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Decision

Matter of: DynCorp International, LLC; PAE Aviation and Technical Services, LLC; M1 Support Services, LP

File: B-420602; B-420602.2; B-420602.3; B-420602.4; B-420602.5; B-420602.6; B-420602.7; B-420602.8; B-420602.9; B-420602.10

Date: June 23, 2022

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DIGEST

1. Protests challenging agency's cost and technical evaluation are denied where protesters have not demonstrated that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.
 2. Protest that the agency failed to consider a conflict of interest based on the awardee's hiring of a former government employee is denied where the contracting officer reasonably concluded that the individual in question did not have access to competitively useful information.
 3. Protest that the agency did not consider the impact of a corporate transaction involving the awardee is denied where the record demonstrates that the agency was unaware of the transaction and the transaction was not imminent and essentially certain prior to award.
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DECISION

DynCorp International, LLC, of Fort Worth, Texas; PAE Aviation and Technical Services, LLC (PAE), of Arlington, Virginia; and M1 Support Services, LP (M1), of Denton, Texas, protest the issuance of a task order to Vertex Aerospace, LLC (Vertex), of Greenbelt, Maryland, under Task Order Fair Opportunity Submission Request (FOSR) No. N00421-20-FOSR-NTWL, issued by the Department of the Navy, Naval Air Systems Command for aircraft maintenance services. The protesters challenge the agency's evaluation of offerors' technical and cost proposals, the availability of Vertex's key personnel, and the agency's best-value determination. Further, DynCorp alleges that the agency failed to properly consider a conflict of interest, and M1 alleges that the agency failed to adequately consider the effect of a recent corporate transaction involving Vertex.

We deny the protests.

BACKGROUND

On May 20, 2021, the agency issued the FOSR under the Navy's Contracted Maintenance, Modification, Aircrew and Related Services (CMMARS) multiple award, indefinitely-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), Exh. 1, FOSR at 2.¹ The solicitation sought maintenance and logistics support services for aircraft, aircraft systems, and support equipment in support of the Naval Test Wing Atlantic (NTWL). *Id.* at 2-3.

The FOSR contemplated the issuance of a single, cost-plus-fixed-fee (CPFF) task order for a base period of one year and six 1-year option periods. *Id.* at 3. The solicitation anticipated the issuance of a task order on a fair opportunity basis, using the ordering procedures of Federal Acquisition Regulation (FAR) section 16.505. *Id.* at 2, 33.

The FOSR provided that award would be made on a best-value tradeoff basis, and described a multi-step approach to the award decision. *Id.* at 33, 35-36. First, three evaluation factors (task order administration, contract experience, and small business participation) would be evaluated as either "acceptable" or "unacceptable." *Id.* at 35-36. A rating of unacceptable would disqualify an offeror from further consideration. *Id.* If an offeror's proposal was evaluated as acceptable on these factors, the agency would then evaluate its proposal on a "program execution" factor, as well as on cost. *Id.* at 36. The

¹ Unless otherwise specified, citations to the agency report are to documents filed with the same exhibit number in the agency reports in all three protests. Citations to the FOSR are to the conformed copy through amendment 5, filed as exhibit 1 in the agency reports.

agency's tradeoff decision would consider only program execution and cost, with program execution being significantly more important than cost.² *Id.*

Offerors' program execution proposals were required to address both their manning approach and management approach. *Id.* at 13-16.

For manning approach, offerors were directed to propose a number of full-time equivalent (FTE) employees to meet the FOSR requirements. *Id.* at 14. Offerors were required to propose at least 1,032 FTEs, but were permitted to propose more. *Id.* Offerors were instructed to include a narrative which "provide[d] in detail all reasoning for manning to include risk[s] mitigated, opportunities sought, and benefits to the [g]overnment," and which provided "an explanation of how the manpower approach is consistent with meeting contract requirements. . . ." *Id.* Offerors were also required to identify specific individuals proposed for eleven positions identified as key personnel, and to provide their resumes. *Id.* at 14-15.

With respect to management approach, offerors were instructed to describe their approach to meeting the contract requirements, and were to "demonstrate that the company's proposed management strategies and corporate structure are adequate to perform the contract requirements with the manning bid. . . ." *Id.* at 15. The FOSR set forth three elements that offerors were to address as part of their management approach: quality, requirement management, and transition plan. *Id.*

The FOSR stated that the agency would evaluate offerors' program execution submissions with respect to both manning approach and management approach, then assign one overall "[c]onfidence [r]ating" for the factor. *Id.* at 36. The Navy would evaluate this factor "from the perspective of the [g]overnment's expectation that the [o]fferor will successfully perform the required effort." *Id.* at 36. The possible ratings, in descending order of favorability, were substantial confidence, satisfactory confidence, limited confidence, and no confidence.³ *Id.* at 38.

With respect to cost, offerors were required to propose direct labor rates, indirect rates, fully burdened subcontractor rates, and fee. *Id.* at 19-27.

For labor categories covered by the existing collective bargaining agreement (CBA), the FOSR required base year labor rates to be consistent with the CBA rates. FOSR at 19-20. For labor categories exempt from the CBA, offerors were required to provide

² Only the program execution and cost factors are of relevance to these protests because all offerors were assessed a rating of "acceptable" on the three pass/fail factors, and no protester raised any challenge relating to these factors.

³ A rating of substantial confidence would be assessed if "[t]he [g]overnment ha[d] a high expectation that the [o]fferor will successfully perform the required effort." FOSR at 38. A rating of satisfactory confidence would be assessed if "[t]he [g]overnment ha[d] a reasonable expectation that the [o]fferor will successfully perform the required effort." *Id.* The two lower ratings are not relevant to these protests.

substantiation for their proposed rates, such as payroll information for existing employees, letters of intent for contingent hires, or Bureau of Labor Statistics salary data. *Id.* at 21. Offerors were also required to include CBA-mandated fringe benefits in their proposals. *Id.* at 23.

The FOSR permitted offerors to propose indirect rates consistent with an approved forward pricing rate agreement (FPRA) or forward pricing rate recommendation (FPRR), in which case no additional support was required for the proposed rates. *Id.* at 22. If an offeror did not have an FPRA/FPRR, or if an offeror chose to submit rates that differed from its FPRA/FPRR, it was required to explain the rationale for its rates and submit supporting data. *Id.*

The FOSR further required that offerors propose a fee on proposed labor. *Id.* at 23. The solicitation directed offerors to identify their proposed fee rate and the cost elements to which the fee would be applied, and to explain the rationale for their proposed fee. *Id.* The FOSR stated that “[o]fferors shall not propose a negative fee,” *id.*, and specifically provided that “[i]f the [o]fferor proposes a negative fee . . . then the proposal shall be ineligible for award.” *Id.* at 37.

