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# Decision

**Matter of:** Guidehouse LLP

**File:** B-419848.3; B-419848.4; B-419848.5

**Date:** June 6, 2022

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## DIGEST

1. Protest challenging awardee's alleged impaired objectivity organizational conflict of interest (OCI) is sustained where the agency's OCI analysis was unreasonable, and mistakenly focused upon whether the two work efforts were similar in size and scope rather than whether the awardee would be in a position to review its own work.
2. Protest challenging the agency's evaluation of the protester's technical quotation is denied where the assigned weaknesses were reasonable, consistent with the stated evaluation criterion, and adequately documented.
3. Protest challenging that the agency failed to evaluate whether awardee's prices were unbalanced is denied where the protester fails to make a showing that one or more of the awardee's line item prices were significantly overstated and where the agency's evaluation of the awardee's price was reasonable.
4. Protest challenging the agency's best-value tradeoff source selection decision is sustained where the agency failed to adequately document or explain why the awardee's technical advantages justified paying the price premium associated with that quotation.

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## DECISION

Guidehouse LLP, of Falls Church, Virginia, protests the issuance of a task order to Deloitte Consulting LLP, of Arlington, Virginia, under Request for Quotations (RFQ) No. 70US0921Q70090020, issued by the Department of Homeland Security (DHS), United States Secret Service, for the provision of financial support services. Guidehouse argues that the agency's evaluation of vendors' quotations and resulting award decision were improper.

We sustain the protest.

## BACKGROUND

The Secret Service protects the President and Vice President of the United States, their families, visiting heads of state/government, and associated residences: the agency also investigates violations of law relating to the counterfeiting of United States securities and obligations. Agency Report (AR), Tab 4, RFQ amend. 1, Performance Work Statement (PWS) at 111.<sup>1</sup> Within the Secret Service, the responsibilities of the Office of the Chief Financial Officer (CFO) include conducting budget and financial management operations for the agency. *Id.* at 110. In support thereof, the Secret Service created the "CFO support services" PWS here to obtain budget formulation and execution, special lodging program, and financial management support services. *Id.* at 111.

The RFQ was issued on January 21, 2021, to holders of the General Services Administration's One Acquisition Solution for Integrated Services indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.<sup>2</sup> RFQ at 97; AR, Tab 2, Contracting Officer's Statement (COS) at 31. The solicitation contemplated the issuance of a fixed-price task order for a base year with four 1-year options. COS at 30. The solicitation established that task order award would be made on a best-value tradeoff basis, based on three evaluation factors in descending order of importance: (1) technical capability (technical); (2) past performance/corporate experience/professional qualifications (past performance); and (3) price. RFQ at 159. The technical and past performance factors were significantly more important than price. *Id.*

Four vendors, including Deloitte and Guidehouse, submitted quotations by the February 22 closing date for receipt of quotations. COS at 31. An agency technical evaluation panel (TEP) evaluated vendors' non-price quotations using various adjectival rating schemes set forth in the solicitation. For the technical factor, the available ratings

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<sup>1</sup> Unless otherwise noted, all citations to the agency report documents are to the consecutive numbering of the pages in the Adobe PDF format of such documents.

<sup>2</sup> The solicitation was subsequently amended four times. Unless stated otherwise, all citations are to the final version of the solicitation.

were: high confidence, some confidence, and low confidence, while the available ratings for the past performance factor were: low risk, medium risk, high risk, or neutral. RFQ at 161. On May 5, after completing its evaluation, the agency issued the task order to Deloitte. COS at 31.

On May 19, Guidehouse filed a protest with our Office challenging the agency’s evaluation and award decision to Deloitte. Among other things, Guidehouse alleged the agency had failed to conduct a reasonable assessment of Deloitte’s “unmitigable” organizational conflict of interest (OCI). Protest, B-419848, May 19, 2021, at 11. On June 17, the agency notified our Office that it intended to take corrective action by “cancel[ing] the award, amend[ing] the solicitation, and allow[ing] offerors to resubmit part of their proposals in accordance with that amendment,” after which the agency would “re-evaluate the full proposals, conduct a new best-value analysis, and make a new source selection decision.” Agency Notice of Corrective Action, B-419848, June 17, 2021, at 1. As a result, on June 22 we dismissed the prior Guidehouse protest as academic. *Guidehouse LLP*, B-419848, June 22, 2021 (unpublished decision).

The Secret Service thereafter amended the RFQ and permitted vendors to submit revised quotations by July 19. By February 4, 2022, the agency completed its reevaluation, with the final evaluation ratings and prices of the Deloitte and Guidehouse quotations as follows:

	<b>Deloitte</b>	<b>Guidehouse</b>
<b>Technical</b>	High Confidence	High Confidence
<b>Past Performance</b>	Low Risk	Low Risk
<b>Overall<sup>3</sup></b>	High Confidence	Some Confidence <sup>4</sup>
<b>Price</b>	\$23,996,557	\$20,999,946

AR, Tab 9, Technical Evaluation Report at 267, 271-272, 275; Tab 11, Price Evaluation Report at 292.

<sup>3</sup> In addition to assigning individual ratings to quotations under each of the two non-price evaluation factors, the TEP also assigned an “overall” non-price confidence rating regarding its assessment of the vendors’ ability to successfully perform the PWS requirements. AR, Tab 9, Technical Evaluation Report.

