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Decision

Matter of: Science Applications International Corporation

File: B-422244; B-422244.2

Date: March 19, 2024

Daniel R. Forman, Esq., William B. O'Reilly, Esq., and Emily P. Golchini, Esq., Crowell & Moring LLP, for the protester.

Scott N. Flesch, Esq., Jason N. Workmaster, Esq., and Connor W. Farrell, Esq., Miller & Chevalier Chartered, for Peraton Aerospace & Defense, Inc., the intervenor.

Amy Scott Wasyluka, Esq., and Wade L. Brown, Esq., Department of the Army, for the agency.

April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Admission of outside counsel to protective order will not be revoked based on allegations of a conflict of interest where the allegations are related to attorney rules of professional conduct--a matter our Office does not adjudicate--and the allegations do not establish that the admitted attorneys would fail to honor their commitments under the protective order.
 2. Protest alleging an impaired objectivity organizational conflict of interest is denied where the agency gave meaningful consideration to the potential for organizational conflicts of interest related to the awardee and there is no clear evidence in the record that the agency's conclusion was unreasonable.
 3. Protest challenging the agency's assessment of a weakness in the protester's technical quotation, as well as the best-value tradeoff decision, is denied where the evaluation and tradeoff decision were reasonable and consistent with the solicitation.
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DECISION

Science Applications International Corporation (SAIC) of Reston, Virginia, protests the issuance of a task order to Peraton Aerospace and Defense, Inc., of Huntsville, Alabama, under task order request for quotations (TORFQ) No. 2022T-07, issued by the Department of the Army, Army Contracting Command--Redstone, for engineering support services. SAIC challenges various aspects of the agency's source selection

process, including the consideration of alleged organizational conflicts of interest (OCIs), technical evaluation, and the best-value tradeoff decision.

We deny the protest.

BACKGROUND

On February 28, 2023, the agency issued the TORFQ pursuant to Federal Acquisition Regulation (FAR) subpart 8.4 to vendors holding Expedited Professional and Engineering Support Services (EXPRESS) blanket purchase agreements (BPA).¹ See TORFQ.² The TORFQ sought a contractor to provide technical and engineering support services for the Army's Program Executive Office for Intelligence, Electronic Warfare, and Sensors (PEO IEW&S), Project Management Office, Aircraft Survivability Equipment (PMO ASE). *Id.* at 1-2. According to the TORFQ, the PMO ASE mission objective is to develop and field "world class aircraft survivability systems that maximize the survivability of Army aircraft against a continually evolving threat without degrading combat mission effectiveness." AR, Tab 5, TORFQ Performance Work Statement (PWS) at 1. The contractor would be responsible for a range of systems engineering and technical assistance (SETA) support services that are considered "mission essential services." *Id.* The TORFQ noted that SAIC is the incumbent contractor. TORFQ at 2.

The TORFQ contemplated the issuance of a single hybrid³ task order to be performed over 66 months, including a base year period, five option years, and an optional 6-month extension. *Id.* at 2, 9. The TORFQ stated that award would be made on a best-value tradeoff basis considering two factors: technical and price. *Id.* at 12. The TORFQ provided that the technical factor was more important than price, and that price was "not expected to be the controlling criterion in the selection," although its

¹ The Army's EXPRESS program uses General Services Administration (GSA) Federal Supply Schedule (FSS) contractors to acquire advisory and assistance services and consists of five "domains" under which BPAs may be established and services may be ordered. Here, the TORFQ was issued to vendors holding BPAs in the technical non-research and development domain, under North American Identification Classification System Code 541330 for engineering services. The TORFQ provided that all terms and conditions of the GSA FSS and the EXPRESS BPA were applicable to this solicitation and resulting award. Agency Report (AR), Tab 4a, Updated TORFQ at 1-2; Supp. AR, Tab 22b, Source Selection Decision Document (SSDD) at 1-2.

² References to the TORFQ are to the solicitation filed by the agency that was updated on March 21. All citations are to the Adobe PDF page numbers of the documents referenced in this decision, unless otherwise paginated.

³ The TORFQ provided that the task order would be issued on a time-and-material basis with fixed-price and cost-no-fee contract line item numbers. TORFQ at 2; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1.

importance would “increase as the differences between the evaluation results for the technical criterion decrease.” *Id.*

For the technical factor, the TORFQ instructed vendors to address, among other things, two PWS paragraphs identified as “critical”: PWS paragraph 2.2.3 on aircraft survivability equipment (ASE) software engineering requirements and PWS paragraph 2.2.5 on test requirements. *Id.* at 11. For these critical PWS paragraphs, the TORFQ provided that the agency would evaluate quotations based on their “demonstration of clear understanding of the requirements and ability to successfully perform the tasks described, to include but not limited to plans for executing the requirements through the length of the task order and detail their company’s processes, procedures, innovative methods, and problem-solving abilities.” *Id.* at 13. The TORFQ provided that the agency would assign technical ratings of outstanding, good, acceptable, marginal, or unacceptable. *Id.* The TORFQ also provided that the agency could assess strengths and weaknesses and, of relevance here, defined a weakness as “any flaw in the quotation that increases the risk of unsuccessful task order performance.” *Id.*

On or before the April 6 closing date for initial quotations, the agency received quotations from six vendors, including SAIC and Peraton.⁴ Supp. AR, Tab 22b, SSDD at 3. Of note, Peraton’s quotation included an OCI disclosure form, as required by the TORFQ, which did not indicate the presence of any OCIs. TORFQ at 10; COS/MOL at 2, *citing* AR, Tab 20, Peraton Quotation Part One, OCI Certifications. The agency evaluated the quotations of SAIC and Peraton as follows:

	SAIC	Peraton
Technical	Good	Outstanding
Price	\$170,117,505	\$192,764,369

Supp. AR, Tab 22b, SSDD at 36, 39, 57.