Each offeror’s proposed rates, combined with its proposed manning and several “plug numbers” provided by the government, would determine the offeror’s proposed price, calculated by formulas set forth in a spreadsheet provided with the solicitation. *Id.* at 30. See AR, Exh. 1.09, Cost Attachment Spreadsheet.

The FOSR provided that the agency would evaluate offerors’ proposed prices for “reasonableness, realism, and completeness, and to ensure CLINs [contract line item numbers] contain no material imbalances.” *Id.* at 36. The government would arrive at a “most probable cost” for each offeror’s proposal, considering the supporting data that offerors provided for both direct labor rates and indirect rates. *Id.* at 37. For evaluation purposes, the agency would calculate a total evaluated cost equal to the most probable cost plus half of the evaluated cost of the last option period. *Id.*

Proposals were due on June 21, 2021, and four offerors submitted timely proposals. Contracting Officer’s Statement of Fact and Memorandum of Law (COS/MOL) at 8.⁴ The agency convened a task order review panel (TORP) to evaluate proposals. *Id.* at 9. The TORP’s Program Execution Evaluation Team (PET) prepared a detailed report of its evaluation of each offeror’s proposal under the program execution factor. See AR, Exh. 3, Program Execution Summary Report at 4-39. This report identified and described elements of offerors’ proposals that increased or decreased the government’s confidence in the offeror’s ability to perform, and explained the extent to which those elements increased or decreased the government’s confidence. *Id.*

⁴ Page citations to the COS/MOL in this background section are to the COS/MOL in the DynCorp protest, B-402602.1. The contracting officer’s statements and memoranda of law in the PAE and M1 protests contain similar discussions.

The PET identified five elements of Vertex's proposal that increased the government's confidence, and no elements that decreased the government's confidence. *Id.* at 36-38. Of the five confidence-increasing findings, the PET identified two as significantly increasing the government's confidence, two as moderately increasing confidence, and one as slightly increasing confidence. *Id.* The elements identified as significantly increasing the government's confidence were the addition of a [DELETED] and the addition of dedicated [DELETED] personnel. *Id.* at 36-37. The elements that moderately increased the PET's confidence in Vertex were a [DELETED] quality management system and [DELETED] capability. *Id.* at 37-38. Vertex's proposed [DELETED] was identified as slightly increasing confidence. *Id.* at 38. Based on these findings, the PET determined that it had "substantial confidence" that Vertex would successfully perform the required effort. *Id.* at 39.

With respect to DynCorp, the PET identified five elements that increased confidence, and none that decreased confidence. *Id.* at 11-13. None of the confidence increasers were identified as significant, and the PET described all of them as either "slightly" or "moderately" increasing confidence in DynCorp's performance. *Id.* The PET assigned DynCorp a confidence rating of "satisfactory confidence." *Id.* at 13-14.

In evaluating M1's proposal, the PET identified three elements that increased confidence--one moderately, and two slightly. *Id.* at 20-22. The PET also identified one element that decreased confidence: M1 proposed, as one of its key personnel (the [DELETED]), a current government employee who might be prohibited by the post-employment restrictions of 18 U.S.C. § 207 from performing on the task order. *Id.* at 22. The PET assigned M1 a confidence rating of "satisfactory confidence." *Id.* at 22-23.

The PET identified two elements in PAE's proposal that slightly increased its confidence in PAE's performance. *Id.* at 28-29. The PET further identified one element that decreased confidence: PAE's decision not to include "[DELETED]⁵ personnel" in its manning approach, which the PET concluded posed a risk to adequate execution of the FOSR tasks related to [DELETED] maintenance. *Id.* at 29-30. The PET assigned PAE a confidence rating of "satisfactory confidence." *Id.* at 30.

In addition to the PET, the TORP also included a cost evaluation team, which reviewed all offerors' cost submissions and prepared a report of its findings. See AR, Exh. 4, Cost Evaluation Summary Report. The cost evaluation team evaluated all offerors' proposals to determine reasonableness, realism, and completeness, and to ensure no material imbalances. *Id.* at 2. The cost evaluation team determined that all offerors' proposed costs were reasonable. *Id.* at 3. The cost evaluation team also made cost

⁵ "[DELETED]" refers to personnel with the CBA designation "[DELETED]." See AR, Tab 2, CBA at 40; PAE Protest at 19.

realism adjustments of between zero and one percent to each offeror's proposed prices, as follows:

	DynCorp	M1	PAE	Vertex
Proposed Price	\$974,186,902	\$891,514,580	\$847,362,002	\$849,232,253
Most Probable Cost	\$974,186,902	\$893,424,447	\$855,101,274	\$849,776,433
Total Adjustment	\$0	\$1,909,867	\$7,739,272	\$544,180
Percent Adjustment	0.00%	0.21%	0.91%	0.06%

Id. at 3.

In evaluating the realism of Vertex's proposed costs, the cost evaluation team identified that Vertex had omitted certain shift differentials and wage premiums required by the CBA for specific categories of work, and it adjusted Vertex's most probable cost upwards to account for these omissions. *Id.* at 13. These cost realism adjustments affected a total of 26 FTEs, and amounted to a total adjustment of \$544,179.41. *Id.* at 3.

The cost evaluation team also noted that Vertex had proposed a [DELETED] percent fee on its own labor and that of its subcontractors. *Id.* at 13. The government accepted this fee, explaining as follows:

Vertex proposed a [[DELETED] percent] fee on prime labor and [a [DELETED] percent] fee on subcontractor fully burdened labor rates. FOSR section 4.5.3.2.2 states "Offerors shall not propose a negative fee and that fee percentage shall be the same across all Labor CLINs within a contract year." Proposing [a [DELETED] percent] fee was not restricted per the FOSR. Vertex provided a detailed rationale for the proposed fee and stated, "the [DELETED] provided by the Naval Test Wing Atlantic contract will [DELETED], and will make Vertex a more profitable company." The Government noted that proposing [a [DELETED] percent] fee is unconventional. However, this is a CPFF type Task Order and [the] proposed Fee will be fixed throughout the life of the contract. As a result, there is no risk of increased fee during execution. Vertex will be reimbursed for all allowable contract costs. The fee rationale provided was accepted by the Government.

Id.

Of relevance to these protests, the cost evaluation team also made two adjustments to PAE's direct labor rates. First, the team concluded that PAE's proposed labor rates for certain "senior proficiency-level," CBA-exempt personnel were too low and adjusted these rates upwards. *Id.* at 9. Second, the team concluded that PAE had failed to properly account for a provision of the CBA requiring payment of a shift differential for workers assigned to shifts beginning between certain times, and added that differential where necessary. *Id.* at 10-11. Collectively, these cost realism evaluations resulted in a \$7,739,272 increase in PAE's total evaluated cost. *Id.* at 3.

