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Decision

Matter of: Deloitte Consulting, LLP

File: B-422094; B-422094.2

Date: January 18, 2024

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DIGEST

1. Protest that the agency's evaluation of the awardee's technical quotation was unreasonable is sustained where the record shows that, to mitigate an organizational conflict of interest, the awardee eliminated a proposed teaming partner from its quotation, and the agency evaluation contains no evidence that the agency considered the impact on contract performance of the elimination of that firm.
2. Protest that agency conducted unfair discussions is denied where the record shows that the agency's exchanges--conducted only with the awardee--constituted discussions, but the record does not establish a reasonable possibility that the protester was competitively prejudiced by the agency's discussions with the awardee.
3. Protest that the agency conducted an unreasonable consistency analysis is denied where the analysis was consistent with the terms of the solicitation and the contemporaneous technical evaluation.
4. Protest that the agency disparately evaluated quotations regarding the proposed use of innovation is denied where the record shows that the different evaluations reflected quotation differences.

DECISION

Deloitte Consulting, LLP, of Arlington, Virginia, protests the issuance of a blanket purchase agreement (BPA) call order to CGI Federal, Inc., of Fairfax, Virginia, under request for quotations (RFQ) No. 70RDAD23Q00000112, issued by the Department of Homeland Security (DHS) for technical systems integration support services. The protester argues that the agency conducted unfair discussions and that the agency's evaluation of technical quotations was unreasonable.

We sustain the protest.

BACKGROUND

The fixed-price and time-and-materials call order solicitation was issued under Federal Acquisition Regulation (FAR) 8.405-3 to firms holding General Services Administration, Federal Supply Schedule, Enterprise Financial System Integrator (EFSI) BPAs. Agency Report (AR), Tab 4, RFQ at 1, 13. The agency sought technical systems integration support services that would modernize and integrate the financial management systems--collectively known as the DHS Cube--for the DHS Office of the Chief Financial Officer Joint Program Management Office. *Id.* at 14. The period of performance was a 10-month base period and five 12-month option periods. *Id.* at 94.

The solicitation contained two technical evaluation factors¹: technical approach and capabilities, and management approach.² *Id.* at 161-162. The technical approach and capabilities factor was more important than the management approach factor. *Id.* at 168. When combined, those two factors were significantly more important than price. *Id.* A single award would be made to the vendor whose quotation represented the best value to the agency in accordance with FAR part 8. *Id.* at 167.

As part of its price quotation, each vendor was required to complete a pricing template providing its proposed labor categories, rates, and hours. AR, Tab 6a, RFQ attach. 1, Cube Pricing Template. The template provided vendors with the agency's estimated level of effort, labor categories, and labor hours, but advised vendors they could vary from those estimates. *Id.* The RFQ advised vendors that a price analysis would be conducted to determine the reasonableness of the vendor's total quoted price, which included the base period and all option and surge periods. RFQ at 169. The solicitation

¹ While the RFQ referred to the term "evaluation criteria," during the development of the protest record, the parties--including the agency--employed the more idiomatic term "evaluation factors." For consistency with the briefings, we adopt the latter term.

² In evaluating the two technical factors, the agency would consider the attributes that increased and decreased confidence in the vendor's proposed approach to arrive at a confidence assessment of high confidence, some confidence, or low confidence--reflecting the likelihood of successful contract performance. *Id.* at 169.

also advised vendors that the services priced in the price volume must be consistent with the services described in the technical volume, and that any unexplained inconsistencies might render the quotation ineligible for award. AR, Tab 6, RFQ amend. 1 at 157.

On July 25, 2023, the agency received quotations from two firms: CGI and Deloitte. AR, Tab 12, Business Evaluation Report at 1. CGI’s quotation identified [DELETED] as one of CGI’s teaming partners³ on the current procurement. AR, Tab 23, CGI Technical Quotation at 2. On August 30, the contracting officer informed CGI “there may be a potential Organizational Conflict of Interest (OCI) with one of CGI’s teaming partners on RFQ 70RDAD23Q00000111 for the Cube Financial Systems Modernization (Cube FSM) requirement.” AR, Tab 28c, DHS Exchanges with CGI at 2. The contracting officer’s email included a copy of the OCI clause from [DELETED]’s Cybersecurity and Infrastructure Security Agency contract, which contained restrictions on the work [DELETED] could perform in the future because of OCI concerns. *Id.* at 3. Two days later, on September 1, CGI responded, informing the contracting officer that “[a]fter reviewing your August 30 email regarding mitigation, [DELETED] and CGI Federal mutually agreed that [DELETED] would not participate on any resultant Cube FSM award. Effective immediately, [DELETED] will not be part of CGI Federal’s team.” *Id.* at 1. CGI did not submit a revised quotation. See AR, Tab 23, CGI Technical Quotation at 1 (dated July 25, the date of the initial quotation).

After this exchange, the agency proceeded with evaluation of the quotations. The table below summarizes the agency’s evaluation of the two quotations:

Evaluation Factors	Vendor	
	Deloitte	CGI
Technical Approach and Capabilities	High Confidence	Some Confidence
Management Approach	High Confidence	Some Confidence
Total Proposed Price	\$311,010,821	\$225,358,337

AR, Tab 13, Best-Value Tradeoff Analysis at 3.

The contracting officer conducted a tradeoff between the two quotations, recognizing that Deloitte’s quotation was stronger under both evaluation factors. *Id.* at 4-8. The contracting officer concluded that “Deloitte’s superior approach is not so exceptional as compared to CGI’s that paying the exceedingly higher price premium of [\$85,652,484]

³ CGI’s quotation referred to “our subcontractor teaming partners.” AR, Tab 23, CGI Technical Quotation at 33. Throughout its quotation, CGI referred to the aggregate of itself and its subcontractors as “Team CGI,” and CGI stated that it had “partnered” with various firms, including [DELETED]. *Id.* at 33. Whether [DELETED] was a teaming partner or a subcontractor is not determinative of any protest allegation. For consistency, we adopt the term teaming partner.