Under the technical factor, the agency assessed eight strengths and one weakness in SAIC’s quotation, and 14 strengths and no weaknesses in Peraton’s quotation. *See id.* at 27, 34. Of relevance here, the agency assessed a weakness in SAIC’s quotation because SAIC’s responses to critical PWS paragraph 2.2.3, ASE software engineering requirements, “contain multiple statements that are unclear and ambiguous” that “suggest [SAIC] may not have a full understanding of the requirements . . . , thereby increasing the risk of unsuccessful performance.” AR, Tab 21, SAIC Technical Evaluation Report at 4-5; *see also* Supp. AR, Tab 22b, SSDD at 31-32.

⁴ On or before July 24, the agency received updates to the quotations after issuing an amendment to the TORFQ that asked vendors to provide updated pricing and a plan to meet certain agency security requirements--these updates are not at issue in this protest. AR, Tab 12, TORFQ amend. 0001, July 10, 2023; COS/MOL at 2.

The contracting officer, who also served as the selection authority, considered the evaluation results, compared the quotations, and documented the tradeoff and award decision. The contracting officer made various comparisons between the quotations, including a comparison between the quotation from Peraton and the lower-priced, lower technically rated quotation from SAIC.⁵ See *id.* at 44-81. Over several pages of the selection decision, the contracting officer discussed and compared in detail the quotations from Peraton and SAIC, which included: recognizing Peraton's technical superiority and lower risk of unsuccessful performance; comparing the various qualitative aspects of the quotations with their strengths and, for SAIC, a weakness; and noting Peraton's higher price. *Id.* at 57-65. Among other things, the contracting officer noted that Peraton's quotation "provides greater depth with respect to both critical PWS paragraph[s]" and presents strengths that "were each determined to provide exceptional merit and to be exceptionally advantageous." *Id.* at 64. The contracting officer also noted that, "[i]n comparison, none of SAIC's strengths were determined to provide exceptional merit or to be exceptionally advantageous," and that the assessment of a weakness in SAIC's quotation was "also a discriminating factor." *Id.*

Further, in recognizing the relative importance of the technical and price factors as stated in the TORFQ, the contracting officer noted that, "[b]ecause there are significant differences between Peraton and SAIC with respect to the technical factor, the price factor remains less important." *Id.* at 65. The contracting officer noted that Peraton's total evaluated price was higher than SAIC's total evaluated price by \$22,646,863, or around 13.3 percent, but that,

the multiple advantages offered by Peraton's quotation including the merit provided by its fourteen (14) strengths, its greater depth in terms of strengths with respect to both Critical PWS Paragraphs, its three (3) more impactful strengths, its lack of weaknesses, its very low risk of unsuccessful performance, and its overall exceptional approach and understanding of the requirements justify the payment of a 13.3 [percent] premium.

Id.

Overall, the contracting officer concluded that "Peraton's quotation provides an exceptional technical solution and is clearly in the best interest of the government." *Id.* at 81. On November 29, the agency notified SAIC of its award decision and provided a brief explanation. See AR, Tab 23, SAIC Brief Explanation. This protest followed.

⁵ The contracting officer also noted that only one other vendor was the "most highly rated" like Peraton, and that only SAIC quoted a lower total evaluated price than Peraton. Supp. AR, Tab 22b, SSDD at 44-45.

PROTECTIVE ORDER ADMISSIONS

As a preliminary matter, on December 12, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a). Electronic Protest Docketing System (Dkt.) No. 4. After the parties each represented that they had no objections to the protective order applications, outside counsel for the protester and intervenor were admitted to the protective order. See Dkt. No. 13. However, by letter dated January 16, 2024, the intervenor raised concerns for the first time about the protective order admissions of protester's counsel from the law firm of Crowell & Moring. The intervenor raised concerns about a "conflict" from prior work that Crowell had performed for a company that is now a subsidiary of Peraton and alleged that Crowell's current representation of SAIC breaches their fiduciary duties to Peraton and violates the American Bar Association's model rules of professional conduct. In this context, the intervenor advised that, "given this issue, we hereby withdraw our consent to the protective order applications filed by the Crowell attorneys representing SAIC in this protest." Intervenor's Letter to GAO Re: Withdrawal of Consent and Objection to the Admission of Protester's Counsel to the Protective Order, at 1-2.

Specifically, according to the intervenor, Crowell previously represented Perspecta Inc., now a subsidiary of Peraton, on various matters for several years, "including analyzing and advising on business transactions, contracts, and related [OCI] issues that include the very business transactions, contracts, and alleged corresponding conflict issues" raised in the protest. *Id.* at 1. The intervenor advised that a separate litigation counsel for Peraton had sent a disqualification request to the Crowell lead attorney that further explained the allegations that Crowell's current representation of SAIC "breaches [Crowell's] fiduciary duties to Peraton and violates the rules of professional conduct." *Id.* at 3, 5.

The agency agreed with the intervenor, based on the intervenor's filing "detailing the significant conflict of interest in Crowell's representation of SAIC" in the instant protest. Agency's Letter to GAO Re: Concurrence with Withdrawal of Consent and Objection to Protective Order Admission, at 2.

In response, Crowell disputed the existence of an "impermissible professional conflict." Protester's Letter to GAO Re: Resp. to Intervenor's Objection, at 1. Crowell argued that the allegations raised in the intervenor's objection are outside of the scope of GAO's review as they concern "an attorney's compliance with applicable rules of professional conduct." *Id.* at 2. Crowell also argued that the intervenor's arguments as filed in the objection do not challenge the standards by which GAO will review protective order applications--specifically, Crowell noted that the intervenor "does not contest the accuracy of any representation made by counsel for SAIC on their respective protective order applications," nor does the intervenor "make any general assertions that Crowell

is involved in competitive decisionmaking or otherwise presents a risk of inadvertent disclosure.”⁶ *Id.*

In considering the propriety of granting or denying an applicant admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decisionmaking and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information, should the applicant be granted access to protected material. See *Sikorsky Aircraft Corp.*, B-421359, B-421359.2, Apr. 6, 2023, 2023 CPD ¶ 87 at 7 (and internal citations).

Based on the parties’ various filings, our Office declined to rescind the admission of protester’s counsel to the protective order. We note that our Office does not adjudicate allegations, such as those presented here, related to attorney rules of professional conduct, which is a matter for the relevant bar association. *WellPoint Mil. Care Corp.*, B-415222.5, B-415222.8, May 2, 2019, 2019 CPD ¶ 156 at 6 n.7. Further, the allegations raised in the intervenor’s objection do not establish that the Crowell attorneys would fail to honor their commitments under the protective order. See *id.* at 6 (reaching similar conclusion where, under those circumstances, “[n]othing about the conflict, whether it exists and/or was waived, suggested that the attorneys would fail to honor their commitments under the protective order”). Under these circumstances, we declined to rescind the admission of protester’s counsel to the protective order.⁷ Dkt. Nos. 41-42.

⁶ Crowell also questions what it calls the “highly suspect” timing of the intervenor’s objection, as it was not raised with our Office until after receipt of the agency report and before the due date for comments--given that Peraton, through its outside counsel, earlier had access to the public version of the protest that disclosed the OCI allegations. Protester’s Letter to GAO Re: Resp. to Intervenor’s Objection, at 3; see *also* Letter from Crowell to Peraton’s Litigation Counsel, at 1 n.1. The intervenor asserts that the “conflict” underpinning its objection “did not become apparent to Peraton until it was performing its due diligence to respond to the agency’s OCI investigation following the filing of the protest.” Intervenor’s Letter to GAO Re: Withdrawal of Consent and Objection to the Admission of Protester’s Counsel to the Protective Order, at 1-2. Our regulations provide that “[o]bjections to an applicant’s admission shall be filed within 2 days after the application is filed, although GAO may consider objections filed after that time.” 4 C.F.R. § 21.4(d). On the facts presented here, we decline to comment further on the timing of the intervenor’s objection.

⁷ Moreover, while the intervenor continues to press its objection in subsequent filings, the intervenor’s arguments are based on the same factual circumstances and do not present any “new developments that are appropriate for GAO to consider.” Dkt. No. 42; see Intervenor’s Comments at 1 n.1, 13-14 n.6; Intervenor’s Supp. Comments at 1 n.2.

DISCUSSION

Turning to the protest grounds, SAIC challenges various aspects of the agency's source selection process, including the consideration of alleged OCIs, the agency's technical evaluation, and the best-value tradeoff decision. The parties have raised various arguments, including ones that are in addition to, or variations of, those specifically discussed below. While we do not specifically address every argument, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

Organizational Conflicts of Interest

First, SAIC argues that the agency failed to meaningfully consider an impaired objectivity OCI as a result of issuing this task order for the Army's PMO ASE at the program level because of Peraton's performance of a different task order for the Army's PEO IEW&S at the headquarters level.⁸ Protest at 10-18; Comments and Supp. Protest at 4-7, 13-21. By way of background, the Army's PEO IEW&S is a headquarters office that oversees seven program management offices, including the PMO ASE. COS/MOL at 7; TORFQ at 1-2. According to the performance work statements for each task order, both are requirements to provide SETA services, which include performing a range of technical and engineering support services and providing subject matter expertise and analysis. See PWS; AR, Tab 28, OCI Determination, exh. 9, PEO IEW&S Task Order PWS. For ease of discussion, our decision refers to the contractor effort for the lower organizational entity as the program-level task order or the PMO ASE task order, and the contractor effort for the higher organizational entity as the headquarters-level task order or the PEO IEW&S task order.

According to the protester, the award creates an impaired objectivity OCI affecting the headquarters-level task order because Peraton's performance of both task orders involves performing the same type of work in the same organization and review chain. Protest at 17. Primarily, based on its reading of the performance work statements for the task orders, SAIC contends that, on the headquarters-level task order, "Peraton will be in a position to review its own performance" on the program-level task order. Comments and Supp. Protest at 17. The protester further asserts that the agency has "failed to take any action to avoid or neutralize those OCIs." Protest at 18.

⁸ The parties acknowledge that the PEO IEW&S task order was originally issued to DHPC Technologies, Inc., which has since been acquired by Peraton. Protest at 11-12; COS/MOL at 8. The intervenor points out that Peraton, through DHPC, is already serving in dual roles on both task orders at issue here where, in addition to its performance of the PEO IEW&S task order, it is also a subcontractor to SAIC as the incumbent contractor performing the PMO ASE task order. Intervenor's Comments at 3 n.3; see *also* AR, Tab 46, Contracting Officer's OCI Determination and Findings (OCI Determination), exh. 19, Peraton Response to Questions at 2.

The record shows that, as noted above, Peraton's quotation included an OCI disclosure form, as required by the TORFQ, which did not indicate the presence of any OCIs. TORFQ at 10; COS/MOL at 2, *citing* AR, Tab 20, Peraton Quotation Part One, OCI Certifications. The contracting officer explains that, upon receipt of SAIC's protest and supplemental protest, he performed further review and assessment specific to the protester's allegations and concluded that "Peraton did not and does not have an [OCI] that would make it ineligible for award." AR, Tab 28, OCI Determination at 12; AR, Tab 53, Contracting Officer's Supp. OCI Determination and Findings at 25 (Supp. OCI Determination).

The contracting officer's OCI determinations included gathering information from the PEO IEW&S headquarters office, the PMO ASE program office, and Peraton, and reviewing documents including: the TORFQ, the quotations, the performance work statements and the award documentation for the PMO ASE task order and the PEO IEW&S task order, delegation memoranda and policy for the PEO IEW&S, and various declarations submitted by "persons with relevant knowledge of" the two task orders. AR, Tab 28, OCI Determination at 2; AR, Tab 53, Supp. OCI Determination at 2.

In response to the protest, the agency asserts that the contracting officer "meaningfully considered the entire scope of Peraton's roles as both a PMO ASE and PEO IEW&S contractor, detailed the bases for his conclusions, and otherwise conducted a proper and comprehensive initial OCI investigation." Supp. COS/MOL at 25. In the agency's view, SAIC's OCI allegations "stem from a combination of suspicion and a misunderstanding of Army organizational structure and safeguards." COS/MOL at 7. Ultimately, the agency argues that "Peraton's ability to render impartial advice to the Government" on the headquarters-level task order will not be impacted by its performance on the program-level task order. *Id.* at 17.

Contracting officers are required to identify potential conflicts of interest as early in the acquisition process as possible, and to avoid, neutralize, or mitigate such conflicts to prevent the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a); *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. In assessing potential OCIs, the FAR directs contracting officers to examine each contracting situation individually on the basis of its particular facts and the nature of the proposed contract. In this regard, a contracting officer is to exercise common sense, good judgment, and sound discretion with regard to whether a conflict exists and, if so, the appropriate means for resolving it; the primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR 9.505; *Alion Science & Tech. Corp.*, B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 7-8.

In reviewing protests that challenge an agency's conflict of interest determination, our Office reviews the reasonableness of the contracting officer's investigation. Where an agency has given meaningful consideration to whether an OCI exists, even when this consideration is given after award, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Superlative*

Techs., Inc.; Atlantic Sys. Grp., Inc., B-415405 *et al.*, Jan. 5, 2018, 2018 CPD ¶ 19 at 5. Further, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 6. A protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *SRM Grp., Inc.*, B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 9.

The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity.⁹ As relevant here, an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505(a); *Diversified Collection Servs., Inc.*, *supra* 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 its relationship to the product or service being evaluated. *Id.*

Here, we find that the contracting officer meaningfully considered whether Peraton had an impaired objectivity OCI that would disqualify it from award, and the protester has not identified clear evidence that the agency's conclusion was unreasonable. With respect to the protester's impaired objectivity OCI allegations, the contracting officer's detailed OCI investigation and analysis included, in sum, the following several relevant considerations.

First, the contracting officer noted that both task orders are considered requirements to provide SETA support services and, as such, involve performing similar types of work. AR, Tab 28, OCI Determination at 6, 11. The contracting officer found, however, that the fact that "Peraton will be providing similar types of support to the Government" in its performance of each task order "does not mean that Peraton will be evaluating its own work or has a relationship to the products or services that it is evaluating either at the PMO ASE level or at the PEO IEW&S level." AR, Tab 53, Supp. OCI Determination at 14. In other words, as the agency argues, SAIC's assertions "rely on high-level comparisons between" the performance work statement for the headquarters-level task order and the program-level task order that fail to appreciate the "actual work performed" on these task orders. Supp. COS/MOL at 19.

Second, the contracting officer considered the organizational structure from the higher organizational entity down, *i.e.*, from PEO IEW&S--as the headquarters level entity down to PMO ASE--as the program level entity reporting to PEO IEW&S, and the

⁹ While SAIC initially asserted that the "award to Peraton is tainted by every conceivable form of OCI," Protest at 2, the protester subsequently withdrew its allegations of a biased ground rules OCI and an unequal access to information OCI after receipt of the agency's reports. Comments and Supp. Protest at 20 n.7; Protester's Supp. Comments at 2 n.3.

performance of the task orders. The contracting officer noted that while performance at the headquarters level could include providing some support to the program level--such as logistics, operations, and acquisition and technical support--this does not include supporting SETA requirements at the program level. In this regard, the contracting officer noted that, "because the PMO ASE task order is a SETA requirement, Peraton does not provide support for that task order" from its performance on the PEO IEW&S task order. AR, Tab 28, OCI Determination at 11; AR, Tab 53, Supp. OCI Determination at 11. Further, as the headquarters-level SETA contractor, "Peraton would not be providing PEO IEW&S guidance, analysis or recommendations with respect to any acquisition in which it could compete, or with respect to its own work product." AR, Tab 55, Supp. Decl. of PEO IEW&S Acting Division Chief at 5.

Moreover, the contracting officer found that the headquarters does not evaluate any SETA contractor supporting the program level and, therefore, as the contractor on the headquarters-level task order, "Peraton will not be evaluating its own work" under the program-level task order. AR, Tab 28, OCI Determination at 11. The contracting officer noted, among other things, that the program office "independently evaluates the performance of contractors on its task orders via the Contractor Performance Assessment Reporting System"; and further that "any documents related to staffing or the evaluation of a contractor[']s performance on the PMO ASE task order will only come to the PEO [headquarters] through [program management] Government employees whose responsibilities include ensuring such documentation reflects the Government's interests and is free from biased influence of any contractor." *Id.* at 11-12.

Third, the contracting officer also considered the organizational structure from the lower organizational entity up, *i.e.*, from PMO ASE at the program level to PEO IEW&S at the headquarters level, and the performance of the task orders. The contracting officer noted generally that the contractor performing the program-level task order would support "helping the Government prepare, analyze, and review documentation (including, design review packages, technical strategies, technical studies, etc[.]) relating to the systems supported by the [program management]" level. AR, Tab 53, Supp. OCI Determination at 15.

More specifically, in reviewing the task order requirements, the contracting officer considered: each level of the organization may use a SETA contractor like Peraton to analyze and review technical documentation; that technical documentation relates to systems at the program level and originates from and relates to third-party contractors for those systems;¹⁰ and, for the express purpose of avoiding OCIs, the third-party contractor cannot also be a SETA contractor. AR, Tab 54, Supp. Decl. of PMO ASE Technical Lead at 3; AR, Tab 53, Supp. OCI Determination at 12. The third-party

¹⁰ Our decision refers to these as "systems" for ease of discussion, and the contracting officer notes that "these systems may also be referred to as requirements, projects or programs, depending on the context." AR, Tab 53, Supp. OCI Determination at 12.

contractors are referred to here as original equipment manufacturers (OEMs) or prime developers. Indeed, the contracting officer confirmed that Peraton, as a SETA contractor, is not an OEM or prime developer here. AR, Tab 53, Supp. OCI Determination at 12.

Moreover, the contracting officer considered that a SETA contractor, like Peraton, “by their very nature cannot take ownership or approve any documentation developed by the program shop or [headquarters].” AR, Tab 42, OCI Determination, exh. 15, Decl. of PMO ASE Technical Lead at 3. Thus, while at the program level Peraton may support analyzing and reviewing the OEM or prime developer’s technical documentation for the program office, the contracting officer confirmed that “the only documentation presented by PMO ASE to PEO IEW&S for review relates to the PMO ASE systems and not to the work of PMO ASE SETA contractors.” *Id.* at 11. In other words, the documents sent by the program level up to the headquarters level would originate from and relate to the program systems that are from other contractors, not from Peraton.

The contracting officer also explained that, when this technical documentation is sent from the program level up to the headquarters level, it is sent to a government technical point of contact whose review is “ministerial in nature” and who, ultimately, does “not direct PMO ASE to take any particular course of action.” AR, Tab 53, Supp. OCI Determination at 13, 16. Notwithstanding the contracting officer’s explanation, the protester notes that a government technical point of contact may use Peraton as the headquarters-level contractor to “assist in processing the technical documents received from” the program level and alleges that Peraton would not be able to do so objectively. Protester’s Supp. Comments at 5, *citing* AR, Tab 54, Supp. Decl. of PMO ASE Technical Lead at 4 (“like PMO ASE, the PEO HQ may use their support contractors to assist in processing the technical documents received from PMO ASE”); *see also* AR, Tab 53, Supp. OCI Determination at 16 (same).

The protester’s position, however, ignores the agency’s explanation about the “technical documents” sent to the headquarters level for review. These technical documents originate from and relate to OEMs or prime developers--not Peraton or any work product produced by Peraton. Accordingly, given the nature of the technical documents, we find reasonable the agency’s conclusion that Peraton at the headquarters level is not reviewing any analyses prepared by Peraton at the program level. We note further that the protester has not reasonably rebutted the agency’s conclusion regarding review of the technical documents since SAIC in its various filings, has not identified where, or how, the task orders require Peraton at the headquarters level to evaluate any work produced by or attributed to Peraton at the program level.

As the agency explains from the contracting officer’s OCI determinations:

[E]ach of the systems that PMO ASE supports has its own OEM/Prime Developer. To avoid OCIs, PMO ASE SETA contractors cannot be a PMO ASE OEM/Prime Developer. Additionally, at the [program management] level, in providing PMO ASE SETA Technical support,

Peraton will be providing input, analysis, development and support with respect to products and data that is originally prepared and furnished by other contractors--the Prime Developers. Consequently, although at the PEO IEW&S [I]level, Peraton may be analyzing and reviewing this data, it would not be evaluating itself.

Supp. COS/MOL at 20 (internal citations omitted); AR, Tab 53, Supp. OCI Determination at 13-14. In other words, as the contracting officer reasoned, because Peraton cannot be an OEM or prime developer for these systems, Peraton has “no incentive” not to provide impartial advice. *Id.* at 18. Moreover, as the agency argues: “Peraton would not be able to create an advantage for itself, or steer beneficial decisions towards itself by virtue of its positions at either” the headquarters-level task order or the program-level task order, because its work at either level “would [not] benefit Peraton, but rather OEMs/Prime Developers. Because Peraton has no relationship to or interest in [the] underlying system[s] being evaluated, Peraton’s review of those systems at either the PMO ASE or PEO IEW&S does not create an opportunity for it to ‘influence assessments of its own performance’ as SAIC alleges.” Supp. COS/MOL at 26.

Fourth, the contracting officer considered the final review process for any products that PMO ASE at the program level may send up to the PEO IEW&S at the headquarters level and found this to be additional support for the agency’s conclusion that Peraton in performing the headquarters-level task order would not be evaluating Peraton at the program level. Specifically, the contracting officer noted that, “even if Peraton did provide support for that task order, any product that PMO ASE, or any [program management], sends to PEO IEW&S has to be coordinated and approved by the O-5/O-6 (Lieutenant Colonel/Colonel).” AR, Tab 28, OCI Determination at 11; AR, Tab 53, Supp. OCI Determination at 19. The agency further explains this is “a Government employee whose responsibilities include ensuring such documentation reflects the Government’s interests and is free from biased influence of any contractor.” COS/MOL at 17. The contracting officer found this additional mitigating layer to be “a meaningful, independent, and neutral safeguard.” AR, Tab 53, Supp. OCI Determination at 19.

Ultimately, the contracting officer concluded that his OCI investigations “did not identify any tasks or responsibilities under the PEO IEW&S task order that would require or otherwise place Peraton in the position of reviewing its own work under the PMO ASE task order.” AR, Tab 53, Supp. OCI Determination at 20. To be clear, based on the contracting officer’s OCI investigations, the agency further asserts that “there is no separate Peraton [PMO] ASE work product that will even potentially be reviewed in any way by Peraton as the [PEO] IEW&S contractor.” Supp. MOL at 25.

In all, on this record and given the discretion afforded contracting officers, the agency has reasonably explained its investigation of potential OCIs with respect to this contracting situation and demonstrated that it has given meaningful consideration to whether an OCI exists. Simply put, the record does not support SAIC’s allegation that

Peraton on the headquarters-level task order “will be in a position to review its own performance” on the program-level task order. Comments and Supp. Protest at 17. To the extent SAIC disagrees with the agency’s judgments regarding the various aspects of the agency’s organizational structure and the two task orders at issue here, SAIC’s arguments fail to identify any material flaws that would render the agency’s conclusions unreasonable. A protester’s disagreement with an agency’s judgment, as here, does not establish that the judgment was unreasonable. See *Alion Science & Tech. Corp.*, *supra* at 8.

We agree with the protester that the role of the government employees at each level in the review process is not by itself dispositive; the fact that an agency retains final approval or decision-making authority does not absolve the agency of assessing whether a conflict can arise. See *Booz Allen Hamilton, Inc.--Costs*, B-414822.4, May 7, 2018, 2018 CPD ¶ 183 at 8 (where an agency found a firm was only “participating” in certain activities, as opposed to having final responsibility for those efforts, this did not excuse the agency from considering whether the awardee might have an impaired objectivity OCI); Comments and Supp. Protest at 16. However, under the circumstances discussed above—including the organizational structure, the analysis of the work performed or to be performed under each task order, and the distinction of the program-level systems under review that are prepared or furnished by contractors other than Peraton—we think it was reasonable for the contracting officer, in giving meaningful consideration in his investigation, to have noted this government employee’s role.

While SAIC correctly observes that Peraton will provide support to two distinct levels in the agency’s organizational chain, SAIC’s broader position that Peraton’s role at the headquarters level “will necessarily implicate” or be implicated by its role at the program level is tenuous. Protester’s Supp. Comments at 5. In our view, SAIC’s position glosses over the specific facts here, such as what SETA work entails, the relationship between the headquarters and program levels, and the actual work required of Peraton to be performed at each level. The protester has not shown where, or how, the performance work statements for the task orders require Peraton in supporting the headquarters level to evaluate its own work product or would otherwise cause its objectivity to be negatively impaired by its work at the program level. As noted above, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency’s, absent clear evidence that the agency’s conclusion is unreasonable. See *Superlative Techs., Inc.; Atlantic Sys. Grp., Inc.*, *supra* at 5; see also *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 7-9 (sustaining protest in part because the agency did not give meaningful consideration to whether an impaired objectivity OCI was created by a particular organizational structure, under which a contractor itself and through its wholly-owned subsidiary would operate within the same chain of review by making decisions and making recommendations to reconsider those decisions on appeal).

As a representative example of the protester’s various points of contention, SAIC notes that, for the program-level task order, Peraton will “provide technical expertise in applying the systems engineering process throughout the system life cycle or

development of new products and/or existing system products” that will be documented in “system engineering reports and products.” Comments and Supp. Protest at 14, *citing* PWS at 5. SAIC then notes that, for the headquarters-level task order, Peraton will “participate in technical reviews of those same documents.” Comments and Supp. Protest at 14, *citing* AR, Tab 35, OCI Determination, exh. 8, PEO IEW&S Task Order Award at 55. In the protester’s view, “having the same vendor perform both roles leads to a clear situation where the [PEO] IEW&S vendor may ‘pull punches’ if it identifies issues that could implicate its work as the [PMO] ASE contractor.” Protester’s Supp. Comments at 5.

The contracting officer considered SAIC’s specific allegation and confirmed that the “new products and/or existing system products” referred to under the program-level task order are, as discussed above, the OEM’s systems that each have their own prime developers--not Peraton. AR, Tab 53, Supp. OCI Determination at 16. The contracting officer also confirmed that the review at the headquarters level consists of reviewing those same underlying systems from the OEMs/prime developers, rather than the PMO ASE contractor’s work. *Id.* In other words, in its role on the headquarters-level task order, Peraton will not be reviewing its own program-level work, but rather will be reviewing the specific system from other contractors, just at the headquarters level as opposed to the program level. Supp. COS/MOL at 21.

In this context, to address the protester’s concern that Peraton’s performance of one task order “could implicate its work” on the other task order, Protester’s Supp. Comments at 5, the agency argues instead that this “does not provide any inherent benefit to Peraton as a good review at the PEO IEW&S level would not benefit Peraton and would instead benefit the underlying OEM/Prime Developer of the [program management] system,” whose systems are the subject of review at each level of the organization. Supp. COS/MOL at 21.

Under these circumstances, we have no basis on which to agree with the protester or to reject the contracting officer’s OCI investigation. Accordingly, this protest ground is denied.

Technical Evaluation

Next, SAIC challenges the agency’s technical evaluation of its quotation.¹¹ Specifically, SAIC argues that the assessment of a weakness in its quotation was unreasonable and inconsistent with the terms of the solicitation. Protest at 19-26. Among other things, in the protester’s view, “the evaluators overstated the level of risk associated with any perceived ambiguities in SAIC’s quotation and created a misperception that it presented

¹¹ SAIC also raised, and subsequently withdrew, various supplemental allegations that the agency’s technical evaluation revealed unequal treatment as reflected in the assessment of various strengths in Peraton’s quotation. Resp. to Agency’s Req. for Partial Dismissal of Supp. Protest at 1; Comments and Supp. Protest at 31-36.

a material risk of unsuccessful performance that is entirely divorced from the underlying evaluation findings.” Protest at 20-21, *citing L3Unidyne, Inc.*, B-414902 *et al.*, Oct. 16, 2017, 2017 CPD ¶ 317 at 6 (sustaining protest challenging the assessment of a deficiency where the agency did not explain how the deficiency “amounts to a material failure of [the protester’s] proposal that increases the risk of unsuccessful contract performance to an unacceptable level”).

In response, the agency argues that its evaluation was reasonable and notes that the TORFQ “did not define a weakness as a ‘material risk’ nor did it require the Army to quantify that risk by stating that the risk must rise to a certain level.” COS/MOL at 21. As noted above, under the technical factor, the TORFQ required vendors to address two critical PWS paragraphs and provided that the agency would evaluate the quotation’s “demonstration of clear understanding of the requirements and ability to successfully perform the tasks described, to include but not limited to plans for executing the requirements through the length of the task order and detail their company’s processes, procedures, innovative methods, and problem-solving abilities.” TORFQ at 11, 13. The TORFQ defined a weakness as “any flaw in the quotation that increases the risk of unsuccessful task order performance.” *Id.* at 13.

The record shows that, in assessing a weakness in SAIC’s quotation, the technical evaluation team found that SAIC’s responses to critical PWS paragraph 2.2.3, ASE software engineering requirements, “contain multiple statements that are unclear and ambiguous.” AR, Tab 21, SAIC Technical Evaluation Report at 4. The evaluators identified SAIC’s responses to three distinct subparagraphs, found the responses unclear in how they addressed the requirements, and noted that the quotation “does not clarify these ambiguities.” *Id.* at 4-5.

As a representative example, the evaluators noted that under PWS paragraph 2.2.3, ASE software engineering requirements, subparagraph 2.2.3.8 requires the offeror “to provide resources for the test, integration, and fielding of the software products.” *Id.* at 5. The evaluators found SAIC’s response “unclear” where part of the quotation stated that SAIC “will ensure[] [REDACTED] access to [REDACTED] users.” *Id.*, *citing* AR, Tab 17, SAIC Quotation, Part Two, Technical, at 17. The evaluators further explained: “The Offeror’s statement is unclear as to who[m] it is referring to as ‘[REDACTED] users,’ what ‘[REDACTED] access’ it is purporting to provide to those users, or how this will satisfy subparagraph 2.2.3.8’s requirements. The Offeror’s quotation does not clarify these ambiguities.” AR, Tab 21, SAIC Technical Evaluation Report at 5.

The evaluators concluded that although SAIC’s quotation “demonstrated an ability to perform the requirements of critical PWS paragraph 2.2.3 (ASE software engineering requirements), [under specific]subparagraphs, the combined effect of the multiple unclear and ambiguous statements contained in the Offeror’s [quotation] suggest the Offeror may not fully understand the requirements contained within these subparagraphs, thereby increasing the risk of unsuccessful task order performance.” *Id.*; *see also* Supp. AR, Tab 22b, SSDD at 31-32. The agency argues that the

evaluation was consistent with the TORFQ's definition of a weakness as "any flaw in the quotation that increases the risk of unsuccessful performance." COS/MOL at 21; TORFQ at 13.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate quotations; rather, we will examine the record to determine whether the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement statutes and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgments does not establish that the evaluation was unreasonable. *Amyx, Inc.*, B-410623, B-410623.2, Jan. 16, 2015, 2015 CPD ¶ 45 at 6.

On this record, we find no basis to question the agency's assessment of a weakness in SAIC's quotation. As noted above, the evaluators considered the effect of "multiple unclear and ambiguous statements" in SAIC's quotation that suggested the firm "may not fully understand the requirements . . . , thereby increasing the risk of unsuccessful task order performance." AR, Tab 21, SAIC Technical Evaluation Report at 5. While the protester contends that the evaluation was flawed due to "the total absence of any identifiable risk *whatsoever*" and that a block section of its quotation "explicitly addressed" the requirements, Comments and Supp. Protest at 23, 30, SAIC does not explain how the evaluation is unreasonable. The agency explains that its evaluation considered SAIC's quotation and, in the agency's view, neither the quotation nor the protester's filings explained away the ambiguities that raised concerns for the agency--as noted above, who "the [REDACTED] users" are, what the "[REDACTED] access" is, and how this will meet the requirements. Supp. COS/MOL at 41.

We view this argument as simply reflecting the protester's disagreement with the agency's judgment. In this regard, while the protester insists that its quotation "explicitly addressed (1) who constituted '[REDACTED] users;' (2) what '[REDACTED] access' it purported to provide to those users; and (3) how this process fully addressed subparagraph 2.2.3.8," Comments and Supp. Protest at 30-31, these conclusory assertions fail to demonstrate where or how this information appears in its quotation.

Moreover, it is a vendor's responsibility to submit a well-written quotation, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements; the vendor runs the risk that the agency will unfavorably evaluate its quotation where it fails to do so. See *22nd Century Techs., Inc.*, B-418029 *et al.*, Dec. 26, 2019, 2020 CPD ¶ 14 at 4. The protester has not established that it provided a well-written quotation that would require our Office to find the agency's evaluation unreasonable, particularly in the context of a solicitation that requires, as here, a vendor to demonstrate its "clear understanding of the requirements." TORFQ at 13.

Moreover, SAIC's reliance on *L3 Unidyne, Inc., supra*, is inapposite given the different factual circumstances here. Protest at 20-21; Comments and Supp. Protest at 24. *L3 Unidyne* concerned an agency's assessment of a deficiency, involving a more rigorous standard, which the solicitation in that case defined as "a material failure of a proposal to meet a government requirement . . . that increases the risk of unsuccessful contract performance to an unacceptable level." *L3Unidyne, Inc., supra* at 6. Under those circumstances, we found that the agency's evaluation had not explained how information lacking in the protester's proposal rose to the level of a deficiency and was therefore inconsistent with the terms of that solicitation. *Id.* Here, the assessment at issue was for a weakness, which the TORFQ defined as "any flaw in the quotation that increases the risk of unsuccessful task order performance." TORFQ at 13. In other words, while SAIC complains that the evaluation found "a material risk of unsuccessful performance," Protest at 20, the record does not demonstrate that the agency found a material risk of unsuccessful performance. Further, the agency's evaluation is consistent with the discretion afforded the agency by the terms of the TORFQ. In sum, we deny this protest ground.

Best-Value Tradeoff Decision

Finally, SAIC challenges various aspects of the agency's best-value tradeoff decision that resulted in the selection of Peraton's higher-priced, higher technically rated quotation. Protest at 28-31; Comments and Supp. Protest at 37.

Based on our review of the record, and as discussed above, we conclude that the agency's evaluation and source selection decision were reasonable and in accordance with the terms of the solicitation. Here, the record shows that the contracting officer provided a well-reasoned basis for a tradeoff that recognized Peraton's technical superiority and lower risk of unsuccessful performance; compared the various qualitative aspects of the quotations with their strengths and, for SAIC, a weakness; and justified paying Peraton's higher price. See Supp. AR, Tab 22b, SSDD at 57-65. Overall, the contracting officer concluded that "Peraton's quotation provides an exceptional technical solution and is clearly in the best interest of the government." *Id.* at 81.

The record is consistent with the requirement that where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for award on a "best value" basis, it is the function of the selection official to perform a price/technical tradeoff; that is, to determine whether one quotation's technical superiority is worth its higher price. *InnovaTech, Inc.*, B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 3, 6 n.8; *The MIL Corp.*,

B-297508, B-297508.2, Jan. 26, 2006, 2006 CPD ¶ 34 at 13. The agency adequately explained its basis for selecting the technically superior and higher-priced quotation. Accordingly, we also deny this protest ground.

The protest is denied.

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General Counsel