



Decision

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Matter of: LOGC2, Inc.

File: B-416075

Date: June 5, 2018

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DIGEST

1. Protest that the agency failed to reasonably evaluate the awardee's costs is denied where the record shows that the agency reasonably evaluated the awardee's proposed costs, taking into account the awardee's technical approach and individual cost elements.
2. Protest that the agency failed to reasonably evaluate the offerors' proposals under the technical/risk factor is denied where the agency's evaluation was reasonable in accordance with the solicitation criteria.
3. Protest that the agency did not meaningfully consider whether task orders held by awardee's subcontractor created an impaired objectivity and unequal access to information organizational conflict of interest (OCI) is denied where the agency reasonably investigated awardee's potential OCI and the protester does not show that the agency's conclusions were unreasonable.

DECISION

LOGC2, Inc., d/b/a Connected Logistics, a small business located in Huntsville, Alabama, protests the award of a task order issued under the Army's Program Management Support Services 3 (PMSS 3) indefinite-delivery, indefinite-quantity (IDIQ) contract, to Zantech IT Services, Inc., a small business of Tysons Corner, Virginia, by the Department of the Army, Army Contract Command, pursuant to request for task order proposals (RFTOP) No. W52P1J-17-R-TMS3 for technical and management support services (TMSS 3). The protester, the incumbent contractor, challenges the

agency's evaluation and award decision. LOGC2 also alleges that the agency failed to address a potential organizational conflict of interest (OCI) involving the awardee's subcontractor.

We deny the protest.

BACKGROUND

On June 7, 2017, the Army issued the solicitation to small business PMSS 3 IDIQ contract holders pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5. RFTOP at 1. The RFTOP contemplated the award of a cost-plus-fixed-fee task order with a 1-year base period and three 1-year option periods. Id. at 1. The solicitation stated that award would be made on a best-value tradeoff basis based upon the following factors: technical/risk and cost/price. Id., add. 0004, Instructions and Evaluation Criteria, at 18. The RFTOP also provided that the technical/risk factor, which included two subfactors: technical capabilities and management capabilities, was significantly more important than the cost/price factor. Id.

With respect to the technical/risk volume, the solicitation required offerors to provide a complete and detailed description of their approach to executing the performance requirements of the performance work statement (PWS), which divided the work into the following six tasks: enterprise resource planning; business process support; solution implementation; data center engineering; cybersecurity/information assurance; and task order management. Id., add. 0001, PWS, at 20. Under the technical capabilities subfactor, offerors were to provide their approach for meeting the requirements of tasks one through five, including any identified corporate, technical or specialized experience where the approach was proven. Id., add. 0004, Instructions and Evaluation Criteria, at 7. Under the management capabilities subfactor, offerors were to provide their approach to personnel management (staffing, replacements, governance and conflict resolution, knowledge distribution, and personnel qualifications); complete a staffing hours and labor category skill matrix; and identify key personnel. Id. at 7-9.

The agency's evaluation of the offerors' proposals under the technical/risk factor would assess the degree and extent to which the proposal satisfies the requirements set forth in the RFTOP to include consideration of feasibility and risk. Id. at 19. The technical capabilities subfactor evaluation would assess in relevant part: the extent to which the description of the proposed approach and rationale meets technical tasks one through five with processes, methods, and functions that are proven, mature, complete, and feasible as related to the RFTOP requirements. Id. at 20. The agency's evaluation of the management capabilities subfactor would assess an offeror's approach for meeting the requirements in task six, task order management, including: the offeror's approach for recruiting, managing, and retaining a qualified and capable workforce that possesses the necessary experience, education, certifications, clearances, and skills to support the entire scope and period of performance; the offeror's approach to replace departed personnel; the offeror's description of the governance procedures; and the offeror's key personnel. Id. at 20-21. An offeror's labor category and skill matrix would also be

evaluated to determine the extent to which every labor category, position description, personnel qualification, and skill level proposed are complete, realistic, feasible, and include an appropriate number of personnel hours to meet the PWS requirements; the proposed position specific skills, certifications, and education credentials are realistic and relevant to the PWS tasks; and the key personnel and qualifications are uniquely matched to the position. Id. at 21.

With respect to the cost/price volume, the solicitation required offerors to complete a summary cost/price spreadsheet, a detailed cost spreadsheet in support of the summary spreadsheet, and a cost/price narrative to substantiate the proposed cost/prices. Id. at 9. The RFTOP provided that the narrative must include a basis of estimate for all proposed cost elements. Id. at 11. The basis of the offerors' proposed labor rates was to include supporting documentation such as: current payroll records, wage surveys, collective bargaining agreements, and/or wage determinations. Id. at 11-12. The solicitation also required offerors to explain why the offeror selected each wage survey title from the wage survey and how it used that information to calculate the proposed labor rates. Id. at 12.

