



# Decision

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**Matter of:** Mortgage Contracting Services, LLC

**File:** B-418483.2; B-418483.3

**Date:** September 10, 2020

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## DIGEST

1. Protest that the awardee possessed a disqualifying organizational conflict of interest is denied where the agency investigated the protester’s allegations and reasonably concluded that work performed by the awardee under a different contract did not provide it with access to information that created an unfair competitive advantage.
  2. Protest that agency improperly evaluated the relevance of awardee’s experience and past performance is denied where the agency reasonably considered the relevance of the contracts submitted by the awardee and assigned ratings consistent with the awardee’s overall experience and past performance.
  3. Protest challenging the agency’s price realism evaluation is denied where the agency reasonably evaluated the awardee’s pricing and where a more in-depth price analysis was not required by the solicitation.
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## DECISION

Mortgage Contracting Services, LLC (MCS), of Lewisville, Texas, protests the award of a contract to Information Systems and Networks Corporation (ISN), of Bethesda, Maryland, under request for proposals (RFP) No. 12SAD119R0003, issued by the Department of Agriculture (USDA), for property preservation and inspection services. The protester alleges that the agency unreasonably evaluated ISN’s price and non-price proposals as well as the relevance of ISN’s experience and past performance. The protester further contends that the USDA did not meaningfully investigate ISN’s organizational conflict of interest (OCI).

We deny the protest.

## BACKGROUND

The agency issued the solicitation on April 27, 2019, seeking nationwide property and asset management services associated with the liquidation of single-family housing rural properties.<sup>1</sup> COS at 1. The solicitation contemplated the award of an 18-month indefinite-delivery, indefinite-quantity (IDIQ) contract with fixed-price, time-and-materials, and cost line items. Agency Report (AR), Tab 1, RFP at 4.<sup>2</sup> The anticipated contract would contain no option periods. *Id.*

The solicitation's performance work statement (PWS) included an attachment for certain property inspection and preservation services to be performed under the contract's first task order. Offerors were asked to price both the IDIQ contract line item numbers (CLINs) and the first task order CLINs.

The RFP contemplated that contract award would be on a best-value tradeoff basis considering the evaluation of three factors: technical capability, past performance, and cost/price. *Id.* at 72. Technical capability was more important than past performance, and both factors, when combined, were significantly more important than price. *Id.*

The technical evaluation factor consisted of the following five subfactors, listed in descending order of importance: (1) relevant experience; (2) nationwide coverage, geographic service area; (3) management approach, to include the quality assurance surveillance plan; (4) staffing plan, key personnel resumes, subcontractors, and subcontracting plan; and (5) property management system. *Id.*

For the evaluation of past performance, the RFP instructed offerors to "submit a list of the last three contracts completed during the past three years or currently being performed that are similar to the solicitation size, scope, and complexity, and that are specifically related to property preservation and inspection services." *Id.* at 67. The solicitation noted that work "of particular relevance to this solicitation and PWS" included, but was not limited to "Nationwide Property Inspections ([real estate owned] and foreclosure custodial)," and "nationwide property preservation ([real estate owned] and foreclosure custodial)". *Id.* The RFP provided that the agency would assign a confidence assessment rating based on "the offeror's overall record of recency, relevancy, and quality of performance." *Id.* at 74. Further, for large business concerns, the agency would evaluate the extent to which the offeror has "attained applicable goals

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<sup>1</sup> Such services include inspections, asset preservation, and addressing and abating environmental hazards. Contracting Officer's Statement (COS) at 1.

<sup>2</sup> References to page numbers in the solicitation (AR, Tab 1) and in ISN's proposal (AR, Tab 2) are to the pagination created by the agency for purposes of responding to this protest rather than to any page numbers otherwise appearing in these documents.

for small business participation under prior contracts that required subcontracting plans.” *Id.*

For the evaluation of cost/price, the RFP contemplated that the agency would evaluate the reasonableness, realism, and balance of each offeror’s proposed cost/price for the base IDIQ effort, as well as the first task order. *Id.* at 77. The solicitation provided that the agency would evaluate cost/price using one of three methods: a comparison of proposed costs or prices received in response to the solicitation; a comparison of previously proposed prices and contract prices with current proposed prices; and a comparison of proposed costs or prices with independent cost estimates. *Id.*

The agency received proposals from 11 offerors, including proposals from MCS (the incumbent contractor) and ISN. On October 3, following an initial evaluation, the agency advised offerors that it would conduct a reevaluation of proposals as a “self-imposed corrective action.” AR, Tab 10, Notice to Offerors at 2. After this reevaluation, the agency evaluated ISN’s and MCS’s proposals as follows:

