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## Decision

**Matter of:** Federal Information Systems, Inc.

**File:** B-421567; B-421567.2

**Date:** July 5, 2023

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### DIGEST

1. Protest that the agency failed to give adequate consideration to awardee's potential organizational conflict of interest is denied where the agency reasonably evaluated whether the awardee had unequal access to information, and where the protester's allegations fail to present hard facts indicating the existence of a conflict.
  2. Protest challenging the agency's evaluation of proposals is sustained where the agency failed to evaluate the awardee's technical proposal consistent with the solicitation's evaluation criteria.
  3. Protest challenging the agency's conduct of discussions is denied where the record provides no basis on which to conclude that discussions were not meaningful or otherwise improper.
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### DECISION

Federal Information Systems, Inc. (FIS), a small business of San Antonio, Texas, protests the issuance of a task order to Halvik Corp. (Halvik), of Vienna, Virginia, under task order request for proposals (TORFP) No. 415828, issued by the United States Special Operations Command (USSOCOM), for cybersecurity services. The protester challenges the agency's evaluation of proposals and resulting award decision.

We sustain the protest in part, and deny it in part.

## BACKGROUND

The agency issued the TORFP on July 22, 2022, under the Department of the Army's multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) Computer Hardware, Enterprise Software, and Solutions Information Technology Enterprise Solutions-3 Services (ITES-3S) contract vehicle, in accordance with the procedures of Federal Acquisition Regulation (FAR) part 16. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 4, TORFP at 1.<sup>1</sup> The solicitation sought a contractor to provide enterprise-wide cybersecurity support and solutions to the Special Operations Forces Information Environment to assist in keeping its network and information systems secure. TORFP at 1; AR, Tab 3, Statement of Work (SOW) at 2. USSOCOM issued the TORFP as a total small business set-aside. TORFP at 1. The solicitation contemplated the issuance of a single cost-plus-fixed-fee and cost-reimbursable type task order, with a period of performance consisting of a 7.5-month base period and up to four 1-year option periods. *Id.*

The solicitation provided for award to be made on a best-value tradeoff basis, considering price and the following four non-price evaluation factors: (1) facility clearance; (2) management; (3) technical, and (4) performance risk. AR, Tab 5, TORFP attach. 5 at 1. The facility clearance factor would be evaluated on an acceptable/unacceptable basis. *Id.* The management factor was the most important evaluation factor, and was slightly more important than the performance risk factor.<sup>2</sup> *Id.* The performance risk factor, in turn, was significantly more important than the technical factor. *Id.* For the management and technical factors, the solicitation explained that the agency would assign offerors one of the following adjectival ratings: outstanding; good; acceptable; marginal; or unacceptable.<sup>3</sup> *Id.* at 4-6. Performance risk would be evaluated as: very low risk, low risk, moderate risk, or high risk. *Id.* at 8. All non-price factors, when combined, were significantly more important than price. *Id.* at 1.

Eight offerors submitted proposals by the August 26, 2022, submission deadline. TORFP at 4. After completing initial evaluations, the agency conducted multiple rounds of discussions, during which it eliminated two offerors from the competitive range. AR, Tab 8, Source Selection Decision Document (SSDD) at 5-6. The agency then requested that offerors submit their final proposal revisions (FPRs) by February 16,

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<sup>1</sup> Citations to page numbers for documents in the agency report are to the Adobe PDF page numbers. The agency amended the TORFP twice. Unless otherwise stated, all citations are to the final version of the solicitation found at tabs 3-5, 35 of the agency report.

<sup>2</sup> The management factor consisted of four subfactors: (1) management organizational structure; (2) recruitment and retention plan; (3) quality management plan; and (4) transition plan. AR, Tab 5, TORFP attach. 5 at 2.

<sup>3</sup> The adjectival ratings also had associated color designations (e.g., blue for outstanding). For simplicity, we refer only to the adjectival ratings.

2023. AR, Tab 12, Close Discussion Letter at 3. The remaining six offerors submitted their FPRs by the due date. AR, Tab 8, SSDD at 6.