The Army's evaluation of the offerors' price/costs would consider price reasonableness, cost realism, and whether the proposal reflects an understanding of the effort required. Id. at 22.

The agency received two proposals by the July 12 due date. Agency Report (AR), Source Selection Decision (SSD), at 2. The agency evaluated proposals and opened discussions with both offerors on August 31. AR, Tab 51-52, Discussion Notices; Contracting Officer Statement (COS), at 10. The agency provided evaluation notices to both offerors, which listed weaknesses and uncertainties identified in the proposals. Id., Tab 55-56, Evaluation Notices and Responses. LOGC2 and Zantech submitted proposal revisions by the September 14 due date. COS at 10. The agency evaluated the offerors' revised proposals and determined that cost/price concerns remained. Id. at 13. The agency re-opened discussions with the offerors solely to address the cost concerns. Evaluation notices were sent to LOGC2 and Zantech on October 23. AR, Tab 53-54, Reopen Discussion Notices. Both offerors responded with revised cost volumes by November 1. COS at 13. The agency's evaluation of the offers resulted in the following ratings:

	LOGC2	Zantech
Technical/Risk	Acceptable	Acceptable
Technical Capabilities	Acceptable	Good
Management Capabilities	Acceptable	Acceptable
Cost/Price	\$50,762,208	\$34,993,350

AR, Tab 91, SSD, at 5.

The source selection authority (SSA) conducted an integrated assessment of the proposals and concluded that Zantech offered the best value to the Army. Id. at 7. In this regard, the SSA found “[s]ince both Offerors are comparatively equal from a

technical perspective, with Zantech being slightly higher in Subfactor 1, Technical Capabilities, receiving a good versus LOGC2 receiving an acceptable, cost is the determining factor for award. There is no justification in paying a 45% premium, when both offerors are comparatively equal and at a realistic [and reasonable] cost." Id. at 6.

The Army issued the task order to Zantech on January 31, 2018. LOGC2 was notified of the award on February 1. AR, Tab 93, Unsuccessful Offeror Notice. After receiving a debriefing on February 20, LOGC2 filed this protest with our Office.¹

DISCUSSION

LOGC2 challenges the agency's evaluation of the offerors' proposals and the resulting award decision. The protester primarily alleges that the agency's cost realism evaluation was flawed; the agency improperly evaluated LOGC2's and Zantech's technical/risk proposals; the Army conducted improper discussions; the SSA's best-value award decision was unreasonable; and the agency failed to address an organizational conflict of interest related to the awardee's subcontractor. While we do not address each of the protester's various allegations, we have reviewed them all and find no basis to sustain the protest.²

Cost Realism

LOGC2 argues that the Army's cost realism analysis was flawed. The protester asserts that the agency failed to properly analyze the individual elements of Zantech's cost proposal; failed to calculate a most probable cost for Zantech's proposal; and failed to explain why it was realistic for the awardee to propose extensive incumbent capture at rates as low as the [DELETED] percentile of the market rate. Based on our review of the record, we find the agency's evaluation of the awardee's costs unobjectionable.

¹ The awarded value of the task order at issue exceeds \$25 million. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts. 10 U.S.C. § 2304c(e)(1)(B).

² For example, the protester alleges that the agency failed to find risk associated with the awardee's unbalanced direct labor rates. While we question the applicability of an unbalanced pricing analysis to cost reimbursable contract line items, based on our review of the record, we find no basis to sustain the protest because the protester has not demonstrated that any of Zantech's proposed direct labor rates are overstated.

See MSC Industrial Direct Company, Inc., B-409585 et al., June 12, 2014, 2014 CPD ¶ 175 at 6-7 (To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices are overstated; that is, it is insufficient for a protester to show simply that some line item prices are understated. This is so because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing.).

As stated above, the task order competition here was conducted among PMSS 3 contract holders pursuant to FAR subpart 16.5. In reviewing protests of awards in a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. DynCorp Int'l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7.

Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost to determine whether the estimated proposed costs are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal. FAR § 15.404-1(d)(1); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7 (considering FAR part 15 cost realism standards in a FAR part 16 task order procurement). Agencies are required to perform such an analysis when awarding cost-reimbursement contracts to determine the probable cost of performance for each offeror. FAR § 15.404-1(d)(2). Agencies are given broad discretion to make cost realism evaluations. Burns & Roe Indus. Servs. Co., B-233561, Mar. 7, 1989, 89-1 CPD ¶ 250 at 2. An agency is not required to conduct an in-depth cost analysis, see FAR § 15.404-1(d)(1), or to verify each and every item in assessing cost realism; rather, the evaluation requires the exercise of informed judgment by the contracting agency. See AdvanceMed Corp.; TrustSolutions, LLC, B-404910.4 et al., Jan. 17, 2012, 2012 CPD ¶ 25 at 13. Consequently, our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26. Based on our review of the evaluation record, we find no basis to conclude that the agency's cost realism analysis was unreasonable.

The record demonstrates that the agency thoroughly reviewed Zantech's technical approach, and the individual cost elements in Zantech's cost proposal pertaining to direct labor, indirect rates (fringe rates, overhead rates, general and administrative (G&A) rates), proposed fee, the six-month option to extend services, and the offeror's accounting system to determine whether the proposed costs were reasonable and realistic. AR, Tab 88, Zantech Cost Realism Evaluation, at 3-11. As relevant here, with respect to Zantech's direct rates, the agency compared the labor rates to data retrieved from salary.com for the Alexandria, Virginia location. Id. at 3. The agency issued multiple cost evaluation notices to Zantech, including evaluation notices requesting an explanation of the selection of specific labor categories and the percentiles chosen for each category. AR, Tab 56, Zantech Evaluation Notices and Responses. Zantech responded to the evaluation notices by providing additional rationale to support the rates. Id. Zantech's revised proposal explained that the offeror chose to keep the salary range in the [DELETED] to [DELETED] percentiles for a majority of salaries, but where the level of effort required specialized and skilled personnel, Zantech proposed salaries above the [DELETED]. AR, Tab 81, Zantech Revised Cost Proposal, at 5. Zantech explained that this approach enabled the firm to maintain low costs yet hire

highly-qualified individuals where needed. Zantech also provided a screenshot from salary.com for each proposed position, with an explanation of position functions and proposed salary based on that data, and an explanation why each proposed salary/percentile range was appropriate. Id. at 6-20. The agency reviewed this additional information and accepted Zantech's proposed rates. AR, Tab 88, Zantech Cost Realism Evaluation, at 3-11. Accordingly, with respect to LOGC2's general allegation that the agency failed to properly analyze the individual elements of Zantech's costs, we find the agency's analysis reasonable.

Next, with respect to the agency's most probable cost calculation, LOGC2 argues that the agency failed to calculate the most probable costs of Zantech's proposal. LOGC2 contends that if the Army had properly analyzed Zantech's costs it would have made upward adjustments to account for Zantech's low direct labor rates. For example, the protester alleges that the agency failed to analyze the awardee's rates, which were as low as the [DELETED] percentile on salary.com.³ We find no basis to question the agency's analysis.

Zantech's cost proposal provided that, for direct labor costs, the firm "maintains a competitive wage and salary structure that has proven successful in recruiting and retaining professional employees." AR, Tab 81, Zantech Final Cost Proposal, at 3. The proposal provided that Zantech "recognizes individual contributions and promotes professional growth, which permits it to compete successfully in the job market" and that it is Zantech's "policy to pay wages and salaries based on local market value, the education and skill level of the employee, and the nature of the work performed." Id. Zantech's proposal stated that it priced direct labor rates based on actual salaries of current staff performing similar functions on similar contracts and has estimated salaries of all other positions required based on salary surveying from salary.com for the [DELETED]. Id.

As stated above, the record demonstrates that the agency reviewed the salary.com screenshots Zantech provided for each labor category proposed as well as Zantech's explanation for the selection of each labor category and associated direct labor rate. AR, Tab 88, Zantech Cost Realism Evaluation, at 3. The agency found that Zantech's direct labor rates were between the [DELETED] and [DELETED] percentiles for the labor categories on salary.com for the Alexandria, Virginia location. Id. The evaluators noted Zantech's explanation that it chose to propose a majority of salaries between the [DELETED] and [DELETED] percentile to keep costs low yet hire highly-qualified individuals. Id. The agency also found that Zantech proposed some salaries above the [DELETED] based on recognized level of effort for specialized and skilled personnel. Id. For example, Zantech proposed [DELETED] positions under the [DELETED] category: a [DELETED] proposed at the [DELETED] percentile on salary.com; a

³ The record demonstrates that Zantech proposed one labor category just above the [DELETED] percentile on salary.com, a [DELETED]. AR, Tab 81, Zantech Cost Proposal, at 11.

