



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

# Decision

**Matter of:** ORBIS Sibro, Inc.

**File:** B-417406.2; B-417406.3

**Date:** November 19, 2019

---

Jerome S. Gabig, Esq., and Christopher Lockwood, Esq., Wilmer & Lee, PA, for the protester.

Ambika Biggs, Esq., Hirschler Fleischer, for Patrona Corporation, the intervenor.  
Ryan Banach, Esq., and Sabrina Hay, Esq., Department of the Navy, for the agency.  
Michael Willems, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest that agency applied an unstated evaluation criterion by assigning its proposal a weakness for failing to address the provisions of a voluminous document incorporated by reference in the solicitation is denied when the solicitation directed offerors to propose in accordance with the document and the agency called the relevant portion of the incorporated document to the protester's attention repeatedly during discussions.
2. Protest alleging that awardee had an unequal access to information organizational conflict of interest and was involved in a Procurement Integrity Act violation is denied where the agency's investigation revealed no evidence that the awardee had access to nonpublic or procurement-sensitive information.

---

## DECISION

ORBIS Sibro, Inc., a small business of Mt. Pleasant, South Carolina, protests the issuance of a task order under the Department of the Navy's Seaport-E indefinite-delivery, indefinite-quantity (IDIQ) contract to Patrona Corporation, a small business of Arlington, Virginia, by the Department of the Navy for maintenance, planning and fleet support logistics services. The protester alleges that the agency erred in its evaluation of proposals and best-value tradeoff, and also failed to investigate the awardee's alleged organizational conflicts of interest (OCIs).

We deny the protest.

## BACKGROUND

The agency issued the request for proposals (RFP) on November 8, 2017, for services to support one of the Naval Sea Systems Command's (NAVSEA) field activities, the Submarine Maintenance Engineering, Planning and Procurement (SUBMEPP) activity. Memorandum of Law (MOL) at 3, 8. The RFP contemplated award on the basis of three evaluation factors: (1) technical capability; (2) past performance; and (3) cost/price. RFP at 88-92. Id. The RFP further provided that the technical capability factor would be divided into two sub-factors that would receive an adjectival rating: (1) Hypothetical Task Approach; and (2) Personnel. Id. The RFP also identified nine separate requirements, which would be assessed on a pass/fail basis. Id.

The RFP provided that the agency would assign the technical factor and the two technical subfactors one of the following ratings: (1) outstanding; (2) good; (3) acceptable; (4) marginal; or (5) unacceptable. RFP at 92-93. Similarly, the RFP indicated that the agency would assign one of the following past performance confidence ratings: (1) substantial confidence; (2) satisfactory confidence; (3) unknown confidence; (4) limited confidence; or (5) no confidence. Id. at 94.

The RFP contemplated award on the basis of a best-value tradeoff, and provided that technical capability was more important than past performance, but that the non-cost factors considered together were significantly more important than cost/price. Id. at 92. The RFP also noted that cost/price would increase in importance where other factors were comparatively equal. Id.

In December, 2017, the agency received two proposals, one from ORBIS and one from Patrona. MOL at 8. The agency conducted two rounds of discussions with both offerors, and directed them to provide any final proposal revisions by November 1, 2018. Id. at 9. The agency then evaluated the revised proposals and assigned the following ratings to the proposals<sup>1</sup>:

|                             | <b>ORBIS Sibro</b> | <b>Patrona</b> |
|-----------------------------|--------------------|----------------|
| <b>Technical Capability</b> | Acceptable         | Good           |
| <b>Hypothetical Tasks</b>   | Acceptable         | Good           |
| <b>Personnel</b>            | Acceptable         | Acceptable     |
| <b>Past Performance</b>     | Satisfactory       | Satisfactory   |
| <b>Cost/Price</b>           | \$63,692,256       | \$63,190,486   |

MOL at 10-11.

In January of 2019, the agency concluded that Patrona's proposal represented the best value as it was both technically superior and lower-priced. MOL at 11. On March 5, ORBIS filed a report with the Director of the Navy's Office of Small Business Programs

---

<sup>1</sup> Both proposals received "pass" ratings on all pass/fail elements. MOL at 10.

that an employee of Patrona (referred to in this decision as “Mr. A”) had allegedly entered SUBMEPP spaces, but signed in as part of the janitorial staff. Id. The report also alleged that Mr. A was a former executive director for SUBMEPP and was “talking to people.” Id. Additionally, the report noted that the SUBMEPP union representative had reported the matter to the security office, but no actions resulted. Id. On Mar. 5, the contracting officer concluded that the matter did not warrant further investigation because it had already been reported to security and ORBIS had not raised the matter directly with the contracting team for the procurement. MOL at 11. The agency then issued the task order to Patrona on March 11. Id.