<sup>4</sup> The TEP assigned an overall non-price rating to Guidehouse’s quotation of “High Confidence.” AR, Tab 9, Technical Evaluation Report at 275. The agency source selection authority (SSA), however, subsequently assigned the Guidehouse quotation an overall rating of “Some Confidence.” Supp. AR, Tab 10, Source Selection Decision Document (SSDD) at 13; Tab 18, Supp. COS at 20.

The agency technical evaluators also identified strengths and weaknesses in the vendors' quotations in support of the ratings assigned. AR, Tab 9, Technical Evaluation Report at 267-268, 271-272.

On February 14, the contracting officer, who was also the source selection authority (SSA), received and reviewed the technical and price evaluation reports. Supp. AR, Tab 10, SSDD at 3-16. The SSA ultimately concluded that Deloitte's higher technically rated, higher-priced quotation, represented the best overall value to satisfy the agency's needs. *Id.* at 16.

On February 24, after receiving notice of award and a debriefing, Guidehouse filed its protest with our Office.<sup>5</sup>

## DISCUSSION

Guidehouse raises several challenges regarding the agency's evaluation and award decision. First, the protester again contends the agency failed to reasonably evaluate Deloitte's alleged impaired objectivity OCI. Guidehouse also contends that the agency's technical evaluation of the protester's quotation was unreasonable. The protester next asserts the Secret Service failed to realize that Deloitte's proposed pricing was unbalanced. Finally, Guidehouse argues the agency's best-value tradeoff determination was improper. Had the Secret Service conducted a proper evaluation, the protester argues, the agency would have eliminated Deloitte from the competition and determined that Guidehouse's quotation represented the overall best value to the agency.<sup>6</sup> Protest at 8-20; Comments and Supp. Protest, Apr. 7, 2022, at 2-11.

As detailed below, we find that the agency's OCI analysis of Deloitte was unreasonable and that the agency's best-value tradeoff decision was inadequately documented and sustain the protest on those grounds. While we have also considered all of the remaining issues raised by Guidehouse, we find no additional bases on which to sustain the protest.

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<sup>5</sup> As the value of the task order at issue is greater than \$10 million, the procurement here is within our jurisdiction to hear protests related to the issuance of task orders under IDIQ contracts awarded by civilian agencies. 41 U.S.C. § 4106(f).

<sup>6</sup> Guidehouse also alleged that the agency improperly downgraded Guidehouse's quotation for price realism concerns, and that the agency's evaluation of vendors' technical quotations was unequal. Protest at 17-19; Comments and Supp. Protest, Apr. 25, 2022, at 7-8. The protester subsequently elected to withdraw these additional protest grounds. Guidehouse Notice of Withdrawal of Protest Argument, Apr. 29, 2022; Guidehouse Response to GAO Requests, May 6, 2022, at 1.

## Organizational Conflict of Interest

Guidehouse first argues that the Secret Service failed to reasonably evaluate Deloitte's alleged impaired objectivity OCI. Specifically, the protester contends that "an award to Deloitte means that Deloitte will be required to monitor, report on, and identify necessary corrective action related to activities Deloitte itself is performing under another [Secret Service] task order." Protest at 8. Guidehouse also alleges the agency failed to reasonably consider Deloitte's impaired objectivity OCI, insofar as the contracting officer's analysis, among other things, erroneously focused upon the similarity of the two work efforts. Comments and Supp. Protest, Apr. 7, 2022, at 4. We agree.

The FAR requires contracting officials to identify and evaluate organization conflicts of interests as early as possible, and to avoid, neutralize, or mitigate significant potential conflicts 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. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505(a); *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 6; *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 8.

We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *C2C Innovation Sols., Inc.*, *supra* at 7; *DRS Tech. Servs., Inc.*, B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 11. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *DRS Tech. Servs., Inc.*, *supra*. A protester must also 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 3-4. Once it has been determined that an actual or potential OCI exists, the protester is not required to demonstrate prejudice; rather, harm from the conflict is presumed to occur. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 305 at 7; *Department of the Navy--Recon.*, B-286194.7, May 29, 2002, 2002 CPD ¶ 76 at 12.

### Timeliness

As a preliminary matter, the agency and intervenor contend that Guidehouse is untimely to argue that the award to Deloitte creates a disqualifying OCI. Specifically, the agency and intervenor argue that the OCI challenge is untimely because it should have been

filed prior to the time for receipt of initial quotations in February 2021. We disagree, as explained below.

Under our Bid Protest Regulations, protests based upon alleged improprieties in a solicitation which are apparent prior to the time set for receipt of initial quotations must be filed prior to that time; similarly, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested no later than the next closing time for receipt of quotations following the incorporation. 4 C.F.R. § 21.2(a)(1). Protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2).

Our Office has explained that there are several considerations for when an OCI protest is timely. As a general rule, a protester is not required to file a protest that another firm has an impermissible OCI until after that firm has been selected for award. *AT&T Corp., supra* at 7; *REEP, Inc.*, B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. We have adopted a different rule, however, where: (1) a solicitation is issued on an unrestricted basis; (2) the protester is aware of the facts giving rise to the potential OCI; and (3) the agency advises the protester that it considers the potentially conflicted offeror eligible for award. *Honeywell Tech. Sols., Inc.*, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 6; *Abt Assocs., Inc.*, B-294130, Aug. 11, 2004, 2004 CPD ¶ 174 at 2. In such cases, the protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must file the protest before the closing time for receipt of proposals or quotations. *Abt Assocs., Inc., supra*.