The agency's source selection evaluation team (SSET) thereafter evaluated final proposal revisions, and assigned the following ratings to FIS and Halvik:

	FIS	Halvik
<b>Facility Clearance</b>	Acceptable	Acceptable
<b>Management</b>	Good	Outstanding
<b>Technical</b>	Good	Good
<b>Performance Risk</b>	Very Low Risk	Low Risk
<b>Most Probable Cost</b>	\$88,831,204	\$81,952,571

*Id.* The contracting officer, as the source selection authority, reviewed and adopted the SSET's findings. *Id.* at 18-19. When comparing proposals from FIS and Halvik, the SSA determined that "Halvik's proposal provides the better value to the Government because it offers more tangible, direct benefits in the key area of Management at a significantly reduced cost." *Id.* at 13-14. Halvik's proposal was selected for award as offering the overall best value, when considering price and non-price factors. *Id.* at 19.

After the agency provided FIS with notice of the task order award to Halvik on March 9, and a debriefing that concluded on March 21, FIS filed its protest with our Office.<sup>4</sup> Protest at 1, 11-13.

## DISCUSSION

The protester challenges numerous aspects of the agency's evaluation and resulting award decision. Specifically, FIS claims that (1) Halvik has an unmitigated organizational conflict of interest (OCI); (2) the agency improperly evaluated proposals under the management, technical, and price factors; (3) the agency conducted misleading and unequal discussions; and (4) the agency conducted a flawed best-value determination. Protest at 13-32. Had the agency performed a proper evaluation, FIS argues, it would have been selected for award. *Id.* at 31. We have considered the arguments and issues raised by FIS, and while we do not address them all, we sustain the protest of the agency's technical evaluation.

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<sup>4</sup> Because the value of the task order issued here is in excess of \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under IDIQ contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

## Organizational Conflict of Interest

The protester claims that Halvik has an unmitigated organizational conflict of interest (OCI). Protest at 13-16. Specifically, the protester alleges that Halvik's work on the USSOCOM Enterprise Knowledge Management (EKM) contract provided the awardee with an unfair competitive advantage because it gave Halvik's employees "access to nonpublic, competitively sensitive information about FIS and its subcontractors, and provided Halvik with information related to the present procurement and the Agency's requirements." *Id.* at 13, 16. In the protester's view, had the agency properly investigated this OCI, Halvik would have been deemed ineligible for award, resulting in award to FIS. *Id.* at 16. The agency responds that it took steps throughout the acquisition to avoid, neutralize, and mitigate any potential OCI. COS at 8-12; Memorandum of Law (MOL) at 8. In addition, the agency explains that, in response to the protest, the agency conducted an OCI investigation, which concluded that Halvik's performance on the EKM contract did not create an OCI because Halvik did not have access to non-public, competitively useful information. COS at 12-13; MOL at 9.

The FAR instructs agencies to avoid, neutralize, or mitigate significant OCIs before contract award so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.501, 9.504, 9.505. Subpart 9.5 of the FAR, and our Office's decisions, broadly categorize OCIs into three groups: biased ground rules, unequal access to non-public information, and impaired objectivity. An unequal access to information OCI exists where a firm has access to non-public information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b), 9.505-4; *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 4. The concern regarding this type of OCI is that a firm may gain a competitive advantage based on its possession of proprietary information furnished by the government, or source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. FAR 9.505(b); *Phoenix Mgmt., Inc.*, B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 3 n.6.

Halvik's EKM contract requires the firm to provide support services for enterprise-wide knowledge management services, including developing and implementing procedures to employ, validate, and document information assurance policies and regulations across the agency's knowledge management operations. Supp. COS/MOL at 18; AR, Tab 36, OCI Determination and Findings (D&F) at 1. Performance of the EKM contract requires Halvik to access the agency's Special Operations Forces Network, including an online SharePoint portal that serves as the agency's repository for electronic contract files. AR, Tab 36, OCI D&F at 4. FIS and its proposed subcontractors also have access to the same systems while performing the incumbent cybersecurity effort. *Id.*

In conducting this procurement, the agency explains that it took precautions to prevent contractors from accessing source selection or proprietary information. For example, in January 2022, the agency created a dedicated page within its Max.gov portal to store

both pre-acquisition materials as well as source selection evaluation documentation.<sup>5</sup> AR, Tab 36, OCI D&F at 2. The agency restricted access to this Max.gov page so that it was not accessible by any contractors. *Id.* To conduct the initial and final source selection evaluations in August and October 2022, respectively, the agency utilized what it called its “brick-and-mortar” source selection facility, which was restricted to only those individuals on the evaluation team. *Id.* Finally, the contracting officer used an external hard drive, to which only she had access, to store all other supporting non-public acquisition documentation. *Id.*

On December 21, 2022, while the agency was still evaluating FPRs submitted for the present solicitation, the incumbent contractor (AlliantCorps)--a joint venture of which FIS is a member--informed the contracting officer that two employees of its subcontractor (Jacobs Technology) had gained access to procurement sensitive and source selection information related to the current acquisition. *Id.* at 2-3. FIS has proposed to use the same subcontractor (Jacobs Technology) to compete on this solicitation. COS at 8. The agency explains that from November 12 until December 22, certain limited proposal and source selection information was temporarily on a SharePoint portal accessible by contractors. AR, Tab 36, OCI D&F at 4; COS at 11. Following the notification by AlliantCorps, the agency conducted an investigation, and the investigation determined that the two contractor employees had violated the Procurement Integrity Act (PIA). AR, Tab 27, PIA Investigation at 8. The contracting officer, however, concluded that FIS, itself, had not obtained unequal access to any relevant information nor gained an unfair competitive advantage based on the actions of the two employees of its proposed subcontractor. *Id.* at 9-10; AR, Tab 36, OCI D&F at 3.

After the agency made award to Halvik, FIS filed the instant protest, alleging among other things, that Halvik had multiple OCIs based on the Halvik’s work on the EKM contract. Upon review of the allegation, the contracting officer initiated an investigation into the protester’s OCI claims. In conducting the investigation, the contracting officer reviewed FAR subpart 9.5, as well as the EKM contract’s statement of work, comparing it to the requirements of the current solicitation. AR, Tab 36, OCI D&F at 3-4. She also examined the March 2023 PIA investigation to consider whether Halvik, like FIS’s proposed subcontractor, could have also gained unequal access to information related to this procurement. *Id.*

As a result of her investigation, the contracting officer concluded that “Halvik’s performance on the EKM contract did not create an OCI in accordance with FAR 9.5 as [Halvik] did not have unequal access to information.” *Id.* at 5. She determined that Halvik, like other contractors, had been restricted from accessing Max.gov, the brick-and-mortar source selection facility, and the contracting officer’s external hard drive. *Id.* The contracting officer further determined that there were no “facts or substantiated

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<sup>5</sup> Max.gov is a system used by federal employees to facilitate cross-government collaboration and knowledge management. COS at 10.

allegations” to establish that Halvik had accessed any source selection information that had briefly been on the SharePoint site accessible to contractors in late 2022.<sup>6</sup> *Id.*

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. *Sys. Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is insufficient. *Turner Constr. Co., Inc. v. United States*, 645 F.3d 1377, 1387 (Fed. Cir. 2011); *Acquisition Servs. Corp.*, B-409570.2, June 18, 2014, 2014 CPD ¶ 197 at 15.

The record, here, reflects that the contracting officer reasonably investigated and concluded that Halvik did not have an unequal access to information OCI, and FIS has failed to identify any hard facts indicating the existence or potential existence of an alleged conflict. The contracting officer’s OCI investigation reasonably reviewed pertinent information regarding the duties Halvik performs under the EKM contract, including the government information systems that could be accessed. Contrary to FIS’s contentions, Halvik’s work under the EKM contract involved access to only certain systems, systems on which the agency did not store source selection or proprietary information. AR, Tab 36, OCI D&F at 5. Moreover, the record demonstrates that the agency took proactive steps throughout the acquisition to avoid, neutralize, and mitigate potential OCIs, by storing information related to this acquisition on systems which contractors could not access. *Id.*

In trying to bolster its argument, FIS essentially argues the agency’s OCI investigation did not go far enough, and points to, in its view, the limitations of the contracting officer’s inquiry, such as limiting the investigation timeframe to the only known period when procurement sensitive information was accessible to contractors.<sup>7</sup> Comments & Supp. Protest at 9. The protester also raised concerns that the contracting officer only focused on source selection materials, and instead should have considered Halvik’s hypothetical access to “information about the performance of the incumbent contract, including *potentially*, reviews for FIS and its team members, pricing and payment

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<sup>6</sup> Indeed, the only confirmed access to that information was by employees of FIS’s current proposed subcontractor, Jacobs Technology. AR, Tab 27, PIA Investigation at 8.

<sup>7</sup> FIS seemingly takes issue with the fact that the agency did not address Halvik’s access to information until after FIS filed its protest. However, an agency may provide information and analysis regarding the existence of a conflict of interest at any time during the course of a protest, and we will consider such information in determining whether the agency’s conclusions are reasonable. *LOGC2, Inc.*, B-416075, June 5, 2018, 2018 CPD ¶ 204 at 16.

information, and staffing details.” *Id.* at 12 (emphasis added). FIS contends that “Halvik *could have* reviewed feedback on FIS’ or its teammates’ performance, confidential reporting on the contract that FIS and its teammates did not see during formal feedback, and communications related to the government’s expectations for the next iteration of this contract.” *Id.* (emphasis added). However, with regard to this information, the agency confirms that no Halvik employees have, or have had, access to the applications the agency uses to maintain performance, staffing, and pricing/invoicing information. Supp. COS/MOL at 18-19. The agency also conducted an audit which showed no evidence that any contractor employees performing the EKM contract have ever accessed either the incumbent contract folder or the TORFP contract folder. *Id.* at 19.

Here, FIS alleges that an unequal access to information OCI may exist because of Halvik’s work under the EKM contract. The protester essentially argues that the contracting officer’s inquiry was unreasonable because it did not find an OCI involving Halvik. A protester, however, must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 5. Having failed to demonstrate, as alleged, that Halvik’s work involved access to any proprietary or source selection sensitive information, the protester essentially expresses disagreement with the contracting officer’s judgment regarding the scope of the OCI inquiry conducted; such disagreement does not rise to the level of hard facts necessary to support a valid challenge. *Liquidity Servs., Inc.*, B-409718 *et al.*, July 23, 2014, 2014 CPD ¶ 221 at 9-10. Based on our review of the record, we have no basis to question the contracting officer’s conclusion that Halvik did not have access to non-public information that would provide the firm with a competitive advantage in the procurement. *LOGC2, Inc.*, *supra* at 14-16 (finding agency reasonably investigated awardee’s potential unequal access OCI and protester failed to show that conclusions were objectionable).

## Evaluation of Proposals

Next, FIS alleges that USSOCOM unreasonably evaluated proposals under the management, technical, and price factors. Protest at 21-31. The agency responds that its evaluation of proposals was reasonable and in accordance with the TORFP’s evaluation criteria. COS at 17-28; MOL at 14-23.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency’s discretion. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4. In reviewing protests of awards in task order competitions, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision were reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *DynCorp Int’l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester’s disagreement with the agency’s judgment regarding the evaluation of proposals, without more, is not sufficient

to establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 5.

### Evaluation of Protester's Proposal

With regard to the agency's evaluation of its proposal, the protester alleges that all three assigned weaknesses were unreasonable, that the agency improperly failed to identify various strengths in its proposal, and that the evaluation of the FIS and Halvik proposals was disparate. Protest at 21-29. We have reviewed all of the protester's allegations and find no basis on which to sustain the protest, and discuss some representative examples below.

### Management Factor

The protester challenges the assessment of two weaknesses to its proposal under the management factor. *Id.* at 22-23. The agency assessed the first weakness because FIS proposed to have its cybersecurity systems analyst, a key person, perform multiple roles. AR, Tab 28, FIS Management Evaluation at 2. The agency found this approach would overburden that key person with additional duties. *Id.*

Under the TORFP, the agency would evaluate the ability of an offeror's "management organizational structure to meet the requirements of the Cybersecurity SOW and how the proposed will ensure mission success," including an offeror's application of corporate resources and an offeror's "capacity to efficiently manage emerging issues and risks associated with the requirements." AR, Tab 5, TORFP attach. 5 at 2. In its proposal, FIS stated that its cybersecurity systems analyst, a key personnel position, would also serve as the deputy program manager and site lead for USSOCOM headquarters. AR, Tab 29, FIS Management Proposal at 3-4, 7. The SSET found that approach increased the risk of unsuccessful performance, noting that "[t]he [Headquarters] Site has the most FTEs [full-time equivalents] assigned under this contract which requires additional management and oversight." AR, Tab 28, FIS Management Evaluation at 2. In the agency's view, under FIS's approach, the FIS cybersecurity systems analyst position "may be overburdened with additional duties," and "may not be able to effectively accomplish core duties." *Id.* When comparing the FIS and Halvik proposals, the SSA agreed that FIS's decision to assign multiple roles to one of its key personnel increased the risk for unsuccessful performance. AR, Tab 8, SSDD at 11.

The protester also argues that the agency's evaluation applied an unstated evaluation criterion, since nothing in the solicitation required that different employees perform in these different positions. Protest at 22. FIS claims that had it known the agency actually required two different employees to perform each of these positions, it would have altered its proposal accordingly. *Id.*

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements, and



an offeror risks having its proposal evaluated unfavorably where it fails to submit an adequately written proposal. *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4. The protester's decision to propose a key person in such a role is an exercise of its independent business judgement in responding to the solicitation. That the agency found FIS's proposed approach to be a weakness does not, by itself, create an unstated evaluation criterion. See *Blue Water Thinking, LLC; AcesFed LLC*, B-418461.9 *et al.*, Feb. 22, 2021, 2021 CPD ¶ 142. Our review of the record provides no basis to question the agency's evaluation. The record reflects that the agency's assignment of this weakness was not related to an unstated requirement that two individuals perform these positions, but rather due to the particular individual and location to which FIS proposed to assign these multiple roles, thereby increasing the risk of unsuccessful performance. As such, we find no merit to this argument.

Next, the agency assessed FIS's proposal a second weakness under the management factor for the firm's proposed recruitment and retention plan. Specifically, the agency found FIS's plan to combat absences and minimize recruitment delays to be impractical. AR, Tab 28, FIS Management Evaluation at 4.

The solicitation advised that the agency would evaluate an offeror's "methods to recruit, retain, hire, and train a capable workforce to ensure all requirements of this solicitation are met." AR, Tab 5, TORFP attach. 5 at 2. As part of that evaluation, the agency would assess an offeror's "ability to backfill positions with qualified candidates in accordance with the SOW." *Id.* FIS proposed that "[i]n the event of an extended absence due to injury, illness, etc., FIS mitigates the issue by . . . backfilling the position in less than 48 hours." AR, Tab 29, FIS Management Proposal at 13. The evaluators determined that the proposed plan to backfill a position in 48 hours "seems impractical, especially in OCONUS [outside the contiguous United States] or remote locations." AR, Tab 28, FIS Management Evaluation at 4.

The SSA agreed that "FIS' ability to project and minimize extended absences includes additional risks which may result in unsuccessful performance." AR, Tab 8, SSDD at 11. When comparing the FIS and Halvik proposals, the SSA recognized that "[t]he Cybersecurity contract will be Staff Augmentation services; therefore, it is critical for the contractor to be able to maintain a full, qualified staff at all times which is highly dependent upon the contractor's recruitment and retention processes." *Id.* at 12. In particular, "[t]he Cybersecurity services support industry experiences high attrition and turnover rates, so it is critical for contractors to have a comprehensive process in place to backfill any vacancies." *Id.* at 8. Differentiating Halvik's "exceptional approach to minimize extended absences and vacancies," wherein Halvik proposed to implement a feedback loop and tracker to monitor the likelihood and effect of staff departures, the SSA agreed that FIS's plan for "backfilling a position in no more than 48 hours seems impractical." *Id.* at 13.

The protester challenges this assessed weakness, claiming that its proposal exceeded the solicitation's requirements. Protest at 22-23. In the protester's view, "[i]t makes no sense that the Agency considered FIS' well-reasoned and executed recruitment and

retention plan to be a weakness.” *Id.* at 23. We disagree. The TORFP explained that the agency would evaluate whether an offeror’s recruitment and retention methods “indicate an understanding of the requirements, including the ability to support a large, geographically dispersed workforce.” AR, Tab 5, TORFP attach. 5 at 2. Here, the agency reasonably determined that FIS did not demonstrate that it sufficiently understood the OCONUS recruitment requirements with regard to backfilling positions, and assessed its proposal a weakness due to this additional risk. AR, Tab 28, FIS Management Evaluation at 7. We find no basis to object to the agency’s assessment of the weakness. *Med. Staffing Servs., Inc.*, B-420759.3, Aug. 23, 2022, 2022 CPD ¶ 222 at 4-6 (denying protest challenging assessment of significant weakness to protester’s extended backfill coverage plan where protester’s plan “omitted critical details”).

### Technical Factor

Similarly, we find the protester’s challenge to the agency’s assessment of a weakness to its proposal under the technical factor to be without merit. Protest at 24-26. The agency assessed a weakness to FIS’s proposal, in part, because the proposal discussed tier 2 level information system security officer (ISSO) support, but failed to “discuss the ISSO for Tier 3 support.” AR, Tab 30, FIS Technical Evaluation at 2.

The protester claims that the agency’s evaluation was unreasonable because its proposal included the statement that “FIS support also includes Tier 2-3 level expertise,” and that the agency “omitted this plain and obvious reference to Tier 3 level support in its evaluation.” Protest at 26. The agency responds--and the record confirms--that the quoted language cited by FIS in its protest is from FIS’s initial technical proposal and is completely absent from FIS’s final proposal revision. COS at 20-21. Despite conceding that “the phrase was removed from the final proposal,” the protester still contends that the proposal’s description of the roles and responsibilities of the ISSO applied to both tier 2 and tier 3. Comments & Supp. Protest at 34. Our review of the record finds nothing unreasonable with the agency’s conclusion that the protester failed to discuss how the firm would provide tier 3 support in its FPR, and that the protester’s argument is without merit. *SOC LLC*, B-418487.2, B-418487.3, Feb. 4, 2021, 2021 CPD ¶ 75 at 8 (rejecting challenge to assessed significant weakness where proposal “did not contain sufficient detail demonstrating compliance with the solicitation requirements”).

### Evaluation of Awardee’s Proposal

With regard to the agency’s evaluation of Halvik’s proposal, the protester raises a series of challenges arguing, among other things, that the agency assessed unwarranted strengths to the proposal, failed to properly assess the proposal with deserved weaknesses, and that the agency improperly evaluated Halvik’s unrealistically low cost. Protest at 23-24, 28-32. As explained below, we sustain FIS’s protest ground challenging the agency’s technical evaluation of the awardee’s proposal.

Under the technical factor, FIS argues that the agency unreasonably failed to disqualify Halvik’s proposal. Comments & Supp. Protest at 28-32. Specifically, the protester

claims that Halvik's technical proposal should have been deemed unacceptable because several of Halvik's proposed key personnel failed to meet the solicitation's minimum qualification requirements and that Halvik failed to propose labor categories that met the requirements of the statement of work. *Id.* at 28-29. The agency responds that the protester's arguments wrongly conflate the requirements of the management and technical evaluation factors, adding that the agency properly evaluated Halvik's technical proposal as eligible for award. Supp. COS/MOL at 9-17. We agree that the agency properly evaluated Halvik's key personnel under the management factor. However, the agency failed to reasonably evaluate Halvik's proposed labor categories under the technical factor as provided for under the solicitation.

The solicitation provided offerors with a staffing matrix that identified five key personnel positions, designating among other things, their position title and the location of performance. SOW at 68. Under the management evaluation factor, the TORFP required offerors to "[i]dentify key personnel and their qualifications, to include certifications, education, and training." AR, Tab 35, TORFP attach. 4 at 5. The agency would then review the provided key personnel resumes "to evaluate the Offeror's understanding of the requirements and an ability to assign appropriate Key Personnel who possess the required security clearances, skill sets, education, experience, and/or certifications with regards to the position proposed, as identified in the SOW." AR, Tab 5, TORFP attach. 5 at 2. Here, the agency evaluated Halvik's proposed personnel under the management factor, and concluded that the firm had "provided resumes and Letters of Commitment for the (5) key personnel positions listed in the SOW identifying the qualifications, to include certifications, education and experience which meet the SOW requirements." AR, Tab 32, Halvik Management Evaluation at 2.

Separate from its evaluation of the individual qualifications of an offeror's proposed five key personnel under the management factor, the agency also evaluated an offeror's general proposed labor categories under the technical factor. The agency explains that the TORFP included labor categories with different, unique names from those awarded under the ITES-3S IDIQ contract vehicle. Supp. COS/MOL at 11. The TORFP instructed offerors to propose a labor category from the offeror's ITES-3S IDIQ contract to satisfy each identified TORFP labor category--which the agency evaluated under the technical factor. *Id.*; AR, Tab 5, TORFP attach. 5 at 5. After evaluating Halvik's proposal under the technical factor, the agency assessed Halvik with a weakness, concluding that some of its proposed ITES-3S labor categories did not "encompass all of the functional responsibilities required by this SOW." AR, Tab 34, Halvik Technical Evaluation at 4; AR, Tab 8, SSDD at 9.

As an initial matter, we find that the protester conflates the evaluation of individual proposed key personnel under the management factor, with the proposed general labor categories evaluated under the technical factor. FIS is simply mistaken that the agency "was required to evaluate the qualifications of Halvik's personnel" under the technical factor. Supp. Comments at 12. Whereas, the agency's evaluation under the management factor assessed Halvik's key personnel qualifications at the individual

level, the agency's evaluation under the technical factor assessed labor at the category level.

However, we agree with the protester that the agency unreasonably evaluated Halvik's technical proposal. A proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis for award. *Trandes Corp.*, B-411742, B-411742.2, Oct. 13, 2015, 2015 CPD ¶ 317 at 6 (sustaining protest where the agency's source selection was based on a proposal that failed to satisfy a material solicitation requirement). Under the technical factor, the RFP stated that the agency would evaluate an offeror's proposed ITES-3S labor categories "to verify they meet the requirements identified for each position." AR, Tab 5, TORFP attach. 5 at 5. After reviewing Halvik's proposal, the agency explicitly concluded that Halvik's "proposed ITES-3S labor categories do not fully meet the requirements of the SOW," finding that "[s]ome of the proposed labor categories do not encompass all of the functional responsibilities required by this SOW." AR, Tab 34, Halvik Technical Evaluation at 4. We find that it was unreasonable for the agency to conclude that Halvik's proposal deserved a good rating, indicating the proposal "meets requirements and indicates a thorough approach and understanding of the requirements," where the agency found that Halvik's "proposed ITES-3S labor categories do not fully meet the requirements of the SOW." AR, Tab 5, TORFP attach. 5 at 5; AR, Tab 34, Halvik Technical Evaluation at 4.

Moreover, we find that the protester was prejudiced by the agency's failure to enforce the solicitation's requirements when evaluating Halvik's technical proposal. As the protester notes, had it known that the agency would have accepted labor categories that did not meet the solicitation's requirements, "it could have proposed less qualified and lower cost personnel." Comments & Supp. Protest at 32. Likewise, the agency's flawed evaluation permitted Halvik to propose less qualified labor categories at a cost savings, thereby prejudicing FIS where the protester proposed potentially more expensive labor categories that satisfied the solicitation's requirements. We therefore sustain this aspect of FIS's protest. *For Your Information, Inc.*, B-278352, Dec. 15, 1997, 97-2 CPD ¶ 164 (concluding proposal that did not satisfy the solicitation's personnel requirements was unacceptable and may not properly form the basis for award).

### Conduct of Discussions

The protester also challenges the agency's conduct of discussions. Protest at 17-21. Among other things, the protester claims that the agency's discussions misled it by failing to direct FIS to all three proposal areas that the agency later assessed as weaknesses. *Id.* at 17-19. The agency responds that its discussions were meaningful because they provided FIS with all required information. COS at 13-16; MOL at 10-12.

The regulations concerning discussions under FAR part 15, which pertain to negotiated procurements, do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the task order competition here. *NCI Info. Sys., Inc.*, B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 9. In this regard, section 16.505 of

the FAR does not establish specific requirements for discussions in a task order competition; nonetheless, when exchanges with the agency occur in task order competitions, they must be fair and not misleading. *Id.*; see FAR 16.505.

Here, the agency held multiple rounds of discussions with offerors. AR, Tab 8, SSDD at 5-6. The agency issued 20 evaluation notices (ENs) to FIS, addressing the management, technical, and price factors. AR, Tab 6, September 22, 2022, FIS Discussions Letter at 4-6; AR, Tab 9, December 22, 2022, FIS Discussions Letter at 3-8; AR, Tab 10, January 17, 2023, FIS Discussions Letter at 3-6; AR, Tab 11, January 23, 2023, FIS Discussions Letter at 3-8; AR, Tab 12, Close Discussion Letter at 4-10. The agency's evaluation of final proposal revisions identified three weaknesses in FIS's approach, two under the management factor, and one under the technical factor. AR, Tab 28, FIS Management Evaluation at 2, 4; AR, Tab 30, FIS Technical Evaluation at 2. FIS argues the agency's discussions were inadequate because they failed to apprise the protester of these three weaknesses. Comments & Supp. Protest at 14-15. Had the agency raised these weaknesses during discussions, the protester claims, FIS could have easily addressed these areas. *Id.* at 16.

When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, they must lead the offeror into the areas of its proposal that require correction or amplification. *Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 6. In this regard, the FAR states that the discussions, at a minimum, must address "deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR 15.306(d)(3). The contracting officer is encouraged, but not required to, discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to materially enhance the proposal's potential for award. *Id.* A contracting officer is also not required to discuss every area where the proposal could be improved in order for the discussions to be meaningful, and the precise content of discussions is largely a matter of the contracting officer's judgment. *Skyline Ultd, Inc.*, B-416028, B-416028.2, May 22, 2018, 2018 CPD ¶ 192 at 6-7.

Here, the agency identified all deficiencies and significant weaknesses in FIS's proposal during discussions. The agency identified a deficiency in FIS's management proposal related to the proposal's non-compliance with the position requirements for two of the proposed key personnel positions. AR, Tab 6, September 22, 2022, FIS Discussions Letter at 4. The record reflects that the agency found no deficiencies or significant weaknesses to which FIS did not have an opportunity to respond, nor has the protester alleged any. Instead, the protester argues that it should have been allowed to address the three assessed weaknesses--the substance of which the protester, itself, characterizes as "minutiae." Protest at 19. As our decisions have explained, the requirement that discussions be meaningful, however, does not obligate an agency to "spoon-feed" an offeror or to discuss every area where the proposal could be improved. FAR 15.306(d)(3); *General Dynamics Info. Tech., Inc.*, B-418533, June 11, 2020, 2020 CPD ¶ 212 at 9. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. *Id.*

Accordingly, we find no merit to the allegation that discussions with FIS were not meaningful.<sup>8</sup>

FIS also contends that the agency's discussions were misleading because, by limiting discussions to only four ENs under the management and technical factors, FIS was led to believe that the agency had no other concerns regarding those portions of its proposal. Comments & Supp. Protest at 14-15. We disagree. Discussions are misleading when the agency misleads an offeror into responding in a manner that does not address the agency's concerns, or misinforms the offeror concerning a problem with its proposal or about the government's requirements, none of which the protester asserts. *M.A. Mortenson Co.*, B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 8-9. The protester's assertion--that anything less than complete discussions (*i.e.*, addressing every single weakness or concern identified by the agency) must be considered misleading--would thereby necessitate the "spoon-feeding" of offerors, which we have consistently stated agencies are not required to do.<sup>9</sup> *Id.*

## RECOMMENDATION

As noted above, we conclude that the Halvik proposal could not properly form the basis for the award of a task order because it failed to meet a material requirement of the

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<sup>8</sup> FIS also argues that once the agency engaged in discussions that addressed areas that were not limited to significant weaknesses or deficiencies, the agency was required to apply that approach evenly to all evaluation factors and proposals. Protest at 19-20. The agency reasonably explains that it discussed some weaknesses, but not others, since it determined those proposal aspects could be materially enhanced in order to receive the best value proposal. COS at 14. Moreover, the protester's reliance on our decision in *AMEC Earth & Env't, Inc.*, B-401961, B-401961.2, Dec. 22, 2009, 2010 CPD ¶ 151 is misplaced. *AMEC* does not stand for the proposition, as FIS suggest, that "[o]nce the Agency went down the path of identifying weaknesses in parts of FIS' proposal it was required to raise all weaknesses." Protest at 19. In *AMEC*, we found that the agency had held discussions that went beyond the FAR's minimum requirements with all offerors, but had failed to do so equally with the protester. *AMEC*, *supra* at 6. Here, by contrast, FIS has failed to demonstrate that the agency has unequally engaged in more detailed discussions with the other offerors.

<sup>9</sup> FIS claims that "[b]ecause resolution of the weaknesses would have materially enhanced FIS' potential for award, the Agency was required to raise the weaknesses with FIS during discussions." Comments & Supp. Protest at 17. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise of a weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. *Qwest Gov't Servs., Inc. d/b/a CenturyLink QGS*, B-419271.4, B-419271.7, Apr. 14, 2021, 2021 CPD ¶ 169 at 9. Here, the record reflects that FIS had a reasonable chance to receive the award notwithstanding its three weaknesses. AR, Tab 8, SSDD at 11-14.

solicitation, namely, the requirement that Halvik's proposed ITES-3S labor categories meet the SOW requirements. We recommend that the agency reevaluate Halvik's proposal consistent with the terms of the solicitation. As a consequence of its reevaluation, the agency may need to reopen discussions among the competitors; solicit, obtain and evaluate revised proposals; and make a new source selection decision. We also recommend that the agency reimburse the protester the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part, and denied in part.

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