(28 [percent]) is warranted.” *Id.* at 9. The contracting officer determined that, “although the technical factors are significantly more important than the price factor based on the RFQ, the merits of Deloitte’s quote do not warrant the exceedingly high price premium associated with awarding to Deloitte over CGI.” *Id.* at 9-10. Accordingly, the contracting officer found that CGI’s quotation represented the best value to the agency. *Id.* at 10.

The selection official conducted an integrated assessment of the quotations, relying on the technical consensus evaluation report, the business evaluation report, and the best-value tradeoff report, as well as briefings from the contracting officer and other agency officials. AR, Tab 14, Award Decision Memorandum at 2. The selection official concurred with the findings in those reports. *See id.* at 4-5. Specifically, the selection official concurred with the contracting officer’s determination that CGI’s quotation represented the best value to the agency. *Id.* at 5. The call order was issued to CGI, *id.*, and this protest followed.

DISCUSSION

Deloitte asserts that DHS’s exchanges with CGI regarding the awardee’s OCI constituted unfair discussions, where DHS did not conduct comparable exchanges with Deloitte. Deloitte further argues that as a result of CGI’s exchanges with the agency, the awardee eliminated a proposed teaming partner from its quotation, and that DHS’s evaluation of CGI’s quotation unreasonably failed to consider the impact of the elimination of that teaming partner.⁴ The protester also contends that the agency conducted an unreasonable consistency evaluation and otherwise unreasonably evaluated technical quotations. As explained below, we sustain the protest on the basis

⁴ In its initial protest, Deloitte also asserts that CGI had an unmitigated OCI based on its licensing its Sunflower asset management software to DHS. Protest at 7. On December 11, 2023, the agency notified our Office that the head of contracting activity (HCA) had approved “a request for waiver of the application of the rules and procedures of FAR Subpart 9.5 to alleged biased ground rules and impaired objectivity Organizational Conflicts of Interest (OCIs) relating to the EFSI FSM Cube BPA Call Order procurement.” Agency Request for Dismissal of OCI Allegations at 1; see Cube BPA Call Order OCI Waiver Request; HCA Waiver Approval. Our office will review an OCI waiver only to consider whether the waiver complies with the requirements of the FAR, that is, whether it is in writing, sets forth the extent of the conflict, and is approved by the appropriate individual within the agency. *AT&T Gov’t. Solutions, Inc.*, B-407720, B-407720.2, Jan. 30, 2013, 2013 CPD ¶ 45 at 4. Because the protester did not challenge the adequacy of the waiver, we dismiss the allegation that CGI had an unmitigated OCI pertaining to its Sunflower software.

that the agency's evaluation of CGI's technical quotation was unreasonable, and we deny the remaining allegations.⁵

CGI's Removal of a Teaming Partner from Its Quotation

Deloitte argues that the agency unfairly conducted discussions with only CGI when the agency permitted CGI to remove a teaming partner from its quotation. Comments and Supp. Protest at 3. As stated above, the protester contends that CGI's quotation was unacceptable because it relied on the use of [DELETED] which created an impermissible OCI in the awardee's approach, and that allowing CGI to remove [DELETED] from its quotation made CGI's unacceptable quotation acceptable; thus, the exchanges constituted discussions. *Id.* Deloitte also argues that the agency failed to consider the impact of CGI's removal of [DELETED] in its evaluation. Deloitte notes that, after quotation submission but before the evaluation of quotations, CGI severed its relationship with [DELETED]. *Id.* at 4. This severing of [DELETED], the protester contends, is not reflected in either the quotation or in the evaluation documents. *Id.* Deloitte argues that there is nothing in the evaluation documents, best-value tradeoff analysis report, or the award decision memorandum that reflects any consideration of the impact of CGI's decision to sever its relationship with [DELETED] and thereby change its approach to performing the contract as outlined in CGI's quotation. Supp. Comments at 22, *citing* AR, Tab 11, CGI Technical Consensus Evaluation Report at 6-9, 17-19; AR, Tab 13, Best-Value Tradeoff Analysis Report; AR, Tab 14, Award Decision Memorandum. Deloitte maintains that DHS's evaluation of CGI's technical quotation was thus unreasonable.

We first consider whether the agency reasonably evaluated CGI's technical quotation and then assess the fairness of the agency's exchanges with the awardee.

Reasonableness of Agency's Evaluation of CGI's Technical Quotation

Deloitte argues that DHS's evaluation of CGI's technical quotation was unreasonable because it was based on a quotation that was no longer an accurate statement of how the awardee would perform the solicitation requirement. Supp. Comments at 21. As discussed in detail below, the protester maintains that CGI's quotation reflected that [DELETED] would make a unique contribution to performance, so removal of [DELETED] from CGI's team was material. The agency contends that, in the exchanges it had with CGI, "no material changes were made to CGI's technical approach or price." Supp. Memorandum of Law (MOL) at 8, *citing Enterprise Servs., LLC, B-417329 et al.*, May 29, 2019, 2019 CPD ¶ 205 at 9. The agency did not

⁵ While we do not discuss in detail every allegation raised by the protester, we considered all of them and find that, with the exception of the matter identified above, none provides a basis to sustain the protest.

elaborate on its claim that CGI did not make material changes to its quotation.⁶ See *id.* at 8, 10.

Where, as here, an agency issues an RFQ to Federal Supply Schedule vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *XL Assocs., Inc., d/b/a XLA*, B-417426.3 Jan. 16, 2020, 2020 CPD ¶ 33 at 4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *Id.*

The record does not support the agency's contention that CGI did not materially alter its quotation by severing [DELETED] from its team. In support of its protest, Deloitte correctly highlights the fact that "CGI's proposal stated that including [DELETED] in the proposal provided strength to Team CGI." Supp. Comments at 21. The record reflects that, as one of the "strengths" of CGI's team, CGI specifically identified [DELETED]'s experience [DELETED]. AR, Tab 23, CGI Quotation at 4.