Relevant to the protest here, the agency provided prospective vendors, as part of the solicitation, with the following questions and answers (Q&A):

[Question:] Can the Government please confirm the offeror's understanding that a vendor with unfettered access to TOPS/FRED<sup>7</sup> and who is performing database operations and maintenance would be conflicted out of this procurement?

Answer: The [solicitation's OCI] provision was revised. Please complete the [OCI] provision by selecting C1 [the offeror hereby represents that it is not aware of any facts which create an OCI] or C2 [the offeror hereby represents that it has provided all current information bearing on the existence of any actual or potential OCI and has included a mitigation plan].

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<sup>7</sup> As we detail below, TOPS/FRED is another Secret Service information technology (IT) system for which Deloitte currently provides technical support services.

[Question:] Does the agency intend to conduct a new OCI determination of each offeror prior to award?

Answer: Yes

[Question:] Does the agency believe that Deloitte's performance of the TOPS/FRED task order presents an unmitigable OCI with respect to this procurement?

Answer: An OCI determination of each offeror will be conducted and documented.

AR, Tab 5, RFQ Q&As at 181-182, 186; see RFQ at 156-157.<sup>8</sup>

Here, the record reflects the agency deferred any determination regarding a Deloitte OCI, and related eligibility for award, until after receipt of the vendor's quotation. We have previously stated that an agency's request that vendors provide additional information for evaluation as part of the agency's OCI analysis indicates that the agency has not made a final decision as to whether an offeror is eligible or ineligible for award with respect to OCIs. *AT&T Corp., supra; Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 5-6 (request for mitigation plan indicated the contracting officer had not made a final determination regarding eligibility for award). We therefore find that the third prong of our *Honeywell* analysis has not been satisfied, and that the agency's issuance of the aforementioned Q&A as part of the solicitation did not require Guidehouse to file a pre-award protest regarding this issue.<sup>9</sup>

#### OCI Regarding Earlier Deloitte Task Order

In 2018, the Secret Service issued Task Order No. 70US0918F2GSA0088 to Deloitte for enterprise support, *i.e.*, operations, maintenance, configuration, and enhancement, of the agency's IT systems related to travel, core accounting, procurement, and property management, collectively referred to by the acronym "TOPS." COS at 32. The 2018 task order also includes providing technical support for the agency's financial repository of enterprise data (FRED) application. AR, Tab 16, TOPS/FRED Statement of Work

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<sup>8</sup> The first referenced Q&A was part of the initial solicitation (which had a February 22, 2021, closing date), while the second and third referenced Q&As were part of RFQ amendment 3 (which had a July 19, 2021, closing date). Corrected Agency Response to GAO, May 18, 2022, at 1.

<sup>9</sup> We also find that, even assuming that Guidehouse was the author of the above-cited question--which cannot be determined from the contemporaneous record--the question did not amount to an agency-level protest. See *Coulson Aviation (USA), Inc.*, B-411525, B-411525.2, Aug. 14, 2015, 2015 CPD ¶ 272 at 5-6 (finding that a written submission which merely expresses a suggestion, hope, or expectation, and does not include a specific request for relief, does not constitute an agency-level protest).

(SOW) at 315. Together, the TOPS/FRED systems provide the Secret Service with financial data and reports that are utilized for the agency's budget analysis and management functions. TOPS also interfaces with the Department of the Treasury Information Executive Repository, a data warehouse through which DHS agencies submit their financial information, and which directly impacts DHS's financial statement reporting. See *id.* at 316, 325; see *also* Protest at 8.

The TOPS/FRED SOW is lengthy (44 pages total) and contains a detailed list of "specific requirements" as follows: program management; operations and production support; software and hardware performance; information system security officer support; system administration support; interface processing; help desk; data warehousing support and reports; report and dashboard administration; system utilization/performance/improvement; software maintenance; training; and enhancements. *Id.* at 318-333.

Similarly, the PWS for the CFO support services task order here is also lengthy (18 pages total) and detailed. The CFO PWS contains approximately 115 tasks and subtasks in bullet format. PWS at 115-124. Of those, a number of tasks/bullets relate directly to the TOPS/FRED systems:

- Perform life cycle reconciliation of reimbursables to ensure that all necessary transactions are recorded in TOPS;
- Conduct root cause analysis to identify systemic business process, TOPS application issues, and perform remediation accordingly;
- Conduct analysis of TOPS application data to identify inaccurate, invalid, or incomplete information and provide data cleanup and migration solutions in addition to a project plan;
- Perform data cleanup remediation and migration for TOPS applications for the life of the data to resolve and prevent audit findings;
- Perform periodic and ongoing TOPS application reconciliations to ensure data quality and continuity; and
- Review [a]gency's vendor information within the TOPS applications to ensure accuracy and completeness; maintain and make updates as necessary;
- Assist with [TOPS/FRED] [u]ser account management and access control support.
- Assist with [TOPS/FRED] internal controls and audit requests.

PWS at 117, 119-120, 122

The Deloitte quotation, submitted in response to the RFQ, represented that the vendor was not aware of any facts which created actual or potential OCIs. AR, Tab 17, Deloitte Quotation, Attach. II, at 362. Specifically, Deloitte stated that, under the TOPS/FRED task order, it provided information system security officer, help desk, training, and enhancement services, while under the CFO task order it would be supporting program



management for the agency's budget formulation and execution activities and financial management operations. Deloitte then concluded that:

[DELETED].