	<b>ISN</b>	<b>MCS</b>
<b>Technical Capability &amp; Subfactors</b>	<b>Outstanding</b>	<b>Outstanding</b>
Relevant Experience	Outstanding	Outstanding
Nationwide Coverage-Geographical Service Area	Outstanding	Outstanding
Management Approach	Outstanding	Outstanding
Staffing Plan (including Key Personnel Resumes)	Outstanding	Outstanding
Property Management System	Outstanding	Outstanding
<b>Past Performance</b>	<b>Substantial Confidence</b>	<b>Substantial Confidence</b>
<b>Task Order 1 Ceiling Cost/Price</b>	<b>\$21,288,840</b>	<b>\$36,091,446</b>
<b>IDIQ Ceiling Cost/Price</b>	<b>\$34,983,380</b>	<b>\$57,183,879</b>

AR, Tab 19, Source Selection Decision Document (SSDD) at 3.

On February 5, 2020, the agency notified offerors of its decision to award the contract to ISN. On February 18, MCS filed a protest of the award, which our Office docketed as B-418483.1. The protester asserted that an OCI rendered ISN ineligible for award;

MCS also challenged the agency's price and technical evaluations. On March 4, we dismissed the protest as academic based on corrective action proposed by the agency.

During the corrective action, the agency conducted an investigation of the alleged OCI and corrected several typographical errors in the evaluation documentation, but did not change the evaluation scores. COS at 2.

Following the completion of the corrective action, the agency completed its source selection determination. Based on the results of the agency's evaluation, the source selection authority concluded that while both MCS's and ISN's proposals received superior ratings, "the proposal from MCS did not supply any features which would warrant the significantly higher premium in price." AR, Tab 19, SSDD at 7.

On May 29, the agency notified MCS that the award to ISN had been reaffirmed. This protest followed.

## DISCUSSION

The protester challenges the OCI investigation conducted by the agency as inadequate and also argues that the USDA unreasonably evaluated ISN's proposal in several areas. With respect to the OCI assertion, the protester contends that ISN's role on a contract with the Department of Housing and Urban Development (HUD) gave it unequal access to information that provided it with an unfair competitive advantage. With respect to the protester's evaluation challenges, MCS asserts that the USDA ignored the solicitation's evaluation criteria in its evaluation of ISN's proposal. MCS further challenges the relevancy determinations made by the agency with respect to ISN's corporate experience and past performance. Finally, the protester argues that the agency unreasonably evaluated ISN's proposed pricing for realism and balance.

While we do not address in detail every argument raised by the protester, we have reviewed each issue and find no basis to sustain the protest.

### Unequal Access to Information OCI

The protester contends that the agency did not reasonably investigate an OCI arising from ISN's role as a mortgagee compliance manager for HUD. In that role, ISN reviews certain invoices forwarded by MCS, and other companies, to HUD for property preservation and inspection services on HUD single-family properties. The protester contends that access to this information afforded ISN an unfair competitive advantage because these invoices show both the prices negotiated by MCS with third party vendors and the names of those vendors. The protester asserts that the agency did not meaningfully investigate whether ISN could use this invoice information to derive an unfair competitive advantage in this procurement.

The Federal Acquisition Regulation (FAR) requires that contracting officers identify and evaluate potential OCIs, and directs contracting officers to avoid, neutralize, or mitigate

potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. 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 with an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b); *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 6.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3. Although we presume prejudice where a protester establishes hard facts that constitute an actual or potential OCI, that presumption is rebuttable. *BAE Sys. Tech. Solutions & Servs., Inc.*, B-411810.3, June 24, 2016, 2016 CPD ¶ 174 at 8. In reviewing protests that challenge an agency's conflict of interest determination, our Office reviews the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *DV United, LLC*, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

Here, we find that the agency meaningfully investigated the alleged OCI and, based on that investigation, reasonably concluded that the invoice information at issue did not provide ISN with an unfair competitive advantage. In this respect, the contracting officer determined that the effort required for ISN to data mine and identify MCS-related invoicing information from all of the other vendor invoices under the HUD contract would be too massive for such an undertaking to be useful. See AR, Tab 12, OCI Memo. at 2. This conclusion is supported by information provided by ISN showing that claims with MCS-related invoices constitute only around [DELETED] out of [DELETED] total claims submitted annually, and that ISN would have to manually review "thousands upon thousands of claims" to identify which claim records contained invoices with MCS vendor identities and negotiated prices. AR, Tab 27, ISN Response to OCI Investigation, at 6. The contracting officer also noted that the effort to do this would be needless, particularly because of the ready availability of public pricing information from other agencies' pricing catalogs, pricing information that was in line with the price proposed by ISN on this effort. AR, Tab 12, OCI Memo. at 2-3.