The areas of strength that CGI's quotation identified in [DELETED] unsurprisingly appear to align with the solicitation's contract performance and deliverable requirements. Specifically, the SOW includes [DELETED]. *Id.* at [DELETED]. The SOW also includes a section on [DELETED], where the contractor is required to "[DELETED]." *Id.* at [DELETED]. In fact, including the strengths that [DELETED] brought to Team CGI, CGI's quotation touted the fact its team displayed "[e]xpertise in all aspects of Cube financial system modernization." AR, Tab 23, CGI Technical Quotation at 4.

Deloitte also highlights other specific ways that CGI's quotation demonstrates the unique contribution that [DELETED] would make to contract performance. See Supp. Comments at 21. For example, Deloitte points to the fact that CGI's quotation contained a chart describing [DELETED] accelerators⁷, including this one:

⁶ Instead, the agency argues that, in this case, "the two key elements of a 'material misrepresentation' claim are missing." Supp. MOL at 9. The agency's argument does not address the allegation that the removal of [DELETED] from CGI's quotations is material. In this regard, the protester does not argue that the awardee's quotation contained a material misrepresentation, and our decisions concerning such allegations are irrelevant to resolving what Deloitte did allege, that CGI materially changed the method of performance in its quotation through discussions. In sum, the agency failed to evaluate this change to the awardee's quotation.

⁷ DHS explains that an accelerator is a "pre-designed or pre-configured business processes or workflows, or pre-built interfaces that allow the implementation of software to be sped up." AR, Tab 43, decl. of FSM Cube Assistant Program Manager at 1.

Accelerator	Why An Accelerator?	Benefits to Cube
[DELETED]	[DELETED]	[DELETED]

AR, Tab 23, CGI Quotation at 5. As Deloitte notes, identification of this accelerator was possible because, as a member of CGI’s team, [DELETED] was the [DELETED]. Supp. Comments at 21, *quoting* AR, Tab 23, CGI Quotation at 1.

The contemporaneous evaluation, the briefing to the source selection authority (SSA), and the best-value tradeoff analysis contain no indication that the agency considered that CGI’s contract performance would no longer benefit from [DELETED]’s participation. As discussed below, the agency instead relies on two declarations produced during the pendency of this protest to establish that the contemporaneous evaluation of CGI’s technical quotation considered the elimination of [DELETED] as a CGI team member. See AR, Tab 41, First Technical Evaluation Team (TET) decl. at 2.

Our Office will not limit its review of an agency’s evaluation to contemporaneously documented evidence, but instead will consider all the information provided, including a party’s arguments and explanations. *Avionic Instruments LLC*, B-418604, B-418604.2, June 30, 2020, 2020 CPD ¶ 225 at 6. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded detail will generally be considered in our review, if those explanations are credible and consistent with the contemporaneous record. *Id.* When an agency’s post-protest defense of its evaluation is not supported by the contemporaneous record, or is inconsistent with the record, such explanations are unpersuasive and will be afforded little weight. *Id.* In the absence of any contemporaneous evaluation--where an agency representative’s affidavit is the only support for the reasonableness of the agency’s evaluation--we accord that affidavit little weight. *Id.*

The first declaration from the TET Co-Chair states:

While the TET saw the references to [DELETED] in the list of teaming partners and accelerators in Sections 1 and 2.2.1., the references were minor, and the TET did not note any increases in confidence due to the inclusion of [DELETED]. In summary, the inclusion of [DELETED] did not increase confidence, and severing [DELETED] from the list of teaming partners did not decrease confidence in CGI’s proposed approach.

AR, Tab 41, First TET decl. at 2. As discussed above, according to CGI’s quotation, [DELETED] had unique experience and expertise. The second declaration, which was also signed by the contracting officer, added a significant detail omitted in the first, namely, that the “SSA was advised by the TET Chairs that there was no effect to the evaluation due to the removal of [DELETED].” AR, Tab 41.1, TET Co-Chair & CO decl. at 2. Otherwise, the second declaration repeated the assertions made in the first: that the references to [DELETED] were “minor” and that [DELETED]’s inclusion in the

quotation did not give rise to any findings of increased or decreased confidence. See *id.*

These agency declarations are the only documentation in the record that the agency considered the elimination of [DELETED] from CGI's quotation during the evaluation. The declarations do not fill in gaps in the record; they attempt to create a record. For that reason, we accord the two declarations little weight. CGI's quotation contained [DELETED] as a teaming partner because it brought to contract performance unique experience and expertise relevant to performance of the contract. The agency's failure to consider the elimination of [DELETED] in the evaluation of CGI's quotation was therefore unreasonable, and we sustain this allegation.

Appropriateness of Agency's Exchanges with CGI

Where an agency conducts exchanges with vendors in a FAR subpart 8.4 procurement, those communications--like all other aspects of such a procurement--must be fair and equitable. *Innovative Mgmt. & Tech. Approaches, Inc.*, B-418823.3, B-418823.4, Jan. 8, 2021, 2021 CPD ¶ 18 at 8. While the requirements of FAR part 15 do not apply to procurements conducted under FAR subpart 8.4, our Office looks to the standards and the decisions interpreting part 15 for guidance in determining whether exchanges with vendors under a FAR subpart 8.4 procurement were fair and equitable. *Id.* As a general matter, if a procuring agency holds discussions with one offeror, it must hold discussions with all offerors. See FAR 15.306(d); *Deloitte Consulting, LLP*, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 17. Additionally, section 15.306 of the FAR explains that discussions occur when an agency communicates with a vendor for the purpose of obtaining information essential to determine the acceptability of a proposal or quotation or provides the vendor with an opportunity to revise or modify its proposal or quotation. *Innovative Mgmt., supra*; see FAR 15.306(d). Thus, we have found that where an agency allows a vendor in a part 8 procurement to revise its quotation to remove language that made the quotation unacceptable, the agency has conducted discussions. *Id.*

The agency argues that, where an agency holds exchanges with a vendor regarding the vendor's plan to mitigate identified conflicts of interest, such exchanges do not constitute discussions, and, consequently, the exchanges do not trigger a requirement to conduct discussions with all vendors. Supp. MOL at 7, citing *Cahaba Safeguard Administrators, LLC*, B-401842.2, Jan. 25, 2010, 2010 CPD ¶ 39 at 10; *Overlook Sys. Technologies, Inc.*, B-298099.4, B-298099.5, Nov. 28, 2006, 2006 CPD ¶ 185 at 21. Rather, the agency asserts, such exchanges are properly considered matters of a vendor's responsibility. Supp. MOL at 7.