*Id.* at 363.

On February 9, 2022, the contracting officer completed an OCI analysis of Deloitte that was slightly more than two pages in length, double-spaced. AR, Tab 15, Agency OCI Memorandum at 310-312. The contracting officer first restated the overall objective of the TOPS/ FRED contract: "The US [Secret Service] has a requirement for expert technical and operational/functional knowledge of all TOPS software applications and associated modules in order to maintain, configure[,] and enhance the functionality and integration of these software products, as well as deploy required security and software upgrades." *Id.* at 310, *citing* AR, Tab 16, TOPS/ FRED SOW at 317. The contracting officer then stated that:

This type of support is not related to the definition of the requirement for the CFO Support Services. . . . The two requirements are not the same or similar in scope or size. In their submission of past performance Deloitte submitted their TOPS award with [Secret Service] . . . as an example of past performance. This was excluded from the evaluation due to it not meeting the standard of being relevant to the CFO Support Services requirement. The contracting officer does not believe that performance on one of these contracts would create an organizational conflict of interest in the performance of the other requirement. Due to the lack of similarity between the two requirements, it has been determined by the contracting officer that performance on the TOPS/FRED requirement does not create an organizational conflict of interest preventing the contractor (Deloitte) from competing to obtain an award for the CFO Support Services requirement. The TOPS/FRED contract cannot be used in the evaluation of past performance because the requirements are not comparable.

*Id.* at 310-312; *see also* COS at 33 ("I do not believe that work performed with the TOPS/FRED contract creates an OCI because the . . . scope of work of the TOPS/FRED contract is not similar to the scope of work under the CFO Support Services Award. . . .").

Guidehouse argues that the record confirms that Deloitte has an unmitigated impaired objectivity OCI that the agency failed to reasonably consider. Specifically, the protester alleges that if Deloitte were awarded the CFO support services task order, it would require the awardee to engage in direct oversight of, and recommend improvements for, the work Deloitte now performs under the TOPS/FRED contract. Comments and Supp. Protest, Apr. 7, 2022, at 2. Guidehouse also argues the agency's conclusion "that there is no OCI because '[t]he two requirements are not the same or similar in scope or size[]' . . . is an astounding misunderstanding of the Agency's obligations to consider whether

an award [to Deloitte] creates an OCI.” *Id.* at 1, *citing* AR, Tab 15, Agency OCI Memorandum at 311.

The agency argues that its evaluation of Deloitte’s potential OCI was reasonable. Memorandum of Law (MOL) at 3. Specifically, the agency contends the contracting officer “took a close look” at the OCI allegations raised by Guidehouse and carefully considered the TOPS/FRED SOW. *Id.* The agency also avers that “[n]othing in the CFO Services contract will require Deloitte to evaluate or correct the work done pursuant to the TOPS/FRED contract,” and “[t]he mere fact that Deloitte will need to review data entered by Agency employees in the TOPS/FRED systems under the new [CFO support services] contract, while another group of Deloitte employees provide IT support on the same system, does not create an organizational conflict of interest.” *Id.* at 4.

As detailed below, we find the agency’s OCI review was an unreasonable one. First, the record reflects a fundamental misunderstanding on the part of the contracting officer regarding the legal standards related to impaired objectivity OCIs. Further, contrary to the arguments of agency counsel, the record reflects that the contracting officer did not in fact take a “close look,” or carefully consider, whether Deloitte’s ability to render impartial advice to the agency under the CFO support services task order would be undermined by the firm’s competing interests under the TOPS/FRED task order. The analysis demonstrates that the agency failed to give meaningful consideration to whether a significant organizational conflict of interest exists here.

As an initial matter, the record indicates that the contracting officer misunderstood, and as a result, failed to properly consider whether an impaired objectivity OCI existed. See *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 9 (finding that a contracting officer’s mistaken understanding thereby resulted in an unreasonable analysis). An impaired objectivity OCI arises when a contractor cannot perform its obligations in an objective and unbiased manner because of countervailing economic or business interests. FAR 9.505(a), 9.505-3; see *Steel Point Sols., LLC*, B-419709, B-419709.2, July 7, 2021, 2021 CPD ¶ 254 at 3. As our prior decisions have explained, an impaired objectivity OCI exists when a contractor is in a position to evaluate itself or its affiliates, or where the supposedly impartial judgments the contractor makes, may otherwise directly influence its own self-interest. See, e.g., *The Analysis Grp., LLC*, B-401726, B-401726.2, Nov. 13, 2009, 2009 CPD ¶ 237 at 4 (finding an impaired objectivity OCI “is created when a contractor’s judgment and objectivity in performing contract requirements may be impaired due to the fact that the substance of the contractor’s performance has the potential to affect other interests of the contractor”); *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7 (“The concern in such situations is that a firm’s ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated.”).

As set forth above, the contracting officer’s OCI evaluation focused largely, if not exclusively, upon whether the CFO support services requirements and TOPS/FRED

requirements were “same or similar in scope or size.” AR, Tab 15, Agency OCI Memorandum at 311. The contracting officer also concluded that “[d]ue to the lack of similarity between the two requirements, it has been determined . . . that performance on the TOPS/FRED requirement does not create an organizational conflict of interest preventing the contractor (Deloitte) from competing. . . .” *Id.* For purposes of an impaired objectivity OCI analysis, however, it is wholly irrelevant whether the two efforts are same or similar in scope or size; instead, what is relevant is whether the contractor would be in a position of reviewing its own work or otherwise unable to perform its obligations in an impartial manner. Consequently, we find the contracting officer improperly substituted similarity (or lack thereof) between the two efforts for a reasonable determination of whether Deloitte’s work on the CFO support services task order could be objectively performed in light of its work on the TOPS/FRED task order.<sup>10</sup> *AT&T Corp., supra* at 12-13.

