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Decision

Matter of: MANDEX, Inc.

File: B-421664; B-421664.2; B-421664.3

Date: August 16, 2023

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John R. Tolle, Esq., Baker, Cronogue, Tolle & Werfel, LLP, for Imagine One Technology & Management, Ltd., the intervenor.

Stephanie Beaty, Esq., Department of the Navy, for the agency.

Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the awardee had unequal access to information and impaired objectivity organizational conflicts of interest is sustained where the record shows that the agency unreasonably concluded there was no possibility of any potential conflicts arising from the performance of a related task order.

2. Protest challenging the agency's evaluations of technical proposals and costs is denied where the evaluations were reasonable and consistent with the stated evaluation criteria.

DECISION

MANDEX, Inc., a service-disabled veteran-owned small business of Fairfax, Virginia, protests the Department of the Navy, Naval Information Warfare Systems Command, Naval Information Warfare Center (NIWC) Atlantic's issuance of a task order to Imagine One Technology & Management, Ltd., of Lexington Park, Maryland. The Navy issued the task order under request for task order proposals (RFP) No. N6523622R3030, for Marine Air Ground Task Force Command and Control Systems and Applications (MC2SA) engineering support. MANDEX argues that the agency's evaluation of proposals and resulting award decision were improper.

We sustain the protest.

BACKGROUND

The mission of the Navy's NIWC Atlantic command is to conduct research, development, prototyping, engineering, test and evaluation, installation, and sustainment of integrated information warfare capabilities and services across all warfighting domains to drive innovation and information advantage. See Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. Within NIWC Atlantic, the MC2SA integrated product team is focused on delivering unique, timely, and effective solutions to the warfighter to enable situational awareness, enhance decision making, and increase lethality. Agency Report (AR), Tab 2, RFP at 12.¹ The purpose of the procurement here is to secure engineering support for MC2SA in a variety of functional areas, with primary services in software development, integration, test and evaluation, and cybersecurity. *Id.* at 11-12.

The RFP was issued on September 14, 2022, to holders of the Navy's SeaPort Next Generation (NxG) multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation (FAR) part 16. COS/MOL at 3. The solicitation was issued as a small business set-aside, and the RFP contemplated the issuance of a cost-plus-fixed-fee, level-of-effort, and cost task order with a 1-year base period and four 1-year option periods. RFP at 67, 98.

The solicitation established that award would be made on a best-value tradeoff basis, considering three evaluation factors: technical understanding (technical), software development plan, and cost.² *Id.* at 113. The technical factor was significantly more important than cost. Within the technical factor, there were four subfactors, listed in descending order of importance: (1) engineering support; (2) test and evaluation; (3) cybersecurity/information assurance support (cybersecurity); and (4) requirements management support. *Id.* at 115-17. Each subfactor, as well as the overall technical factor, would be assigned an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 114, 117.

The agency received proposals from seven offerors, including MANDEX and Imagine One, by the October 14 deadline for receipt of proposals. COS/MOL at 4. The Navy evaluated proposals as follows:

¹ Citations to the record are to the documents' Adobe PDF pagination. The agency amended the RFP once; all citations to the RFP are to the amended version at tab 2 of the agency report.

² The software development plan factor would be evaluated on an acceptable/unacceptable basis. Offers found to be unacceptable under this factor would not be eligible for award. See RFP at 113-15. This factor is not at issue in this protest.

	MANDEX	Imagine One
TECHNICAL	ACCEPTABLE	OUTSTANDING
Engineering support	Acceptable	Outstanding
Test and evaluation	Marginal	Good
Cybersecurity	Acceptable	Outstanding
Requirements management support	Acceptable	Acceptable
SOFTWARE DEVELOPMENT PLAN	ACCEPTABLE	ACCEPTABLE
TOTAL EVALUATED COST	\$47,374,353	\$58,352,741

AR, Tab 7, Business Clearance Memorandum (BCM) at 12-13, 16. The contracting officer, who also served as the source selection authority, concurred with the evaluators' assessment of proposals, and concluded that Imagine One's proposal represented the best value. *Id.* at 2, 49-50. On April 14, 2023, the Navy issued the task order to Imagine One. COS/MOL at 8. This protest followed.³

DISCUSSION

MANDEX raises several challenges regarding the agency's evaluation and award decision. First, the protester contends that the agency failed to reasonably evaluate Imagine One's organizational conflicts of interest (OCIs). The protester next asserts that the Navy unreasonably assessed a significant weakness in MANDEX's proposal, and evaluated MANDEX's and Imagine One's proposals in an unjustifiably disparate manner. MANDEX also contends that the agency failed to evaluate proposals for cost reasonableness. Finally, MANDEX argues that the agency's best-value tradeoff determination was improper.⁴

³ The value of the task order here exceeds \$25 million. Accordingly, this protest is within our Office's jurisdiction to resolve protests involving task orders issued under IDIQ contracts established pursuant to the authority in title 10 of the United States Code. 10 U.S.C. § 3406(f)(1)(B).

