would not provide a competitive advantage in this competition to design the new PECOS 2.0 system. 2nd Supp. COS at 2-3. We also deny this protest ground because the protester has not alleged any “hard facts” that indicate the existence or potential existence of a conflict. See BAE Sys. Tech. Solutions & Servs., Inc., supra.

<sup>11</sup> Verisys has also challenged the agency’s overall rating of excellent for SBD’s stage two proposal, arguing, for example, that two weaknesses identified by the TEP should

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engaged in price reduction exchanges with SBD, in accordance with FAR § 8.405-4. We recognize, and the record indicates, that when the agency engaged in its exchanges with SBD, it accepted and evaluated revisions to both SBD's technical proposal and its price quotation. See AR, Tab 14, TEP Evaluation of SBD Revised Quotation. However, the record also shows that the agency selected SBD for award prior to engaging in these exchanges, after concluding that Verisys and two other vendors' proposals were technically unacceptable, and that another proposal rated as satisfactory did not provide the best value to the government. See AR, Tab 11, Pre-Award Decision Memorandum, at 25-26.

As another example, Verisys also argues that the agency improperly amended the solicitation to make stage one and stage two proposals of equal importance, and failed to implement the corrective action promised in response to Verisys' most recent protest because it did not reevaluate Verisys' stage one proposal, resulting in an unfair evaluation. Comments & 2nd Supp. Protest at 14-17, 29-30. However, the record shows that in response to questions from the vendors invited to participate in stage two of the competition, the agency amended the solicitation to identify the weight it would give to the different stages of the evaluation. See 2nd Supp. COS at 4. The record also shows that Verisys was not considered for award because its stage two proposal (not its stage one proposal) had been found to be technically unacceptable. AR, Tab 11, Pre-Award Decision Memorandum, at 25.

Finally, Verisys argues that the agency failed to perform the price evaluation required by the RFQ. Because, as discussed above, we conclude that CMS reasonably found Verisys' stage two proposal to be technically unacceptable, Verisys is not an interested party to raise this issue. VariQ Corp., B-407193, Nov. 27, 2012, 2013 CPD ¶ 233 at 4. Upon determining that Verisys' proposal was technically unacceptable, the agency properly excluded Verisys from further consideration for award. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 5. In sum, we find no basis to

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have been considered significant, that notes and questions identified by the TEP represent additional weaknesses in the proposal, and that SBD was improperly credited twice for a single relationship with a proposed subcontractor. Comments & 2nd Supp. Protest at 19-22. The TEP's rating of SBD's technical merit as excellent was based on its identification of seven strengths and two weaknesses, and combined with ratings of satisfactory for past performance, good for management plan, and acceptable for 508 compliance, assigned an overall rating of excellent. AR, Tab 9C, SBD Stage Two Evaluation Report, at 3-7; 2nd Supp. COS at 5. Based on our review of the record, we find the agency's evaluation of SBD's proposal unobjectionable. Although the protester disagrees with the agency's conclusions, this disagreement does not provide a basis to sustain the protest. AllWorld Language Consultants, Inc., B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 3.

sustain Verisys' protest because it has failed to establish that it had a substantial chance of receiving the award.

The protest is denied.

Susan A. Poling  
General Counsel