[DELETED] at the [DELETED] percentile; and a [DELETED] close to the [DELETED] percentile. See AR, Tab 81, Zantech Cost Proposal at 11-12; COS at 16-17. The cost analysis also confirmed that Zantech's technical approach was consistent with its proposed costs. AR, Tab 88, Zantech Cost Realism Evaluation, at 4. Based on this information and the agency's analysis of the rates, the cost evaluation team did not take exception to the support and rationale for Zantech's proposed direct labor rates or that of Zantech's subcontractors. Id. at 3-4. Overall, the evaluators concluded that Zantech's costs were "realistic for the work to be performed, the proposed cost elements reflect a clear understanding of the requirements, and the proposed cost elements are consistent with the unique methods of performance described in the Offeror's technical proposal." Id. at 6. The evaluators concluded that a most probable cost adjustment was not necessary for Zantech's proposed costs. Id.

The SSA reviewed the cost evaluators' conclusions. AR, Tab 91, SSD, at 5. She also noted a variance between the two offerors, analyzed this difference, and found that the difference in the total cost resulted from fee and labor rates proposed. Id. at 6. The SSA also reviewed Zantech's proposed choice of labor category and direct labor rates. Id. She also reviewed Zantech's responses to the agency's evaluation notices, and concluded that the Zantech proposal did not provide a risk to the government in light of the information it provided. Id. The SSA agreed with the cost evaluators that Zantech's costs were both realistic and reasonable. Id.

Based on our review of the agency's evaluation of the realism of Zantech's costs, we find no basis to conclude that the agency's evaluation was unreasonable. The agency conducted a thorough analysis of the awardee's rates and adequately documented the results of its analysis. The agency accepted the rates proposed by Zantech and therefore did not make any adjustments to Zantech's proposed costs. In this regard, Zantech's most probable costs were equal to its proposed costs. While the protester alleges that agency should have done more, the protester's disagreement with the agency's analysis does not provide a basis to sustain the protest.⁴

Finally, we find no support for the protester's allegation that the agency was required to explain why Zantech's low labor rates were realistic considering Zantech proposed

⁴ For example, LOGC2 also asserts that the agency evaluation was improper because it failed to compare Zantech's rates to incumbent rates. While consideration of the incumbent's historical rates, as advocated by the protester, is one acceptable method for evaluating the realism of a vendor's proposed costs, it is not the only reasonable method. As explained below, the awardee did not propose extensive incumbent capture and the solicitation did not require the agency to compare the proposed rates to that of the incumbent. In this regard, the protester's allegations are misplaced because the solicitation did not include the provision of FAR 52.222-46, evaluation of compensation for professional employees, which requires such an analysis. See SURVICE Eng'g Co., LLC, B-414519, July 5, 2017, 2017 CPD ¶ 237; RFTOP, add. 0010, Provisions and Clauses.

extensive incumbent capture. In this regard, the record demonstrates that Zantech did not propose extensive incumbent capture. Rather, Zantech proposed only to offer “customer-approved” incumbent personnel the first right-of-refusal. AR, Tab 66, Zantech Technical Proposal, at 23. Zantech’s proposal additionally noted that it has “personnel available and qualified to fill each position.” Id. The proposal further explained that Zantech maintains an extensive internal resume pool pre-screened for candidates clearances, with a broad range of skills, across multiple functional areas (of the IDIQ contract), to provide a responsive pipeline of qualified candidates, and has efficient hiring practices including: [DELETED]. Id. at 23-24. Thus, we find the agency’s evaluation unobjectionable.

Technical/Risk Evaluation

LOGC2 contends that the agency’s evaluation of the offerors’ technical/risk proposals was flawed. The protester alleges that the Army improperly assigned Zantech’s technical/risk proposal an acceptable rating because the awardee’s “low-ball offer” was fundamentally risky and not feasible. LOGC2 also asserts that the agency’s evaluation of its technical/risk proposal was unreasonable because the acceptable rating assigned was inconsistent with the solicitation’s adjectival ratings and the Army failed to credit LOGC2 with its outstanding incumbent performance. The protester also challenges the weakness assigned its proposal under the management capabilities subfactor. In this regard, the protester alleges that the weakness was unreasonable and further argues that the agency was required to inform LOGC2 of this weakness during the second round of discussions. We find that the agency’s evaluation was reasonable.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the contracting agency’s discretion, because the agency is responsible for defining its needs and the best method of accommodating them. URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. Id. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that an agency acted unreasonably. Id.

With respect to the agency’s evaluation of Zantech’s proposal, LOGC2 argues that the agency failed to identify the risk inherent in the awardee’s technical proposal. In this regard, LOGC2 alleges that Zantech cannot attract talented workers at the rates it proposed; thus, it has a high risk of poor performance. The protester contends that the agency failed to properly assess this risk, and if it had, Zantech would not have received an acceptable rating, which would render it ineligible for award.⁵ We disagree.