⁴ As we have explained, where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements. *Savvee Consulting, Inc.*, B-408416.3, Mar. 5, 2014, 2014 CPD ¶ 92 at 5. In a supplemental protest, MANDEX argues for the first time that the agency did not enforce an alleged RFP requirement for offerors to certify that they qualified as small businesses at the time of proposal submission. 1st Supp. Protest at 1-6. We find this allegation to be untimely.

Under our Bid Protest Regulations timeliness rules, a protest based on other than alleged improprieties in a solicitation must generally be filed no later than 10 days after the protester knew or should have known of the basis for protest. 4 C.F.R. § 21.2(a)(2). Although MANDEX professes that the supplemental allegation "does not constitute a

As detailed below, we find that the agency's OCI analysis of Imagine One was unreasonable and sustain the protest on that basis. While we do not discuss all of the remaining issues raised by MANDEX, we have considered them all and find no additional bases on which to sustain the protest.

Organizational Conflicts of Interest

MANDEX argues that the agency failed to meaningfully consider OCIs that arose as a result of the award to Imagine One because the Navy earlier issued a different task order supporting MC2SA to Imagine One. Comments & 2nd Supp. Protest at 2-18. According to MANDEX, while proposals were due for the MC2SA engineering support solicitation at issue here, the Navy issued task order No. N6523622F3049 to Imagine One for the provision of "programmatic and technical management support for MC2SA initiatives"--referred to as the MC2SA management support task order. *Id.* at 4. MANDEX asserts that the agency has since failed to reasonably identify and evaluate conflicts that arose as a result. *Id.* We agree.

The FAR requires that contracting officers identify and evaluate potential OCIs, and directs contracting officers to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three types: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. In considering whether there is an actual or potential OCI, the FAR advises contracting officers to examine the particular facts of the contracting situation and the nature of the proposed contract, and to exercise common sense, good judgment, and sound discretion in deciding whether a significant OCI exists, and in determining the appropriate means for resolving any significant OCI that has been identified. FAR 9.505.

The primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR 9.504; *RMG Sys., Ltd.*, B-281006, Dec. 18, 1998, 98-2 CPD ¶ 153 at 4. Our Office reviews the

challenge to Imagine One's small business size status," the protest ground is predicated on the protester's view that Imagine One was a large business at the time it submitted its proposal in response to the task order solicitation set aside for small businesses under the Seaport NxG IDIQ contract. See *id.*; see also AR, Tab 35, MANDEX's Protest to the Small Business Administration (filed on April 24, 2023, challenging the size of Imagine One at the time of proposal submission). The protester was aware, by the notice of award--as well as the written debriefing--that the task order had been issued to Imagine One, but did not raise this challenge until MANDEX filed its supplemental protest on June 15--more than a month after its initial protest. The allegation is therefore untimely and is dismissed. 4 C.F.R. § 21.2(a)(2); *InterImage, Inc.*, B-415716.29, Aug. 9, 2019, 2019 CPD ¶ 399 at 8.

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. See *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7. Once an agency has given meaningful consideration to whether an OCI exists, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. See *DV United, LLC*, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6; *Alion Sci. & Tech. Corp.*, B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 8.

As discussed above, the successful contractor here will be required to provide engineering support for MC2SA tactical data systems, initiatives, and software products for the United States Marine Corps and its partners. RFP at 12. This includes technical solutions and support in a variety of functional areas, including systems and software engineering, software development, integration support, software integration, cybersecurity / information assurance, code review, authority to operate support, testing and evaluation, requirements management, field exercise support, emerging technology support, model based systems engineering, enterprise tool support, and information management and infrastructure.⁵ *Id.* at 11-12.