Following a debriefing, ORBIS filed a protest with our Office on March 19 alleging, among other things, that Mr. A’s access to the facility under false pretenses represented a potential Procurement Integrity Act (PIA) violation. MOL at 12. On April 4, the agency announced that it was taking corrective action to investigate the alleged PIA violation, and we dismissed the protest as academic. Id.; ORBIS Sibro, Inc., B-417406.1, Apr. 16, 2019 (unpublished decision). On July 29, 2019, the agency’s investigation concluded that there was no improper disclosure of solicitation requirements prior to the solicitation’s release or at any time in the procurement and that none of the offerors had an unfair competitive advantage. Id. at 13. The agency subsequently affirmed its award to Patrona. Id. This protest followed.<sup>2</sup>

## DISCUSSION

The protester alleges that the agency erred in numerous respects in its conduct of this procurement. First, the protester contends that the agency applied an unstated evaluation criterion in assigning its proposal a weakness for failing to address backfit reliability centered maintenance (RCM)<sup>3</sup> in one of the hypothetical tasks. Protest at 5-11. Second, the protester alleges that the agency failed to conduct a reasonable investigation of several potential OCIs and a PIA violation. Protest at 26-30; Supp. Protest at 2-8. Finally, the protester alleges that the agency’s best-value tradeoff decision was unreasonable because it did not consider all the evaluation factors and

---

<sup>2</sup> Our Office has jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts issued under the authority of Title 10, if the task order is valued in excess of \$25 million. See 10 U.S.C. § 2304c(e)(1)(B).

<sup>3</sup> RCM is a method used to determine maintenance requirements on the analysis of the likely functional failures of components, equipment, subsystems, or systems having a significant impact on safety, operations, and life cycle cost. MOL at 17 n.4. Backfit RCM involves analysis of existing maintenance requirements, while “Classic” RCM involves analysis of new maintenance requirements during acquisition or modernization efforts. Id. at 18.

subfactors identified in the solicitation. Supp. Protest at 8-11. We address these arguments in turn.<sup>4</sup>

## Backfit RCM

The protester argues that the agency applied an unstated evaluation criterion by assigning its proposal a weakness for failing to address backfit RCM in one of the hypothetical tasks. Protester's Comments at 2-9. In this regard, the protester argues that the term "Backfit RCM" does not appear in the solicitation at all, but instead is included on a few pages in a voluminous document, which was one of 55 documents referenced in the solicitation. Id. at 2-7. Accordingly, the protester argues that the agency erred in assigning its proposal a weakness for failing to address backfit RCM because the protester did not have reasonable notice that its proposal would be evaluated on this basis. Id. (citing Risk Analysis and Mitigation Partners, B-409687, B-409687.2, July 15, 2014, 2014 CPD ¶ 214 at 6-13 and Phoenix Air Grp. Inc., B-412796.2, B-412796.3, Sept 26, 2016, 2016 CPD ¶ 308 at 11-12). In the alternative, the protester argues that its proposal adequately addressed backfit RCM by referring to it by the synonymous term "level 1" RCM. Protest at 7-9.

In reviewing a protest challenging the agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC, B-406897.3, May 28, 2014, 2014 CPD

---

<sup>4</sup> The protester advanced additional arguments in its pleadings. While we do not address each argument individually in this decision, we have considered all of them, and find that they do not provide a basis to sustain the protest. For example, the protester initially argued that the agency erred in failing to assign its proposal a strength because it proposed the incumbent information technology (IT) contractor, and that contractor's capability would be advantageous to the agency, with particular focus on the IT transition. Protest at 15-18. However, as the agency notes, the only technical factor that specifically addressed IT was a pass/fail factor for IT transition, so no strength could be assigned on that basis. MOL at 35-39. Furthermore, the agency notes that it did assign a strength to the protester's proposal under the personnel technical subfactor, in part, due to proposed key personnel who are employees of the incumbent IT subcontractor. Id. In response, the protester argues, for the first time in its comments to the agency's report, that it should have received a second strength on the basis of other IT key personnel, and notes that the evaluation record does not reflect the agency's consideration and rejection of a strength for those personnel. Protester's Comments at 9-15. However, even assuming that this argument is timely (which is not clear), an agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. Allied Tech. Grp., Inc., B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13. On the record before us, we see no basis to conclude the agency erred in assigning only a single strength in this respect.

¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable; consistent with the stated evaluation criteria, applicable procurement statutes, and regulations; and adequately documented. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. An offeror's disagreement with an agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. Birdwell Bros. Painting & Refinishing, B-285035, July 5, 2000, 2000 CPD ¶ 129 at 5.

Here, the agency did not apply an unstated criterion when it assigned the protester's proposal a weakness for failing to address backfit RCM. The solicitation expressly incorporated by reference a document addressing RCM, rendering this document part of the solicitation's requirements. See, e.g., RFP at 7, 17, 18, 20. Relevant here, the solicitation incorporated MIL-STD-3034-A, Department of Defense Standard Practice, Reliability-Centered Maintenance (RCM) Process, Apr. 29, 2014, as applicable document number 3.1.7. Id. at 7. In addition, the solicitation repeatedly provided that various tasks should be carried out in accordance with document 3.1.7, among other documents. Id. at 17, 18, 20. Moreover, the agency advised the protester that it viewed the proposal's failure to address RCM, in general, as a significant issue during the first round of discussions, and specifically highlighted the protester's failure to address backfit RCM in the second round of discussions. See AR, Tab 4, July Discussion Letter, at 1-2; AR, Tab 6, August Discussion Letter, at 3. The protester cannot claim to be unfairly surprised that its proposal was ultimately evaluated on the basis of materials incorporated by reference in the solicitation and called to its attention repeatedly during discussions.

In reaching our conclusion, we find that the protester's reliance on our decisions in Risk Analysis and Mitigation Partners, supra, and Phoenix Air Grp. Inc., supra, is misplaced. In Risk Analysis, our Office sustained a protest because the protester could not have reasonably expected that the agency would apply voluminous standards that were not specifically referenced in the solicitation. Risk Analysis and Mitigation Partners, supra. Similarly, in Phoenix we sustained a protest because an offeror could not have reasonably expected to be evaluated on the basis of over 100 specifications included in the solicitation where the solicitation only instructed offerors to address general topics. Phoenix Air Grp. Inc., supra. In this case, however, as noted above, the solicitation specifically incorporated the standards in question and the agency expressly advised the protester of the issues during discussions.

As to the protester's alternative argument, it is likewise without merit. The agency assessed a weakness because the protester's proposal did not address backfit RCM in one of the hypothetical tasks. See AR, Tab 3b, Source Selection Evaluation Board (SSEB) Report Technical Evaluation at 13. While, in this context, level 1 RCM appears to be synonymous with backfit RCM, the protester's response to the hypothetical task only addressed level 1 RCM in describing personnel certifications, but not in respect to its maintenance process or methods. See AR, Tab 8, ORBIS Technical Capability Addendum Version 3. Nothing in the protester's proposal demonstrated how the protester would address backfit RCM in the relevant hypothetical task. Id. Because the

agency's assessment of a weakness on this basis was not otherwise unreasonable,<sup>5</sup> we see no basis to conclude the agency erred.

#### OCIs and PIA violation

The protester alleges that the awardee has various unmitigated and, in some cases, uninvestigated, OCIs, and is implicated in a PIA violation. Protest at 26-30; Supp. Protest at 2-8. With respect to OCIs, the Federal Acquisition Regulation (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. Subpart 9.5 of the FAR, and the 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, October 21, 2015, 2015 CPD ¶ 341 at 13. The protester alleges OCIs falling into each of the three categories. Protest at 26-30; Supp. Protest at 2-8.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. McConnell Jones Lanier & Murphy, LLP, supra. However, 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. Where a protester alleges hard facts that indicate the existence or potential existence of an OCI, our Office will generally presume prejudice, but that presumption is rebuttable. See TDF Corp., B-288392; B-288392.2, Oct. 23, 2001, 2001 CPD ¶ 178 at 9; Department of the Navy--Recon., B-286194.7, May 29, 2002, 2002 CPD ¶ 76 at 12 (where protest establishes facts that constitute conflict or apparent conflict, we will presume prejudice unless record affirmatively demonstrates its absence).