⁵ The solicitation required at least an acceptable rating under the technical/risk factor and each subfactor to be eligible for award. RFTOP, add. 0004, Instructions and Evaluation Criteria at 18.

The solicitation required offerors to provide their staffing approach for recruiting, managing, and retaining a qualified and capable workforce with the necessary experience, education, certifications, clearances, and skills to support this effort. RFTOP, add. 0004, Instructions and Evaluation Criteria, at 7-8. Under the management capabilities subfactor, the RFTOP advised that the agency would assess the offerors' approach to determine if it was feasible as related to the RFTOP requirements. Id.

Zantech's proposal provided that it "ha[d] already begun assembling a team" to respond to the solicitation "that has the experience needed to envision, transition, and deliver the services needed to meet/exceed" the program requirements. AR, Tab 66, Zantech Technical Proposal, at 21. Zantech's proposal provided experience to demonstrate its ability "to attract and retain well qualified personnel throughout the entire period of performance" including "[DELETED]." Id. at 22. The proposal also provided Zantech's staffing solution, which stated "[a]lthough we have personnel available and qualified to fill each position, we will give customer-approved incumbent personnel the first right-of-refusal for [DELETED]." Id. at 23. The proposal explained that Zantech maintains an extensive internal resume pool pre-screened for clearances, with a broad range of skills, across multiple functional areas (of the IDIQ contract), to provide a responsive pipeline of qualified candidates. Id. at 23-24. The proposal further stated that Zantech will use efficient hiring practices including: [DELETED]. Id. at 24.

As relevant here, the agency's evaluation of Zantech's management capabilities subfactor found two strengths in the areas of governance and conflict resolution, and transition-in plan.⁶ AR, Tab 86, Zantech Technical Evaluation, at 5. The agency concluded that while the proposal contained two strengths, the strengths were not significant enough to merit a rating of good.⁷ Id. Instead, the evaluators assigned a rating of acceptable finding that the offeror demonstrated solid procedures and processes to manage the contract requirements, with no worse than moderate risk. Id.

We find that agency conducted a reasonable analysis of Zantech's proposed staffing approach. While the protester does not agree that Zantech will be able to attract talented workers at the rates its proposed, the agency thoroughly reviewed Zantech's technical and cost proposal and found otherwise. Moreover, the source selection authority specifically questioned Zantech's direct labor rates and concluded that they

⁶ The agency's evaluation of Zantech's technical capabilities subfactor assigned 12 strengths and a rating of good. Id. at 2-3.

⁷ An acceptable rating was defined in the RFTOP as follows: "Proposal meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate." RFTOP, add. 004 at 22. A good rating was defined as follows: "Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate." Id.

provided no risk to performance. LOGC2's disagreement with the agency's judgments does not provide a basis to sustain the protest.

With respect to the agency's evaluation of LOGC2's proposal, the protester generally alleges that the agency assignment of an acceptable rating for LOGC2's technical/risk factor was improper. LOGC2 also contends that the Army unreasonably failed to assign multiple strengths to its proposal. We find no basis to sustain the protest on these bases.

The record demonstrates that the technical evaluators reviewed LOGC2's technical approach and assigned a rating of acceptable. AR, Tab 85, LOGC2 Technical Evaluation, at 1. The evaluators assigned eight strengths under the technical capabilities subfactor and rated this subfactor acceptable. Id. at 2-3. The evaluators assigned eight strengths and one weakness under the management capabilities factors, and rated this subfactor acceptable. Id. at 4-7.

In response to the protester's allegations, the agency asserts that in reaching the ratings assigned for the subfactors and technical/risk factor, the evaluators did not include a roll-up or mathematical calculation of the number of strengths assigned but assigned ratings based on the significance and impact of the supporting narrative. Rather, the evaluators concluded that LOGC2's proposal merited a rating of acceptable noting multiple strengths with no more than moderate risk. Id. at 1. The agency contends that this analysis was reasonable and in accordance with the RFTOP evaluation criteria. We agree.