In *Cahaba Safeguard Administrators*, our Office denied a protester's argument that an agency's conduct of exchanges with the apparent successful offeror regarding that

offeror's OCI mitigation plan necessitated the opening of discussions with all offerors.⁸ In reaching that conclusion, however, we noted that the exchanges with the awardee "did not result in [the awardee] making any changes to its proposal in terms of its technical approach or price." *Id.* In fact, we noted that, "it may be that reopening discussions would be appropriate under different circumstances where exchanges regarding an offeror's conflicts of interest and mitigation strategy result in material changes to an offeror's proposal in terms of its technical approach or price." *Id.* at 10 n.8. Similarly, we noted in *Overlook Systems Technologies, Inc.* that the exchanges between the agency and the awardee "regarding the mitigation plan did not result in changes to the company's proposal, which, as indicated above, is the acid test for determining whether discussions have occurred." *Overlook Sys. Technologies, supra* at 20 (citation omitted). Thus, even in the context of exchanges regarding OCI mitigation, we have recognized that exchanges that permit an offeror to make changes to its price or technical proposal may constitute discussions.

Here, the protester argues that the exchanges resulted in CGI fundamentally changing its method of performance when it removed [DELETED] from its team and transformed an unacceptable quotation into an acceptable one, which, by definition, constitutes discussions. Comments and Supp. Protest at 3. The RFQ provided three options in the event the government determined that a quotation contained an OCI: the vendor could be disqualified; the "appropriate provisions" to avoid, neutralize, or mitigate the conflict could be included in the awarded contract; or the government could issue a waiver of the conflict. RFQ at 156. While the agency ultimately issued an OCI waiver, it did not do so at the time it identified the potential OCI on the part of [DELETED] in July; rather, it conducted exchanges with the awardee that permitted the awardee to change its method of performance to ameliorate a conflict that otherwise would have rendered its quotation ineligible for award. As a result, we agree with the protester that the agency engaged in discussions--not merely exchanges--with CGI and that they were unequal because the agency did not also engage in discussions with Deloitte.

⁸ As we noted in the above decision, FAR section 9.504(e) provides as follows:

The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

FAR 9.504(e). We explained that this provision contemplates a review after evaluations are completed and after an apparent awardee has been identified. *Cahaba Safeguard Administrators, supra* at 10.

Prejudice from Unequal Discussions

While we conclude the agency improperly engaged in discussions only with CGI, the protester has not demonstrated how it was competitively prejudiced from the discussions. Competitive prejudice is an essential element of every viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *JHC Tech., Inc.*, B-417786, Oct. 23, 2019, 2019 CPD ¶ 376 at 6.

GAO generally has presumed prejudice when a vendor is not afforded a fair opportunity to revise its quotation as a result of having been unequally excluded from discussions. See *Raytheon Co.*, B-261959.3, Jan. 23, 1996, 96-1 CPD ¶ 37 at 12, n.11. Where prejudice is "not otherwise evident," however, and where the protester relies on "general allegations of prejudice," GAO will not presume prejudice. *Northrop Worldwide Aircraft Servs., Inc.--Recon.*, B-262181, B-262181.3, June 4, 1996, 96-1 CPD ¶ 263 at 3.

Here, Deloitte merely argues that, had DHS conducted discussions with the protester concerning an impaired objectivity OCI that had been identified by the agency stemming from Deloitte's performance of another contract, Deloitte would have "revised its [quotation] and reduced its price." Supp. Comments at 28. This unspecific statement that the protester would have revised its quotation and reduced its price, offered with no support, is insufficient to establish a presumption of prejudice. See *ASRC Fed. Sys. Solutions, LLC*, B-420443, B-420443.2, Apr. 12, 2022, 2022 CPD ¶ 96 at 8 (noting that "a general contention that the protester might have revised its proposal during further discussions is insufficient to show competitive prejudice"). For example, a statement explaining how the protester could have altered its quotation to address its impaired objectivity OCI if given the chance during discussions could have demonstrated how the protester was prejudiced by the agency's actions. Because the record does not support a finding that, absent the agency's conduct of unequal discussions, Deloitte would have altered its quotation to its competitive advantage, we find that the protester was not prejudiced by the agency's conduct of discussions, and we deny this allegation.

Inconsistency Analysis of CGI's Quotation

As noted previously, the RFQ required that the services priced in a quotation's price volume be consistent with the services described in the technical volume, and the solicitation provided that unexplained inconsistencies might render the quotation ineligible for award. AR, Tab 6, RFQ amend. 1 at 157. In its evaluation of the above requirement, DHS included a technical crosswalk in its business evaluation report. That crosswalk included an analysis of each vendor's proposed level of effort and staffing mix against each vendor's technical quotation.⁹ AR, Tab 12, Business Evaluation

⁹ In its evaluation, DHS utilized level of effort as a proxy for labor hours and staffing mix as a proxy for labor categories. AR, Tab 12, Business Evaluation Report at 10.

Report at 10-11. The agency's analysis identified no inconsistencies in either quotation. See *id.*

The protester argues that the agency conducted an unreasonable consistency evaluation where it failed to downgrade CGI's quotation under the technical factors for inconsistencies between its technical and price quotations. Deloitte further argues that the agency's conclusions in its consistency analysis--that CGI's quotation contained no inconsistencies--were not reasonably and adequately supported. See Comments and Supp. Protest at 17. Deloitte contends that, "[b]ecause the agency believed (incorrectly) that it would have to exclude CGI if it found any unexplained inconsistencies, the agency ignored or downplayed inconsistencies" between CGI's technical and price quotations. *Id.* at 18. The agency disagrees. We consider both issues and find that DHS's understanding of the requirement was reasonable and that the record provides no basis on which to sustain the protester's challenge to the agency's consistency analysis.

Defining the Requirement

Deloitte and DHS disagree whether the RFQ permitted the agency to downgrade a vendor's quotation under the technical factors due to inconsistencies between the technical and price quotations. The language at issue is:

[T]he services priced in the price volume must be consistent with the services that are described in the Technical volume of the quotation. Inconsistency, if unexplained, raises a fundamental issue regarding the Quoter's understanding of the RFQ, as well as of the Quoter's ability to meet the requirements of the RFQ. Such unexplained inconsistencies may render the quote ineligible for award.

RFQ at 164. DHS argues that "[t]he solicitation simply does not provide for the Agency to downgrade a quoter's confidence rating under Criterion 1 [technical approach and capabilities] or 2 [management approach] based on any inconsistency, as the Protester argues." Supp. MOL at 25, citing AR, Tab 6, RFQ amend. 1 at 157. DHS contends that the protester is attempting to read the consistency language requirement into the evaluation criteria for the two technical factors, when the agency's interpretation of the disputed language "gives meaning to the whole solicitation." Supp. MOL at 25. The agency asserts that the consistency evaluation language "was a discrete requirement found in the price instruction section while [technical factors] 1 and 2 reflect technical requirements quoters were required to satisfy." *Id.*

Deloitte argues that the agency's "reading ignores the clear connection between the express purpose of the consistency analysis and the RFQ's evaluation criteria." Comments and Supp. Protest at 17. The protester asserts that the evaluation criteria for price and for the two technical factors share similar language. *Id.* at 17-18, *comparing* RFQ at 157, the consistency analysis (where the agency will scrutinize "the

Quoter's understanding of the RFQ, as well as of the Quoter's ability to meet the requirements of the RFQ") *with id.* at 162, the evaluation scheme of the two technical factors (where the "Government will evaluate the Quoter's Technical Approach and Capabilities to determine its confidence that the quoter will successfully perform the work"). Deloitte claims that the agency's "use of *the exact same language* in both the RFQ's consistency analysis instruction and evaluation criteria is fatal to the agency's position that it may not consider inconsistencies as elements that decrease confidence during the evaluation of [factors] 1 and 2." Comments and Supp. Protest at 18.

Under FAR subpart 8.4, when evaluating quotations received for procurements requiring a SOW, agencies must "evaluate all responses received using the evaluation criteria provided to the schedule contractors." FAR 8.405-2(d). A solicitation may provide for the agency to assess weaknesses in the technical proposal based on a cost analysis that reveals an inconsistency between a vendor's approach and the resources proposed. See *Jacobs Tech., Inc.*, B-411784, B-411784.2, Oct. 21, 2015, 2015 CPD ¶ 342 at 7 (noting that the RFP allowed the source evaluation board to assess a technical weakness based on a cost analysis that revealed an inconsistency between an offeror's approach and the resources proposed); *CACI Enter. Sols., Inc.*, B-412648, B-412648.2, Apr. 25, 2016, 2016 CPD ¶ 111 at 3 (noting that the solicitation advised offerors that an "[o]verall lack of cost realism," or "[u]nrealistic costs or elements of costs . . . may adversely impact the . . . [m]ission [s]uitability ratings and numerical scores").

The RFQ identified only one potential consequence stemming from the agency's identification of inconsistencies between a vendor's technical approach and price--elimination of the quotation from the competition. That is, unlike in *Jacobs Technology, Inc.*, the RFQ here did not advise vendors that the results of the consistency analysis could negatively affect a quotation's technical factor ratings. Deloitte argues for an evaluation scheme that it considers preferable to that announced in the RFQ, but there is no support in the solicitation for the protester's contention that the agency could, or was required to, downgrade a vendor's quotation under the technical factors for inconsistencies identified in the consistency analysis.

The solicitation could have provided for downgrading quotations under the technical factors for such inconsistencies, but it did not. If Deloitte was dissatisfied with the announced evaluation scheme, the protester was required to protest the terms of the solicitation prior to the deadline for quotation submission. 4 C.F.R. § 21.2(a)(1) (protests challenging the propriety of a solicitation's provisions must be filed before the deadline for submitting bids, proposals, or quotations). The plain language of the RFQ provided for nothing more nor less than the possibility that a quotation could be rendered ineligible for award due to unexplained inconsistencies between the price and technical volumes. We therefore see no merit to the protester's allegation that the agency's evaluation was flawed because it did not assign weaknesses under the technical factors due to unexplained inconsistencies.

Reasonableness of Consistency Analysis

The protester asserts two flaws in the consistency analysis: the analysis lacks support for the agency's conclusion that CGI's quoted hours for the implementation and sustainment phases of performance were consistent with CGI's technical approach and reasonable to support the RFQ requirements; and DHS unreasonably found that CGI could perform the RFQ's [DELETED] with roughly half of the hours in the government's estimate.¹⁰ Comments and Supp. Protest at 24-28, *citing* AR, Tab 12, Business Evaluation Report at 10-11. DHS argues that its consistency analysis reasonably considered whether the vendor's labor mix and labor hours were consistent with the vendor's proposed technical approach. Supp. MOL at 26. DHS contends that the solicitation language pertaining to consistency did not require the agency to evaluate a vendor's prices "to determine whether they reflect a lack of technical understanding and whether the quote could be rejected or assessed negatively for that reason." *Id.* As explained below, the protester's allegations do not provide a basis on which to sustain the protest.

Deloitte first challenges as unreasonable and unsupported DHS's conclusion that CGI's proposed hours for the implementation and sustainment phase were consistent with its technical approach and reasonable to support the RFQ requirements.¹¹ Comments and Supp. Protest at 24. The consistency analysis stated:

Under the Implementation and Sustainment CLINs [contract line item numbers] CGI proposed a level of effort of [DELETED] for Implementation and [DELETED] labor hours for Sustainment. CGI's proposed labor hours for both Implementation and Sustainment are [DELETED] the Government's estimated level of effort of [DELETED] labor hours for Implementation, and [DELETED] labor hours for Sustainment. While CGI's level of effort under these two CLINs is [DELETED] the Government estimate, the TET found that CGI's proposed labor hours are consistent

¹⁰ The RFQ explained that, within the SOW, "requirements are *generally* associated with one or more of the three phases"; discovery phase (the base period); implementation phase (multiple option periods); and sustainment phase (multiple option periods). *Id.* at 8-9.

¹¹ Activities in the implementation phase include system design based on the outcomes from discovery, configuration of the system, user training, developmental testing, data migration, and any other activities necessary to build and verify the system is ready for use by the FSM Cube components. AR, Tab 43, decl. of FSM Cube Assistant Program Manager at 2. The sustainment phase begins when the first users of a Cube component will begin using the system to perform daily operations. *Id.* The sustainment phase includes all activities required to operate and maintain the system and to provide user support and training, security support, software support, and any other maintenance required for the system. *Id.*

with their technical approach, and reasonable to support the requirements of each of these phases of the Cube FSM requirement.

AR, Tab 12, Business Evaluation Report at 10. Deloitte claims that the agency inaccurately minimized the extent to which CGI's proposed hours [DELETED] the government estimate by referring to them as [DELETED] than the government estimate, and that "the agency provides absolutely no support in its consistency analysis *or anywhere in the evaluation materials* for its bald assertion that CGI's proposed hours were consistent with its technical approach and 'reasonable to support the requirements' of the RFQ." Comments and Supp. Protest at 24. Deloitte argues that "the agency does not point to a single element in CGI's technical quotation that remotely suggests it can successfully perform the Implementation and Sustainment CLINs with [DELETED] the agency's estimate. *Id.*

DHS provides five examples from the agency's evaluation of CGI's quotation to support the reasonableness of DHS's consistency analysis finding that the hours CGI proposed were consistent with its technical approach and therefore reasonable. Supp. MOL at 32-34, *citing* AR, Tab 11, CGI Technical Evaluation at 6, 8. For example, the TET credited CGI for "[DELETED]." Supp. MOL at 32, *quoting* AR, Tab 11, CGI Technical Evaluation at 6. The TET found [DELETED]. *Id.* As one other example, the TET found CGI's

[DELETED].

Supp. MOL at 33, *quoting* AR, Tab 11, CGI Technical Evaluation at 6 (emphasis in Supp. MOL). DHS argues that the agency evaluation "provides many areas where DHS credited CGI's technical approach for improving processes, introducing efficiencies, and reducing the likelihood of errors." Supp. MOL at 35. The agency contends that it reasonably considered these areas of increased confidence in its consistency analysis. *Id.*

Deloitte challenges the reasonableness of the agency's reliance on the TET report to support the conclusion in the business evaluation report's consistency analysis, where "the Business Evaluation Report makes not one mention of these elements or even the TET Report generally." Supp. Comments at 35. The protester argues that "[t]he agency attempts to shoehorn in an *entirely new evaluation* to support the one that was missing entirely from its original consistency analysis." *Id.* at 36. The protester therefore asks GAO to reject arguments, which the agency advanced in declarations by the contracting officer and TET co-chair, asserting that "the agency essentially asks that the analysis in [the declarations] *replace* the *non-existent* consistency analysis in the Business Evaluation Report."¹² Supp. Comments at 39.

¹² The protester also argues that the agency "repeatedly and forcefully[] stated that it did not consider--indeed the RFQ prohibited it from considering--elements of CGI's [quotation] that impacted its confidence rating during the consistency analysis." Supp.

(continued...)

We do not agree with the protester that the analysis in the declarations is unsupported by the contemporaneous evaluation record. The agency identified several features of CGI's quotation--identified in the contemporaneous evaluation--that, in DHS's view, support a finding that CGI's quoted hours were consistent with its technical approach and reasonable. Deloitte asserts that GAO should not consider how the contemporaneous technical evaluation supports the reasonableness of the consistency analysis, without ever challenging the substance of the agency's argument. See Supp. Comments at 36. The protester argues that GAO should not consider the declaration of the contracting officer and the TET co-chair, which Deloitte calls "an entirely new evaluation," but Deloitte offers no argument for why the agency unreasonably relied on contemporaneously evaluated features of CGI's quotation to conclude that the awardee's technical and price quotations were consistent. *Id.*

DHS enumerates multiple facets of CGI's quotation that the agency contends supported a finding that the awardee's quoted hours were consistent with its technical approach. In the absence of any challenge to the substance of that argument--or any plausible reason to discount the agency's reliance on the contemporaneous technical evaluation to support its consistency analysis--we deny the allegation that the consistency analysis unreasonably found that CGI's proposed hours for implementation and sustainment were consistent with its technical approach and reasonable to support the RFQ requirements.

Deloitte also challenges the reasonableness of the consistency analysis regarding the RFQ's training requirement. Comments and Supp. Protest at 25. The consistency analysis stated:

Under the Training CLIN, CGI again proposed a [DELETED]. The TET considered the level of effort reasonable and noted the firm's proposed labor category of [DELETED] which adds value to the [DELETED] required under the RFQ. The TET also noted that CGI's [DELETED] under the [DELETED] is consistent with the firm's proposed [DELETED].

AR, Tab 12, Business Evaluation Report at 10-11.

Comments at 36, *citing* MOL at 31; Supp. MOL at 23-27. The record does not support the protester's characterization of the agency's position. In this regard, the agency argues that, while "an unexplained inconsistency between price and technical approach could result in the overall exclusion of the quote for award," the RFQ "did not permit the Agency to downgrade any quoter under either [factors] 1 or 2 based on any such inconsistency." MOL at 31; see Supp. MOL at 23-27. DHS in essence argues that in the event of unexplained inconsistencies between a vendor's technical and price quotations, the RFQ's evaluation scheme permitted the agency to exclude rather than downgrade a vendor from consideration. As such, Deloitte's allegation that DHS considered itself precluded from considering the content of a vendor's quotation when conducting the consistency analysis is not supported by the record and is denied.

Deloitte argues that “nothing in section [DELETED] of CGI’s technical quote [DELETED] even mentions the [DELETED] let alone explains how the unique qualities of that position are such that it is ‘reasonable’ for CGI to propose to perform the [DELETED].” Comments and Supp. Protest at 25, *citing* AR, Tab 23. CGI Technical Quotation at 24-27. The protester asserts that CGI’s quotation does not describe the [DELETED] or explain how it is somehow different or [DELETED]. Comments and Supp. Protest at 25. Deloitte maintains that “[t]he notion that somehow the mere mention of this [DELETED] enables CGI to perform the required [DELETED] is irrational and unsupported in the record.” *Id.*

DHS contends that the consistency analysis was reasonable regarding the [DELETED] quoted by CGI, given the awardee’s technical approach. Supp. MOL at 36. The agency notes that the TET report found [DELETED]--increased confidence in CGI’s successful performance of the requirement. *Id.* CGI’s [DELETED] which would “add value to the [DELETED] required under the RFQ.” *Id.*, *quoting* AR, Tab 11, CGI Technical Evaluation at 8. The TET also found CGI’s proposed [DELETED]. Supp. MOL at 37, *citing* AR, Tab 11, CGI Technical Evaluation at 8. DHS assessed CGI’s quotation a finding of increased confidence based on the awardee providing [DELETED] prior to the discovery phase because [DELETED]. Supp. MOL at 37, *quoting* AR, Tab 11, CGI Technical Evaluation at 6. The TET report cited CGI’s offer to leverage their [DELETED] as a factor increasing the agency’s confidence. Supp. MOL at 37, *quoting* AR, Tab 11, CGI Technical Evaluation at 7 (noting the partnership [DELETED]). Finally, the TET noted that CGI quoted the use of the [DELETED] and aligns the model to the Agile development methodology employed by CGI. Supp. MOL at 38, *citing* AR, Tab 11, CGI Technical Evaluation at 7. The TET found that “[DELETED].” AR, Tab 11, CGI Technical Evaluation at 7.

Again, Deloitte offers no substantive response to the agency’s defense of the reasonableness of its consistency analysis--an argument that includes multiple citations to the contemporaneous technical evaluation.¹³ *See id.* at 36-38. Instead, Deloitte reiterates that “**absolutely nothing in the [DELETED] of CGI’s technical quote [DELETED] even mentions the [DELETED] position, let alone explains how the inclusion of this [DELETED] will magically allow CGI to conduct [DELETED] in close to [DELETED] the Government expects.**” *Id.* at 37. Deloitte ignores what is obvious from CGI’s quotation, and what the agency reminds the protester of, namely, that the labor category for the [DELETED]. *See* Supp. MOL at 36; AR, Tab 23, CGI Technical Quotation at 40. In fact, [DELETED] identified for the [DELETED]. *See* AR, Tab 23, CGI Technical Quotation at 40. [DELETED], then, are the sum and substance of CGI’s performance [DELETED] requirement.

¹³ Deloitte again argues that GAO should ignore the contentions in the agency’s supplemental report, asserting that, “because it cannot support its contemporaneous evaluation, the agency resorts to conducting a new consistency analysis.” Supp. Comments at 38.

The protester also argues that, for support for its consistency analysis, DHS looks to the TET report, “which recognized that CGI’s [DELETED].” Supp. Comments at 37, *quoting* AR, Tab 11, CGI Technical Evaluation at 8. DHS assessed CGI’s quotation a finding of increases confidence for this experience (as well as similar experience for other proposed leads) because [DELETED] was desired, but not required, by the solicitation. See AR, Tab 11, CGI Technical Evaluation at 8; see *also* RFQ at 91. Yet, Deloitte argues, the [DELETED] was also a factor in a finding of decreases confidence that the agency assessed CGI’s quotation because it was not clear that the [DELETED] would “be fully focused on the project.” Supp. Comments at 37, *quoting* AR, Tab 11, CGI Technical Evaluation at 9. In other words, the protester argues, the proposed [DELETED] was a drawback, not an asset, in CGI’s quotation. Supp. Comments at 37.

It is possible that the experience the training lead would bring to contract performance increased the agency’s confidence in CGI’s quotation, even while DHS had concerns about the possible loss of focus of the training lead. Moreover, the consistency analysis stated that it was CGI’s “proposed labor category of [DELETED]” under the [DELETED] that “would offer in-depth SAP product knowledge which adds value to the training effort required under the RFQ.” AR, Tab 12, Business Evaluation Report at 11. As noted above, all proposed personnel under [DELETED]--not just the [DELETED]--were [DELETED]. See AR, Tab 23, CGI Technical Quotation at 40. The consistency analysis determined that CGI’s entire [DELETED] supported the reasonableness of the number of hours that the awardee quoted [DELETED].

In summary, DHS identifies several features of CGI’s quotation--contained in the contemporaneous technical evaluation--that support the reasonableness of the consistency analysis regarding the level of [DELETED] hours. On this record--where Deloitte advances no substantive argument as to why the agency’s reliance on those quotation features was unreasonable--we have no basis on which to sustain the allegation that the consistency analysis regarding the RFQ’s [DELETED] requirement was flawed. As such, this allegation is denied.

Technical Evaluation

Deloitte also challenges the reasonableness of the agency’s conclusion that Deloitte’s reliance on [DELETED] to perform the requirements was a negative feature of its technical approach. Deloitte argues that the agency’s evaluation was inconsistent with the RFQ because the RFQ encouraged firms to propose innovative approaches to performing the contract requirements. In support of this position, Deloitte highlights the section of the RFQ that advised vendors the agency “may conduct a tradeoff analysis that involves the assessment of the attributes of superior technical quotation features” such as “[DELETED]” versus the added price of such features. RFQ at 167. Alternatively, Deloitte argues that the agency’s concerns with the [DELETED] of its quotation reflects disparate treatment where the agency did not similarly identify concerns with CGI’s quotation for its [DELETED]. We have considered both assertions and find that neither provides a basis on which to sustain the protest.

Deloitte's quotation stated: "Our approach, based on our [DELETED]." AR, Tab 17, Deloitte Technical Quotation at 9. Deloitte's quotation discussed throughout "[DELETED]." See *id.* at 11. Deloitte challenges as unreasonable the agency's assessment of the following finding regarding the protester's quotation:

[DELETED]

AR, Tab 10a, Deloitte Technical Consensus Evaluation at 4.

As noted above, Deloitte challenges the reasonableness of this finding on the basis that it was inconsistent with the RFQ. Comments and Supp. Protest at 28-30; see RFQ at 167. The protester notes that "the attributes of superior technical quotation[s]" include "unique and innovative approaches or capabilities." Comments and Supp. Protest at 29, *quoting* RFQ at 167.

DHS argues "Deloitte was free to propose any manner of [DELETED], but it chose to propose [DELETED] that the TET determined could lead to increase cost as well as schedule delays arising out of the need for [DELETED]." Supp. MOL at 42. The agency asserts that its "overarching concern" with Deloitte's [DELETED] was "the overall impact on cost and schedule for [DELETED], which Deloitte stated in its quotation was foundational to its methodology." AR, Tab 33, Declaration of Technical Evaluation Leads at 5. According to Deloitte, however, "[t]he possibility that the agency may need to [DELETED] is implicit in the RFQ's solicitation of [DELETED]." Comments and Supp. Protest at 30. The protester argues that, "[i]f the agency did not want to trouble itself with [DELETED], then it should not have solicited--and incentivized--quoters to provide them." *Id.*

Deloitte relies on *Avionic Instruments LLC* for the proposition that "[GAO] will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based." Comments and Supp. Protest at 28-29, *quoting Avionic Instruments LLC, supra* at 5¹⁴ (additional citations omitted). The protester offers no support in its assertion that, having solicited innovation generally, the agency was precluded from assessing a quotation decreases confidence related to [DELETED]. The RFQ put vendors on notice that DHS sought to "minimize[e] risks and the total life-cycle cost of the FSM Cube solution." RFQ at 14. [DELETED]. Deloitte does not rebut DHS's contention that the protester's quotation presented these risks. See Comments and Supp. Protest at 28-31. DHS's assessment of the decreases confidence, based on these perceived risks, was consistent with the solicitation, and Deloitte's arguments therefore provide no basis on which to sustain the protest.

In the alternative, Deloitte contends that CGI also proposed to use [DELETED], but the agency did not assess CGI's quotation with a comparable negative evaluation finding;

¹⁴ GAO sustained *Avionic Instruments LLC* because where there was no contemporaneous evaluation of whether the protester's or awardee's proposals met the requirements of the statement of work. *Avionic Instruments LLC, supra*.

the protester asserts that the quotations were thus disparately evaluated. Comments and Supp. Protest at 30. DHS rejects the claim that its evaluation was disparate, stating “CGI did not propose [DELETED] that could increase cost and schedule.” Supp. MOL at 42.

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation’s requirements and evaluation criteria. *Fluor Fed. Servs., Inc.; CDM Fed. Programs Corp.*, B-420783.3 *et al.*, June 1, 2023, 2023 CPD ¶ 124 at 11. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the vendors’ quotations. *Id.*

Deloitte’s approach to contract performance generally relied on its [DELETED]. See AR, Tab 17, Deloitte Technical Quotation at 9. It was this pervasive use of [DELETED] that concerned the agency. See AR, Tab 10a, Technical Consensus Evaluation Report at 4 (noting concerns with “[DELETED] [that] are foundational to [Deloitte’s] [DELETED]”). Deloitte does not assert that CGI’s quotation utilized innovation in a similar “foundational” way. See Comments and Suppl Protest at 30; Supp. Comments at 40. Deloitte argues that CGI’s quotation contained [DELETED] and that the awardee proposed to create [DELETED]. See Supp. Comment at 43.

The protester does not claim that this level of innovation was comparable to Deloitte’s. Deloitte’s quotation received the highest possible rating--“high confidence”--under the technical approach and capabilities factor, in part for its use of the “[DELETED].” See AR, Tab 11, Technical Consensus Evaluation Report. That “high confidence” rating, and the “some confidence” rating assigned to CGI’s quotation, reflected differences in quotations. Likewise, the assessment of decreases confidence in Deloitte’s quotation alone--due to possible cost and schedule concerns--reflected the protester’s intent to base contract performance on Deloitte’s [DELETED]. Because the differences in the evaluations can be traced to differences between the quotations, the allegation that DHS disparately evaluated quotations is denied.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we sustain Deloitte’s allegation that DHS unreasonably evaluated CGI’s technical quotation. We recommend that the agency reevaluate that quotation consistent with this decision. Consistent with the discussion above, if the agency elects to consider the discussion responses it received from CGI, we recommend the agency open discussions with vendors, receive and evaluate revised quotations, and select the best-value vendor for award, if otherwise proper.

We also recommend that the agency reimburse Deloitte the reasonable costs of filing and pursuing its protest, including reasonable attorneys’ fees. The protester should submit its certified claim for costs 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.

Edda Emmanuelli Perez
General Counsel