Additionally, the procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act, provide, among other things, that except as provided by law, a person shall not knowingly disclose or obtain contractor bid or proposal information or source selection

---

<sup>5</sup> The protester additionally contends that the assessment of a weakness was unreasonable given the number of solicitation requirements offerors were expected to address within the constraints imposed by the solicitation's page limits. Protest at 8. However, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. See International Med. Corps, B-403688, Dec. 6, 2010, 2010 CPD ¶ 292 at 7-8; STG, Inc., B-411415, B-411415.2, July 22, 2015, 2015 CPD ¶ 240 at 5-6.

information before the award of a federal agency procurement contract to which the information relates. 41 U.S.C. § 2102(b). The FAR states that a contracting officer who receives or obtains information of a violation or possible violation of the PIA must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor. FAR § 3.104-7(a). If the contracting officer determines that there is no impact on the procurement, he or she must forward the information concerning the violation or possible violation, along with documentation supporting the determination that there is no impact on the procurement, to an individual designated in accordance with agency procedures. FAR § 3.104-7(a)(1). If that individual agrees with the contracting officer's analysis, the procurement may proceed. FAR § 3.104-7(a)(1)(i).

### Unequal Access to Information OCI and PIA violation

Following the previous protest alleging a PIA violation, the agency conducted a detailed investigation.<sup>6</sup> Specifically, the agency conducted written interviews with numerous officials implicated in the allegations or otherwise connected to the procurement, including the procuring contracting officer, two SSEB members,<sup>7</sup> the SUBMEPP security manager, the SUBMEPP executive director, the SUBMEPP engineering department head, and the SUBMEPP union representative, among others. AR, Tab 11.a, PIA Investigation Memorandum, at 3, 6. The investigator specifically asked the interviewees, among other things, about their role in the procurement, about any steps taken to safeguard procurement-sensitive information, about whether they knew or had contact with Mr. A, and whether, to their knowledge, Mr. A had obtained access to such information. See, e.g., AR, Tab 11.b, encl. 6, Email Correspondence with Procuring Contracting Officer, at 1-2. The investigator also asked detailed follow-up questions where individuals indicated they had contacts with Mr. A. See, generally, AR, Tab 11.c, encl. 9, Email Correspondence with Executive Director.

The investigation found that the interviewed members of the source-selection team all offered similar statements concerning the safeguards employed to protect procurement documents. See AR, Tab 11.a, PIA Investigation Memorandum, at 9. For example, the team members noted that all discussions and meetings concerning the procurement were held in a closed conference room; electronic documents were password-protected and the files and folders were stored with permissions that limited access to the

---

<sup>6</sup> We note that the investigation was styled as a PIA investigation rather than an OCI investigation, but the investigation focused directly on the question of whether Mr. A, and by extension, Patrona, had access to any non-public information concerning this procurement. See, generally, AR, Tab 11.a, PIA Investigation Memorandum.

<sup>7</sup> The agency's investigation noted that a third SSEB member, as well as two other individuals involved in developing requirements for the procurement, had retired prior to the investigation and were not contacted. AR, Tab 11.a, PIA Investigation Memorandum, at 6.

procurement team; and all physical documents were stored in locked containers or destroyed. See AR, Tab 11.a, PIA Investigation Memorandum, at 9. The agency concluded on the basis of its investigation that Mr. A had authorized access to the SUBMEPP space, and that neither Mr. A, nor anyone else outside the procurement team, obtained inappropriate access to procurement documents. AR, Tab 11.a, PIA Investigation Memorandum, at 11.

Turning to the specifics of the protest, the following facts form the basis of the protester's OCI and PIA allegations and are not disputed, although the parties disagree concerning the implications of these facts. Mr. A is currently an employee of Patrona, but was, until 2015, the executive director of SUBMEPP, the requiring activity in this procurement. See AR, Tab 11.a, PIA Investigation Memorandum, at 4-5; AR, Tab 11.c, encl. 11, Email Correspondence with SSEB member, at 1. Mr. A remained friendly with several employees of SUBMEPP, and maintained a "relative celebrity status with some of the old timers." See AR, Tab 11.a, PIA Investigation Memorandum, at 8-9; AR, Tab 11.c, encl. 11, Email Correspondence with SSEB member, at 1. Patrona currently holds a contract providing planning support to NAVSEA, SUBMEPP's parent command, and Mr. A works on that contract. MOL at 46-47; AR, Tab 11.c, encl. 9, Email Correspondence with SUBMEPP Executive Director, at 7-9.