The contracting officer also determined that access to the invoice information was restricted to certain ISN personnel that had no involvement in the proposal effort. In this regard, ISN provided sworn affidavits from the [DELETED] employees who manage the HUD contract, stating that the ISN personnel working on the HUD contract provided no input and were not a part of the proposal team for the USDA procurement. *Id.* at 2. In addition, these affidavits explained that ISN separates, both functionally and

managerially, the personnel supporting the HUD contract from the personnel that prepared ISN's proposal for this procurement. *Id.*

The protester argues that the contracting officer's investigation focused too heavily on whether ISN could have used MCS's pricing and ignored the possibility that ISN could have derived an unfair competitive advantage from simply knowing the names of MCS's vendors, which were also included in the invoices. We see no reason, however, that the agency's conclusions, noted above, regarding the inaccessibility of the invoice information, and the difficulty of mining such information, would not also apply to the names of vendors included on those invoices. Accordingly, we find that the agency reasonably concluded that ISN did not derive an unfair competitive advantage from its role on the HUD contract.

#### Failure to Follow Evaluation Criteria

The protester asserts that the agency failed to evaluate ISN's proposal in accordance with the solicitation instructions and the evaluation criteria. As an initial matter, the protester argues that ISN violated the solicitation instructions by not specifying, in its cost/price proposal, the percentage of work proposed for its subcontractor. In this regard, the solicitation instructions required each large business offeror to propose subcontracting at least 22 percent of the contract effort to small businesses and to "specify the prime/subcontractor ratio for the work in both the [t]echnical and [cost/price] proposals." RFP at 71. The protester notes that, while ISN included this ratio in its technical submission, it did not include it in its cost/price proposal. MCS asserts that this error was prejudicial because the inclusion of this information could have affected the agency's evaluation of ISN's pricing.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *ARBEIT, LLC*, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. Additionally, competitive prejudice is an essential element to every viable protest, and where an agency's improper actions do not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *STG, Inc.*, B-415580.4, B-415580.5, July 5, 2018, 2018 CPD ¶ 232 at 8.

Based on our review of the record, we conclude that the omission of the prime/subcontractor ratio information from ISN's cost/price proposal was a minor omission that did not materially affect the evaluation. In this regard, we note that the price evaluation criteria did not require the agency to evaluate this information as part of the price evaluation. While the protester asserts that this information could nonetheless have been relevant to the agency's evaluation of reasonableness, balance, or realism, we do not agree. Moreover, we note that ISN proposed a compliant (above 22 percent) level

of subcontracting, a figure that was provided elsewhere in its proposal. See AR, Tab 2, ISN Proposal at 10. Finally, we note that MCS similarly did not include its prime/subcontractor ratio in its price proposal.

The protester also asserts that the agency failed to assess, within its past performance evaluation, the extent to which the offerors fulfilled their small business subcontracting goals during the performance of prior contracts. In this respect, the RFP provided that “for large business concerns, the [g]overnment will evaluate past performance to determine the extent to which [the] offeror has attained applicable goals for small business participation under prior contracts that required subcontracting plans.” RFP at 74. The protester argues that it was prejudiced by USDA’s failure to evaluate this information, because MCS addressed the attainment of small business subcontracting goals in its proposal, whereas ISN did not. MCS Comments & Supp. Protest at 21.

While the record supports the protester’s assertion that the agency did not evaluate the offerors’ records of fulfilling their small business subcontracting goals, we see no basis to conclude that the protester was competitively prejudiced by this failure. Despite providing for evaluation of the attainment of small business subcontracting goals, the solicitation did not require offerors to include this information in their proposals, and ISN did not include it. The agency thus had no information, negative or positive, regarding ISN’s history of fulfilling its small business subcontracting goals. Absent evidence that ISN did not comply with solicitation requirements by failing to provide information regarding its attainment of small business subcontracting goals, or evidence indicating that ISN had, in fact, failed to meet such goals, we see no indication that the protester was prejudiced by the agency’s failure to undertake such an analysis.