Additionally, the record does not support the agency’s assertion that the contracting officer conducted a detailed review of the requirements for the two efforts. To the contrary, the record reflects that the contracting officer’s assessment was limited to reviewing the top-level/overall objectives of the CFO support services without any analysis or consideration of the many hundreds of work activities required for the two efforts. Absent a consideration of these requirements here, the agency’s OCI analysis lacked a reasonable foundation. Relevant to this discussion, the TOPS/FRED SOW contains a detailed list of requirements, including resolving data discrepancies, correcting production issues which impact performance, and system, data, and reporting enhancements and improvements.<sup>11</sup> AR, Tab 16, TOPS/FRED SOW at 318-333. The record reflects that the contracting officer’s OCI analysis, however, did not extend beyond consideration of the top-level/overall objectives of the TOPS/FRED task order. AR, Tab 15, Agency OCI Memorandum at 310. Similarly, the CFO support services PWS contains approximately 115 tasks and subtasks, including several tasks involving the TOPS/ FRED systems and data. PWS at 117-122. Again, the contemporaneous record reflects that the agency’s OCI analysis did not consider more

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<sup>10</sup> As a consequence of determining that the TOPS/FRED task order was not the “same or similar in size or scope” to the CFO support services requirements for purposes of the OCI determination, the contracting officer also excluded consideration of the TOPS/FRED effort from the evaluation of Deloitte’s past performance. AR, Tab 15, Agency OCI Memorandum at 311. As discussed above, because the agency misunderstood the standard of review, this exclusion did little, if anything, to cure the potential impaired objectivity OCI.

<sup>11</sup> The record also shows the TOPS/FRED SOW involves much more than--as the agency claims--“provid[ing] data entry support” and assisting federal employees that are having difficulty inputting information. COS at 32; see *also* MOL at 4. Consequently, as the premise upon which the agency’s conclusion is built is a faulty one, we cannot say that CFO support services requirements involving TOPS/FRED (e.g., “conduct root cause analysis to identify systemic business process, [and] TOPS application issues”) do not involve analysis of Deloitte’s TOPS/FRED performance.

than the top-level/overall objectives of the CFO support services PWS. AR, Tab 15, Agency OCI Memorandum at 311. Quite simply, while the Deloitte quotation represents that the CFO support services team would involve [DELETED]--but not evaluating the work of--the Deloitte TOPS/FRED team, the contracting officer's OCI review does not confirm this statement or specifically analyze for potential OCIs any of the possible work activities under the respective task orders.

In sum, we conclude that the contracting officer's determination that there was no potential OCI associated with the award to Deloitte was unreasonable because it mistakenly focuses upon the similarity of the two efforts and fails to adequately consider whether the contractor's impartiality would be impaired. We therefore sustain the protest on this basis.

#### Technical Evaluation of Guidehouse

Guidehouse next challenges the evaluation of its technical quotation. Specifically, the protester alleges that the three weaknesses identified by the agency evaluators in Guidehouse's submission were unreasonable or otherwise improper.

As stated above, the task order competition here was conducted pursuant to FAR subpart 16.5. The evaluation of proposals in a task order competition is primarily a matter within the contracting agency's discretion, because the agency is responsible for defining its needs and the best method of accommodating them. *Verizon Bus. Network Servs., Inc.*, B-419271.5 *et al.*, Apr. 26, 2021, 2021 CPD ¶ 191 at 7; *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 15. In reviewing protests of an award in a task order competition, we do not reevaluate quotations, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4-5. A protester's disagreement with the agency's judgment regarding the evaluation of quotations, without more, is not sufficient to establish that an agency acted unreasonably. *Verizon Bus. Network Servs., Inc.*, *supra*; *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

Relevant to the protest here, the RFQ established that, under the technical evaluation factor, vendors were to submit a "comprehensive and complete technical quotation" demonstrating their ability to perform the work detailed in the PWS and describing their performance methodology, program management approach, and staffing plan. RFQ at 159. The PWS in turn required, among other things, the contractor to provide data, documentation, analysis, and recommendations for budget and financial management process improvements. PWS at 116, 118-120. The TEP, when evaluating Guidehouse's technical quotation, identified four strengths and three weaknesses, and assigned a rating of "high confidence." AR, Tab 9, Technical Evaluation Report at 271-272.