Because those contract activities require coordination between NAVSEA and SUBMEPP, Mr. A had, at all times relevant to this protest, a facility pass and the necessary security clearance for authorized and unescorted access to SUBMEPP's spaces. Id. Mr. A was seen on several occasions in SUBMEPP spaces meeting with, among others, the current executive director. AR, Tab 11.c, encl. 11, Email Correspondence with SSEB member, at 4-6. The access procedures for the SUBMEPP space involved contractors signing in on each visit and listing their corporate affiliation and destination. Protester's Supp. Comments, attach. 2, Statement of SUBMEPP Security Manager, at 1; AR, Tab 11.b, encl. 8, Email Correspondence with SUBMEPP Security Manager, at 8-9. SUBMEPP's security manager indicated that Mr. A sometimes went to locations other than the one he identified on the sign-in sheet and did not, in all cases, sign in as required. Protester's Supp. Comments, attach. 2, Statement of SUBMEPP Security Manager, at 1. On at least one occasion, Mr. A signed in at the security desk with his own name, but instead of indicating that he worked for Patrona, he instead entered the name of the janitorial services contractor for the facility.<sup>8</sup> AR, Tab 11.b, encl. 8, Email Correspondence with SUBMEPP Security Manager, at 8-9.

---

<sup>8</sup> The record only demonstrates that this occurred in one case. However, the protester contends that the agency's investigation, in effect, failed to ask the right questions of the security manager to establish that it didn't also occur on other occasions. Protester's Supp. Comments at 2-4. We note that the investigator asked the security manager to forward relevant pages of the sign-in logs, and in response the security manager only forwarded one sign-in page from the logs. AR, Tab 11.b, encl. 8, Email Correspondence with SUBMEPP Security Manager, at 6-8. We also note that the

(continued...)

From these facts, the protester infers that Mr. A was “masquerading as a janitor” to conceal his presence in the SUBMEPP facility, and used this surreptitious access to review source-selection and other procurement sensitive materials. See, e.g., Protester’s Comments at 19-20. The protester also suggests that the agency’s investigation was unreasonable for various reasons,<sup>9</sup> but primarily because it failed to adequately consider Mr. A’s ongoing contact with SUBMEPP staff with whom he remained friends. Supp. Protest at 2-6. The protester implies, but does not specifically allege, that Mr. A may have extracted procurement sensitive information from various SUBMEPP staff who knew him well. Id. These “hard facts,” the protester contends, demonstrate that Mr. A had unequal access to nonpublic information that gave rise to an OCI and a presumption of prejudice, which the agency must rebut.

By contrast, the agency advances no specific explanation as to why Mr. A signed in as part of the janitorial staff,<sup>10</sup> but argues that its investigation found that all procurement-sensitive materials were subject to the significant electronic or physical controls that would have prevented Mr. A from accessing them, even were he attempting to gain access, for which the investigation also found no evidence. MOL at 46-48; AR, Tab 11.a, PIA Investigation Memorandum, at 8-11. Accordingly, the agency argues that there are no “hard facts” suggesting Mr. A had any unequal access to nonpublic information concerning this procurement, and accordingly there can be no presumption of prejudice. MOL at 46-48.

An unequal access to information OCI exists where a firm has access to nonpublic information, and where that information may provide the firm a competitive advantage in

---

(...continued)

protester’s supplemental comments include a sworn statement from the same security manager (now retired), but that sworn statement does not indicate that Mr. A signed in with a janitorial affiliation on other occasions. Protester’s Supp. Comments, attach. 2, Statement of SUBMEPP Security Manager, at 1. Because the protester also had an opportunity to interview the security manager, and that interview also did not establish that Mr. A signed in as part of the janitorial staff on more than one occasion, we have no basis to question the agency’s conclusion that the Mr. A signed in as part of the janitorial staff on only one occasion.

<sup>9</sup> For example, the protester argues that the agency erred by failing to interview all members of the SSEB. Supp. Protest at 5-6. However, certain members of the SSEB had retired by the time of the investigation and were not available for contact. Supp. MOL at 5 n.6. More significantly, there is no evidence in the record suggesting that Mr. A had contact with any SSEB members.