As a general matter, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making; our Office has repeatedly rejected protest arguments that essentially seek a mathematical or mechanical consideration of the number of strengths or weaknesses assessed against the offerors. See Burke Consortium, Inc., B-407273.3, B-407273.5, Feb. 7, 2013, 2013 CPD ¶ 74 at 10-12. Moreover, there is no legal requirement that any agency must award the highest possible rating, or the maximum point score, under an evaluation factor simply because a proposal or quotation contains strengths or is not evaluated as having any weaknesses, or both. See Applied Tech. Sys., Inc., B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. While the protester's allegations in effect ask our Office to reevaluate its proposal, our review of the record shows that these arguments amount to nothing more than disagreement with the agency's considered technical judgments regarding the specific elements of LOGC2's proposal. SSI, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322 at 9. In this regard, the record demonstrates that the agency fully considered LOGC2's multiple strengths and reasonably concluded that LOGC2's proposal met the requirements but was not deserving of a higher adjectival rating. AR, Tab 85, LOGC2 Technical Evaluation, at 1-8. Moreover, contrary to the protester's allegation that the agency failed to credit LOGC2 for its outstanding incumbent performance, the record demonstrates that the agency recognized the protester's experience and assigned strengths in this regard. Id. at 1-2. Thus, we find no basis to disturb the agency's assignment of the overall acceptable rating.

The protester also challenges the agency's assignment of a weakness under the management capabilities subfactor. We find that the agency reasonably assessed this weakness.

The solicitation provided that the agency's evaluation of the management capabilities subfactor would assess the offeror's approach for meeting the requirements in PWS paragraph 3.6--task order management. RFTOP, add. 0004, Instructions and Evaluation Criteria, at 20. As relevant here, the agency would evaluate the extent to which the offeror's proposal meets key personnel requirements in the PWS, and the extent to which the offeror's proposal contains firm commitments for key personnel positions, as demonstrated by the letters of intent. The RFTOP identified four key personnel positions. Id., add. 0001, PWS, at 29-30.

In response to an agency evaluation notice questioning LOGC2's proposed use of [DELETED] key personnel, where the RFTOP only required four key personnel, the protester provided:

[i]n its original proposal, Team LOGC2 identified [DELETED] personnel as key. We intend to maintain these [DELETED] positions as key throughout the duration of the contract, subject to Government review and approval . . . Additionally, by designating the positions as key, we reduce the Government's risk by providing the Government with an opportunity to review and approve personnel and verify that they meet . . . mission requirements before they are introduced to the program.

AR, Tab 55, LOGC2 Evaluation Notice and Response, at 40. LOGC2's technical proposal revision additionally provided:

[I]long-term personnel consistency and continuity and risk reduction [would be] achieved through designation of [DELETED] key personnel ([DELETED] more than the four required and [DELETED] of whom are incumbents); this approach enables Government verification of key personnel confidence in staff readiness, skills, and capabilities and delivers proactive risk reduction through use of succession plans.

AR, Tab 58, LOGC2 Final Technical Proposal, at 21.

The evaluators concluded that LOGC2's approach to key personnel, which sought the government's review and approval of key personnel, "transfers the responsibility and risk from the contractor to the government if the personnel chosen for the position are unable to perform." AR, Tab 85, LOGC2 Technical Evaluation, at 5. The evaluators considered this a risk to the overall approach to recruiting key personnel and assigned a weakness. Id. The source selection official agreed with the weakness assessed and explained that the approach "could be an unacceptable personal services arrangement and transfers the responsibility and risk from the contractor to the Government. . . . Providing qualified candidates is LOGC2's responsibility not the Government['s].

Therefore, this is a risk to the overall approach to recruiting and key personnel.” AR, Tab 91, SSD, at 3.

LOGC2 argues that the assignment of this weakness was unreasonable. The protester contends that the weakness is inconsistent with the clear terms of the solicitation, which required offerors to provide resumes for key personnel replacements. RFTOP, add. 0001, PWS, at 29. The protester also argues that the source selection authority’s concern that approval of key personnel would create an improper personal services contract was misplaced. While we agree with the protester that there is no general statutory or regulatory prohibition against agency approval of key employees, and requiring agency approval does not create a personal services contract, see Danoff & Donnelly; Kensington Associates, B-243368, B-243368.2, July 26, 1991, 91-2 CPD ¶ 95 at 6, we find that the agency’s assessment of a weakness was reasonable due to the agency’s concern that the approval of LOGC2’s [DELETED] key personnel before they are introduced to the program transfers the responsibility and risk from the contractor to the government.

In its protest, LOGC2 contends that its approach did not create risk because the PWS required a contractor to submit to the procuring contracting officer/contracting officer representative, for approval, the resume and any other required data of the qualified replacement of key personnel. See RFTOP, add. 0001, PWS, at 29. We are not persuaded by this argument. While the PWS required the submission of resumes for replacement of key personnel during performance of the contract, the protester’s proposal states that it would provide the agency with an “opportunity to review and approve personnel . . . before they are introduced to the program.” AR, Tab 55, Evaluation Notices, at 40. Thus, to the extent that LOGC2 intended this language to reflect its process for replacement of key personnel, and not prior to contract performance, its proposal is unclear. Since it is an offeror’s responsibility to submit an adequately written proposal, we find no basis to conclude that the agency’s assignment of a weakness here was unreasonable.⁸ See Noridian Administrative Services, LLC, B-407355, B-407355.3, Dec. 21, 2012, 2013 CPD ¶ 15 at 8.