In making the award decision, the source selection authority (SSA) reviewed and agreed with the TORP's overall ratings of all offerors. AR, Exh. 5, Decision Memorandum at 3-4. Accordingly, the final program execution confidence ratings and total evaluated cost for all offerors was as follows:

	DynCorp	M1	PAE	Vertex
Program Execution	Satisfactory	Satisfactory	Satisfactory	Substantial
Total Eval. Cost	\$1,049,715,036	\$961,745,362	\$920,994,370	\$914,760,193

Id. at 2-3.

The SSA next compared Vertex's program execution proposal to those of the other three offerors, in each case concluding that Vertex's proposal was superior. *Id.* at 5. With respect to both PAE and M1, the SSA specifically stated that even if the offeror "corrected the one (1) confidence decreasing finding, its [p]rogram [e]xecution would not rise to a [s]ubstantial rating and would remain" lower-rated than Vertex's proposal. *Id.*

The SSA concluded that Vertex's program execution submission was superior to the other offerors' submissions. *Id.* And, the SSA noted that Vertex had the lowest total evaluated cost. *Id.* Accordingly, Vertex was both the highest-rated and the lowest-priced offeror, and the SSA concluded that Vertex's proposal presented the agency with the best value. *Id.* at 6-7.

The agency issued the task order to Vertex on March 2, 2022, and provided written debriefings to all offerors that same day. COS/MOL at 9. All three unsuccessful offerors submitted written questions, which the agency answered on March 11, concluding the debriefings. *Id.* These protests followed.⁶

DISCUSSION

The protesters challenge the agency's evaluation of proposals under the program execution and cost factors, the availability of Vertex's key personnel, the agency's investigation and determination regarding an alleged conflict of interest, the effect of a corporate transaction on the agency's evaluation of Vertex's proposal, and the agency's best-value determination. While we do not address every argument raised by the protesters, we have reviewed them all and find no basis to sustain the protest.

Technical Evaluation Challenges

The protesters allege that the agency improperly evaluated proposals under the program execution factor. In this regard, the protesters argue that the agency acted unreasonably in evaluating Vertex's proposal too favorably, in evaluating the protesters'

⁶ Because the value of the task order at issue exceeds \$25 million, the protest is within our Office's jurisdiction to review protests of task orders issued under multiple-award contracts awarded by defense agencies. 10 U.S.C. § 3406(f)(1)(B).

proposals unfavorably, and in evaluating offerors' proposals unequally. See, e.g., DynCorp Protest at 14-24; PAE Protest at 9-16, 20-21; M1 Protest at 12-15.

When 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. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. Accordingly, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Id.* A protester's disagreement, without more, does not form the basis for us to conclude that an evaluation was unreasonable. See *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8.

Here, we have reviewed all of the protesters' challenges to the agency's evaluation of proposals. We conclude that the allegations represent nothing more than disagreement with the agency's judgment, which, by itself, is not sufficient to establish that the agency acted unreasonably and find no basis to sustain the protests. *Id.* We address representative examples below.

First, DynCorp alleges that its proposal should have been evaluated more favorably because its proposed key personnel have more experience performing the contract requirements. DynCorp Protest at 17, DynCorp Comments & 2nd Supp. Protest at 15-19. The agency explains that it determined that all of DynCorp's proposed personnel met the FOSR requirements, and that the government would not receive any added benefit from key personnel who exceeded the requirements set forth in the FOSR for their positions. COS/MOL, B-420602.1, at 22-24. The agency further notes that DynCorp's proposal did not explain how any specific proposed key person would offer an additional benefit to the government. *Id.* at 24.

We find nothing unreasonable in the agency's evaluation. An agency's judgment that the features identified in a proposal did not warrant the assessment of unique strengths is a matter within the agency's discretion and one that our Office will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. *UDC USA, Inc.*, B-419671, June 21, 2021, 2021 CPD ¶ 242 at 7. And, agencies may reasonably determine that a proposal that exceeds the requirements of a solicitation does not offer any additional benefit to the government. See *MSN Services, LLC*, B-414900 *et al.*, Oct. 4, 2017, 2017 CPD ¶ 3 at 5. Here, the agency concluded that DynCorp's proposal did not demonstrate any additional benefit from the qualifications of its key personnel. DynCorp has not shown that this conclusion was unreasonable.

DynCorp also argues that the agency failed to consider that, as the incumbent contractor, it posed a lower transition risk. DynCorp Protest at 18-19, DynCorp Comments & 2nd Supp. Protest at 19-21. Here, the agency explains that it was not required to give DynCorp a more favorable rating simply because of its incumbent status. We agree.

A protester's contention that its incumbency status should have resulted in a strength for its proposed transition plan provides no basis for finding the agency's evaluation unreasonable. *American Electronics, Inc.*, B-419659, B-419659.2, May 25, 2021, 2021 CPD ¶ 218 at 4. In this regard, there is no requirement that an incumbent be given extra credit for its status as an incumbent. *Id.* Moreover, the record demonstrates that DynCorp was, in fact, evaluated more favorably than any other offeror with respect to the transition element of its proposal. Of the five confidence-increasing findings the agency identified in DynCorp's proposal, four were related to its transition approach, whereas Vertex received only one confidence-increasing finding relating to its transition approach.⁷ AR, Exh. 3, Program Execution Summary Report at 10. DynCorp has not demonstrated that there is anything unreasonable in this aspect of the agency's evaluation, or that the agency acted improperly by not evaluating DynCorp's transition approach even more favorably.

In addition, PAE challenges the agency's evaluation of offerors' quality management systems, arguing that its proposal offered similar benefits to Vertex's, and that the agency's assessment of a confidence-increasing finding to Vertex's proposal but not to PAE's constituted disparate treatment. PAE Comments & Supp. Protest at 22-25. When a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10.

Here, the agency argues that the difference in evaluation was due to a difference in the proposals. Supp. COS/MOL, B-420602.2 at 7-9. Specifically, the agency states that Vertex proposed to obtain [DELETED] of its quality management system [DELETED] within [DELETED] of award, whereas PAE did not. *Id.* This is borne out by the offerors' proposals. Compare AR, B-420602.2, Exh. 8, Vertex Program Execution Proposal at 4 ("[DELETED]") with AR, B-420602.2, Exh. 6, PAE Program Execution Proposal at 22 (discussion of PAE's quality management system with no similar commitment). Accordingly, the record supports the agency's position that the difference in evaluation stemmed from a difference in proposals, and we find no basis to sustain PAE's protest on this ground. See *IndraSoft, supra* at 10.

M1 challenges the agency's evaluation of offerors' manning approaches, arguing that the agency failed to recognize that Vertex proposed a less skilled workforce than M1. M1 3d Supp. Protest at 12-14. In this regard, M1 alleges that Vertex proposed only [DELETED] percent of its aircraft mechanic positions to be filled by "actual mechanics"

⁷ As set forth in the FOSR, the transition approach was only one of three elements under the management element, which itself was one of two elements under the program execution factor. FOSR at 36. The FOSR stated that the agency would assign one overall rating to the program execution factor, accounting for all of its component elements. *Id.* Under this evaluation scheme, we find nothing inherently unreasonable about the agency's determination that DynCorp's apparent transition advantage did not equate to an overall advantage on the program execution factor.