#### Past Performance and Relevant Experience

The protester challenges the agency’s determination that two of the contracts submitted by ISN as examples of past performance and relevant experience were relevant. In this regard, the protester argues that the USDA did not meaningfully evaluate the relevance of a contract performed by ISN for the U.S. Marshals Service (USMS), which was only a small fraction of the size of the instant effort. The protester notes that the size of the USMS contract was \$22.5 million over a 6-year period, with a portfolio of 1,800 properties, while the instant IDIQ contract has a ceiling value of \$38.2 million over an 18-month period, with a portfolio of approximately 11,000 properties. MCS Comments & Supp. Protest at 3. MCS also challenges the agency’s relevancy determination with respect to ISN’s contract with HUD. The HUD contract involved processing property preservation requests, reviewing property inspections conducted on defaulted properties, submitting contingency preservation requests, and providing reporting. See AR, Tab 2, ISN Proposal at 84. MCS argues that none of these services satisfy the solicitation’s definition of relevant experience/performance, which the protester asserts was limited to directly providing property preservation and inspection services.

Where a protester challenges an agency’s evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and

consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. *Veteran Technologists Corp.*, B-413614.3, B-413614.5, Nov. 29, 2016, 2016 CPD ¶ 341 at 6. The evaluation of an offeror's experience and past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based evaluation ratings. *Id.*

Here, we find that the solicitation contemplated the evaluation of an offeror's overall record of experience and past performance. In this respect, the RFP provided for the evaluation of past performance "based on the offeror's overall record of recency, relevancy, and quality of performance." RFP at 74. Similarly, for the relevant experience subfactor, the solicitation anticipated the broad demonstration of experience "in providing a variety of property/asset management services associated with pre and post liquidation of [single family housing] rural properties serving as security for rural housing loans and guarantees of equivalent portfolio size, as specifically listed in the PWS." *Id.* at 73.

Moreover, contrary to MCS's assertion, the solicitation did not set out limitations on what would be considered relevant performance. For example, the RFP did not provide specific size details regarding the instant effort or detail what metrics would be used to assess whether a contract was similarly sized. *See id.* at 67. The RFP also did not provide a strict definition of the scope of a relevant contract reference. In this respect, while the RFP's past performance criteria stated that relevant experience "must be demonstrated within the last three years of providing property preservation and inspection services as required in the PWS," this statement does not define relevancy or state that every contract must involve the exact type of property preservation and inspection services detailed in the PWS. *Id.* at 74. Instead, fairly read, this statement required direct property preservation and inspection services similar to the PWS to be a part of each offeror's overall past performance. We note that this interpretation accords with the solicitation instructions, which did not require each contract submitted to involve the exact type of property and preservation services provided for in the PWS, but instead required submitted contracts to be "specifically related to property preservation and inspection services." *Id.* at 67.

While the protester notes aspects of two of ISN's contracts that were dissimilar to the instant effort, the evaluation record demonstrates that ISN's overall past performance and experience supports the agency's assigned ratings. In this respect, ISN submitted two contract references involving property management services, including a contract performed by ISN's subcontractor with a value of \$425 million. *See AR*, Tab 11, Technical Evaluation Team Report at 16. The third contract, the HUD contract, involved the provision of portfolio management services for approximately 60,000 properties per year. *See AR*, Tab 2, ISN Proposal at 84. While such services were merely "related to" property preservation and inspection services, we find that the agency nonetheless acted reasonably in considering the HUD contract as part of ISN's overall past performance and relevant experience. In sum, we find that the agency reasonably

found that ISN's overall experience and past performance were relevant and merited the high ratings assigned to ISN under those factors.

## Price Evaluation

MCS argues that the agency did not meaningfully evaluate ISN's cost/price proposal for realism and balance. With respect to balance, the protester notes that several of ISN's line item prices were significantly lower than the corresponding competitive price results (CPR) benchmark, which the agency calculated using the prices received from other offerors in this procurement. The protester contends that the agency did not meaningfully consider these material imbalances and that it failed to document its price balancing analysis adequately.

Unbalanced pricing exists where the prices of one or more line items are significantly overstated or understated, despite an acceptable total evaluated price (typically achieved through underpricing of one or more other line items). *General Dynamics-Ordnance & Tactical Sys.*, B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 5. To prevail on an allegation of unbalanced pricing, a protester must show that one or more prices in the allegedly unbalanced proposal are overstated; it is insufficient for a protester to show simply that some line item prices in the proposal are understated. *Marine Terminals Corp.-East, Inc.*, B-410698.9, Aug. 4, 2016, 2016 CPD ¶ 212 at 11.