⁸ In any event, even if this weakness was inappropriately assigned, the protester has not demonstrated that it would be prejudiced. 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. Lockheed Martin Integrated Sys., Inc., B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 8. Here, the source selection authority found that the proposals were comparatively equal technically. The source selection authority also found that “[e]ven with a weakness in the area of key personnel, the strengths and overall management approach demonstrated that LOGC2 would have acceptable procedures and processes in place to manage this contract.” AR, Tab 91, SSD, at 4. Thus, it does not appear that the weakness assigned had a material effect on the source selection authority’s tradeoff

(continued...)

LOGC2 also argues that the agency engaged in discussions with the protester that were either misleading or not meaningful. As a general rule, FAR part 15, which pertains to negotiated procurements, does not govern task and delivery order competitions under FAR part 16, such as the procurement for the task order here. Furthermore, FAR § 16.505 does not establish specific requirements for discussions in a task order competition. P3I, Inc.; Quantech Servs., Inc., B-405563.4 et al., Aug. 6, 2015, 2015 CPD ¶ 333 at 13. Nevertheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. Id. We have reviewed the record, and find no basis to conclude that the agency's discussions with the protester were improper.

The Army informed LOGC2 of the areas of its proposal that required revision during the first round of discussions. In this regard, the Army identified multiple weaknesses and uncertainties. See AR, Tab 55, LOGC2 Evaluation Notices and Responses. LOGC2 responded to the evaluation notice and submitted a revised proposal. The key personnel weakness assigned under the management capabilities subfactor at issue here, was first incorporated into LOGC2's proposal after the first round of discussions. Thus, the agency was not required to open discussions to address this new weakness. Smiths Detection, Inc., B-298838, B-298838.2, Dec. 22, 2006, 2007 CPD ¶ 5 at 13 n.13. (Where a weakness is first introduced in an offeror's final proposal revision, after discussions are concluded, the agency has no obligation to reopen discussions to address the new weakness.) Moreover, while here the agency engaged in another round of discussions regarding the offerors' cost proposals, we find that the agency was not required to inform LOGC2 of the new weakness in its technical proposal. Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. See FAR § 15.306(d)(3). All-encompassing discussions are not required, nor is the agency obligated to "spoon-feed" an offeror as to each and every item that could be revised to improve its proposal; an agency is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. See Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 11.

In sum, we find that the agency's evaluation of the offerors' technical/risk factor and underlying subfactors was reasonable and in accordance with the solicitation criteria.

(...continued)

analysis. Moreover, the protester has not demonstrated how removal of this sole weakness would overcome the 45 percent cost premium.

Best Value

LOGC2 argues that the agency's evaluation was fundamentally flawed, which impacted the best-value tradeoff decision.

As stated above, we find no basis to conclude that the agency's evaluation was unreasonable. We also find, contrary to the protester's arguments, that the agency's best-value tradeoff was reasonable, consistent with the solicitation, and well documented. The record demonstrates that the SSA reasonably conducted and adequately documented her integrated assessment of the proposals. AR, Tab 19, SSD, at 3-4. For example, the source selection document demonstrates that the SSA confirmed the multiple strengths assigned to both offerors under the technical and management capabilities subfactors; analyzed the offerors' proposed costs; and as explained above, specifically reviewed Zantech's costs for realism. The SSA noted that Zantech received a higher rating under the management capabilities subfactor but concluded that both offerors were comparatively equal overall for the technical/risk factor. The SSA agreed with the evaluators that both offerors provided reasonable and realistic costs and determined that there was no justification for paying a 45 percent premium. We find nothing unreasonable in these assessments and conclusions.

Organizational Conflict of Interest

Finally, LOGC2 contends that the Army failed to address a potential OCI regarding Zantech's subcontractor, [DELETED]. In this regard, the protester alleges that [DELETED] is a prime contractor under the Army's Enterprise Resource Planning (ERP) IDIQ contract, under which the Army has executed at least 15 contract actions with [DELETED] to provide a range of ERP services. LOGC2 contends that the work to be performed under the current TMSS 3 task order is likely to include advisory and assistance services related to [DELETED] ERP IDIQ contract. The protester argues that [DELETED], thorough its participation in the current task order, may be unable to render impartial advice to the agency, and may be in a position to evaluate its own performance under the ERP IDIQ. LOGC2 alleges that [DELETED] role creates a high risk of an impaired objectivity OCI and an unequal access to information OCI, which the Army was required to identify and analyze. Had the Army conducted such an analysis, LOGC2 asserts that the agency would have concluded that [DELETED] role on Zantech's team creates an unacceptably high risk of an OCI that would have eliminated Zantech from award consideration.