(as opposed to less skilled aircraft workers or helpers) while M1 proposed [DELETED] percent of its mechanics positions to be comprised of “actual mechanics.” *Id.*

The agency counters that its evaluators determined that Vertex could perform the FOSR tasks with the manning that it proposed, because certain tasks could be performed by less skilled workers. Supp. COS/MOL, B-420602.3 at 15; AR, B-420602.3, Exh. 24, Decl. of PET Lead at 2. Therefore, M1’s proposal to perform these tasks with more skilled workers provided no benefit to the agency. *Id.* As noted above, an agency may reasonably determine that a proposal that exceeds solicitation requirements does so in a manner that offers no benefit. *MSN Services, supra* at 5. Here, M1 has provided no reason to find unreasonable the agency’s determination that Vertex met the solicitation’s manning requirements, or its determination that M1’s proposal of a greater number of aircraft mechanics provided no additional benefit.

Having reviewed these and the protesters’ other, similar challenges to the agency’s evaluation of proposals, we conclude that the protesters’ have not demonstrated that the agency’s evaluation was unreasonable or inconsistent with the stated evaluation criteria. *AECOM Mgmt., supra* at 9. As such, these protest grounds are denied.⁸

Availability of the Awardee’s Key Personnel

The protesters also challenge the agency’s evaluation of proposals on the basis that some of the key personnel that Vertex proposed for the task order were either known to be unavailable at the time Vertex submitted its proposal or later became unavailable. See DynCorp Comments & 2nd Supp. Protest at 21-22; PAE Protest at 30-32; PAE Comments & Supp. Protest at 19-22.⁹

⁸ PAE and M1 also challenge the confidence-decreasing findings assessed to their respective proposals. PAE Protest at 9-20; M1 Protest at 12-21. The protesters argue that these findings were unreasonable, and that the agency conducted misleading exchanges by not bringing the issues to their attention. *Id.* However, neither PAE nor M1 can demonstrate prejudice from any alleged error in this regard because the SSA found that even if the protesters had corrected their respective confidence-decreasing findings, their proposals would still be rated lower than Vertex’s. AR, Exh. 5, Decision Memorandum at 5. Given the significant differences between the confidence-increasing findings that the agency found in the offerors’ proposals, we find this conclusion reasonable. Accordingly, even if PAE and M1 successfully challenged their confidence-decreasing findings, their proposals would remain both lower-rated and higher-priced than Vertex’s. No price/technical tradeoff would be required in this scenario, and the protesters cannot demonstrate competitive prejudice. See *Deloitte & Touche, LLP*, B-420038, Oct. 28, 2021, 2021 CPD ¶ 353 at 12. In any event, we have reviewed these challenges and find nothing unreasonable in the agency’s evaluation or conduct of exchanges.

⁹ M1 raised a similar challenge in its initial protest, which it withdrew in its comments on the agency report. See M1 Comments at 33.

The agency responds that these allegations are legally insufficient, and are in fact rebutted by evidence in the record.

The issue of whether personnel identified in an offeror's proposal will perform under the subsequently awarded contract is generally a matter of contract administration that our Office does not review. See 4 C.F.R. § 21.5(a); *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶159 at 7. Nonetheless, our Office will consider allegations that an offeror proposed personnel that it did not have a reasonable basis to expect to provide during contract performance in order to obtain a more favorable evaluation, as such a material misrepresentation has an adverse effect on the integrity of the competitive procurement system. *American Sys. Corp.*, B-417387, B-417387.2, June 11, 2019, 2019 CPD ¶ 238 at 5. In addition, our Office has explained that offerors are obligated to advise agencies of changes in proposed staffing and resources, even after the submission of proposals. *General Revenue Corp., et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 22.

Here, DynCorp and PAE allege that Vertex's job postings for key personnel positions, and post-award recruitment efforts, demonstrate that Vertex did not propose personnel for those roles (or proposed unavailable personnel). DynCorp Protest at 22-23; PAE Protest at 30-32. However, our Office has found that the recruitment of key personnel after award does not, by itself, establish that the proposed personnel were unavailable to perform the contract work. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6. Moreover, the record demonstrates that Vertex properly proposed resumes for all required key personnel, together with signed letters of intent demonstrating the availability of those personnel not already employed by Vertex at the time of proposal submission. AR, B-420602.1, Exh. 8, Vertex Program Execution Proposal at 62-93 (key personnel resumes); AR, B-420602.1, Exh. 18, Vertex Cost Proposal Annex B at 27-32 (signed letters of intent). And, in a March 25, 2022 sworn declaration, Vertex's Chief People Officer confirmed that all of the proposed key personnel were available as of the submission of Vertex's proposal. Intervenor's Req. for Dismissal, B-420602.1, B-420602.2, exh. 1, Decl. of Chief People Officer at 1. In addition, he stated that, as of the date of the declaration, Vertex had no reason to believe that any key personnel were unavailable. *Id.* Accordingly, we find no basis to sustain this protest ground.

Further, DynCorp and PAE each identify an individual who they contend was either unavailable at the time of proposal submission or became unavailable before award. As detailed below, we find no basis to sustain the protests with respect to either of these individuals.

DynCorp alleges that one of Vertex's proposed key personnel (a maintenance manager) left Vertex's employment in October of 2021, approximately one month before the final proposal submission deadline. DynCorp Comments & 2nd Supp. Protest at 21-22. Notably, however, DynCorp does not allege that this individual took a different job at that time. *Id.* Moreover, that individual stated in a sworn declaration, provided by the intervenor, that he did not revoke his availability at any time prior to award, and did not accept a job with another company until after award (during the pendency of these

protests). Intervenor's Supp. Comments, exh. 1, Decl. of Vertex Proposed Maintenance Manager at 1.

PAE argues that Vertex's proposed site manager is unavailable because he has received a promotion within Vertex that would render him unavailable for the role for which he was proposed. PAE Comments & Supp. Protest at 19-21. However, Vertex confirms that this individual remains a Vertex employee, remains available to perform, and in fact attended a kickoff site meeting, which occurred after award and prior to the protest filings. Intervenor Supp. Comments at 6.

On these facts, we find no basis to conclude that Vertex misrepresented the availability of its key personnel.

Cost Evaluation Challenges

The protesters all challenge various aspects of the agency's cost evaluation. DynCorp and M1 challenge the agency's evaluation of Vertex's cost proposal. DynCorp Protest at 24-32; DynCorp Comments & 2nd Supp. Protest at 7-15; M1 Protest at 28-33; M1 3d Supp. Protest at 2-12.¹⁰ PAE and M1 challenge cost realism adjustments made to their own proposals. PAE Protest at 21-29, PAE Comments & 2nd Supp. Protest at 10-19; M1 Protest at 21-28.