<sup>10</sup> However, we note that the SUBMEPP security manager offered that Mr. A may have been “being funny,” and that he had a reputation for “doing that sort of thing” when he worked at SUBMEPP. AR, Tab 11.b, encl. 8, Email Correspondence with SUBMEPP Security Manager, at 5.

a later competition for a government contract. Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. In this case, there is no evidence that Mr. A actually had access to nonpublic information concerning this procurement.

First, it is clear from the available evidence that the protester's claim that Mr. A masqueraded as a janitor is untenable. While Mr. A, on one occasion, signed in and listed the janitorial contractor as his corporate affiliation, he signed in under his own name, which suggests a lack of any intent to deceive. AR, Tab 11.b, encl. 8, Email Correspondence with SUBMEPP Security Manager, at 8-9. No evidence in the record, supports the conclusion that Mr. A actually dressed as a janitor.<sup>11</sup> Moreover, the protester's secondary argument, that Mr. A was well known in SUBMEPP and may have induced some officials who knew him to share information with him, undercuts the protester's primary argument: if Mr. A was well known to the facility staff, it is unclear how he might have passed undetected, especially when signing in under his own name. It is unreasonable, on the basis of these facts, to conclude that Mr. A succeeded (or for that matter, even attempted) to obtain surreptitious access<sup>12</sup> to the SUBMEPP space. More significantly, given the security controls in place and the testimony of various officials, there is nothing in the record to reasonably suggest that he gained access to secured procurement-sensitive information while in the SUBMEPP space.

Second, while there is testimonial evidence in the record of social contact between Mr. A and certain SUBMEPP staff with whom he remained friends, there are no "hard facts" that Mr. A improperly received any procurement sensitive information. The evidence in the record only establishes that Mr. A visited SUBMEPP frequently prior to May of 2018, sometimes for social rather than business purposes, and on at least one occasion, but possibly more, was seen going to dinner with the current SUBMEPP executive director. AR, Tab 11.c, encl. 11, Email Correspondence with SSEB member, at 1, 4-6; AR, Tab 11.d, encl. 13, Email Correspondence with SUBMEPP Union Representative, at 2-4. The SUBMEPP staff with whom Mr. A is alleged to have had contact had some involvement in the development of the solicitation requirements, but were not involved in the evaluation of proposals.<sup>13</sup> Id.; AR, Tab 11.a, PIA Investigation Memorandum, at 3. That said, there is no evidence that Mr. A sought information from any of those individuals, or that any of those individuals conveyed any information to

---

<sup>11</sup> While the agency did not, as the protester repeatedly suggested, review security footage from that day, there is no evidence anywhere in the record suggesting that Mr. A was dressed as a janitor when he signed in. See Supp. Protest at 5.

<sup>12</sup> To be clear, it is uncontested that Mr. A had ongoing, unescorted access to the NAVSEA facility and the SUBMEPP space, but the evidence points to that access being authorized and acknowledged. See MOL at 46-47

<sup>13</sup> For example, the engineering department head with whom Mr. A was alleged to have had social contact reviewed the solicitation requirements during the development of the statement of work prior to the publication of the procurement. AR, Tab 11.d, encl. 12, Email Correspondence with Engineering Department Head, at 3.

Mr. A. Rather, the individuals affirmed that Mr. A never approached them seeking information about the procurement and that they did not discuss the procurement with him. See, e.g., AR, Tab 11.d, encl. 12, Email Correspondence with Engineering Department Head, at 4.

In support of its argument, the protester principally relies on our decision in PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17-22, but that decision is readily distinguishable from this procurement. In that decision we concluded that an agency's investigation of an unequal access OCI was unreasonable because, while the agency investigated whether the awardee's hiring of a high-level government employee from the requiring activity created a potential OCI, the agency limited its review to what responsibility and role the government employee had prior to his retirement. Id. Notably, the agency did not consider the employee's access to nonpublic source selection information, the employee's continued daily contact with members of the source selection team, and the employee's access to inside information concerning the agency's procurement-specific requirements. Id. In addition, the individual in question in PCCP Constructors retired from federal service during the procurement, had undisputed access to nonpublic, competitively useful information prior to his retirement, and several members of the procurement team indicated they had discussed matters related to the procurement with him. Id. By contrast, here, Mr. A retired two years prior to this procurement, there is no evidence he had access to nonpublic, competitively useful information related to this procurement, and no member of the procurement team indicated that they had discussed matters related to the procurement with him.