The FAR provides that an OCI exists when, because of other activities or relationships with other persons or organizations, a person or organization is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage. See FAR § 2.101. FAR subpart 9.5, and decisions of our Office, broadly identify three categories of OCIs: biased ground rules, unequal access to information, and impaired objectivity. McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As

relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR § 9.505-4; DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6. An impaired objectivity OCI exists where a firm's ability to render impartial advice to the government will be undermined by the firm's competing interests, such as a relationship to the product or service being evaluated. FAR § 9.505-3; McConnell Jones Lanier & Murphy, LLP, supra.

Contracting officers are required to identify and evaluate potential OCIs as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts of interest before contract award. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting officer. Innovative Test Asset Solutions, LLC, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 17. 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. Id. at 18. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. 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. Id.

Based on our review of the agency's record, we conclude that the contracting officer, upon review of LOGC2's protest allegations, conducted, and documented, a comprehensive investigation regarding the potential for OCIs. In this regard, the contracting officer considered: Zantech's OCI mitigation plan; [DELETED] OCI mitigation plan, which was submitted with the ERP contract; the TMSS 3 PWS; and the ERP PWS. AR, Tab 100, CO OCI Declaration, at 2. The contracting officer also had conversations with the contracting officer for the ERP contract regarding [DELETED] contract and performance requirements. Id.

The contracting officer's investigation confirmed that [DELETED] is currently a prime contractor on the Army's ERP IDIQ contract and provides support for the General Fund Enterprise Business Systems (GFEBS) program, such as system applications sustainment and system infrastructure sustainment. Id. [DELETED] was required to submit and receive approval of an OCI mitigation plan, which was incorporated into its contract. Id. [DELETED] mitigation plan provides "No Army PMO [program management office] project support personnel of [DELETED] or any of [DELETED] subcontractors will in any way participate in the preparation of any Army ERP Services Task Order proposals. Both [DELETED] and its employees and subcontractors recognize that to do so would violate the provision of Nondisclosure Agreements and this Plan." AR, Tab 106, [DELETED] OCI Mitigation Plan at 5. The plan also states that:

[DELETED] shall establish an internal “firewall” separating Army ERP PMO project support personnel from the Army ERP Services task order proposal team. The OCI plan and firewall consists of seven elements . . . which will ensure that any potential conflict of interest situation resulting from a [DELETED] decision to bid on future task orders is adequately mitigated.

Id. at 3.

The contracting officer also noted that work on the TMSS 3 task order effort includes program support services to the GFEBS program management office, which includes functions such as support for the day-to-day program management organizational requirements. AR, Tab 100, CO OCI Declaration, at 3. The contracting officer examined the requirements to be performed on the TMSS 3 task order against the requirements of the [DELETED] GFEBS ERP contract and concluded that an OCI with Zantech's subcontractor [DELETED] does not currently exist. Id. The contracting officer acknowledged that while the potential for impaired objectivity or unequal access is possible, Zantech's and [DELETED] OCI plans provide the necessary mitigation to prevent any OCIs from occurring. Id. The contracting officer also found that in addition, “both Zantech's or [DELETED] contract support and recommendations will be vetted by the GFEBS' program manager[. As a result,] under TMSS 3[,] they will not be in a position to have direct influence or impaired objectivity as their support is to the GFEBS program manager, not directly to [DELETED] as a prime.” Id.

On this record, the Army reasonably found that there is no significant OCI as a result of [DELETED] work on the ERP IDIQ that cannot be adequately mitigated or avoided. The record shows that the contracting officer conducted a thorough investigation of LOGC2's OCI allegations. While the protester asserts that we should give little weight to the agency's post-protest analysis, an agency may provide information and analysis regarding the existence of a conflict of interest at any time during the course of a protest, and we will consider such information in determining whether the agency's determinations are reasonable. IBM Corp., B-415575, Jan 19. 2018, 2018 CPD ¶ 61 at 8 n.19; BAE Sys. Tech. Sols. & Servs., Inc--Recon., B-411810.4, Dec. 26, 2017, 2018 CPD ¶ 9 at 4 n.6. Accordingly, we find the agency meaningfully considered [DELETED] potential OCI and we have no basis to question the agency's conclusions in this regard.

The protest is denied.

Thomas H. Armstrong
General Counsel