We find no basis to sustain any of these challenges.

First, DynCorp and M1 argue that the agency should have found Vertex's proposed indirect rates for the task order option years to be unrealistic and adjusted them upwards. In this respect, Vertex proposed a decreasing rate for fringe benefits over the life of the task order, which it supported both by proposing to renegotiate the health and welfare benefits of the CBA and by relying on historical data regarding its costs for these fringe benefits. AR, B-420602.1, Exh. 9; AR, B-420602.3, Exh. 14, Vertex Cost Proposal at 22. DynCorp and M1 argue that this is contrary to the FOSR's directive that "CBA mandated indirect rates/costs (e.g. fringe benefits) shall be adhered to and included in the proposal." FOSR at 23.

The agency counters that the record demonstrates that the agency reviewed Vertex's proposed fringe rates and reasonably found them to be sufficient to cover the required benefits of the CBA. We find the agency's conclusion to be reasonable.

In this respect, the CBA does not require that the contractor spend any specific amount on health and welfare benefits; rather, it describes the features that must be provided: *i.e.*, the plan options, the required coverages, the employee contributions, and the credits for opting out. See AR, Exh. 2, CBA at 38-43. The CBA also expressly recognizes that changes to health and welfare plans may be required for, among other

¹⁰ PAE initially challenged the agency's evaluation of Vertex's cost proposal; it withdrew this challenge while maintaining its protest of the agency's cost realism adjustments to PAE's proposal. See PAE Supp. Comments at 1 n. 1.

reasons, “cost-containment.” *Id.* at 38. Further, the FOSR did not constrain offerors to propose any particular fringe rate. Instead, it required offerors that proposed indirect rates different from their FPRA/FPRR rates to support their proposal with a “fully supportable rationale,” including a full cost calculation breakdown. FOSR at 22.

Here, the record shows that the agency reviewed Vertex’s proposed fringe rate, including Vertex’s supporting cost breakdowns, and expressly concluded that the rate was realistic. AR, Exh. 4, Cost Summary Report at 12. The agency wrote:

The Offeror’s indirect rates are a combination of rates built from the bottom-up specifically for this contract, and rates derived from the DCAA [Defense Contract Audit Agency] approved FPRR. The Offeror provided detailed tables and rate methodology to demonstrate the basis of the developed Fringe rate and certified that the Fringe rate proposed is sufficient to cover all mandated fringe benefits included in the CBA. Vertex provided a description and calculation of how the FPRR rates were combined to create blended rates in order to match the Task Order period of performance. Based on the cost realism on proposed indirect rates described above, all proposed indirect rates were accepted as realistic.

Id. DynCorp and M1 have not demonstrated that this conclusion is unreasonable.¹¹

In addition to Vertex’s fringe rates, the protesters also challenge the agency’s evaluation of Vertex’s [DELETED] percent fee. They argue that this fee violates the terms of the FOSR, which stated that offerors “shall propose [a] fee on proposed [l]abor,” FOSR at 23, and that the agency failed to evaluate the performance risk to the government from a [DELETED] task order. We find no merit to either argument.

¹¹ Moreover, neither DynCorp nor M1 demonstrated competitive prejudice from this alleged error. M1 calculated that this issue reduced Vertex’s total evaluated cost by \$33,694,185. M1 3d Supp. Protest, exh. A at 1. Adding this to Vertex’s total evaluated cost of \$914,760,193 would yield a new total evaluated cost for Vertex of \$948,454,378, still approximately \$13.3 million lower than M1’s total evaluated cost. Similarly, DynCorp contends that Vertex’s total evaluated cost should have increased by “as much as \$56.6 million.” DynCorp Comments & 2nd Supp. Protest at 12. This would yield a total evaluated cost for Vertex of \$971.4 million, which is still more than \$78 million lower than DynCorp. Accordingly, even accepting each protester’s calculation at face value, neither DynCorp nor M1 alleges that this error would have resulted in it having a lower total evaluated cost than Vertex. And, as we have denied all challenges to the agency’s evaluation of the offerors under the non-cost factors, neither protester has established competitive prejudice. *See Deloitte, supra* at 12.

The FOSR prohibited proposals with a negative fee; *i.e.*, a fee of less than zero percent. FOSR at 23, 37. A fee of [DELETED] percent is not a negative fee; accordingly, the FOSR did not prohibit offerors from proposing a [DELETED] percent fee.¹²

Further, the record demonstrates that the agency meaningfully considered the impact of Vertex's [DELETED] percent fee proposal. In its initial review of Vertex's proposal, the agency noted that Vertex had not supported this proposed fee, and asked Vertex to provide its rationale. AR, B-420602.1, Exh. 10; AR, B-4020602.3, Exh. 15, Vertex Interchange Notice at 1. Vertex responded and explained as follows:

The rationale for proposing fee at [[DELETED] percent] on [p]rime contractor labor and subcontractor cost elements is associated with our approach to evaluating opportunities using a [DELETED] approach whereby [DELETED]. In simple terms, the [DELETED] provided by the Naval Test Wing Atlantic contract will [DELETED], and will make Vertex a more profitable company.

Id. at 2. The agency's cost evaluation team considered this response, acknowledged that it was "unconventional," noted that there was no risk of a fee increase or of Vertex incurring allowable costs for which it could not be reimbursed, and expressly concluded that "[t]he fee rationale provided was accepted by the [g]overnment." AR, Exh. 4, Cost Summary Report at 13. Thus, contrary to the protesters' assertions that the agency failed to evaluate Vertex's proposed fee, the record demonstrates that the agency evaluated the fee and reached a conclusion. The protesters' disagreement with that conclusion does not provide a basis to sustain the protest. *See DynCorp Int'l, LLC, supra* at 7-8.

Last, we find no basis to sustain PAE's challenge to the cost realism adjustments made to its own proposal.¹³

PAE first alleges that the agency improperly adjusted PAE's proposed direct labor rates for several CBA-exempt senior personnel. PAE Protest at 21-29. PAE contends that it supported its proposed rates for these positions by providing actual salary data for current PAE employees with corresponding job titles, and that this type of substantiation was permitted by the FOSR and should have been accepted by the

¹² Notably, this is in contrast to another recent FOSR issued under the same CMMARS IDIQ, which expressly prohibited offerors from proposing a fee of less than five percent. *See, PAE Aviation and Tech. Servs.*, B-418828.3, 2021 CPD ¶ 153 at 2.

¹³ M1 also challenged the cost realism adjustment to its proposal. However, M1's proposed price, even prior to the cost realism adjustment, was higher than Vertex's total evaluated cost. Accordingly, even if M1's arguments were meritorious, it would remain higher-priced and lower-rated than Vertex, and M1 cannot show prejudice from any error in the agency's cost realism adjustment to its proposal. *See Deloitte, supra* at 12. Because prejudice is an essential element of any protest, this ground of M1's protest is denied.

agency. *Id.* The agency responds that PAE did not provide any substantiation for some of the adjusted categories, and that the agency reasonably determined that the substantiation PAE did provide was insufficient. COS/MOL, B-420602.2 at 30.

PAE's proposal included several CBA-exempt labor categories at the senior proficiency level, together with proposed hourly rates for those categories. AR, B-420502.2, Exh. 7, PAE Cost Proposal at 9. In an interchange notice provided to PAE prior to award, the agency informed PAE that it did not accept PAE's rates for six senior positions. AR, B-420502.2, Exh. 10, PAE Interchange Notice at 1-2. The agency informed PAE of the rates it believed to be realistic for these six positions, and requested that PAE either update its proposal or provide additional substantiation. *Id.* PAE responded by raising its proposed rate for one of the six positions, but to an amount still lower than the rate that the government stated it believed to be realistic. *Id.* at 3. As further substantiation for its rates, PAE provided a table explaining that its proposed rates were, on average, approximately [DELETED] percent higher than the "BLS median rates." *Id.* PAE also provided salary information for four current employees who PAE stated had the "same titles" and were paid rates consistent with or less than PAE's proposed rates. *Id.*

In reviewing PAE's proposal, the agency's cost evaluation team concluded that PAE's rates for the six identified positions (as well as one additional position¹⁴) were unrealistic. The agency explained that it considered a salary level between the 75th and 90th percentile from the BLS data to be realistic for senior proficiency level positions. AR, Exh. 4, Cost Summary Report at 9. The agency used the 10th to 25th percentiles for junior positions and the 50th to 75th percentiles for journeyman positions. *Id.* This sliding scale is consistent with the FOSR instruction that "[t]he BLS labor rate percentile shall be commensurate with the designation of the labor category (Jr., Journey or Sr.), which is tied to the required years of experience of the labor category." FOSR at 21.

The cost evaluation team noted that PAE used the median (*i.e.* 50th percentile) BLS rate to substantiate its proposed senior proficiency labor rates. AR, Exh. 4, Cost Summary Report at 9. But, PAE did not explain why it believed it could hire senior proficiency level employees at salaries only slightly above the median for their positions. See AR, B-420602.2, Exh. 10, PAE Interchange Notice at 3. Similarly, although PAE identified four employees that it contended had the "same titles" as the adjusted labor categories, it did not propose to use those individuals on this project, nor did it provide any information regarding those individuals' proficiency levels. *Id.* at 3-4. Accordingly, we find nothing unreasonable either in the agency's conclusion that PAE did not

¹⁴ The agency concedes that it inadvertently omitted from its interchange notice one labor category that it intended to adjust. COS/MOL, B-420602.2 at 31. However, the total adjustment to PAE's total evaluated cost as a result of this one labor category was \$46,080. *Id.* Because PAE's unadjusted proposed price was more than \$2.4 million higher than Vertex's evaluated most probable cost, we conclude that this is a *de minimis* error that did not prejudice PAE and provides no basis to sustain PAE's protest.

substantiate its labor rates for the adjusted categories, or in the agency's upward adjustment of PAE's proposed labor rates.

There is also no basis to sustain PAE's protest as a result of the agency's shift differential adjustment to PAE's CBA labor rates. Here, the CBA provided that employees working an "off-shift," *i.e.*, a shift starting between noon and 5:59 a.m.¹⁵ would be paid an \$0.80 per hour shift differential. AR, Exh. 2, CBA at 32. PAE misinterpreted this as applying only to workers who regularly work a day shift, and therefore did not apply this shift premium in its cost proposal. AR, Exh. 4, Cost Evaluation Memorandum at 10-11. The agency noted that PAE's cost proposal did not account for employees who are regularly scheduled for work on night shifts or midnight shifts, and adjusted PAE's rates for approximately [DELETED] FTEs to maintain compliance with the CBA. *Id.* In light of the language of the CBA, we conclude that this adjustment was reasonable.¹⁶

Accordingly, we find no basis to sustain these cost challenges.

Conflict of Interest

DynCorp also argues that the agency failed to properly evaluate a conflict of interest resulting from Vertex's use of a former NTWL official (subsequently referred to as X) to prepare its proposal. Specifically, DynCorp alleges that X consulted with Vertex on the preparation of its proposal, and Vertex ultimately proposed him as a key person under the task order.¹⁷ AR, B-420602.1, Exh. 8, Vertex Program Execution Proposal at 4. DynCorp argues that X's involvement gave Vertex an unfair competitive advantage because of his access to the incumbent DynCorp's confidential cost and performance information. DynCorp Comments & 2nd Supp. Protest at 3-7; DynCorp 3d Supp. Protest at 2-6. DynCorp further alleges that the agency's investigation of this potential conflict of interest was unreasonable. DynCorp 3d Supp. Protest at 6-12.

The agency contends that it conducted a thorough investigation of the potential conflict of interest and reasonably concluded that X did not have access to competitively useful information and that Vertex did not gain an unfair competitive advantage as a result of hiring X. Supp. COS/MOL, B-420602.1 at 5.

¹⁵ At one work location, the CBA provided that shifts beginning between 11:00 a.m. and 5:59 a.m. were considered "off-shift[s]." AR, Exh. 2, CBA at 32.

¹⁶ Notably, Vertex also omitted shift differentials with respect to certain labor categories, and the agency adjusted its evaluated cost upwards as well. AR, Exh. 4, Cost Summary Report at 13. Because Vertex omitted differentials applicable to a smaller number of FTEs, however, this resulted in a smaller adjustment. *Id.*

¹⁷ For the purpose of our analysis, whether X is a consultant or an employee of Vertex is a "distinction without a difference." *Science Applications Int'l Corp.*, B-419961.3, B-419961.4, Feb. 10, 2022, 2022 CPD ¶ 59 at 6 n.6.

Contracting agencies are to avoid even the appearance of impropriety in conducting government procurements. FAR 3.101-1; *Perspecta Enter. Sols., LLC*, B-418533.2, B-418533.3, June 17, 2020, 2020 CPD ¶ 213 at 7. Where a firm may have gained an unfair competitive advantage through its hiring of a former government employee, the firm can be disqualified from a competition based on the appearance of impropriety that results. *Health Net Fed. Servs., LLC*, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 28. This is true even if no actual impropriety can be shown, so long as the determination of an unfair competitive advantage is based on hard facts and not mere innuendo or suspicion. *Verisys Corp.*, B-413204.5 *et al.*, Oct. 2, 2017, 2017 CPD ¶ 338 at 9. Thus, a person's familiarity with the type of work required, resulting from the person's prior position in the government, is not, by itself, evidence of an unfair competitive advantage. *Perspecta Enter. Sols., LLC*, *supra*; *Dewberry Crawford Grp.; Partner 4 Recovery*, B-415940.11 *et al.*, July 2, 2018, 2018 CPD ¶ 298 at 24-25.