This procurement is more similar to our decision in Harkcon, Inc., B-412936.2, Mar. 30, 2017, 2017 CPD ¶ 110 at 3-5, in which we concluded that there was no unequal access to information OCI when a contractor hired a former government employee, because the agency's investigation revealed that the employee did not have access to any systems containing procurement-sensitive or nonpublic information related to that procurement. In sum, there are no hard facts supporting the protester's contention that Mr. A had any access to nonpublic information concerning this procurement, so there is no basis to conclude that an unequal access to information OCI existed or that a PIA violation occurred. No presumption of prejudice can arise where, as here, there is no evidence of an unequal access to information OCI. Accordingly, this protest ground is denied.

#### Biased Ground Rules and Impaired Objectivity OCIs

In its supplemental protest, the protester additionally alleges biased ground rules and impaired objectivity OCIs on the basis of Mr. A's work under Patrona's existing NAVSEA contract. Supp. Protest at 6-7. These allegations rest entirely on the fact that Mr. A helped organize and participated in a NAVSEA planning summit that generated several action items for SUBMEPP. Id. Specifically, the protester contends that one of the action items from that planning summit involved investigating class maintenance plan (CMP) lessons learned from certain programs, and the current procurement will involve

Patrona performing several tasks related to CMP. Id. The protester alleges that Patrona may have had a hand in developing and carrying out those action items, and to the extent they ultimately perform work under the current contract may be unable to offer objective advice under this procurement concerning their prior work developing or carrying out the action items. Id.

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. Systems Made Simple, Inc., supra. Similarly, 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; Pragmatics Inc., B-407320.2, B-407320.3, Mar. 26, 2013, 2013 CPD ¶ 83 at 4-5; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

Contrary to the protester's contention, the record here does not suggest that Mr. A or Patrona were in any way responsible for carrying out the action items prepared at the summit, or that they had any substantive role in developing them. Rather, the record suggests that Mr. A's role at the summit was primarily to provide organizational and logistical support, and Patrona's only tasking arising from the summit involved tracking and monitoring the accomplishment of the action items assigned to various government activities. Supp. MOL at 5-7 (citing AR, Tab 11.c, encl. 9). The facts simply do not meaningfully support an allegation that Patrona had any role in establishing the ground rules for this procurement, or that the firm's work for NAVSEA would prevent it from providing unbiased advice in the current procurement. Under the circumstances here, the protester's contentions amount to nothing more than bare speculation that Patrona had impaired objectivity or created biased ground rules, and as such provide no hard facts that Patrona had a potential or actual OCI. See Mechanical Equip. Co., Inc., et al., B-292789.2 et al., Dec. 15, 2003, 2004 CPD ¶ 192 at 29. These protest grounds, therefore, fail to state a legally sufficient basis of protest and are accordingly dismissed. 4 C.F.R. § 21.5(f).

#### Best-Value Tradeoff

Finally, the protester challenges the best-value tradeoff in several respects. For example, the protester alleges that the tradeoff was unreasonable and inadequately documented because the source selection decision document did not address the pass/fail elements of the proposals in the tradeoff and did not adequately discuss the hypothetical tasks. Supp. Protest at 8-11. The protester notes that the solicitation provided that best value would be assessed based on all evaluation factors and subfactors described in section M of the solicitation, and the agency's best-value tradeoff did not address all factors and subfactors. Id.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value evaluation scheme; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Coastal Int'l Sec., Inc., B-411756; B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. Furthermore, where a proposal is both higher-rated and lower priced than other proposals, our decisions have concluded that no comparative analysis (i.e. a price-technical tradeoff) is required. See Alliance Tech. Servs., Inc., B-311329, B-311329.2, May 30, 2008, 2008 CPD ¶ 108 at 3.

The protester's arguments here are unpersuasive. First, we note that the solicitation explicitly noted that the pass/fail elements would not be assigned ratings and it is unclear how such elements could be qualitatively evaluated consistent with the terms of the solicitation. RFP at 88-92. Second, with respect to the hypothetical taskings, it is unclear that the protester can show prejudice in any case, because the awardee was both higher-rated and lower-priced than the protester and the protester has not established that the agency erred in its underlying technical evaluations. MOL at 10-11. It is unclear, therefore, that a more fulsome best-value tradeoff was required or would have come to a different conclusion. Competitive prejudice is an essential element of every viable protest; where, as here, the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if a defect in the procurement is found. See Procentrix, Inc., B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

The protest is denied,

Thomas H. Armstrong  
General Counsel