Here, while MCS argues in its supplemental protest that ISN's prices were understated, it waited until its supplemental comments to assert that any of ISN's prices were overstated. We find that the piecemeal presentation of this protest ground does not satisfy our Office's timeliness rules. See *Synergy Solutions, Inc.*, B-413974.3, June 15, 2017, 2017 CPD ¶ 332 at 7 (our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues). Because the protester failed to raise the required elements of its argument in a timely manner, we dismiss this protest ground.

MCS also challenges the agency's price realism evaluation of ISN's proposal. In this respect, the protester asserts that the realism analysis undertaken by the agency was perfunctory, with the agency engaging in a mechanical comparison of prices against an arbitrary estimate while ignoring the risks to ISN's technical approach. The protester further notes that ISN's IDIQ and task order ceiling prices were far below the CPR benchmark, with the CLIN 002 costs for both the task order and the IDIQ contract being more than [DELETED] percent below the benchmark and more than [DELETED] percent below the original independent government cost estimate used by the agency in a prior evaluation round. MCS also asserts that a third index used by the agency, titled the "Averaged Agency Pricing" (AAP) benchmark, was flawed because it did not reflect the realistic costs associated with performing this contract. MCS Comments & Supp. Protest at 16.

Price realism is an assessment of whether prices are too low, such that there may be a risk of poor performance. *Maxim Healthcare Servs., Inc.*, B-412967.9, B-412967.11, June 25, 2018, 2018 CPD ¶ 230 at 8. Where a solicitation anticipates the award of a

fixed-price, or time-and-materials, contract or task order, with fixed-price, fully burdened labor rates, the price realism of a proposal is not ordinarily considered, since the risk and responsibility for contract costs is on the contractor. *Advanced Alliant Sols. Team, LLC*, B-410207, B-410207.2, Nov. 18, 2014, 2015 CPD ¶ 4 at 9. Nonetheless, a solicitation may provide for a price realism analysis for purposes of measuring an offeror's understanding of the solicitation requirements or assessing risk. *Id.*

Where a solicitation provides for a price realism analysis, the depth of an agency's analysis is within the sound exercise of the agency's discretion, and an agency is not obligated to verify each and every cost/price element of an offeror's proposal. See *Citywide Managing Servs. of Port Washington, Inc.*, B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 5. Our review of an agency's price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. See *Smiths Detection, Inc.; Am. Sci. & Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 17. In this regard, the fact that an offeror's price is below a government cost estimate does not require the agency to conclude that the price is unrealistically low, since we have recognized that an agency may find even a below-cost price to be realistic. *Optex Sys., Inc.*, B-408591, Oct. 30, 2013, 2013 CPD ¶ 244 at 5-6.

Here, we find the agency's evaluation to be reasonable. In this regard, the agency compared ISN's prices to two benchmarks, the CPR and the AAP. For CLIN 0002, ISN's task order and IDIQ contract prices were more than [DELETED] percent lower than the CPR, but this gap was reduced for the overall IDIQ and task order ceiling prices (19 percent and 26 percent respectively). And, ISN's total prices were largely in line with the AAP pricing index, a benchmark created based on similar federal agency price lists. The protester argues that ISN's pricing is only in line with the AAP because the benchmark is based on the same flawed HUD data set used to create ISN's pricing. We note, however, that the AAP was not based only on prices from HUD properties but was also based on price lists from the Department of Veteran Affairs, FannieMae and FreddieMac. See AR, Tab 13, Price Competition Memo. at 2. While the protester contends that these other agency pricing lists also do not reflect the realistic costs associated with servicing the rural properties involved in this procurement, we find this assertion to be largely unsupported.

In addition to these price comparisons, the agency considered the explanation provided by ISN for its pricing, which was that the pricing was "well researched, and was 100 percent compliant, based on existing rates, other Government work similar in nature, [and] numerous independent surveys and market data." *Id.* at 6. The agency further issued a clarification asking ISN if it was aware that the requirement is for rural America and if their pricing reflects that fact, to which ISN responded in the affirmative. *Id.*

We conclude that this analysis was reasonable. While the protester asserts that the agency should have examined ISN's pricing with more scrutiny, we find that the depth of the USDA's analysis fell within the sound exercise of its discretion. See *Citywide Managing Servs. of Port Washington, Inc.*, *supra*. We also find that the agency's use of

a second benchmark (the AAP) was a reasonable further step to consider and compare the pricing received to the pricing received by other agencies for similar services, and find no support for the protester's assertion that this extra step was arbitrary or unnecessary.

The protest is denied.

Thomas H. Armstrong  
General Counsel