In determining whether an offeror obtained an unfair competitive advantage by hiring a former government employee with knowledge of non-public information, our Office has considered a variety of factors, including whether the non-public information was in fact available to the firm, whether the non-public information was proprietary information, and whether the non-public information was competitively useful. *Sigmattech, Inc.*, B-415028.3, B-415028.4, Sept. 11, 2018, 2018 CPD ¶ 336 at 9. Whether the appearance of impropriety based on an alleged unfair competitive advantage exists depends on the circumstances in each case. *Unisys Corp.*, B-403054.2, Feb. 8, 2011, 2011 CPD ¶ 61 at 5. Ultimately, the responsibility for determining whether an appearance of impropriety exists, and whether an offeror should be allowed to continue to compete, is a matter for the contracting agency, and we will not disturb the contracting agency's determination unless it is shown to be unreasonable. *Id.*

As explained below, based on our review of the record, we find that the agency reasonably concluded that X did not have access to non-public, competitively useful information related to the procurement and that Vertex therefore did not gain an unfair competitive advantage as a result of hiring X.

Here, the record demonstrates that the contracting officer thoroughly and proactively investigated the potential conflict of interest before making award to Vertex. The agency first discovered the inclusion of X in Vertex's proposal--and the potential conflict of interest raised by his involvement--in its review of proposals in August of 2021. AR, B-420602.1, Exh. 19, Conflict of Interest Determination Memorandum at 4. The contracting officer then began an investigation of the potential conflict, which included both internal research and questions posed to Vertex via an interchange notice. *Id.* at 5, 19-30. The contracting officer conducted interviews with agency employees with relevant knowledge, collected documents, and consulted with agency counsel. *Id.* at 5.

The contracting officer's investigation considered multiple issues potentially arising due to X's involvement with Vertex. These included a Procurement Integrity Act violation, a biased ground rules conflict, an unequal access to information conflict due to access to proprietary non-public information, an unequal access to information conflict due to

access to source selection information, and an impaired objectivity conflict. *Id.* at 12-17. With respect to all of these possibilities, the contracting officer concluded that there was no violation or conflict of interest. *Id.* As DynCorp alleges only that X had access to its proprietary information, we address only that finding further.

In investigating whether Vertex had access to DynCorp's proprietary information, the contracting officer considered the nature of X's prior role in the government, and what non-public, proprietary information he might have obtained about DynCorp that would provide Vertex an unfair competitive advantage. *Id.* at 15. The contracting officer reached two conclusions: first, that the DynCorp information to which X had access was not competitively useful, and second, that there was no evidence that X actually accessed this information. *Id.*

Specifically, the contracting officer determined that X had technical permissions to access an NTWL "share drive," on which certain data related to DynCorp's performance was located. *Id.* However, the contracting officer concluded that this data was "high-level" data relating to cost ceilings and surveillance ratings, and did not include individual labor rates, detailed cost data, or any other specific details that could be useful for drafting competitive proposals. *Id.*

The contracting officer also determined that there was no evidence that X had actually accessed the information on the share drive, nor was there evidence that he had received any information regarding DynCorp's performance via email. *Id.* Moreover, the contracting officer reviewed X's role and determined that he would not have had a reason to access or review this information as part of his duties. *Id.* In this respect, X's role was focused on business management and strategic planning, and he had limited contact with the contractor. *Id.*

The contracting officer also considered that X retired from government service effective November 29, 2019. *Id.* at 16. Vertex stated that it first initiated contact with X in January of 2021, after discovering him via his LinkedIn profile. *Id.* at 29. The contracting officer found it highly improbable that X had accessed information about the incumbent, outside of his job requirements, so that he could use this information to assist an offeror that would first contact him more than a year later. *Id.*

Finally, the contracting officer noted that, when the agency asked Vertex about X via an interchange notice, Vertex stated that, prior to retaining X as a consultant, it investigated the possibility that X might possess competitively useful, proprietary information and was assured by X that he did not have such information. *See id.* at 16, 29. X also submitted a declaration with Vertex's response to the interchange notice stating "I . . . do not possess any competitively useful nonpublic information about this procurement," and "[a]t no point during this consultation did I provide any competitively useful nonpublic information about this procurement to Vertex." *Id.* at 41.

DynCorp argues that the information stored on the NTWL shared drive¹⁸ was competitively useful because it contained cost data that would have allowed a competitor to “reverse engineer” DynCorp’s cost structure. DynCorp Supp. Comments at 4-10. DynCorp further argues that the shared drive contained information regarding DynCorp’s performance, such that a competitor could tailor its proposal to imitate the areas in which the agency approved of DynCorp’s performance and describe an improved approach to the areas in which DynCorp had performance challenges. *Id.* at 10-11.

We find that DynCorp’s allegations rely mainly on speculation and inference rather than hard facts. See *Science Applications Int’l Corp.*, *supra* at 12. For example, DynCorp asserts that Vertex must have had access to DynCorp’s cost structure because Vertex proposed a low fringe rate and [DELETED] fee, leading to a lower total cost than DynCorp. DynCorp Supp. Comments at 9-10. However, the record here demonstrates that all three other offerors proposed lower costs than DynCorp, and that DynCorp’s total evaluated cost was more than nine percent higher than the average cost. AR, Exh. 4, Cost Summary Report at 4. Accordingly, we will not infer that Vertex had access to DynCorp’s proprietary information from the mere fact that Vertex underbid DynCorp.

Similarly, DynCorp alleges that in one work location, in one month of the contract, a note in a contracting officer’s representative report (potentially accessible via the NTWL share drive) mentioned that DynCorp had issues with [DELETED]. DynCorp Supp. Comments at 11. DynCorp argues that this must have been the reason that Vertex “went out of its way” to mention its [DELETED] processes in its proposal. *Id.*; see AR, B-420602.1, Exh. 8, Vertex Program Execution Proposal at 39. However, as detailed in Vertex’s proposal, [DELETED] is a mandated process of the Naval Aviation Maintenance Program Standard Operating Procedures, which the FOSR requires the contractor to follow. *Id.* at 38-39. An offeror explaining how it will comply with FOSR requirements is not evidence of unequal access to proprietary information.¹⁹

¹⁸ The agency placed only limited examples of the types of data on the share drive in the agency report. Our Office permitted DynCorp to submit additional examples from its own files, which it did with its comments on the supplemental agency report. We have considered DynCorp’s examples in our analysis.

¹⁹ Further, DynCorp mentioned a “[DELETED]” program in several tables in its proposal, but chose not to provide a detailed narrative to explain any improvement in its processes. See, e.g., AR, B-420602.1, Exh. 6, DynCorp Program Execution Proposal at 35. Vertex was not awarded a confidence-increasing finding for its [DELETED] program, nor was DynCorp assessed any confidence-decreasing findings related to [DELETED]. AR, Exh. 4, Program Execution Summary Report at 4-14, 36-38. For these reasons, the allegation that knowledge of DynCorp’s past performance issues in this area was competitively useful rings hollow.

In conclusion, we find the contracting officer performed a meaningful investigation and reasonably concluded that X did not have competitively useful information. DynCorp has not shown the agency's determination to be unreasonable, and we will therefore not disturb it. *Unisys Corp.*, *supra* at 5.

Impending Corporate Transaction

M1 protests that the agency failed to properly consider the effect of a corporate transaction involving Vertex, or that Vertex misled the agency by failing to disclose the transaction. Specifically, on March 7, 2022, (*i.e.*, five days after the agency made its award decision), Vertex publicly announced a merger with Vectrus, Inc. M1 Protest, exhs. 9, 10.²⁰ Vertex did not disclose this transaction to the agency prior to award, and the agency did not consider it.

Our Office has found that an agency is required to analyze the effect of a possible corporate restructuring on an offeror's proposal when the transaction at issue is "imminent and essentially certain." *National Aeronautics and Space Admin.--Recon.*, B-408112.3, May 14, 2014, 2014 CPD ¶ 155 at 3. Indices of whether a transaction is imminent and essentially certain include whether the timing and manner of the transaction contemplated were within the control of the offeror, and whether the offeror had disclosed detailed plans to the Securities and Exchange Commission (SEC), including an anticipated time frame for closing the transaction. *See Lockheed Martin Integrated Systems, Inc.*, B-410189.5, B-410189.6, Sept. 27, 2016, 2016 CPD ¶ 273 at 8. In this context, we have recognized that "the sale of a business unit, which would involve an arms-length transaction with a third party" should be analyzed differently than a "spin-off" entirely within the control of the parent company. *National Aeronautics*, *supra* at 3.

An agency's obligation to consider the effects of a corporate transaction arises only when the agency becomes aware of an imminent and essentially certain corporate transaction prior to award. *Morgan Business Consulting, LLC*, B-418165.6, B-418165.9, Apr. 15, 2021, 2021 CPD ¶ 171 at 5. An agency's lack of knowledge of a proposed corporate transaction is generally not unreasonable, and an agency generally has no affirmative obligation to discover and consider such information. *Id.*

Here, the record demonstrates both that the agency was unaware of the proposed transaction, and that the transaction was not imminent and essentially certain, until after award.

²⁰ Exhibit 9 to M1's protest is a March 7, 2022 presentation detailing the Vertex/Vectrus merger. Exhibit 10 is a March 7 press release announcing the merger. *See* Vectrus and Vertex to Combine, Creating a Global Leader in Mission-Essential Solutions, <https://www.prnewswire.com/news-releases/vectrus-and-vertex-to-combine-creating-a-global-leader-in-mission-essential-solutions-301496473.html> (last visited June 16, 2022).

Vertex's proposal did not mention this corporate transaction, nor does the record reflect that Vertex notified the agency of the transaction in any pre-award communication. See *generally*, AR, B-420602.3, exhs. 13-15, Vertex Proposal and Interchange Notice Responses. Further, the procuring contracting officer (PCO) confirmed in a declaration that neither he nor anyone else on the source selection evaluation team was aware of the corporate transaction until M1 filed its post-award protest. Req. for Dismissal, B-420602.3, exh. A, PCO Decl. at 1-2. M1 does not challenge this representation, or otherwise contend that the agency had pre-award knowledge of the corporate transaction. In addition, the earliest public disclosure of the transaction that M1 has cited in its protest is dated March 7, five days after award. See M1 Protest, exhs. 9, 10. We find the agency's lack of knowledge of the corporate transaction to be reasonable, and see no reason that the agency was under an obligation to discover the transaction. *Morgan Business Consulting, supra* 5.

Moreover, we find no merit to M1's contention that the merger was "imminent and essentially certain" prior to award. Here, M1 relies on the March 7 announcement, which it contends must have been preceded by a litany of tasks that rendered the transaction imminent and essentially certain at an earlier date. M1 Comments at 35-38. This argument is speculative because M1 does not identify any specific act that it demonstrates occurred prior to the time of award. See *id.* Speculation is insufficient to meet the requirement of our Bid Protest Regulations that a protest include a sufficient factual basis to establish a reasonable potential that the protest allegations may have merit. *Ahtna Facility Servs., Inc.*, B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11.

In any event, documents filed with the SEC regarding the merger demonstrate that it was not imminent and certain as of the March 2 award date. Both on and after this date, Vertex and Vectrus exchanged revised drafts of the merger documents and engaged in discussions regarding "open points" requiring resolution. Vectrus Preliminary Proxy Statement, Apr. 27, 2022, https://www.sec.gov/Archives/edgar/data/1601548/000110465922051314/tm2210280-1_prem14.htm at 69-70 (last visited June 16, 2022) (cited in Vertex's Comments, B-404602.3 at 15 n.4). Vectrus's Board of Directors did not approve the transaction until March 5, and that approval was conditioned on favorable resolution of open issues. *Id.* at 70. Vertex and Vectrus did not reach final agreement on the merger documents until March 7, at which point they signed the documents and publicly announced the merger. *Id.* at 70-71. Further, as Vertex notes, even after this date, the merger remained uncertain, as it was subject to multiple conditions precedent. Vertex's Comments, B-404602.3 at 14-15. These conditions include shareholder approvals, which Vertex avers have not yet been obtained. *Id.* See also Vertex-Vectrus Merger Agreement, <https://www.sec.gov/Archives/edgar/data/0001601548/000160154822000006/exhibit21mergeragreement.htm> at 89-92 (last visited June 16, 2022) (cited in Vertex's Comments, B-404602.3 at 15 n.3). At the time of award, therefore, the transaction remained an arms-length third-party transaction, which was not imminent and essentially certain. See *National Aeronautics, supra* at 3.

For these reasons, we conclude that the agency reasonably evaluated Vertex's proposal without consideration of the transaction, and we deny this basis of M1's protest.

Best-Value Determination

Finally, DynCorp and M1 contend that the agency's best-value determination was unreasonable because it was based on a flawed technical and cost evaluation. See DynCorp Comments & 2nd Supp. Protest at 29-30, M1 Supp. Protest at 6-7. These allegations are entirely derivative of the protesters' other challenges to the agency's evaluation, all of which we have dismissed or denied as set forth above. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *Advanced Alliant Solutions Team, LLC*, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.

The protest is denied.

Edda Emmanuelli Perez
General Counsel