## Staffing Plan

Guidehouse first challenges the weakness assigned to its staffing plan. The RFQ informed vendors that the agency estimated it would require 22 full-time equivalents (FTE) to perform the PWS requirements. AR, Tab 5, RFQ Q&As at 173, 192. The Guidehouse quotation included a table indicating proposed personnel by name, labor category, number of hours to be performed annually, and associated contract line item numbers. AR, Tab 6, Guidehouse Quotation, Technical Volume at 212. The Guidehouse staffing table indicated 16 full-time employees and 18 part-time employees --of various labor hour amounts--totaling 22 FTEs.<sup>12</sup> *Id.*

The TEP, when evaluating Guidehouse's staffing plan, found it to be unclear regarding how part-time personnel would be utilized across the PWS requirements efficiently and effectively. AR, Tab 9, Technical Evaluation Report at 271. Specifically, the agency evaluators stated that, for other than the 16 full-time staff, "[i]t is unclear how the remaining [Guidehouse] staff will shuffle in and out of [the] project and at what stages." *Id.*

Guidehouse argues that the weakness here was unreasonable and that the RFQ did not require detailed explanations of how personnel would be employed. Protest at 11. We find no merit to the protester's assertions. As noted above, Guidehouse elected to propose a mix of full-time and part-time personnel to perform the PWS requirements. However, Guidehouse's decision to utilize part-time personnel--without elaboration or explanation--reasonably introduced a staffing management consideration regarding how such employees would be effectively utilized, especially in light of the fact that Guidehouse proposed individuals to staff levels of effort as small of 40 hours annually. Since the protester did not provide any details or elaboration in its quotation to explain its staffing plan, the agency evaluators reasonably assigned a weakness to Guidehouse's quotation for its failure to explain how staffing would be assigned to the various PWS tasks, and at what stages. *NCI Info. Sys., Inc.*, B-418977, Nov. 4, 2020, 2020 CPD ¶ 362 at 9-10.

## Innovation

Guidehouse next challenges the weakness the agency assigned for failing to provide potential innovations and improvements, and for relying heavily on its incumbent experience with the Secret Service. Here, the protester argues that the agency: (1) applied an unstated evaluation criterion by considering innovation, *i.e.*, that the RFQ did not require vendors to describe how they would enable innovation; and (2) unreasonably ignored the information regarding proposed innovations which

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<sup>12</sup> In some instances, Guidehouse proposed personnel to perform efforts as small as 40 hours, 136 hours, and 150 hours annually. *Id.*

Guidehouse included in its quotation.<sup>13</sup> We find no merit to either of the protester's assertions.

In task order procurements, as in other procurements, while procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. *NCI Info. Sys., Inc.*, B-416926 *et al.*, Jan. 9, 2019, 2019 CPD ¶ 18 at 7-8. Moreover, we have repeatedly stated that where a solicitation indicates the relative weights of evaluation factors, the agency is not limited to determining whether a proposal is merely technically acceptable; rather, quotations may be evaluated to distinguish their relative quality by considering the degree to which they exceed the minimum requirements or will better satisfy the agency's needs, including through the use of innovation. See, e.g., *PricewaterhouseCoopers Public Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 8 (finding that the consideration of innovative technical approaches does not amount to reliance on an unstated evaluation criterion); *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 8 (disagreeing with protester that it was an unstated evaluation criterion because the words "innovate" and "innovation" did not appear in the solicitation). Accordingly, we conclude the Secret Service's consideration of the innovations, or lack thereof, in the vendors' technical quotations was reasonably contemplated by the solicitation and not based on an unstated evaluation criterion as Guidehouse alleges.

Further, the record reflects that the agency evaluators were reasonable to conclude, as they did, that the Guidehouse quotation focused heavily upon its past experience with the Secret Service and provided little insight regarding how the vendor planned to advance the current state of the CFO budget and financial management programs. See AR, Tab 9, Technical Evaluation Report at 272. The TEP also found that several of the items that Guidehouse listed as "innovations" in its quotation were not innovations at all, but rather, software tools and processes already in place. *Id.*; Tab 14, TEP Chairperson Declaration at 307.<sup>14</sup> In sum, the agency's finding regarding Guidehouse's failure to elaborate on how it planned to improve upon past efforts or enable innovation was reasonable.

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<sup>13</sup> We note that while the protester argues that innovations and improvements were an unstated evaluation criterion, it nonetheless addressed such matters as part of its technical submission.

<sup>14</sup> While we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations such as the one here that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review as long as those explanations are credible and consistent with the contemporaneous record. *American Sys. Corp.*, B-420132 *et al.*, Dec. 13, 2021, 2021 CPD ¶ 387 at 10.

## Understanding of Budget Requirements

Guidehouse also disputes the third weakness the agency assigned; that the protester did not understand the full scope of budget requirements. Protest at 16-17. The Guidehouse quotation dedicated approximately three pages to covering how the vendor would perform the PWS budget requirements, and more than seven pages to how it would perform the PWS financial management requirements. AR, Tab 6, Guidehouse Quotation, Technical Quotation at 199-210. The TEP found that Guidehouse's quotation focused more heavily on the financial management requirements (where Guidehouse was the incumbent) and less on budget requirements, and determined that it was unclear whether the vendor understood the full scope of PWS budget requirements beyond assessing and improving the environment via documentation and standard operating procedures. AR, Tab 9, Technical Evaluation Report at 272.

Again, we find no basis to object to the agency's evaluation. Our review of the record reflects that not only did Guidehouse's quotation devote more attention to discussing how it would perform the financial management (as compared to the budget) requirements, but there existed greater contextual sophistication in the vendor's quotation for the former as compared to the latter. Likewise, the TEP reasonably concluded that:

While Guidehouse's quotation addressed budget formulation and execution requirements, the technical evaluation team felt that this portion of the proposal was too high level when it walked thru the same steps of assessing the current environment, identifying improvements, implementing process improvement tools, documenting the process, and focusing on SOP [standard operating procedure] development.