On September 29, 2022, the Navy issued the MC2SA management support task order, No. N6523622F3049, to Imagine One. AR, Tab 15, MC2SA Management Support task order at 1. The task order set forth the following scope: the NIWC Atlantic "MC2SA programmatic and technical management support PWS [Performance Work Statement] covers Program Management (PM), Schedule Management, Risk Management (RM), Configuration Management (CM), Documentation Management, and System engineering management support for MC2SA initiatives." *Id.* at 8. The detailed performance requirements echoed this overall scope, and were organized in six topic areas: (1) project management; (2) configuration management support; (3) documentation management support; (4) quality assurance; (5) equipment and material support; and (6) system engineering management support. *Id.* at 9-15.

Based on the allegations in MANDEX's protest, the contracting officer conducted an investigation into the potential for an unequal access OCI or an impaired objectivity OCI

⁵ One example of an effort supported by holders of previous similar contracts is the joint tactical common operational picture workstation (JTCW). RFP at 12. The JTCW "combines seven tactical applications into one user interface . . . that presents the battlefield in near-real time, and blends digital maps, tactical objects and plans in one workstation to help leaders make more informed decisions." www.marcomsyscom.marines.mil/News/News-Article-Display/Article/798476/battlefield-appears-with-the-touch-of-a-finger (last visited Aug. 2, 2023).

as a result of Imagine One's performance of the management support task order.⁶ AR, Tab 14, OCI Determination. The contracting officer concluded "that Imagine One had no unequal access to competitively useful information through the MC2SA Management Support" task order and that the management support task order "do[es] not create an impaired objectivity OCI with the MC2SA Engineering Support task order." *Id.* at 2, 7. MANDEX challenges both conclusions. Comments & Supp. Protest at 4-18.

Unequal Access to Information

As stated, MANDEX argues the agency failed to properly consider Imagine One's unequal access to information OCI. An unequal access to information OCI arises where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b); *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 6. As the FAR makes clear, the concern regarding this category of OCI is that a firm may gain a competitive advantage based on its possession of "[p]roprietary information that was obtained from a Government official without proper authorization," or "[s]ource 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); *see Arctic Slope Mission Servs., LLC*, B-412851, B-412851.2, June 21, 2016, 2016 CPD ¶ 169 at 8.

MANDEX asserts that, as part of Imagine One's performance of the MC2SA management support task order and prior to the deadline for submission of the MC2SA engineering support proposals, "Imagine One had unparalleled access to NIWC's internal risk analyses, technology needs and objectives, configuration data, program budgets, and schedule information." Protest at 10-11. According to MANDEX, this "allowed Imagine One the unfair and unequal ability to propose Engineering Support in line with the Agency's internal projections, unpublished concerns and unannounced objectives--information that was not shared with other offerors in the competition." *Id.* at 13.

In the OCI determination, the contracting officer did not deny that performance of the MC2SA management support task order would provide access to the types (and nature) of information that the protester alleged. Instead, the contracting officer explains that

⁶ The protester repeatedly emphasizes that the agency's OCI determination occurred after the protest, calling it "*post hoc*." See, e.g., Comments & 2nd Supp. Protest at 2. An agency, however, 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 determinations are reasonable. See, e.g., *McTech Corp.*, B-406100, B-406100.2, Feb. 8, 2012, 2012 CPD ¶ 97 at 7; *see also Turner Constr. Co., Inc. v. United States*, 645 F.3d 1377, 1386-87 (Fed. Cir. 2011) (stating that an agency's post-protest investigation and analysis of an OCI should be considered in the resolution of protests).

the MC2SA management support task order was awarded on September 29, 2022, and MC2SA engineering support proposals were due “[f]ifteen days later, on October 14, 2022.” *Id.* Although Imagine One participated in a “post-award kick-off meeting with the Government” during that period and was performing on the task order, the contracting officer characterizes the work as “only performing transition tasks such as onboarding and credentialing of its team members” until the end of performance of the incumbent, GVI, Inc., on October 27. *Id.* at 2-3. Based on Imagine One’s invoice, the contracting officer found that “the only employee onboard” before the proposal deadline was the program manager, “who did not perform substantive tasks.” *Id.* at 4.

The contracting officer then found that “Imagine One had no unequal access to competitively useful information through the MC2SA Management Support Task Order because Imagine One had not begun substantive performance under that task order at the time that it submitted its proposal.” AR, Tab 14, OCI Determination at 2. On the basis of this distinction between performance and “substantive performance,” the contracting officer concluded that “there was no opportunity for Imagine One to have unequal access to competitively useful information for its proposal submission” under this RFP. *Id.* at 5.

The protester maintains that Imagine One does have an unequal access to information OCI, asserting that the agency’s analysis was not reasonable. Comments & Supp. Protest at 5. According to MANDEX, the contracting officer applied the wrong OCI review standard by narrowly “focus[ing] on whether Imagine One had begun ‘substantive’ performance on the MC2SA Management Support” task order. *Id.* at 7-10. The relevant question, in MANDEX’s view, is “whether Imagine One had access to competitively useful information.” *Id.* at 7.

We agree with the protester that the OCI investigation performed by the Navy did not address whether Imagine One had access to any nonpublic or source selection information, and whether such information was competitively useful. Instead, the contracting officer concluded that Imagine One did not have unequal access to information as a result of the MC2SA management support task order, because, at that time, “the contract was under transition, and all substantive work on the MC2SA Management Support Task Order was still being performed by the incumbent contractor.” AR, Tab 14, OCI Determination at 2. In other words, while the contracting officer concludes that Imagine One only performed transition tasks such as onboarding and credentialing its team members, the contracting officer did not consider whether Imagine One’s employees had access to nonpublic competitively useful information.⁷ We sustain the protest on this basis.

⁷ Although the contracting officer states that no contractors, including Imagine One, had access to “acquisition documents and planning information,” that statement is specific to the MC2SA engineering support task order competition rather than acquisition documents and planning information more generally. See AR, Exh. 14, OCI Determination at 3.

In addition, even in concluding that Imagine One was not performing “substantive work,” the contracting officer considered only limited information about the nature of the duties Imagine One performed during the 15-day transition period between GVI’s and Imagine One’s performance on the MC2SA management support task order. AR, Tab 14, OCI Determination at 2. For example, the Navy’s OCI determination relied on timesheets and invoices to conclude that “the only employee [to] onboard before” the RFP closing date “was the Program Manager, who did not perform substantive tasks.” *Id.* at 2-4. As the protester argues, relying on timesheets and invoices did not account for the fact that there is evidence in the record that the timesheets and invoices do not capture all of the work Imagine One devoted to the task order--or, as necessary to a meaningful OCI analysis, any associated access to information. See Comments & Supp. Protest at 5-10. The timesheets and invoices do not, for example, reflect the work of the Imagine One senior manager that organized and led the kick-off meeting or an Imagine One executive “responsible for overseeing personnel and contract execution on” the management support task order. See *id.* at 5-6. In addition, in one instance, the program manager did not record any time to the MC2SA management support task order, but that individual attended the kick-off meeting for the MC2SA management support task order, while concurrently working on the MC2SA engineering management proposal. AR, Tab 24, Affidavit of Imagine One Senior Manager.

In response to the protester’s argument about attendance at the kick-off meeting, the agency supplemented the record with additional declarations from Navy and Imagine One personnel, but those declarations are focused on the protester’s specific allegations rather than whether Imagine One employees more broadly had access to nonpublic competitively useful information. See Supp. COS/MOL at 9. Several of these declarations seek to explain why an individual attended the kick-off meeting but did not record time to the task order, or state that the Navy and Imagine One “did not talk about the MC2SA Engineering Support (procurement or task order) during the” kick-off meeting. See, e.g., AR, Tab 42, Decl. of Imagine One Director of Contracts. Other declarations reiterate that GVI continued to perform while Imagine One began performance. See, e.g., AR, Tab 39, Decl. of MC2SA Project Manager.

Similar to the initial OCI analysis, however, none of these additional declarations analyze whether Imagine One employees had access to nonpublic competitively useful information. For example, the protester identifies within the slides for the kick-off meeting multiple information systems and resources for which Imagine One had immediate access. Comments & 2nd Supp. Protest at 9-10 (e.g., the information systems referred to as “Jazz” and “Atlassian”). Rather than address when or if Imagine One obtained access to these (or any other) information systems and resources and the nature of the information within them, the declarants simply assert that there was “not unequal access or competitive advantage over MANDEX” because MANDEX had access to the same through its incumbent work for MC2SA. See, e.g., AR, Tab 39, Decl. of MC2SA Project Manager at 4-5. This does not address whether Imagine One had access to any of MANDEX’s nonpublic information, which may create an unequal access OCI. *Dell Servs. Fed. Gov’t*, B-414461.3 *et al.*, June 19, 2018, 2018 CPD ¶ 213 at 8-9 (sustaining protest where awardee “may have an unequal access to information

OCI” and the agency made no “effort either to investigate, or to avoid, neutralize or mitigate, any possible OCI”).

In short, the record shows that the agency failed to reasonably identify and evaluate the nature and extent of Imagine One’s access to nonpublic competitively useful information under the MC2SA management support task order. Accordingly, we sustain this allegation because the OCI analysis was inadequate and, therefore, unreasonable. *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 11 (sustaining protest where the agency failed to reasonably investigate the potential for conflict).

Impaired Objectivity

The protester also argues the agency did not properly investigate Imagine One’s impaired objectivity OCI. An impaired objectivity OCI, as addressed in FAR subpart 9.5 and the decisions of our Office, 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); *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6. The concern in such impaired objectivity situations is that a firm’s ability to render impartial advice to the government will be undermined by the firm’s competing interests. *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

The protester contends that the MC2SA management support task order “will no doubt entail evaluating its own work under the MC2SA Engineering Support” task order and providing input on the associated performance metrics and schedule, citing PWS provisions that refer, for example, to “performing analysis of cost, schedule, performance, risk, [and] resources.” Protest at 15-16. In addition, MANDEX contends that the MC2SA management support task order contemplates the contractor “recommending products and services to be acquired under the [MC2SA] Engineering Support” task order. *Id.* at 16.

In the OCI determination, the contracting officer asserted that, based on review of the work statements and in consultation “with the relevant government personnel who administer and manage the work on both of those task orders,” and Imagine One management, the Navy found there was “no evidence that Imagine One’s work on the MC2SA Management Support task order involves the evaluation of its performance on the MC2SA Engineering Support task order.” AR, Tab 14, OCI Determination at 5-6. Nevertheless, “out of an abundance of caution,” the contracting officer modified the MC2SA management support task order to add the following three paragraphs:

Marine Air Ground Task Force (MAGTF) Command and Control System and Applications (MC2SA) Management Support Section 1.1 Scope is modified to clarify the scope of the PWS for N65236-22-F-3049, the MC2SA Management Support Task Order. The following language is added to Section 1.1 Scope:

Contracting officials must avoid, neutralize or mitigate potential significant OCIs, such as the existence of conflicting roles that might impair a contractor's objectivity. An impaired objectivity OCI occurs when a firm's work under one government contract could allow the firm to evaluate itself, either through an assessment of performance under another contract or an evaluation of proposals. The concern is that the firm's ability to render impartial advice to the government could appear to be undermined by its relationship with the entity whose work product is being evaluated.

Accordingly, it is clarified that the scope of the PWS for N65236-22-F-3049, the MC2SA Management Support Task Order, does not contemplate, require, or permit the contractor to perform work evaluating the contractor's performance or work (including any subs or affiliates) under N65236-23-F-3008, the MC2SA Engineering Support Task Order. Nor may the MC2SA Management Support contractor recommend additional work, products or services under N65236-23-F-3008, the MC2SA Engineering Support Task Order.

Id. at 6-7.

The protester maintains that Imagine One still has an impaired objectivity OCI. Comments & 2nd Supp. Protest at 10-18. MANDEX argues that the contracting officer too narrowly confined her impaired objectivity review to scenarios when a contractor will "directly recommend additional work or directly evaluate its own performance." *Id.* at 13-14. Further, according to MANDEX, the task order modification is not effective, because it leaves unchanged the actual PWS tasking to provide "the full spectrum [of] project management support services" to MC2SA. *Id.* at 12-15.

The agency responds that MANDEX is mischaracterizing the PWS for the MC2SA management support task order. In support of its argument, the agency characterizes the duties of the MC2SA management support contractor as providing administrative support relying on declarations from government personnel who state that the MC2SA management support contractor "cannot perform work evaluating or benefiting the Engineering Support contractor." Supp. COS/MOL at 18-26.

Our Office has explained that the concern in impaired objectivity situations, including evaluation of products or services, is whether a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. For instance, in *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 12, we sustained the protest because the agency did not meaningfully consider potential OCIs arising from the award of a contract that did not require the awardee to directly evaluate itself, but would require the contractor to provide advice to the agency about its own performance under a separate contract. In *Cognosante, LLC*, B-405868, Jan. 5, 2012, 2012 CPD ¶ 87, our Office found that an agency reasonably disqualified an offeror from a competition based on an OCI that arose because the contractor would

be required to choose whether to conduct an audit under two different contracts, each of which had differing financial incentives.

Here, we find that the agency's impaired objectivity OCI analysis relies on the unreasonable assessment that there is "no evidence" in the record "that Imagine One's work on the MC2SA management support task order involves the evaluation of its performance on the MC2SA engineering support task order." AR, Tab 14, OCI Determination at 5. As an initial matter, although the contracting officer does report consideration of the full work statements of the two task orders, the agency's response to the protest reflects that the contracting officer's inquiry may have again been unduly focused on the protester's specific allegations rather than a meaningful, comprehensive review of the potential for conflicts posed by the task orders.

For example, the agency's supplemental legal memo responding to the protest specifically addresses only 12 PWS sections, each of which is cited by the protester in its protest filings. Supp. COS/MOL at 26. With respect to eight of the sections, the agency denies that the work required "can somehow be used to benefit the Engineering Support contractor" because the sections do not "mention Engineering Support." *Id.* Although "the Contracting Officer also found no merit to MANDEX's claims regarding the remaining Management Support PWS sections that were challenged (*i.e.*, PWS § 3.6.1, § 3.6.2, § 3.6.3, and § 3.6.4), those sections have been removed from the Management Support task order as an additional prophylactic measure."⁸ *Id.* One of the sections removed (3.6.1), required Imagine One to "provide input to the technical schedule with technical reviews" in accordance with Department of Defense regulations. See AR, Tab 15, MC2SA Management Support task order at 15 (reflecting PWS § 3.6.1). The agency did not address, however, a separate section in the same PWS, section 3.6.6--presumably because it was not specifically cited by the protester--which required the contractor to "provide input on technical reviews while assisting with the development and collection of technical review documentation artifacts." See *id.* at 15.

Instead, the agency invokes the modification quoted above reiterating that the scope of the PWS for the MC2SA management support task order "does not contemplate, require, or permit the contractor to perform work evaluating the contractor's performance or work" under the MC2SA engineering task order. Supp. COS/MOL at 26. In addition, the agency relies heavily on declarations that set forth how the Navy has relied on the MC2SA management support contractor in the past, rather than the terms of the task order itself and how they may allow for the agency to rely on the contractor in the future. Supp. COS/MOL at 18-24.

Even with the contracting officer's post-protest modifications to the PWS, the plain terms of the MC2SA management support task order require Imagine One to advise the Navy on work in which it has a competing interest. For example, the PWS still requires

⁸ Neither the legal memo nor the task order modification further explain why these particular sections were removed. See Supp. COS/MOL at 26; AR, Tab 50, Amended MC2SA management support task order at 3.

Imagine One to “provide full spectrum project lifecycle technical support,” “full spectrum project management support services,” and “support all aspects of process management, including CPI [continual process improvement] with managing and analyzing data, metrics, and reports for program performance, and risk analysis.” AR, Tab 50, Amended MC2SA Management Support task order at 12, 13, 17. As the protester argues, these PWS requirements could allow Imagine One to affect the engineering support task order by advising “when--and if--various software development projects move forward,” how “resource allocation decisions” are made, “what software and other technical risks are considered significant . . . and the best way to manage them.” Supp. Comments at 8-9. In sum, as the MC2SA management support contractor, Imagine One would perform these PWS functions by providing input about the work and performance of Imagine One as the MC2SA engineering support contractor. The agency’s OCI determination and protest arguments do not address this apparent discrepancy.

Accordingly, we find unreasonable the contracting officer’s determination that there was no impaired objectivity OCI associated with Imagine One’s performance on the MC2SA management support task order, because the OCI analysis relies on an incomplete and unreasonably myopic review of the management support PWS. Consequently, we also sustain the OCI allegation on this basis.

Technical Evaluation

The protester asserts multiple challenges to the agency’s evaluation of proposals under the technical factor, asserting, among others, that the Navy unreasonably identified a significant weakness in MANDEX’s proposal and that the agency disparately assigned strengths only to Imagine One for features that MANDEX’s proposal shared. Comments & 2nd Supp. Protest at 23-27, 29-36. The agency defends its evaluation of proposals as reasonable, evenhanded, and consistent with the solicitation. Supp. COS/MOL at 31-49. As discussed below, we deny these allegations.

As stated above, the task order competition was conducted pursuant to FAR part 16. Under these provisions, the evaluation of proposals, including the determination of the relative merits of proposals, 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. *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9. In reviewing protests challenging the evaluation of an offeror’s proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency’s judgment was reasonable and in accordance with the solicitation’s evaluation criteria and applicable procurement statutes and regulations. *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5; *Distributed Sols., Inc.*, B-416394, Aug. 13, 2018, 2018 CPD ¶ 279 at 4. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish an agency acted unreasonably. *CSRA LLC*, *supra*.

In addition, it is a fundamental principle of federal procurement law that a contracting agency must evaluate in an even-handed manner. *Spatial Front, Inc.*, B-416753, B-416753.2, Dec. 10, 2018, 2018 CPD ¶ 417 at 13. Agencies, however, properly may assign dissimilar proposals different evaluation ratings. *Battelle Mem'l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. When a protester alleges disparate treatment in a technical evaluation, to prevail, it must show that the agency unreasonably evaluated its proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *Id.*; *Office Design Grp. v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020). In other words, a protester must show that the differences in evaluation did not stem from differences between the proposals in order to establish disparate treatment. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10.

The protester raises several challenges to the evaluation of its proposal. As a representative example, we discuss the significant weakness assessed to MANDEX's proposal, which MANDEX also alleges reflected disparate treatment in the Navy's evaluation of proposals. Under the test and evaluation subfactor of the technical factor, offerors were to describe, among other things, "their technical process to develop, integrate, and maintain an automated software testing solution." RFP at 108. The agency assessed a significant weakness to MANDEX's proposal for this requirement because, although MANDEX "described how they would maintain the automation solution," the protester did not address development or integration of the automated software, which the evaluators viewed as "key to the MC2SA program." AR, Tab 6, Selection Evaluation Board (SEB) Report at 22.

The protester argues that this significant weakness was unreasonable because it ignores what MANDEX proposed:

MANDEX's proposal is focused on the use of [DELETED] automated test solution. [DELETED]. As a result, development and integration (in the context of MANDEX's proposed solution) are focused on [DELETED].

Protest at 22. The protester asserts that, "[w]ithin that context, MANDEX's proposal described in detail how it developed and implemented the 'Eggplant' COTS tool on the incumbent contract when the Agency transitioned away from its prior system." *Id.* at 22-23.

In response, the agency explains that the evaluators recognized that MANDEX's proposal described its experience with the Eggplant COTS tool, but found that proposal did not describe MANDEX's "technical process to develop and integrate an automated software testing solution." COS/MOL at 26-33. The agency notes that the evaluators specifically identified an example of what was missing from MANDEX's description: "MANDEX did not describe how they [DELETED] the entire automation process." *Id.* at 31-32; AR, Tab 6, SEB Report at 22.

In a competitive procurement, it is an offeror's burden to submit an adequately written proposal that establishes the merits of its proposal. *SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 10. Although MANDEX argues that its proposal should have been read as addressing all elements of an automated software testing solution as required by the RFP, our review of the record does not support the protester's contention. In this regard, we find nothing objectionable with the Navy's finding that the "lack of information and details provided in [MANDEX's] proposal regarding the development and integration of an automated software testing solution" warranted an assessment of a significant weakness. AR, Tab 6, SEB Report at 22. As such, this allegation is denied. See *URS Fed. Tech. Servs., Inc.*, B-405922.2, B-405922.3, May 9, 2012, 2012 CPD ¶ 155 at 8-9 (denying protest asserting that the agency ignored experience that inherently encompasses or relates to the PWS's requirements because "agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide").

Next, the protester argues that this significant weakness also reflects that the agency disparately evaluated MANDEX and Imagine One. Comments & 2nd Supp. Protest at 26. According to the protester, "Imagine One was not penalized like MANDEX for discussing its experience with particular software automation tools and the implementation of Eggplant" and was, instead, evaluated with a strength for this aspect of Imagine One's proposal. *Id.*

Contrary to the protester's characterization, the record reveals that Imagine One's and MANDEX's proposal were not similar in this regard. Instead, the Navy identified that Imagine One's proposal benefitted from demonstrating "a thorough technical understanding of *how* to use multiple automation tools such as, [DELETED]." AR, Tab 6, SEB Report at 11 (emphasis added). As MANDEX all but concedes, its proposal did not describe the technical process to develop and integrate its single automated testing solution. See Protest at 22-23. Imagine One, by contrast, offered a proposal that explained the technical process for the use and implementation of multiple automation tools. AR, Tab 6, SEB Report at 11. Accordingly, our review of the record provides no basis to conclude that the differences in the evaluation did not stem from differences in the proposals. See *Ahtna Prof'l Servs., Inc.*, B-421164, B-421164.2, Jan. 11, 2023, 2023 CPD ¶ 20 at 7 (denying alleged disparate treatment where protester essentially conceded differences between the proposals but argued it "proposed much of the same thing").

Cost Reasonableness

MANDEX also argues that the agency erred in its evaluation of cost proposals. Protest at 17-19. According to the protester, "the contemporaneous record does not reflect that the Agency actually compared the Imagine One price to any particular offeror's price, the price history, or the average." Comments & 2nd Supp. Protest at 19.

The agency responds that it evaluated proposed costs in accordance with the solicitation. COS/MOL at 16-17. Quoting the BCM, the agency asserts that the contemporaneous record demonstrates that the agency met its obligation to assess reasonableness by comparing offerors' proposed costs with those of other acceptable offerors and to an independent government estimate. *Id.* at 17-18. As discussed below, we deny these allegations.

Here, although the solicitation contemplated issuance of a task order on a cost-type basis, it also advised overall proposed cost reasonableness would be evaluated in accordance with the price analysis techniques of FAR section 15.404-1(b). RFP at 118. The FAR defines such price analysis as "the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit," and includes a non-exhaustive list of permitted price analysis techniques to ensure that the agency pays a fair and reasonable price. FAR 15.404-1(b)(1). The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *TransAtlantic Lines, LLC*, B-411846.3, B-411846.4, May 18, 2016, 2016 CPD ¶ 148 at 7; *Federal Acquisition Servs. Alliant JV, LLC*, B-415406.2, B-415406.3, Apr. 11, 2018, 2018 CPD ¶ 139 at 11.

In evaluating proposed cost reasonableness, the agency relied on two of the techniques prescribed in the FAR--comparison of proposals received in response to the solicitation and comparison to an independent government cost estimate. AR, Tab 7, BCM at 16; see FAR 15.404-1(b)(2). While the protester asserts that the agency should have performed additional calculations and written more about its analysis, the Navy was neither required by the FAR nor the solicitation to do more than it did in evaluating the cost proposals. Ultimately, the protester's complaint is that it disagrees with the agency's conclusion that Imagine One's proposed cost was reasonable. Comments & 2nd Supp. Protest at 18-20. Such disagreement does not provide a basis for our Office to find the agency's evaluation unreasonable. *KPMG LLP*, B-420949, B-420949.2, Nov. 7, 2022, 2022 CPD ¶ 280 at 9-10. The allegation is therefore denied.

Best-Value Tradeoff

Finally, the protester argues that the agency's best-value tradeoff decision was improper because it was based on a flawed evaluation of technical and cost proposals. Comments & 2nd Supp. Protest at 27-28. This allegation is derivative of the protester's challenges to the agency's evaluation of proposals. As discussed above, although we sustain the protest on the basis of the adequacy of the agency's OCI investigation, we find no basis to object to the agency's evaluation of proposals. Accordingly, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *DirectViz Sols., LLC*, B 417565.3, B 417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the Navy's OCI review of Imagine One was unreasonable. We sustain the protest because (1) the agency's OCI analysis failed to reasonably identify and evaluate the nature and extent of Imagine One's access to nonpublic competitively useful information under the MC2SA management support task order; and (2) the OCI analysis relied on an incomplete and unreasonably narrow interpretation of the management support PWS in determining whether Imagine One had a potential impaired objectivity OCI. Where, as here, it has been determined that a potential OCI exists, the protester is not required to demonstrate prejudice; rather, harm from the conflict is presumed to occur. *C2C Innovative Sols., Inc., supra* at 7.

We recommend that the agency, consistent with our decision, conduct and document a new OCI evaluation that reassesses the potential for conflicts arising from Imagine One's access and obligations under the MC2SA management support task order. Should the agency conclude that Imagine One does have an OCI, we recommend that the agency either determine what actions would be appropriate to avoid, neutralize or mitigate the identified OCI, or determine that a waiver of the identified OCI would be appropriate. We also recommend that MANDEX be reimbursed the costs of filing and pursuing its challenge to the agency's OCI determination, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). 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.

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