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Decision

Matter of: IBSS Corporation

File: B-422757; B-422757.3; B-422757.5

Date: October 18, 2024

Ryan C. Bradel, Esq., Chelsea A. Padgett, Esq., and Camille Chambers, Esq., Ward & Berry, PLLC, for the protester.

Jonathan D. Shaffer, Esq., Zachary D. Prince, Esq., and Jonathan K. Keller, Esq., Haynes and Boone, LLP, for Blue Glacier Management Group, Inc., the intervenor. Jeremiah Kline, Esq., and Michael C. Ahl, Esq., Department of Commerce, for the agency.

Michael P. Price, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's staffing plan pursuant to Federal Acquisition Regulation (FAR) provision 52.222-46 is sustained where the agency failed to meaningfully evaluate the awardee's proposed compensation that was lower than the compensation from the predecessor contract, as required by the terms of the provision.
2. Protest challenging agency's evaluation of the protester's staffing plan pursuant to FAR provision 52.222-46 is denied where the record demonstrates the agency reasonably assessed the protester's proposal a rating of low confidence.
3. Protest alleging awardee engaged in a "bait and switch" of key personnel is dismissed where the protest does not sufficiently allege that the awardee knowingly or negligently represented that it intended to rely on personnel who would not be available to perform under the contract.
4. Protest alleging agency engaged in unequal discussions with the awardee and subsequently improperly evaluated the awardee's revised pricing is denied where the agency's conduct of exchanges and subsequent evaluation were consistent with the terms of the solicitation and otherwise reasonable.

5. Protest challenging agency's acceptance of awardee's revised organizational conflict of interest mitigation plan following exchanges is denied where the record demonstrates the agency reasonably determined the awardee's proposal sufficiently addressed the agency's concerns with respect to a potential conflict involving the awardee's subcontractors.

DECISION

IBSS Corporation, a small business of Silver Spring, Maryland, protests the issuance of an order to Blue Glacier Management Group, Inc., and Reston Consulting Group, Inc.,¹ of Englewood, Colorado, under task order request for proposals (TORFP) No. NMITS-OSPO-2023-TORFP, issued by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), for cybersecurity support services across various systems under the agency's Office of Satellite and Product Operations (OSPO). The protester raises a number of challenges to the agency's conduct of the procurement, including challenging the agency's evaluation of offerors' staffing plans and the agency's conduct of exchanges with the awardee, and alleging the awardee engaged in a "bait and switch" with respect to its key personnel. The protester also contends the agency unreasonably determined the awardee had sufficiently mitigated an alleged organizational conflict of interest (OCI) involving the awardee's subcontractors.

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

BACKGROUND

NOAA issued the solicitation on November 16, 2023, to holders of the NOAA mission information technology services blanket purchase agreement pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, seeking proposals for cybersecurity support services including centralized program support, cybersecurity compliance, security management center services, and security architecture and engineering across all agency OSPO sites.² COS at 2; AR, Tab 21, Phase Two Business Clearance Memo. at 3. The agency anticipated awarding a single fixed-price

¹ Blue Glacier and Reston Consulting submitted a proposal utilizing a contractor team arrangement (CTA), with Blue Glacier designated as the "CTA Order Lead." See, e.g., Agency Report (AR) Tab 10.b, Blue Glacier Initial Proposal Vol. II at 3. For purposes of this decision, we will refer to the CTA as "Blue Glacier," while acknowledging that the CTA is comprised of the two entities mentioned.

² The solicitation was amended four times. Contracting Officer's Statement (COS) at 2. All references to the solicitation refer to the final amended version, unless otherwise noted. All page number citations refer to the Adobe PDF page numbers of the documents provided by the parties.

and time-and-materials order with a 45-day phase-in period followed by a 6-month base period, and four 1-year options.³ AR, Tab 7, TORFP at 7-9.

The TORFP advised that NOAA intended to select the responsible offeror whose proposal “is determined to be the most advantageous to the [g]overnment using a best-value tradeoff analysis” considering price and non-price factors, permitting the agency to issue an order to “other than the lowest-priced offeror or other than the highest technically rated offeror.” *Id.* at 3. The TORFP’s non-price factors included (1) demonstrated prior experience; (2) staffing plan; (3) technical approach; (4) management approach; and (5) past performance. *Id.* at 61. The TORFP stated that NOAA would assign proposals a confidence rating under each of the non-price evaluation factors, as well as an overall confidence rating for the proposal. *Id.* The demonstrated prior experience and staffing plan factors were equal in importance to each other and, when combined, were more important than the other non-price factors. *Id.* All non-price factors, when combined, were more important than price. *Id.*

The TORFP contemplated a two-phase procurement in which NOAA would evaluate proposals under the demonstrated prior experience and staffing plan factors (the phase one factors), and then issue advisory notifications to offerors, informing each offeror whether it was likely to be “a viable competitor” in phase two of the procurement. *Id.* at 64. All offerors were permitted to participate in phase two notwithstanding the agency’s determination in advisory notification letters. *Id.* The solicitation further contained a provision titled “exchanges with best suited offeror” which stated as follows:

After the conclusion of [p]hase 2 evaluations, the [g]overnment will determine the [o]fferor that is best-suited (i.e. the apparent successful offeror). The [g]overnment will consider all non-price factors ([p]hase [1] and [p]hase [2]) and price when determining the [o]fferor that is best-suited. The [g]overnment reserves the right to communicate with only that [o]fferor to address any remaining issues, if necessary, and finalize a[n] [order] with that [o]fferor. These issues may include non-price and/or price factors. If the parties cannot successfully address any remaining issues, as determined pertinent at the sole discretion of the [g]overnment, the [g]overnment reserves the right to communicate with the next best-suited [o]fferor based on the original analysis and address any remaining issues.

Id. at 69.

NOAA received phase one proposals from seven offerors, including Blue Glacier and IBSS Corporation, by the deadline for receipt of proposals. COS at 7. The agency’s

³ Though this procurement was conducted pursuant to FAR subpart 8.4 and we typically refer to “vendors” instead of “offerors” and “quotations” instead of “proposals,” because the agency’s solicitation here was styled as a “task order request for proposals,” we primarily use the terms “proposal” and “offeror” in this decision.

technical evaluation team (TET) evaluated proposals under the demonstrated prior experience and staffing plan factors, yielding the following results for phase one:

	IBSS Corporation	Blue Glacier
Demonstrated Prior Experience	High Confidence	High Confidence
Staffing Plan	Low Confidence	High Confidence

COS at 8; AR, Tab 29, Phase One Business Clearance Memo. at 8. NOAA provided an advisory down-select notification letter to IBSS Corporation, explaining that it assigned the protester’s proposal a rating of low confidence under the staffing plan factor, and that the protester was unlikely to be a viable competitor in the competition. AR, Tab 23, IBSS Corporation Advisory Notification at 1. The agency explained that the protester’s proposal received a rating of low confidence because it submitted a staffing plan that failed to comply with FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, as required by the solicitation. *Id.* The agency informed the protester that it could choose to participate in phase two, but that the intent of the advisory notification was to minimize proposal development costs for those firms with “little or no chance of receiving an award.” *Id.*

IBSS Corporation elected to participate in phase two of the competition, and NOAA received phase two proposals from four offerors, including the protester and Blue Glacier. COS at 16. The agency’s TET evaluated proposals under the phase two evaluation factors, yielding the following results:

	IBSS Corporation	Blue Glacier
Technical Approach	High Confidence	High Confidence
Management Approach	High Confidence	High Confidence
Past Performance	High Confidence	High Confidence
Total Evaluated Price	\$52,562,766	\$46,784,483
Overall (Phase 1 and Phase 2)	Some Confidence	High Confidence

COS at 16-17; see AR, Tab 21, Phase Two Business Clearance Memo. at 29. Based on the evaluation results, NOAA selected Blue Glacier as the best-suited offeror. In this regard, the agency explained that Blue Glacier was the only offeror to receive a rating of high confidence under each of the non-price factors, and that it had proposed the second lowest price. AR, Tab 21, Phase Two Business Clearance Memo. at 29. In comparing the proposals of IBSS Corporation and Blue Glacier, the contracting officer noted that while both offerors submitted a “sound approach,” the protester’s staffing plan did not provide a full range of salaries for all professional employees, as required by the solicitation, while the awardee submitted a total compensation plan that complied

with the solicitation. The agency also compared the firms' past performance, noting that the awardee had "slightly superior" past performance despite the equal confidence ratings, and noted that Blue Glacier's proposed price was approximately \$5.7 million lower than IBSS Corporation's price. *Id.* at 30. After selecting Blue Glacier as the best-suited offeror, the agency elected to conduct exchanges with only Blue Glacier. COS at 19.

After exchanges were completed, NOAA identified Blue Glacier as the offeror whose proposal offered the best value to the government. The agency explained that the higher priced proposals did not offer any benefit to the government that justified the higher prices, while noting that Blue Glacier's proposal offered benefits over the lowest-priced proposal. AR, Tab 21, Phase Two Business Clearance Memo. at 37; COS at 21. The agency informed IBSS Corporation that it had not been selected for award on July 2; this protest followed.

DISCUSSION

IBSS Corporation challenges various aspects of the agency's evaluation of proposals and conduct of the procurement. For the reasons explained below, we sustain the protester's challenge to the agency's evaluation of Blue Glacier's total compensation plan under the staffing plan factor. While this decision does not address every additional argument or sub-argument raised by the protester, we have considered them all, and find that none afford an additional basis on which to sustain the protest.⁴

Procedural Matters--Dismissed Protest Ground

As an initial matter, IBSS Corporation challenges NOAA's evaluation of Blue Glacier's past performance. Protest at 9. In this regard, the protester contends that "publicly available information shows that Blue Glacier does not have the past performance required by the [a]gency in the TORFP," and that any evaluation of the awardee's past performance was therefore unreasonable. *Id.* The protester argues that based on information from publicly available website databases that track federal contract awards, Blue Glacier has only two recent contracts that could be considered relevant by the agency, and that "[b]ecause there are only two potentially relevant contracts that Blue Glacier could have listed as its past performance, the [a]gency could not have reasonably chosen Blue Glacier as an awardee." *Id.* at 10.

NOAA requests our Office dismiss this protest ground, because IBSS Corporation's argument relies on an improper reading of the solicitation criteria. Agency Comments

⁴ The protester initially challenged the agency's failure to provide a brief explanation of award as required by FAR subpart 8.4. Protest at 7-8. This protest ground was subsequently withdrawn after the agency provided the protester a brief explanation after the protest was filed with our Office. IBSS Corporation Notice of Withdrawal of First Protest Ground at 1.

on Intervenor's Req. for Dismissal at 2-3.⁵ In this regard, the agency argues that the solicitation did not limit past performance examples to those that would be listed in the databases cited by the protester, the federal procurement data system and USASpending.gov.⁶ The agency further argues that the solicitation also permitted examples from each CTA team member, either as a prime or a subcontractor, as well as proposed first-tier subcontractors. *Id.* at 3. Accordingly, the agency argues that this protest ground fails to state a valid basis of protest and should be dismissed. *Id.* at 2.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Pacific Photocopy & Research Servs.*, B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4. To achieve this end, our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations, and that the grounds be legally sufficient. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Saalex Sols., Inc.*, B-418729.3, July 23, 2021, 2021 CPD ¶ 298 at 5.

Here, the TORFP stated that offerors "shall submit a past performance narrative that includes information for up to three (3) contracts having performance within the past three (3) years of the proposal due date of [p]hase [2], which are relevant to the efforts required by this solicitation." TORFP at 56. The TORFP permitted examples from each teaming partner of a CTA as well as "first-tier" subcontractors. *Id.* at 57. The TORFP advised that past performance examples would be evaluated for quality, timeliness, business relations, and relevancy to the size and scope as described in the performance work statement (PWS). *Id.* at 67.

We find IBSS Corporation's argument concerning the agency's evaluation of Blue Glacier's past performance insufficient to meet the pleading standard required by our Office. The entire basis of the protester's argument is that Blue Glacier, one of the two companies that comprised the CTA awardee, could have possibly submitted only two past performance examples that meet the recency and relevancy requirements of the solicitation. However, the TORFP permitted "up to" three past performance examples, which could be submitted by each teaming partner of a CTA and a "first-tier" subcontractor. IBSS Corporation's argument focuses solely on Blue Glacier's alleged

⁵ The intervenor initially filed a request for partial dismissal of the protest, to which the agency joined and also provided its own comments. Agency Comments on Intervenor's Req. for Dismissal at 1.

⁶ USASpending.gov is "the official source for spending data for the U.S. Government," and as relevant here, provides information about the award of contracts over \$25,000. USASpending website, www.usaspending.gov/about (last visited October 2, 2024).

past performance and ignores the fact that the awardee also could have submitted examples from its other CTA partner, Reston Consulting, or its subcontractor.

Moreover, the TORFP did not provide that an offeror needed to submit three examples in order to merit a rating of high confidence under this evaluation factor; rather, the examples would be evaluated for quality, timeliness, business relations, and relevancy to the size and scope of work contemplated by the PWS. Accordingly, even if Blue Glacier itself could submit only two examples, its CTA partner or subcontractor could submit examples, and further, there was nothing in the solicitation that precluded the agency from assessing a rating of high confidence under this factor on the basis of only two examples.⁷ This protest ground is therefore dismissed.

Evaluations under the Staffing Plan Factor

IBSS Corporation argues that NOAA's evaluation of total compensation plans pursuant to the phase one staffing plan factor was unreasonable. The protester challenges the evaluation of Blue Glacier's staffing plan, as well as its own. We discuss each of those challenges below.

Evaluation of Blue Glacier's Total Compensation Plan

IBSS Corporation primarily challenges NOAA's evaluation of Blue Glacier's total compensation plan under the staffing plan factor. According to IBSS, the agency should have concluded that Blue Glacier's proposed compensation levels were unrealistically low and therefore insufficient to recruit and retain competent professional service employees. Protest at 9. In this regard, the protester argues that the agency failed to consider "drastic pay cuts" proposed by the awardee as compared to the predecessor contract. The protester reasons that because the TORFP contained FAR provision 52.222-46, the agency was required to consider the impact such cuts would have on program continuity and availability of required professional service personnel. Protest at 8-9; Comments & 2nd Supp. Protest at 3. The protester also argues that the agency's documentation of its analysis under FAR provision 52.222-46 was "woefully inadequate," and that NOAA failed to provide any explanation as to how or why proposed pay cuts were not "worthy of further consideration." Comments & 2nd Supp. Protest at 4-5.

NOAA argues that it reasonably evaluated Blue Glacier's total compensation plan in accordance with FAR provision 52.222-46 and the TORFP. Memorandum of Law

⁷ Indeed, in documents pertaining to the past performance evaluation produced later in protest proceedings in response to supplemental protest grounds, the record demonstrates that even IBSS Corporation was assessed a rating of high confidence under the past performance factor, despite having only one past performance example that the agency found recent and relevant. AR, Tab 13, Phase 2 TET Evaluation Workbook at 22-24. The other two examples submitted by the protester were not evaluated by the agency. *Id.*

(MOL) at 8. The agency contends that its evaluation was reasonable and included a comparison under each labor category of offerors' proposed salary ranges to the salary ranges of the incumbent contract, as well as an evaluation and comparison of proposed fringe benefits. *Id.* at 9. The agency further maintains that its evaluation was well-documented and supported by the evaluation record and Blue Glacier's proposal. *Id.*

The purpose of FAR provision 52.222-46, Evaluation of Compensation for Professional Employees, is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. *A-P-T Research, Inc.*, B-419459, Mar. 12, 2021, 2021 CPD ¶ 151 at 13. Our Office has explained that FAR provision 52.222-46 anticipates an evaluation of an offeror's total compensation for professional employees in two respects: (1) whether an offeror understands the contract requirements and has proposed a compensation plan appropriate for those requirements (in effect, a price realism evaluation based on proposed compensation); and (2) for recompetitions, a comparison of an offeror's proposed compensation to the incumbent contractor's compensation. *SURVICE Eng'g Co., LLC*, B-414519, July 5, 2017, 2017 CPD ¶ 237 at 5-6.

Under the second prong of this evaluation, and pursuant to FAR provision 52.222-46(b), if an agency determines that an offeror proposes lower compensation levels compared to the incumbent contractor, then the agency must further evaluate the offeror's proposed compensation plan on the basis of maintaining program continuity, among other considerations. *Id.* In reviewing protests of an agency's evaluation under FAR subpart 8.4, our Office will not reevaluate quotations or substitute our judgment for that of the agency; however, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. See *VariQ Corp.; Octo Consulting Grp., Inc.*, B-417135 *et al.*, Mar. 18, 2019, 2019 CPD ¶ 124 at 4-5.

Here, the record demonstrates that Blue Glacier submitted total compensation plan information as part of its proposal. AR, Tab 10.b, Blue Glacier Initial Proposal Vol. II at 22-24. The awardee included salary ranges across labor categories it proposed, as well as a description of its methodology for arriving at the proposed salary ranges. *Id.* Blue Glacier also included a description of the fringe benefits it intended to provide. *Id.* at 23-24.

NOAA prepared a total compensation plan evaluation spreadsheet that compared offerors' proposed salary and fringe benefit information to each other, in addition to comparing proposed compensation to the incumbent contract. AR, Tab 12.a, Total Compensation Plan Evaluation, Comparative Analysis Tab. For each offeror, the contracting officer subsequently reviewed the findings of the total compensation plan evaluation, specifically with respect to the comparison of proposed compensation to the incumbent contract. AR, Tab 21, Phase Two Business Clearance Memo. at 12-14.

With regard to Blue Glacier, the agency identified eight labor categories for which there was salary information to compare to the incumbent contractor. *Id.* at 13. For five of these labor categories, the awardee's proposed salaries were less than the incumbent's by anywhere from [DELETED] to [DELETED] percent, depending on the labor category. *Id.* These percentages amounted to a decrease of anywhere from \$[DELETED] to \$[DELETED] in annual pay. *Id.* The agency indicated that for these labor categories with lower proposed compensation, the lower compensation "[d]ecrease[d] [c]onfidence as it is [l]ess [t]han [i]ncumbent [a]verage"; however, the agency also noted that it considered two of the lower salary differences to be "nominal." AR, Tab 12.a, Total Compensation Evaluation, Offeror F [Blue Glacier] Tab; see AR, Tab 21, Phase Two Business Clearance Memo. at 13. The agency also identified three salary ranges that met or exceeded the incumbent contractor's, which the agency noted "increased confidence." AR, Tab 21, Phase Two Business Clearance Memo. at 13. The agency also discussed the awardee's proposed fringe benefits and concluded that most of the fringe benefits proposed by the awardee were "equal to or better than the fringe benefits offered under the incumbent [blanket purchase agreement]." *Id.* at 13-14.

Other than the above-mentioned comparison, the record does not demonstrate that NOAA performed any additional analysis of Blue Glacier's proposed compensation plan. Rather, the record includes a blanket statement, referring to "the five (5) offerors with acceptable [total compensation plans]." AR, Tab 21, Phase Two Business Clearance Memo. at 7. The record also includes a generalized finding that all of the offerors submitted acceptable compensation plans and proposed realistic compensation that reflected a clear understanding of the work to be performed. *Id.* at 7-8. The agency further generally stated that it had confidence that each offeror would have the ability to provide uninterrupted high-quality work, that the proposed compensation would have a positive impact on recruiting and retention, and that the proposed compensation would be sufficient to obtain and keep suitably qualified personnel to meet mission objectives. *Id.* Finally, the agency concluded that "[n]o offerors with a complete [total compensation plan] proposed compensation levels significantly lower than those of the predecessor contractor's compensation for the same work." *Id.* at 8.

We find NOAA's conclusions regarding Blue Glacier's total compensation plan to be unsupported and therefore sustain the protest on this basis. The record demonstrates that Blue Glacier proposed salary ranges that were less than the predecessor contractor's for at least five labor categories. Because of the lower compensation levels proposed, FAR provision 52.222-46(b) required the agency to evaluate the proposed compensation "on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees." FAR 52.222-46(b). The record does not reflect any such analysis specific to Blue Glacier's proposal. The agency's conclusory statement indicating that it had confidence that the five offerors that submitted compliant total compensation plans would be able to provide uninterrupted high-quality work, without more, is insufficient to demonstrate that the agency actually evaluated the awardee's lower proposed compensation in the manner required by the FAR.

For example, Blue Glacier proposed a salary for the [DELETED] labor category that was \$[DELETED] less than what the incumbent was paying for the same category, and a salary for the [DELETED] labor category that was \$[DELETED] less than what the incumbent was paying for that same labor category. While the agency's evaluation recognized these pay cuts, there is no explanation in the contemporaneous record as to why the agency concluded that it had confidence in Blue Glacier's proposed compensation levels. Moreover, the agency dismissed as "nominal," pay cuts of at least \$[DELETED] but failed to provide any explanation for this conclusion. See AR, Tab 21, Phase Two Business Clearance Memo. at 13-14; see COS at 10-11. Without this analysis, we cannot conclude that the agency's evaluation under FAR provision 52.222-46 was reasonable. Accordingly, this protest ground is sustained.⁸

Evaluation of IBSS Corporation's Total Compensation Plan

IBSS Corporation also argues that NOAA's evaluation of its total compensation plan under the staffing plan factor was flawed. Specifically, the protester argues that after assessing a low confidence rating to the protester's proposal because of its incomplete compensation plan as part of the phase one evaluation, the agency unreasonably decided not to consider the protester's revised total compensation plan, submitted in phase two of the procurement with the protester's price exhibit. Comments & 2nd Supp. Protest at 6. The protester contends that it submitted the revised total compensation plan with its price exhibit since nothing in the solicitation prevented the protester from doing so and that the revised compensation plan should have been considered by the agency. *Id.* at 6-7. NOAA argues that IBSS Corporation submitted an incomplete, non-compliant total compensation plan during phase one of the procurement, and that its determination not to evaluate the revised compensation plan submitted in phase two was reasonable and adequately documented. MOL at 10-11.

Our Office has consistently stated that it is an offeror's responsibility to submit a well-written quotation, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *BAO Systems, LLC, B-421561.13 et al.*, Apr. 10, 2024, 2024 CPD ¶ 92 at 10 n.12.

⁸ NOAA collaterally argues that IBSS Corporation's argument that Blue Glacier's proposed compensation was too low is flawed and inconsistent with other protest grounds, including the protester's allegation of a bait and switch, discussed below. In this regard, the agency maintains that the protester undercuts its own argument that the awardee would have difficulty recruiting and retaining incumbent employees due to its proposed low salary ranges, where it argues, on the other hand, that the awardee has been hiring employees performing under the incumbent contract since it received the contract award. MOL at 10. However, the fact that the awardee has been able to hire some incumbent employees does not indicate that it will be able to retain these employees, which is the primary issue that the agency failed to evaluate as part of its evaluation under FAR provision 52.222-46.

The TORFP advised that under phase one of the procurement, NOAA would evaluate total compensation plans under the staffing plan evaluation factor. TORFP at 51. The TORFP instructed offerors to submit total compensation plans in volume II of their proposals in accordance with FAR provision 52.222-46, and the solicitation further advised that the agency would evaluate staffing plans during the phase one evaluation of proposals. *Id.* at 61-62. As previously noted, the agency would then issue advisory notifications to offerors, informing them as to whether they were likely to be viable competitors, though permitting any offeror to participate in phase two of the procurement notwithstanding an adverse advisory notification. During phase two of the procurement, the TORFP advised that the agency would evaluate proposals under the remaining, phase two evaluation factors, including technical approach, management approach, past performance and price. *Id.* at 65-68.

In phase one, IBSS Corporation submitted a total compensation plan that established salary ranges for key personnel only; it did not include compensation information for all professional employees that would work under the contract. AR, Tab 21, Phase Two Business Clearance Memo. at 10. The agency determined that it was unable to provide a full analysis of the protester's total compensation plan because it "explicitly failed to comply with" FAR provision 52.222-46 and the solicitation. *Id.* at 11. Accordingly, the agency assigned the protester's proposal a rating of low confidence under the staffing plan factor and determined that the protester was unlikely to be a viable competitor. *Id.* at 7, 11. After the protester elected to participate in phase two of the competition, it submitted a revised total compensation plan with its price volume. Though the agency recognized that the protester submitted a revised total compensation plan, the agency contemporaneously noted that "[t]here are no instructions or evaluation criteria included in the TORFP under the [p]rice [v]olume regarding the [total compensation plan] . . . [a]s a result, we will move forward without evaluating the revised [total compensation plan]." AR, Tab 30, IBSS Corporation Total Compensation Plan Determination at 3.

We find NOAA's initial evaluation of IBSS Corporation's staffing plan reasonable, and further find no basis to question the agency's decision not to reevaluate IBSS Corporation's revised total compensation plan submitted with its phase two proposal. The agency's assignment of a rating of low confidence to the protester's proposal under the staffing plan was reasonable because the protester failed to comply with the requirements of the solicitation and did not submit a complete total compensation plan with proposed salaries for all professional employees. The agency's conclusion in this regard is reasonable and adequately documented.

The protester's argument that the agency should have subsequently reevaluated its total compensation plan when it submitted a revised plan with its phase two proposal also lacks merit. As noted by the agency, the TORFP did not contemplate an evaluation of total compensation plans during phase two. The protester's argument that the agency should have reevaluated the total compensation plan because it was not specifically precluded from doing so by the solicitation is meritless; we will not impose an evaluation requirement on the agency that is not contemplated by the solicitation and

find no basis to question the agency's judgment in this regard.⁹ Accordingly, this protest ground is denied.¹⁰

Competitive Prejudice

As explained above, we find NOAA's evaluation of Blue Glacier's total compensation plan unreasonable and the agency's evaluation of IBSS Corporation's total compensation plan reasonable. We further find the agency's error here to be prejudicial. Competitive prejudice is an essential element of a viable protest. Where the record established no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9. We, however, resolve any reasonable doubts regarding prejudice in favor of a protester since only a reasonable possibility of prejudice is required. *Celta Servs., Inc.*, B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 12.

Though NOAA reasonably assessed IBSS Corporation's proposal a rating of low confidence under the staffing plan factor for submitting an insufficient total compensation plan, leading to an overall proposal rating of some confidence, the agency's assessment to Blue Glacier's proposal of a rating of high confidence under both the staffing plan factor and overall was not supported. Accordingly, had the agency properly evaluated Blue Glacier's proposal under the staffing plan factor, it may have assessed a lower rating, which also may have led to a different overall rating of the awardee's proposal.

⁹ The parties also dispute whether the protester's revised total compensation plan would have exceeded the page limitations prescribed by the solicitation. Comments & 2nd Supp. Protest at 6-7; MOL at 11. The agency's contemporaneous documentation alluded to the fact that this was the case, and its decision not to consider the protester's revised plan was made, in part, on this basis. See AR, Tab 30, IBSS Corporation Total Compensation Plan Determination at 3. For the reasons explained above, it does not matter whether the protester's revised plan would have exceeded the page limitations in the solicitation--the agency was not required to consider total compensation plans in phase two of the procurement regardless of whether the revisions exceeded the page limitations.

¹⁰ The protester also raises a derivative challenge to the agency's best-value determination on the basis that the agency unreasonably failed to consider the protester's revised total compensation plan. Supp. Protest at 6-7. Because we find the agency's evaluation in this regard was reasonable, the protester's derivative argument is also denied. See *Emagine IT, Inc.*, B-420202, B-420202.2, Dec. 30, 2021, 2022 CPD ¶ 20 at 7 (dismissing derivative challenge to agency's best-value tradeoff decision based on flawed underlying evaluations where the underlying evaluation challenges were dismissed or denied).

Further, because both the protester and awardee received identical ratings of high confidence under the remaining non-price factors, this error could have had an impact on the agency's selection of the best-suited offeror, with whom the agency intended to exclusively conduct exchanges. Had the protester been selected as the best-suited offeror, it then could have addressed the issues with its compensation plan, as permitted by the terms of the solicitation. Indeed, the agency recognized such a possibility in its decision not to consider IBSS Corporation's revised total compensation plan, stating "if [IBSS Corporation] is to be considered the best suited offeror, we will conduct exchanges with the revised [total compensation plan] being a [g]overnment objective for negotiations." AR, Tab 30, IBSS Corporation Total Compensation Plan Determination at 3. Accordingly, we find the protester was prejudiced by the agency's error.

Bait and Switch of Key Personnel

IBSS Corporation also alleges that Blue Glacier has engaged in a "bait and switch" of key personnel. Supp. Protest at 4-5. In this regard, the protester argues that Blue Glacier has "replaced or attempted to replace" all of its proposed key personnel since the contract was awarded, and that this demonstrates that it "had no intention of contracting with the [k]ey [p]ersonnel it listed in its proposal." *Id.* at 5. More specifically, the protester argues that "[w]holesale replacement of three out of six key personnel immediately upon the start of contract performance is a *per se* indicia that Blue Glacier did not expect to furnish at least some of these personnel." Comments & 2nd Supp. Protest at 10.

NOAA argues that IBSS Corporation has failed to establish that Blue Glacier knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance. MOL at 13. In this regard, the agency argues that assertions that an awardee has replaced, or may potentially replace, key personnel with incumbent employees is insufficient to conclude that the awardee knowingly or negligently misrepresented its intent to furnish the employees identified in its proposal. *Id.*

To establish an improper "bait-and-switch," our Office has stated that a protester must generally show that the firm in question either knowingly or negligently made a misrepresentation regarding resources that it did not expect to furnish during contract performance, and that the misrepresentation was relied upon by the agency in evaluation and had a material impact on the evaluation results. *Custom Pak, Inc.; M-Pak, Inc.* B-409308 *et al.*, Mar. 4, 2014, 2014 CPD ¶ 73 at 7. Evidence of a switch in key personnel after award is not dispositive; rather, the relevant inquiry is whether at the time the awardee submitted its proposal, the awardee knew or should have known that the key personnel it identified would not be able to perform the contract. *Ahtna Prof'l. Servs., Inc.*, B-421164, B-421164.2, Jan. 11, 2023, 2023 CPD ¶ 20 at 9.

Here, IBSS Corporation's argument is based primarily on the fact that Blue Glacier has hired, or attempted to hire, several incumbent key personnel. However, the protester

has not presented evidence to demonstrate that Blue Glacier knew or should have known that the key personnel identified in its proposal were in fact unavailable to perform the contract at the time Blue Glacier submitted its proposal. While the protester argues that “[w]holesale replacement of three out of six key personnel” is, by itself, “*per se* indicia” that Blue Glacier made a knowing or negligent representation regarding the availability of these personnel, our Office has previously found that evidence of replacement of key personnel after award is not dispositive.¹¹ *Ahtna Prof'l. Servs., Inc., supra*. Absent additional evidence, we find the protester’s argument fails to state a valid basis of protest, and accordingly dismiss this protest ground.¹² *See id.* (dismissing allegation of bait and switch because protester failed to allege that awardee knew or should have known key personnel would be unavailable, and instead relied on the fact that awardee attempted to hire all of the incumbent key personnel).

Exchanges with the Best-Suited Offeror and Evaluation of OCI Mitigation Plan

IBSS Corporation argues that NOAA’s conduct of exchanges with only Blue Glacier was improper for various reasons, and further challenges the agency’s consideration of Blue Glacier’s revised OCI mitigation plan, and the exchanges that occurred regarding the mitigation plan. Comments & 2nd Supp. Protest at 12-21, 23-28. We address each argument in turn below.

NOAA’s Conduct of Exchanges

IBSS Corporation challenges NOAA’s conduct of exchanges in multiple respects. Specifically, the protester argues that while the TORFP permitted “exchanges” with the identified best-suited offeror, it did not permit the agency to conduct “substantive

¹¹ To this end, the awardee provided a declaration stating that while it did perform routine incumbent outreach, all of the key personnel it proposed in its proposal were willing and able to perform the roles for which they were proposed. Specifically, the declaration states that the proposed personnel were still employed with the firm and were completing their in-processing security paperwork during the transition in-phase. Blue Glacier Declaration at 1.

¹² The protester additionally argues that the awardee failed to notify the agency that it intended to make key personnel changes. Comments & 2nd Supp. Protest at 8. The TORFP stated that the contractor “shall obtain the consent of the [c]ontracting [o]fficer prior to making personnel substitutions.” TORFP at 32. Here, the protester’s allegations regarding a failure to notify the agency of personnel changes concern Blue Glacier’s hiring, or attempted hiring, of incumbent contractor personnel after award of the contract. Supp. Protest at 5. The protester has not demonstrated that the awardee was aware of the employees’ unavailability prior to award. Accordingly, to the extent the protester challenges the awardee’s failure to obtain agency consent concerning potential changes to key personnel after the contract was awarded, the protester’s argument concerns a matter of contract administration that our Office will not consider. 4 C.F.R. § 21.5(a).

discussions” or otherwise allow the offeror to “materially improve its proposal.” Comments & 2nd Supp. Protest at 23. The protester further contends that the agency improperly engaged in discussions because it allowed Blue Glacier to “substantively revise its proposal to (1) address issues with its [OCI] mitigation plan and (2) revise its total compensation plan for six different positions.” *Id.* at 24. The protester argues that “the law is clear that an [a]gency may address minor issues (*i.e.* ‘clarifications’),” but that here, the “exchanges between the [a]gency and Blue Glacier were clearly in the realm of discussions, not clarifications, and were both aimed at and cause[d] significant revisions to Blue Glacier’s final proposal.” Supp. Comments at 8-9. Additionally, the protester alleges that it was unreasonable for the agency to permit Blue Glacier to make changes to its pricing but then fail to compare Blue Glacier’s new, revised pricing to the other offerors’ initial pricing in making a best-value determination. Comments & 2nd Supp. Protest at 25-27.

NOAA argues that each of the protester’s challenges in this regard are untimely. The agency contends that the process for holding exchanges, including the scope of those exchanges, was clearly laid out in the TORFP, and the protester should have filed a challenge to the terms of the solicitation if it believed the process for or scope of exchanges was improper. Supp. MOL at 4. The agency further argues that even if the protest grounds were timely filed, the agency’s conduct of exchanges was consistent with the terms of the solicitation, which allowed for exchanges with the best-suited offeror on any remaining issues, including non-price and price issues, after the best-suited offeror was selected. *Id.* at 9.

Exchanges that occur with vendors in a FAR subpart 8.4 procurement, like all other aspects of such a procurement, must be fair and equitable; our Office has looked to the standards in FAR part 15 for guidance in making this determination. *Aurotech, Inc.*, B-413861.4, June 23, 2017, 2017 CPD ¶ 205 at 10. In this regard, FAR part 15 defines clarifications as “limited exchanges” that agencies may use to allow offerors to clarify certain aspects of their proposals, or to resolve minor or clerical mistakes. See FAR 15.306(a)(1)(2); *Aurotech, Inc.*, *supra*. In contrast, under FAR part 15, discussions occur when an agency communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal or provides the offeror with an opportunity to revise or modify its proposal. See FAR 15.306(d).

The issue presented in this protest is not unique; we have previously resolved protests involving similarly worded solicitation provisions that allowed an agency to address any issues, including technical or price, only with the best-suited contractor, including in a FAR subpart 8.4 procurement. See *Sky Sols., LLC*, B-421139.2, B-421139.3, June 30, 2023, 2023 CPD ¶ 184 at 6. In that case and others, our Office concluded that an agency’s communications were proper and permissible when it conducted exchanges with the apparent successful offeror or vendor. See *id.* at 6; *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 18-20.

Here, we find NOAA reasonably engaged in exchanges with Blue Glacier in a manner consistent with the terms of the solicitation. As noted above, the solicitation provided

that after the phase two evaluations, the agency would determine the offeror that is “best-suited (i.e. the apparent successful offeror).” TORFP at 69. The TORFP further stated that the agency “reserves the right to communicate with only that [o]fferor to address any remaining issues, if necessary, and finalize a [task order] with that Offeror” and that these issues “may include non-price and/or price factors.” *Id.*

After conducting the phase two evaluation, NOAA identified Blue Glacier as the best-suited offeror after performing a tradeoff analysis following the phase two evaluation of proposals.¹³ AR, Tab 21, Phase Two Business Clearance Memo. at 29-30. As permitted by the terms of the solicitation, the agency then engaged in exchanges with only Blue Glacier to address remaining issues, including both non-price and price issues. *Id.* at 31-32; TORFP at 69. Specifically, the agency requested Blue Glacier clarify the specific systems to which some of its proposed labor category personnel would be assigned, as well as requesting the awardee correct inconsistencies between two proposed salaries and the awardee’s price exhibit. AR, Tab 21, Phase Two Business Clearance Memo. at 33-34. The agency also requested minor updates to the awardee’s proposed level of effort for a couple of labor categories. *Id.* at 33; Supp. COS at 3. The agency also requested additional clarifying information regarding the awardee’s OCI mitigation plan.¹⁴ AR, Tab 21, Phase Two Business Clearance Memo. at 34. As a result of these exchanges, Blue Glacier’s final pricing increased from \$54,412,866 to \$55,425,957. *Id.* at 35.

We find, on these facts, that the protester’s arguments provide no basis for our Office to object to the agency’s exchanges with Blue Glacier. The agency identified Blue Glacier as the best-suited offeror and, consistent with the express terms of the solicitation, communicated with only Blue Glacier to identify the remaining issues with its proposal, including non-price and price concerns. The agency’s actions in this regard were thus consistent with the terms of the solicitation, and to the extent IBSS Corporation challenges the scope of the exchanges permitted by the solicitation for this FAR subpart 8.4 procurement, its protest is untimely. See *CSRA LLC*, B-417635 *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 7 (finding a challenge to the scope of agency’s exchanges couched as a challenge to the adequacy of exchanges to be untimely, because the solicitation advised offerors as to the scope of exchanges).

We also find the protester’s argument that the agency should have compared Blue Glacier’s revised pricing after exchanges to other offerors’ initial pricing to be untimely. In this regard, the TORFP unambiguously stated that the agency intended to identify a best-suited offeror, *i.e.*, the “apparent successful offeror.” TORFP at 69. The solicitation reserved the agency the right to conduct exchanges with only the best-suited

¹³ The protester has not challenged the agency’s selection of Blue Glacier as the best-suited offeror, rather, it has only challenged the conduct of exchanges, and the agency’s overall best-value determination.

¹⁴ We further discuss the agency’s consideration of the awardee’s revised OCI mitigation plan below.

offeror, and provided that the exchanges could “address remaining issues” to include price issues, and “finalize a [task order] with that Offeror.” *Id.* The solicitation further explained that if the agency and best-suited offeror could not successfully address any remaining issues through those exchanges, the agency “reserve[d] the right to communicate with the next best-suited [o]fferor based on the original analysis and address any remaining issues.” *Id.* The protester was therefore aware, from the terms of the solicitation, that the agency would identify a best-suited offeror, and potentially conduct exchanges with that offeror, but that there would be no further comparison of that offeror’s proposal against the other offerors. Accordingly, the protester was required to raise this protest ground prior to the due date for receipt of proposals. See *CSRA LLC, supra*.

Blue Glacier’s OCI Mitigation Plan

IBSS Corporation challenges the agency’s evaluation of Blue Glacier’s OCI mitigation plan in multiple respects. The protester’s arguments stem from the awardee’s proposed use as subcontractors of [SUBCONTRACTOR A] and [SUBCONTRACTOR B].

As background, after issuing the solicitation, the agency determined that there was a potential for OCIs that may arise under this procurement, and accordingly prepared an OCI memorandum for the record and amended the solicitation. COS at 3; AR, Tab 27, OCI Memo. at 3. The contracting officer determined that two existing NOAA contracts included functions that may overlap with the work being solicited in the instant procurement: (1) the agency’s assistant chief information officer--satellites (ACIO-S) security control assessment task order, being performed by [DELETED], and (2) the agency’s operations, maintenance, and sustainment (OMS) indefinite-delivery, indefinite-quantity (IDIQ) contract, being performed by [SUBCONTRACTOR A].¹⁵ AR, Tab 27, OCI Memo. at 3.

The contracting officer’s memorandum explained that the instant procurement “requires quality assurance (QA) and closure of [p]lan of [a]ction [and] [m]ilestones [POA&M]” using an agency specific tool under work assignment 1 of the PWS, but that high-level POA&Ms are also reviewed under the ACIO-S task order currently being performed by [DELETED]. *Id.* at 4. The agency also observed there was overlap in the security, test, and evaluation portion of the instant procurement with the ACIO-S task order. *Id.* Finally, the contracting officer noted “multiple areas of overlap” between the current procurement and the OMS IDIQ contract, which were included in an appendix to work assignment 1 of the PWS in the current solicitation. *Id.*

Accordingly, the contracting officer added OCI mitigation requirements to the terms of the solicitation concerning the specific potential OCIs identified. The amended TORFP required offerors to “identify and avoid, neutralize, or mitigate any subcontractor

¹⁵ The awardee’s other proposed subcontractor, [SUBCONTRACTOR B], is a subcontractor to [SUBCONTRACTOR A] on the OMS IDIQ contract. AR, Tab 16, Blue Glacier Revised Proposal at 105.

organizational conflict prior to award of the contract to the satisfaction of the [c]ontracting [o]fficer.” TORFP at 29. Offerors were required to submit OCI mitigation plans if they identified a potential OCI, and the agency specifically advised that the ACIO-S task order and the OMS IDIQ contract could be sources of impaired objectivity OCIs. *Id.* at 59-60. The contracting officer, however, did not determine it was necessary to preclude certain firms from performing in any capacity under the contract that was to be awarded in the current procurement. See AR, Tab 27, OCI Memo. at 4-5.

The Blue Glacier CTA proposed to use [SUBCONTRACTOR A] and [SUBCONTRACTOR B], the firms performing under the OMS IDIQ contract, as subcontractors for this procurement. See, e.g., AR, Tab 10.b, Blue Glacier Initial Proposal Vol. II at 3. In accordance with the terms of the solicitation, Blue Glacier submitted an OCI mitigation plan in which it identified three potential OCIs due to the work of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] under the OMS IDIQ contract, and pledged to take the following mitigative action: (1) require [SUBCONTRACTOR A] and [SUBCONTRACTOR B] to notify the prime contractor of specific systems for which it cannot review work; (2) have the prime contractor perform an independent review of all deliverables and reviews prepared by [SUBCONTRACTOR A] and [SUBCONTRACTOR B]; and (3) require [SUBCONTRACTOR A] to firewall certain staff members through direct reporting to the prime contractor, and, in the event a firewall was not possible, eliminate the [SUBCONTRACTOR A] or [SUBCONTRACTOR B] staff members from working on the task area in question. AR, Tab 16, Blue Glacier Proposal Vol. VII at 105-106.

NOAA reviewed Blue Glacier’s OCI mitigation plan and found that the plan proposed a “reasonable approach.” AR, Tab 21, Phase Two Business Clearance Memo. at 32. However, as part of its exchanges with the best-suited offeror, the agency asked Blue Glacier to “directly map[]” its mitigation strategies to the specific OCI identified and further provide a “more detailed/definite mitigation action” regarding its firewall. *Id.* Additionally, the agency requested that the awardee “remove [SUBCONTRACTOR A] and [SUBCONTRACTOR B]” from certain roles associated with the centralized program support and security architecture and evaluation tasks, emphasizing that it was the role, and not the specific personnel assigned to that role, that raised concerns. *Id.* at 32-33. The agency stated that for four specific proposed personnel performing these functions who were initially proposed as either [SUBCONTRACTOR A] or [SUBCONTRACTOR B] employees, the awardee should have prime contractor personnel, as opposed to subcontractor personnel, performing in these roles. *Id.* at 33.

Blue Glacier responded to NOAA’s requests by adding more detail to its OCI mitigation plan. For example, the awardee identified which of its OCI mitigation strategies applied to each of the three OCIs it had previously identified. In response to the agency’s request to remove [SUBCONTRACTOR A] and [SUBCONTRACTOR B] from certain roles, Blue Glacier also provided that for tasks relating to the security architecture and engineering function, it would “ensure that all [] staff will be Blue Glacier or [Reston Consulting] employees,” and that this “mitigation strategy will allow independent review

of OMS architecture plans originated by [SUBCONTRACTOR A] or [SUBCONTRACTOR B].” AR, Tab 16, Blue Glacier Proposal Vol. VII at 107. In the corresponding section of its technical/management approach volume, the awardee revised its proposal to show that the individual performing the security architecture and engineering function, who was previously listed as a [SUBCONTRACTOR A] employee, would now be a Blue Glacier employee. *Id.* at 64. The awardee made similar changes to other areas of its proposal under other affected tasks, including tasks involving quality assurance review of POA&Ms. *See id.* The agency concluded the “revised OCI [m]itigation plan submitted by [Blue Glacier] . . . sufficiently addressed the [g]overnment’s concerns,” explaining that the “mitigation strategies proposed by [Blue Glacier] are sufficiently identified and appropriately mitigate the conflicts of interest identified.” AR, Tab 21, Phase Two Business Clearance Memo. at 34.

The protester argues that the awardee’s revisions to its OCI mitigation plan did not fully respond to the agency’s requests for clarifying information during exchanges and did not effectively mitigate the OCI relating to the use of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] as subcontractors, as the agency had concluded. Comments & 2nd Supp. Protest at 18-20. The protester also argues that due to changes in the awardee’s OCI mitigation plan, the agency was required to reevaluate the awardee’s proposal under the demonstrated prior experience and past performance evaluation factors, due to the “significant reduction in role that [SUBCONTRACTOR A] and [SUBCONTRACTOR B] would be playing” as a result of the changes to the OCI mitigation plan. *Id.* at 27.

NOAA argues that it properly assessed any potential OCI relating to Blue Glacier’s proposed use of [SUBCONTRACTOR B] and [SUBCONTRACTOR A] as subcontractors. The agency contends that the protester’s OCI allegations are factually inaccurate, because many of the functions the protester alleges are implicated by use of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] and their work on the OMS contract are actually performed by the ACIO-S task order holder, [DELETED]. MOL at 15. In any event, the agency contends that, for the areas of contract performance that could involve an OCI, the awardee’s proposal and responses during exchanges were sufficient to mitigate any potential OCI. *Id.* at 18-19. Lastly, the agency argues that the record demonstrates it considered other areas of the awardee’s proposal that may possibly have been implicated by revisions to the awardee’s OCI mitigation plan. To this end, the agency maintains that even though the mitigation plan precluded [SUBCONTRACTOR A] and [SUBCONTRACTOR B] from working on certain functions, the subcontractors would still perform a number of functions and play a “substantial role in contract performance” and therefore the demonstrated prior experience and past performance evaluation ratings were reasonably left in place. Supp. MOL at 12-13.

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); *URS Fed. Servs. Inc.*, B-417643.2, B-417643.3, Feb. 24, 2020, 2020 CPD ¶ 75 at 4. The concern in such situations is that a firm’s ability to render impartial advice to the government will be undermined by its relationship to the product or service being

evaluated. *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. The primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR 9.504. Once an agency has given meaningful consideration to whether an OCI exists, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. *DV United, LLC*, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

Based on our review of the record, we find no basis to disturb the agency's conclusions regarding Blue Glacier's OCI mitigation plan. The record demonstrates that throughout the procurement process, as early as the proposal solicitation phase, the contracting officer was aware of the potential for OCIs, as well as the potential need to require offerors to propose OCI mitigation plans. Where the awardee's proposed mitigation plan lacked detail, or was unclear to the agency, the agency requested additional clarifying information that the record demonstrates the awardee provided; for example, the awardee mapped its OCI mitigation strategies to the specific OCI it identified, and provided greater detail regarding its use of a firewall for the potentially conflicted subcontractor employees. See AR, Tab 16, Blue Glacier Proposal Vol. VII at 107. Furthermore, the awardee also complied with the agency's request to remove certain subcontractor employees from certain roles. See *id.* at 64.

IBSS argues that the awardee's proposed mitigation strategies in removing [SUBCONTRACTOR A] and [SUBCONTRACTOR B] from certain roles, and the agency's evaluation thereof, are unreasonable, because the awardee in part merely "re-badg[ed]" employees. Comments & 2nd Supp. Protest at 18. By way of explanation, the protester states that, for the four individuals the agency expressed concern with, the awardee simply changed the company that employed each individual. IBSS contends that this was insufficient to mitigate a potential OCI for two reasons: (1) there existed a possibility that those individuals could be evaluating their own work, even as newly "badged" prime contractor employees, if performance under the current contract involved reviewing work these employees "performed while in the employ of [SUBCONTRACTOR A]/[SUBCONTRACTOR B]"; and (2) because of the "reality that the prime-sub[contractor] relationship does not totally absolve the possibility that Blue Glacier will be influenced in its work by its business relationship with [SUBCONTRACTOR A]/[SUBCONTRACTOR B]." Comments & 2nd Supp. Protest at 19; see Protester Resp. to GAO Req. for Addl. Briefing at 5-6 (arguing that the agency failed to consider the "close contractual relationship" between prime and subcontractor here, and instead performed only "the most cursory of OCI analyses").

Our Office requested NOAA respond to these specific arguments in a supplemental briefing. In response, the agency reiterates that some of the work the protester contends would result in a conflict due to the use of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] as subcontractors is actually performed under the ACIO-S contract by [DELETED], and therefore poses no conflict at all. Agency Resp. to GAO Req. for Addl. Briefing at 3-4. The agency also argues that the protester's contention that the "rebadged" individuals could be auditing their own work from their time as

employees of [SUBCONTRACTOR A]/[SUBCONTRACTOR B] is factually inaccurate, because, in fact, none of the four individuals were previously [SUBCONTRACTOR A] or [SUBCONTRACTOR B] employees. *Id.* at 4. Rather, the individuals worked for the incumbent contractor or one of its subcontractors, which were not affiliated with [SUBCONTRACTOR A] or [SUBCONTRACTOR B]. *Id.*

In response to the agency's argument, IBSS concedes that these four individuals were not previously [SUBCONTRACTOR A] or [SUBCONTRACTOR B] employees. Protester Resp. to GAO Req. for Addl. Briefing at 2. IBSS instead focuses on its argument that it is the contractual relationship between Blue Glacier and its subcontractors that creates the problem here because Blue Glacier would not be able to be objective if it is in a position to review work that [SUBCONTRACTOR A] or [SUBCONTRACTOR B] performed on the OMS contract. *Id.* In this regard, IBSS asserts that "the [a]gency should have never let the OMS [c]ontract incumbents anywhere near the instant contract and certainly not under the totally ineffective OCI mitigation terms that Blue Glacier proposed." *Id.* at 3.

Based on our review of the record, we find the protester's argument that the use of [SUBCONTRACTOR A] or [SUBCONTRACTOR B] employees in any capacity for this procurement is unreasonable due solely to the "contractual relationship" between prime and subcontractor and [SUBCONTRACTOR A]'s work under the OMS IDIQ contract to be without merit. As explained above, the agency investigated the potential for OCIs regarding this procurement during the solicitation phase. After the contracting officer completed the investigation, the solicitation was amended to specifically identify the OMS IDIQ contract as creating a potential OCI, and required offerors who identified an OCI relating to this contract (or others) to submit an OCI mitigation plan. The solicitation did not state that the contractors who performed the OMS IDIQ contract were precluded from performing on this procurement.

Contrary to the protester's argument that the nature of the prime-subcontractor relationship should preclude [SUBCONTRACTOR A] or [SUBCONTRACTOR B] from performing under this contract in any capacity, our Office has found that the use of a firewall may, depending on the circumstances, be sufficient to mitigate a potential impaired objectivity OCI; this holds true whether the potential OCI involves the prime contractor, or a proposed subcontractor. *See Business Consulting Associates, LLC*, B-299758.2, Aug. 1, 2007, 2007 CPD ¶ 134 at 10. Such a mitigation approach usually involves subcontracting or transferring work to a separate entity and establishing a firewall around the impaired entity. *Id.* Here, the protester proposed firewalling [SUBCONTRACTOR A] personnel from performing certain tasks, or, in the event that a firewall was insufficient or not possible, removing [SUBCONTRACTOR A] from those tasks entirely. The agency explains that given the alleged OCIs related to only some tasks for this procurement, representing a "limited set of functions," the use of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] personnel in other task areas that are not implicated by a potential OCI is entirely reasonable. Supp. MOL at 12. We find no basis to disturb that conclusion and additionally find no basis to conclude that [SUBCONTRACTOR A] or [SUBCONTRACTOR B] should have been precluded from

performing under the contract entirely, where the record demonstrates the agency conducted a thorough and reasonable OCI analysis. See *URS Fed. Servs. Inc., supra* at 6 (finding reasonable an agency's OCI determination that a conflicted subcontractor could still perform the contract under task areas not related to those implicated by the OCI).

Finally, we find IBSS Corporation's argument that NOAA failed to reevaluate Blue Glacier's proposal under the demonstrated prior experience and past performance factors due to changes implicated by the awardee's revised OCI mitigation plan to be meritless. First, the record demonstrates that the agency did consider other aspects of the awardee's proposal that were implicated by the revised mitigation plan. See, e.g., Tab 20, Revised Phase Two TET Workbook at 6 (noting that the awardee made, and the agency considered, changes to the technical/management approach volume of its proposal by revising its OCI mitigation plan). The agency also concluded, following its consideration of Blue Glacier's revised proposal, that any phase one or phase two finding not affected by exchanges was still relevant to the awardee's ratings. AR, Tab 21, Phase Two Business Clearance Memo. at 35.

Moreover, the agency explains that the awardee's prior experience rating would remain the same, because [SUBCONTRACTOR A] and [SUBCONTRACTOR B] will still play a significant role under the current contract. Specifically, the agency provides that notwithstanding the removal of subcontractor personnel for a few tasks, [SUBCONTRACTOR A] and [SUBCONTRACTOR B] will provide [DELETED] out of [DELETED] information systems security officers and [DELETED] out of [DELETED] systems analysts under work assignment 1 of the PWS, in addition to providing five out of seven systems engineers for the security management center under work assignment 2 tasks not impacted by the potential OCI. In short, the protester's argument is undercut by the demonstrated fact that [SUBCONTRACTOR A] and [SUBCONTRACTOR B] would not have a significantly "reduced role" due to changes to the OCI mitigation plan, but rather, these subcontractors would still be playing a meaningful role in performance in areas for which there is no conflict.

In any event, IBSS Corporation's argument that the reduced roles of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] would have affected Blue Glacier's ratings under the demonstrated prior experience and past performance factors assumes that the ratings of high confidence under both these factors was largely due to the prior performance examples reflecting [SUBCONTRACTOR A] or [SUBCONTRACTOR B] work; however, this is contradicted by the record. For example, under the past performance factor, Blue Glacier submitted three contract examples, only two of which were found to be relevant in size. AR, Tab 13, Phase Two TET Workbook at 36. One of the examples was from Reston Consulting, which the agency ultimately concluded "increased confidence" that the awardee will perform as required. *Id.* at 37. The other example, which was from [SUBCONTRACTOR A], was determined by the agency to be "less relevant and neither increases or decreases [g]overnment confidence." *Id.* Therefore, the underlying basis of the protester's argument is flawed--the past performance of [SUBCONTRACTOR A] and [SUBCONTRACTOR B] did not

materially impact the awardee's rating under this factor, and any changes to the awardee's proposal resulting from changes to the OCI mitigation plan with respect to these subcontractors would thus not have had an impact on this rating.

Similarly, under the demonstrated prior experience factor, Blue Glacier submitted six examples to demonstrate it met the requirements of the solicitation. At least four of these examples were submitted by either Blue Glacier or Reston Consulting, and for each of those four examples, the agency found the example "increases the [g]overnment's confidence [Blue Glacier] can successfully perform the contract requirements." AR, Tab 12, Phase 1 TET Workbook at 20. Only one example was submitted from [SUBCONTRACTOR A], which the agency also found to increase its confidence that Blue Glacier could successfully perform the contract. Accordingly, the protester has not demonstrated that the awardee's demonstrated prior experience rating would have decreased because of any reduced role [SUBCONTRACTOR A] may have as a result of the OCI mitigation approach.

Overall, the record demonstrates that NOAA reasonably evaluated Blue Glacier's proposed OCI mitigation plan and considered other aspects of Blue Glacier's proposal that may have been implicated by changes to the awardee's OCI mitigation plan. Accordingly, these protest grounds are denied.

RECOMMENDATION

As explained above, we conclude that NOAA failed to reasonably evaluate Blue Glacier's total compensation plan under the staffing plan evaluation factor in accordance with FAR provision 52.222-46, specifically failing to explain how it concluded that the awardee's proposed lower compensation levels as compared to the predecessor contract were reasonable and sufficient to recruit and retain personnel. We further conclude that IBSS Corporation was competitively prejudiced by these evaluation errors, because the agency's flawed evaluation of the awardee's proposal, in part, resulted in the agency's selection of Blue Glacier as the best-suited offeror.

We recommend that the agency reevaluate proposals under the staffing plan factor in accordance with FAR provision 52.222-46 and adequately document its conclusions in a manner consistent with our decision. To the extent the agency's reevaluation results in the identification of a new best-suited offeror, we recommend that the agency proceed with exchanges with this offeror, to the extent necessary, consistent with the terms of the solicitation, and then make a new best-value determination. Finally, we recommend that IBSS Corporation be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1).

IBSS Corporation should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

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

Edda Emmanuelli Perez
General Counsel