AR, Tab 14, Declaration of TEP Chairperson at 308. Although Guidehouse contends the budget aspects of its quotation were just as comprehensive and thorough as the financial management ones, we find this amounts to mere disagreement with the agency's evaluation, which does not render the evaluation unreasonable. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 12. In sum, our review indicates that the agency's technical evaluation of Guidehouse was reasonable and consistent with the stated evaluation criteria.

## Unbalanced Pricing Evaluation of Deloitte

Guidehouse also challenges the Secret Service's price evaluation of Deloitte. Specifically, the protester maintains that because the agency did not perform the proper pricing analysis required by the RFQ, it failed to realize that Deloitte's proposed pricing was unbalanced. Comments and Supp. Protest, Apr. 7, 2022, at 7-8. As detailed below, we find that the protester presents no evidence of unbalanced pricing and that the record shows the Secret Service's price evaluation of Deloitte was reasonable.

Unbalanced pricing exists when, despite an acceptable total evaluated price, the prices of one or more contract line items is significantly over or understated, as indicated by the application of cost or price analysis techniques. FAR 15.404-1(g)(1); *Dynamic Sec. Concepts, Inc.*, B-416013, B-416013.2, May 15, 2018, 2018 CPD ¶ 186 at 8; *Academy Facilities Mgmt.-Advisory Op.*, B-401094.3, May 21, 2009, 2009 CPD ¶ 139 at 15. While unbalanced pricing may increase risk to the government, agencies are not required to reject an offer solely because it is unbalanced. FAR 15.404-1(g); *Serco, Inc.*, B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 10. Rather, where an unbalanced quotation is received, the contracting officer is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that the unbalancing will result in unreasonably high prices for performance. FAR 15.404-1(g)(2).

While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices. *Dynamic Sec. Concepts, Inc.*, *supra* at 9; *Crown Point Sys.*, B-413940, B-413940.2, Jan. 11, 2017, 2017 CPD ¶ 19 at 5. Low prices, by themselves, do not establish or create the risk inherent in unbalanced pricing. *Dynamic Sec. Concepts, Inc.*, *supra*. Our Office will review for reasonableness both an agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. *Id.*; see *Gemmo Impianti SpA*, B-290427, Aug. 9, 2002, 2002 CPD ¶ 146 at 2 n.1.

The gravamen of the Guidehouse protest is its assertion that Deloitte's base year price--which is 6 percent higher than the independent government cost estimate (IGCE) for the same period--was "significantly overstated."<sup>15</sup> Comments and Supp. Protest, Apr. 7, 2022, at 7. The protester, however, provides no support in furtherance of its claim that a 6 percent price difference is a "significant" one, such that Deloitte's base year price was "significantly overstated" in comparison to the IGCE. By contrast, we have previously determined that a line-item price that was 23 percent higher than the government estimate "was not [a] significant" overstatement, and thus the offeror's prices were not unbalanced. *Diversified Capital, Inc.*, B-293105.4, B-293105.8, Nov. 12, 2004, 2004 CPD ¶ 242 at 3. In sum, we find Guidehouse's naked assertion that Deloitte's base year price is "significantly overstated" is not evidence of unbalanced pricing.<sup>16</sup> *IR Techs.*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7 n.7.

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<sup>15</sup> The record reflects that Deloitte's price for the base year was \$5,293,925, while the corresponding IGCE amount was \$4,993,539. AR, Tab 11, Price Evaluation Report at 292-293.

<sup>16</sup> Moreover, in response to the protester's allegation, the agency provided a detailed discussion of its unbalanced pricing evaluation. Supp. COS at 18-20. Although the FAR does not specify what would be considered "significantly over or understated," the contracting officer, based on her training in evaluating price, was of the view that a price which was 25 percent higher or lower than the IGCE would be considered significant.



## Agency's Best-Value Tradeoff Decision

Lastly, Guidehouse contends the Secret Service's best-value tradeoff determination was improper. The protester first asserts the agency's tradeoff decision was based on an unreasonable underlying evaluation, and thus, itself, was unreasonable. Protest at 19-20. Guidehouse also argues that the agency failed to perform any best-value tradeoff at all, *i.e.*, it did not include an analysis of whether Deloitte's quotation was worth the associated price premium. Comments and Supp. Protest, Apr. 7, 2022, at 10-11. As detailed below, we find the agency's best-value tradeoff decision to be inadequately documented.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the SSA to perform a tradeoff between price and non-price factors, that is, to determine whether one quotation's superiority under the non-price factor is worth a higher price. *Alpha Omega Integration, LLC*, B-419812, Aug. 10, 2021, 2021 CPD ¶ 302 at 7; *ACCESS Sys., Inc.*, B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7. In reviewing protests of awards in a task order competition, we do not reevaluate quotations but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Alpha Omega Integration, LLC, supra*; *Triple Canopy, Inc.*, B-310566.4, Oct. 30, 2008, 2008 CPD ¶ 207 at 6-7. In this regard, FAR part 16 requires that agencies document the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. FAR 16.505(b)(7). An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *Alpha Omega Integration, LLC, supra*.

Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider the cost or price to the government in making its selection decision. *e-LYNXX Corp.*, B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7. Likewise, before an agency can select a higher-priced quotation that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the technical superiority of the higher-rated quotation warrants paying a price premium. *Alpha Omega Integration, LLC, supra*; *ACCESS Sys., Inc., supra*. Stated otherwise, a best-value determination cannot be based solely upon a determination of technical superiority, but requires the SSA to also adequately explain why the identified technical advantages are of greater value to the

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*Id.* at 19. The contracting officer also explained that it was "not uncommon to see proposed pricing for multiple year awards differ across option years," with many quotations showing "a higher price in the base year." *Id.* The protester, on the other hand, has provided no support for its bald assertions that a proposed base year price that is 6 percent higher than the IGCE should automatically be considered "significantly overstated." Under the circumstances here, we find nothing objectionable with the contracting officer's price analysis that found no unbalanced pricing existed. *Defense Base Servs., Inc.*, B-416874.3, B-416874.4, Aug. 19, 2019, 2019 CPD ¶ 304 at 6.

agency than the amount that would be saved by foregoing such technical advantages. See *J.R. Conkey & Assocs., Inc. dba Solar Power Integrators*, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 9.

The agency argues that the SSA carefully considered the detailed technical evaluation and arrived at the independent conclusion that Deloitte's proposal was both technically superior to that of Guidehouse and provided the best value to the government despite its higher price. Supp. MOL at 7. The agency also points to those aspects of the source selection decision memorandum where the SSA accepted the TEP's findings supporting a determination of Deloitte's technical superiority. *Id.* at 7-8, citing Supp. AR, Tab 10, SSDD at 5-6. Based on the strengths listed in the selection decision, the agency argues, the SSA then reasonably found Deloitte's proposal to provide a better value for the government. *Id.* at 9-10. We disagree.

Based upon our review of the record, we find that the SSA failed to provide an adequate rationale for the tradeoff determination here, and thus, we are unable to conclude that the conclusion was reasonable. The agency's best-value tradeoff rationale is largely a generalized statement about the technical attributes of Deloitte's quotation (which are not disputed) as well as a contra-explanation about why Guidehouse was found not to be the best value. See Supp. AR, Tab 10, SSDD at 15-16. Absent from the source selection decision memorandum, however, is a substantive discussion (with sufficient specificity) as to why the superior technical features of Deloitte's quotation justified the associated price premium vis-à-vis each other award-eligible vendor. *Id.* at 3-16.

The SSA's best-value tradeoff, after reviewing the underlying evaluation, began by concluding that Deloitte's quotation "offers the best overall value to the Government." *Id.* at 15. The SSDD then reviewed the remaining vendors' quotations, including that of Guidehouse, as follows:

The cost difference between Deloitte and Guidehouse was about 13% with Deloitte having the higher price. Guidehouse currently provides services under an active contract for CFO Support Services with [the financial management division]. While there is confidence in their ability to perform the requirement, the level of confidence was impacted by their lack [of] understanding of how to fully support the [budget] requirements and in explaining how their part time staff would support the requirement. Considering the facts and circumstances stated above, I have made the decision not to consider Guidehouse for award.

*Id.* Finally, the SSA set forth her decision to make award to Deloitte as follows:

In my opinion it is worth the Government paying a higher price to ensure that the award is made to the offeror who can meet and exceed their expectations and has a clear understanding of what the requirement is as well as how to allocate staff to support the CFO Support Services requirement.

*Id.* at 16.

As stated above, notably absent from the tradeoff analysis, however, is any substantive discussion of the specific qualities, both price and non-price, of the Deloitte and Guidehouse quotations in relation to each other. The decision memorandum does not adequately identify the basis for the conclusion that the Deloitte quotation's technical advantages, as compared to those of the Guidehouse quotation, outweigh the associated price premium. Thus, the generalized statement quoted above falls short of the requirement to justify its best-value tradeoff decision. See *Trailboss Enters., Inc.*, B-407093, Nov. 6, 2012, 2013 CPD ¶ 232 at 5 (finding generalized statements insufficient to document the reasonableness of an agency's best-value determination); *LIS, Inc.*, B-400646.2, B-400646.3, Mar. 25, 2009, 2010 CPD ¶ 5 at 7 (observing generalized statements to be an insufficient substitute for substantive analysis or consideration of the relative differences in offerors' proposals when undertaking a price/technical tradeoff decision). Quite simply, we find the agency's award decision needed to provide a much more fulsome analysis of the technical and price advantages associated with awarding to a higher-rated and higher-priced quotation to justify its price/technical tradeoff decision.

## CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the agency's OCI evaluation of Deloitte was unreasonable and that the agency's best-value tradeoff decision was inadequately documented. Competitive prejudice is an essential element of a viable protest, and we will only sustain a protest where the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *OGSystems, LLC*, B-417026 *et al.*, Jan. 22, 2019, 2019 CPD ¶ 66 at 18. Here, without adequate documentation, we cannot conclude with any certainty that the SSA performed a proper tradeoff analysis. Coupled with the agency's unreasonable OCI review, we find that Guidehouse has established the requisite competitive prejudice to prevail in its bid protest, and we sustain the protester's challenges as discussed above.

We recommend that the agency, consistent with our decision, conduct and document a new OCI analysis of Deloitte. We also recommend that the agency, consistent with our decision, conduct and document a new best-value tradeoff analysis. If the new OCI analysis determines that Deloitte has an unmitigatable OCI, the agency should remove Deloitte from the competition. If the new source selection decision concludes that a vendor other than Deloitte represents the best value to the government, the agency should terminate Deloitte's task order for the convenience of the government and award to the successful vendor, if otherwise proper. We also recommend that Guidehouse be reimbursed for its costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel