



Decision

Matter of: Castro & Company, LLC

File: B-423689

Date: November 13, 2025

Gabriel Fry, Castro & Company, LLC, for the protester.
Amber N. Smith, Esq., Steve N. Hajjar, Esq., Jean Mauss, Esq., and Raeed N. Tayeh, Esq., Federal Election Commission, for the agency.
Uri R. Yoo, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest alleging that agency failed to consider unmitigable organizational conflict of interest (OCI) is sustained where the agency failed to document its consideration of an apparent OCI arising from the awardee's role providing a contract specialist in the agency's procurement office.
 2. Protest challenging reasonableness of agency's technical evaluation is sustained where the evaluation of the protester's quotation under the technical approach factor was unsupported by the record and inadequately documented.
 3. Protest challenging agency's best-value tradeoff decision is sustained where the agency's tradeoff analysis did not include any documented rationale for not considering the protester's lowest-priced quotation.
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DECISION

Castro & Company, LLC, a small business of Alexandria, Virginia, protests the establishment of a blanket purchase agreement (BPA) with Contracts Management Enterprises, LLC (CME), a small business of Leesburg, Virginia, under request for quotations (RFQ) No. 9531BP25Q0010, issued by the Federal Election Commission (FEC) for financial management and accounting support services. The protester alleges that the awardee has an unmitigable organizational conflict of interest (OCI) that precludes it from award. The protester also challenges the agency's evaluation of the protester's technical quotation and the best-value tradeoff decision.

We sustain the protest.

BACKGROUND

The FEC is charged with preventing corruption in the federal election campaign process by administering, enforcing, and formulating policy with respect to the Federal Election Campaign Act of 1971. Contracting Officer's Statement (COS) at 1. In support of this statutory mandate, the finance division of the agency's Office of the Chief Financial Officer (OCFO) provides budgetary, accounting, and financial reporting support. *Id.* To accomplish its mission, the OCFO requires financial management and accounting support services, which were previously provided under a predecessor BPA that expired in June 2025. *Id.*

The agency issued the solicitation on April 25, 2025, by providing the RFQ *via* email to seven potential vendors.¹ *Id.* The solicitation was issued as a total set-aside for small businesses and anticipated the establishment of a single award BPA for a 1-year base period with four 1-year option periods. Agency Report (AR), Exh. 3, RFQ at 7, 15.² The solicitation provided for award on a best-value tradeoff basis considering three factors: (1) technical approach; (2) price; and (3) past performance. *Id.* at 33. For tradeoff purposes, technical approach would be significantly more important than price, and price would be more important than past performance. *Id.* The solicitation informed vendors that the agency may "accept other than the lowest priced or highest technically rated offer and may reasonably determine that the [o]fferor with the highest rated in non-price factors is the best value." *Id.* at 36.

Under the technical approach factor, vendors were required to submit a quotation that addresses section 3 of the statement of work (SOW) and "effectively demonstrates the [o]fferor's clear understanding of all the tasks and how the approach is likely to yield the required results." *Id.* at 32. In this regard, vendors were directed to demonstrate their understanding of the tasks to be performed, "as well as the technical approach and methodology and flexibility that will be utilized" in accomplishing the requirement. *Id.* The proposed methodology was to include: technical expertise as it related to the

¹ While the solicitation's standard form 1449 marked the solicitation type as an RFQ, all other parts of the solicitation refer to it as a "Request for Proposal (RFP) for a single award [BPA] in accordance with FAR Part 12 Acquisition of Commercial Items in conjunction with FAR Part 15 Contracting by Negotiation." See AR, Exh. 2, Initial RFQ at 1-2. In turn, the agency report refers to the solicitation as both a "Request for Proposal ("RFP")" and a "Request for Quotations ("RFQ" or "RFP") . . . [issued] in accordance with FAR Part 15.203(c)." See Memorandum of Law (MOL) at 1, 2. For consistency, and noting that FAR part 15 does not provide for the establishment of BPAs, we refer to the solicitation here as an RFQ.

² The solicitation was amended once. Unless otherwise noted, citations to the solicitation are to the amended version of the RFQ provided in exhibit 3 of the agency report. Citations to agency report documents are to the exhibit page numbers assigned by the agency.

requested service; application of government standards; quality control process; timeliness; and business relations. *Id.*

As relevant here, vendors were required to “address all aspects of the technical requirements” and to “provide sufficient detail to enable the Government to thoroughly evaluate the [o]fferor’s ability to satisfy the requirement specified” in the SOW. *Id.* at 31. The solicitation advised that “[s]imple statements of compliance (*i.e.* ‘understood,’ ‘will comply’) without a detailed description of how compliance will be achieved will not be considered sufficient evidence that the proposed services can technically meet the requirements.” *Id.*

The agency received seven timely quotations, including those from Castro and CME. COS at 3. The agency evaluated the quotations of Castro and CME as follows:

	Castro	CME
Technical Approach	Marginal	Outstanding
Past Performance	Moderate Confidence	High Confidence
Price	\$1,793,354	\$1,831,111

AR, Exh. 9, Summary of Award at 3-4.

Castro’s rating of marginal under the technical approach factor reflected the technical evaluation team’s (TET) assessment of one strength, one weakness, and two deficiencies.³ AR, Exh. 7, Castro Consensus Evaluation at 1-3. In assessing one strength, the TET noted that Castro’s quotation included “planning to create a tracking spreadsheet for [prepared-by-client (PBC)] items, rigorously review items for accuracy and completeness before submission, and communicate with the auditors to address questions and potential delays.” *Id.* at 2. For this strength, the TET added that Castro “commit[ted] to providing other audit support as needed, indicating a comprehensive approach to meeting audit requirements.” *Id.* The TET also assessed one weakness for “fail[ing] to provide the specific details and timeline details as required by the SOW,” and one of two deficiencies for “lack[ing] a structured response that aligns with the task outlined in the [SOW] . . . which made it difficult to verify full compliance.” *Id.* at 1-2. A second deficiency was assessed based on a finding that Castro’s “key personnel experiences lack audit PBC management, and some main financial management

³ The agency was to assign adjectival ratings of outstanding, good, marginal, or unacceptable to quotations under the technical approach factor. RFQ at 34. As relevant here, the RFQ defined the rating of “marginal” as follows: “[Quotation] does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The [quotation] has one or more weaknesses that are not offset by strengths. Risk of unsuccessful contract performance is high.” *Id.* The rating of “outstanding” was defined as follows: “[Quotation] meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.” *Id.*

tasks.” *Id.* at 2-3. The TET concluded that Castro’s technical approach warranted a rating of marginal and summarized its rationale as follows:

The [quotation] fails to provide the specific details, including timeline details, and lacks a structured response that aligns with the task outlined in the [SOW] section 3.0 requirements, which made it difficult to verify full compliance. Key personnel is lacking some important key skills as identified above.

Id. at 3-4.

The contracting officer performed a tradeoff analysis among “all offerors considered for award,” considering non-price and price evaluations, and concluded that CME’s “highest rated . . . but . . . not the lowest priced” quotation represented the best value to the government for this requirement. AR, Exh. 9, Summary of Award at 5. As relevant here, the documented tradeoff analysis did not include any discussion of Castro’s quotation. *Id.*

On June 17, the agency notified Castro of the selection decision. COS at 4. After requesting and receiving a debriefing, Castro filed this protest with our Office.

DISCUSSION

Castro asserts that the agency failed to meaningfully consider an impermissible OCI arising from CME’s ongoing role providing acquisition support services to the FEC’s OCFO, which requires CME personnel to work alongside, and closely with, the source selection authority for this procurement. Protest at 6-8; Comments at 3-4. The protester also contends that the agency’s evaluation of Castro’s technical approach was inconsistent with the solicitation, unreasonable, and inadequately documented. Protest at 8-12; Comments at 4-5. Finally, the protester argues that the agency’s best-value tradeoff decision was flawed. Protest at 12.

As discussed below, we find that the agency’s OCI analysis was unreasonable and inadequately documented. We also find that the agency’s technical evaluation and tradeoff analysis were not adequately documented to permit our Office to assess their reasonableness. Therefore, we sustain the protest on these bases.

In reviewing protests of an agency’s evaluation and source selection decision, our Office will not reevaluate quotations; rather, we review the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria, and applicable procurement laws and regulations. See *NCI Info. Sys., Inc.*, B-412870.2, Oct. 14, 2016, 2016 CPD ¶ 310 at 11. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency’s conclusions are inconsistent with the solicitation’s evaluation criteria, undocumented, or not reasonably based. *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5.

Impaired Objectivity OCI

Castro argues that the agency failed to consider CME's unmitigated impaired objectivity OCI.⁴ Protest at 6-8. In this regard, the protester contends that, under CME's task order to provide acquisition support to OCFO, CME's employee works as a contract specialist in close proximity with the contracting officer for this procurement. *Id.* The protester argues that this creates the appearance of an impaired objectivity OCI that cannot be mitigated by the separation of duties or implementation of a firewall. *Id.*

As additional background, in July 2023, the agency issued an order to CME, under the firm's Federal Supply Schedule contract, to provide acquisition support services for OCFO's procurement division. COS at 1; see Contract Summary: FEC Delivery Order to CME, USASpending, https://www.usaspending.gov/award/CONT_AWD_9531BP23_F0023_9506_47QRAA22D00E4_4732 (last visited Sept. 17, 2025). Under that delivery order, CME provides contractor personnel as contract specialists to support the agency's procurement officials. *Id.* As relevant here, a CME contract specialist provides direct support to the contracting officer who in turn was the source selection authority for the instant procurement. Protest at 7; see Protest Exh. 7, Contracting Officer's (CO) Automatic Email Reply at 1.

In response to the protest, the contracting officer, who also serves as the acting director of procurement within OCFO⁵, attests that she "considered whether prior contracts with CME created a conflict of interest" prior to initiating the instant procurement. COS at 1. In this regard, the contracting officer states that she determined that CME's acquisition support work "may create a conflict of interest or the appearance of a conflict of interest" and, "in an abundance of caution," decided to take steps to safeguard the solicitation process. *Id.* at 1-2. These steps included: (1) creating a "firewall" to ensure that the CME contractor was "not involved in this procurement and had no access to proprietary or source selection information"; (2) directing all quotation materials to be sent and secured only in the contracting officer's own email account to create a "data silo"; and (3) ensuring that no solicitation materials were uploaded to any shared drives before

⁴ 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. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. 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); *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 6; *C2C Innovative Sols., Inc.*, B-416289, B-416289.2, July 30, 2018, 2018 CPD ¶ 269 at 8.

⁵ The FEC's OCFO is comprised of three divisions: budget; finance; and procurement. See FEC Organizational Chart, <https://www.fec.gov/about/leadership-and-structure/fec-offices/> (last visited Sept. 24, 2025). The requirement at issue in this procurement is for support services for OCFO's finance division. COS at 1.

award. *Id.* at 2. The contracting officer adds that she only used email to share quotation information with the TET and also informed the TET of safeguarding procedures through the technical evaluation memorandum. *Id.*; see AR, Exh. 12, CO Email to TET, May 8, 2025, at 1.

The FAR requires contracting officials to identify and evaluate OCIs as early as possible, and to avoid, neutralize, or mitigate significant potential conflicts so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable or unsupported by the record. *C2C Innovation Sols., Inc., supra* at 7; see *NCI Info. Sys., Inc., supra* at 12. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *DRS Tech. Servs., Inc.*, B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 11. A protester must also 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. *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. Once it has been determined that an actual or potential OCI exists, the protester is not required to demonstrate prejudice; rather, harm from the conflict is presumed to occur. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 305 at 7.

Because the agency report did not include any contemporaneous documentation of the contracting officer's OCI analysis or the implementation of mitigation measures--nor any indication that the agency conducted additional investigation or analysis in response to the protester's OCI allegation--our Office requested that the agency provide any existing documentation of the FEC's OCI analysis or implementation of a mitigation plan. See Notice of Req. for Add'l Documents at 1. The agency responded by providing email communications with the TET about the agency's evaluation procedure (purporting to show that the CME employee was not an addressee for these emails), and standard instructions to the TET not to discuss the procurement with anyone other than the evaluation team and the contracting officer. See *generally*, AR, Exhs. 12-15. The agency's response did not include any documentation, contemporaneous or otherwise, evidencing the agency's investigation or consideration of the alleged OCI arising from CME's performance under its acquisition support task order.

Nevertheless, the agency argues that CME did not have an impermissible OCI and that the contracting officer's actions in conducting the procurement sufficiently mitigated any potential OCI concerns. MOL at 9-12. In this regard, the agency contends that the protester has not met its burden to present "hard facts" indicating the existence or potential existence of an OCI, but instead bases its OCI allegation on unsupported speculation. *Id.* We disagree.

In our view, the situation here presents sufficient hard facts to demonstrate the existence of, or potential for, an impaired objectivity OCI. As an initial matter, the protester's OCI allegation is based on the fact that the awardee has a contract to perform an acquisition support function for the same agency office tasked with overseeing CME's performance of this contract. Protest at 7-8; Comments at 4. Indeed, the contracting officer's own account states that her consideration of "whether prior contracts with CME created a conflict of interest" led her to "determine[] that CME's prior contract with FEC may create a conflict of interest or the appearance of a conflict of interest." COS at 1-2. While the contracting officer takes the position that any potential OCI was mitigated by isolating the procurement process from CME personnel, we note that the protester's OCI allegations are not limited to CME's involvement in the instant procurement.⁶ Rather, the protester also alleges that a potential impaired objectivity OCI arises from CME "potentially be[ing] on both sides of the procurement process for each subsequent activity contemplated under the BPA, from task order negotiation to timing to budget availability," as it will be providing both acquisition support and financial support services for the same office under two different contracts. Protest at 7.

Based on our review of the record, we do not find that the contracting officer effectively investigated, considered, or mitigated the impaired objectivity OCI identified by the protester. Instead, the record shows that although the contracting officer identified a potential OCI before initiating the solicitation process, she failed to conduct a meaningful investigation of the alleged OCI or to contemporaneously document her consideration. Indeed, the entirety of the agency's record of its OCI analysis consists of the contracting officer's bare statement that she "considered whether prior contracts with CME created a conflict of interest" and "determined that CME's prior contract with FEC may create a conflict of interest or the appearance of conflict of interest." COS at 1-2. The agency offers no further explanation, however, about what the contracting officer considered in her analysis (e.g., SOWs for the instant BPA and for CME's acquisition support task order), what factors formed the basis of her OCI determination, or how it even related to the alleged impaired objectivity OCI.

⁶ We note that the steps the contracting officer states that she implemented--creating a firewall and ensuring that CME employees did not receive quotation or evaluation information--appear to address an unequal access to information OCI, rather than an impaired objectivity OCI. An unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract, and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR 9.505(b), 9.505-4; *Raytheon Tech. Servs. Co. LLC*, B-404655.4 *et al.*, Oct. 11, 2011, 2011 CPD ¶ 236 at 4. Here, however, the protester does not allege that CME had an unequal access to information OCI; rather, the protester alleges that the agency failed to account for the impaired objectivity OCI created by the potential for CME to be involved with the administration of its own contract. The contracting officer, however, did not distinguish or address this type of OCI when the agency made award to CME or responded to the protest.

Moreover, while our Office has explained that an agency may properly investigate potential OCIs following the receipt of a protest that raises this issue, *see Inquiries, Inc.*, B-418486 *et al.*, May 27, 2020, 2020 CPD ¶ 182 at 12, the record here is devoid of any evidence that the agency conducted such a post-protest investigation or attempted to document any additional explanation of the contracting officer's OCI determination. Because the agency has failed to document its OCI consideration, we have no basis to review whether the contracting officer meaningfully considered the potential impaired objectivity OCI at issue.⁷

Accordingly, since there is nothing in the record documenting that the agency meaningfully considered CME's potential impaired objectivity OCI, we conclude that the agency's actions here were not reasonable and sustain this protest ground.

Technical Approach Evaluation

Castro also contends that the agency failed to evaluate the firm's technical approach in accordance with the solicitation. Specifically, the protester argues that the agency applied unstated evaluation criteria and drew conclusions that were inconsistent with the content of Castro's quotation in assessing one weakness and two deficiencies, which resulted in the quotation receiving a rating of marginal under the technical approach factor.⁸ Protest at 8-12. As discussed below, we find that the agency failed to adequately document aspects of its evaluation of the protester's quotation and, consequently, failed to establish the reasonableness of its evaluation.

⁷ In this regard, when investigating whether a firm's ability to render impartial advice to the government may be undermined by that firm's conflicting duties or interests under another contract, the contracting officer must consider, at a minimum, the work that firm will be performing under the two contracts (*e.g.*, by examining the respective statements of work), and document such consideration. *See DirectViz Solutions, LLC*, B-423366 *et al.*, June 11, 2025, 2025 CPD ¶ 137 at 11-14 (finding that a contracting officer failed to meaningfully consider whether a firm's performance under two separate task orders would impair its ability to provide objective and unbiased services to the agency where the contracting officer's OCI analysis did not include the consideration of overlapping responsibilities under respective performance work statements).

⁸ The protester initially argued that the agency unreasonably assessed a deficiency for Castro's key personnel lacking experience. *See* Protest at 10-12. The agency substantively responded to this argument, *see* MOL at 8, but the protester failed to address the agency's response. *See generally*, Comments. Accordingly, we consider this protest argument to have been abandoned. *See Sterling Med. Assocs., Inc.*, B-419910.3, Jan. 10, 2022, 2022 CPD ¶ 28 at 5 ("Where an agency responds to a protest issue in its report, and the protester does not substantively address the agency's response in its comments on the report, we consider the issue to be abandoned.").

We note that the solicitation here did not define the term "deficiency," and the agency does not argue that the presence of one or more deficiencies rendered Castro's quotation unacceptable or otherwise ineligible for award.

It is a fundamental principle that agencies must evaluate quotations in a manner consistent with the terms of the solicitation and, while the evaluation of vendors' quotations generally is a matter within the procuring agency's discretion, our Office will question an agency's evaluation where it is unreasonable, inconsistent with the solicitation's stated evaluation criteria, or undocumented. See *Guidehouse Inc.*, B-421227.2, B-421227.3, Aug. 26, 2024, 2024 CPD ¶ 202 at 5-6; *Exelis Sys. Corp.*, B-407111 *et al.*, Nov. 13, 2012, 2012 CPD ¶ 340 at 5. Although an agency is not required to retain every document generated during its evaluation of quotations, the agency's evaluation must be sufficiently documented to allow our Office to review the merits of a protest. See *TriCenturion, Inc.; SafeGuard Servs., LLC*, B-406032 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 18. Where an agency fails to document its evaluation or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. *Id.*; see *Verdi Consulting, Inc.*, B-414103.2 *et al.*, Apr. 26, 2017, 2017 CPD ¶ 136 at 10.

In identifying one weakness in Castro's technical approach, the TET found that the quotation "fail[ed] to provide the specific details and timeline details as required by the SOW Section 3.0 Requirements." AR, Exh. 7, Castro Consensus Evaluation at 1. This single sentence, however, comprised the entirety of the TET's documentation of this weakness, without any further elaboration about the missing details or timeline or which specific task under SOW section 3 was missing the required detail or timeline. See *id.*

Castro challenges the assessment of this weakness, arguing that section 3 of the SOW did not require any "timeline details." Protest at 8-9. In this regard, the protester argues that timelines were not provided or required because the solicitation contemplated the establishment of a BPA, under which orders will be issued with a "milestone/ performance schedule" and an "estimate of hours needed" for each particular order. *Id.*; see RFQ at 8. The protester also contends that the weakness was "too vague to assess, and does not appear to describe either a stated evaluation factor or Castro's quotation, which objectively does contain specific details about the work to be performed in the format described" by the solicitation. Protest at 8.

The agency first responds that the protester "cherry-picked" the phrase "timeline details" when the weakness as a whole was assessed for the lack of sufficient detail throughout Castro's quotation. MOL at 6-7. The agency, however, does not offer any other explanation as to why the TET cited to the lack of "timeline details" as part of this weakness. See *id.* As the protester correctly notes though, the SOW did not include any requirement for timelines. See RFQ at 8-12. Further, we note that the single sentence containing the phrase "timeline details" is the only contemporaneously documented basis for the assessment of this weakness. See AR, Exh. 7, Castro Consensus Evaluation at 1. Moreover, the TET repeats this same assessment--that the quotation "fails to provide the specific details, including timeline details"--as part of the

explanation of the marginal rating assigned to Castro's technical approach.⁹ *Id.* at 3. Absent any explanation for this finding of a lack of timeline details, we have no basis to find this aspect of the agency's evaluation reasonable.

The agency further contends that the weakness was warranted because the solicitation instructed vendors to "address all aspects of the technical requirements" and to "provide sufficient detail to enable the Government to thoroughly evaluate the Offeror's ability to satisfy the requirements specified in the [SOW]." MOL at 6; RFQ at 31. Pointing out that "section 3.0 of the solicitation includes at least 40 separate technically oriented requirements under support functions," the agency now asserts that the weakness was assessed because Castro's quotation failed to address all of the requirements "beyond vague assertions that it has expertise and scattered mentions that it will support some of these requirements." MOL at 6-7.

The agency's arguments in this regard, however, merely repeat the TET's generalized conclusion without providing any substantive support in the record, or additional explanation for the finding, that would allow our Office to review the reasonableness of the evaluation. For instance, while acknowledging that Castro asserted expertise to support "some of these requirements," the agency does not give any examples that might shed light on which of the "at least 40 separate" requirements Castro failed to fully address. *See id.* Nor does the agency provide any specific examples of the alleged "vague assertions" made by Castro's quotation.

The protester additionally challenges a deficiency assessed for failing to provide a "structured response." Protest at 9-10. The TET described this deficiency as follows:

Deficiencies: The [quotation] lacks a structured response that aligns with the task outlined in [SOW] section 3.0 requirements, which made it difficult to verify full compliance. This is a potential risk to the government because it leaves uncertainty regarding the [o]fferor's understanding and approach to these critical financial and asset management areas.

AR, Exh. 7, Castro Consensus Evaluation at 2. The protester contends that the FEC's assessment of this deficiency was unreasonable and relied on the application of unstated evaluation criteria. Supporting this argument, the protester first notes that the structure of its technical approach section was organized in "direct alignment" with the support functions outlined in SOW section 3, "using each task as a heading . . . in the same order as the SOW." Protest at 9-10.

The agency responds that the protester again focuses on a "cherry-picked" phrase--this time the phrase "structured response"--and argues that the deficiency "had nothing to

⁹ We note that the solicitation lists "[t]imeliness" (not *timelines*) as an element of the methodology to be addressed in the vendor's technical approach. RFQ at 32. The record confirms that Castro's quotation addressed *timeliness* as part of its technical approach methodology. *See* AR, Exh. 4, Castro Quotation at 12.

do with the organizational structure of Castro's" quotation. MOL at 7. As with the above-discussed weakness, however, the agency again fails to explain what the TET meant--this time when the evaluators described the deficiency as a lack of a "structured response that aligns with the task outlined in the [SOW]." See AR, Exh. 7, Castro Consensus Evaluation at 2. Instead, the agency argues that, notwithstanding the specific words used in the evaluation documentation, the basis for this deficiency was the same as the basis for the previously assessed weakness: a "lack of substantive detail" that made it "difficult to verify full compliance" with the requirements. *Id.*; MOL at 7. While the agency argues that the specific words comprising this evaluative finding are not relevant, we find this position unavailing, especially because the TET repeated those exact words--"lacks a structured response that aligns with the task outlined in the [SOW] section 3.0 requirements"--in documenting its reason for the marginal rating. AR, Exh. 7, Castro Consensus Evaluation at 3-4.

As with the prior weakness, other than repeating the TET's sparse and conclusory remarks, the agency does not offer any additional post-protest explanation about the specific missing detail or the specific requirement that was not complied with. Instead, the agency offers facially incorrect observations about the protester's quotation that cast further doubts on the reasonableness of the agency's assessment. For example, while the agency asserts that "Castro's headings . . . state evaluation factors but do not address the SOW's section 3 requirements," MOL at 7, a simple comparison shows that the subheadings provided in Castro's technical approach mirror the tasks outlined in section 3 of the SOW. Compare AR, Exh. 4, Castro Quotation at 3, with RFQ at 8-9, 32.

In sum, the agency fails to provide a reasonable explanation to support the TET's assessment of a weakness and a deficiency based on the lack of detail in Castro's technical approach. As noted above, an agency that fails to adequately document its evaluation of quotations bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. See *Environmental Chemical Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 14. While an agency's contemporaneous evaluation record is not required to "prove a negative," the agency's explanation--contemporaneous or otherwise--must allow our Office to review whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See *Tech Marine Business, Inc.*, B-420872 *et al.*, Oct. 14, 2022, 2022 CPD ¶ 260 at 6. Where an agency record is not adequate to support the agency's actions, and in the absence of any reasonable explanation for the agency's actions, our Office will be left with no option but to make an adverse inference. See *Walker Dev. & Trading Grp., Inc.*, B-413924, Jan. 12, 2017, 2017 CPD ¶ 21 at 6.

Here, in the absence of an adequate explanation for the agency's adverse findings, we have no basis to conclude that the agency's evaluation was reasonable and sustain the protest on that basis.

Best-Value Tradeoff Analysis

Finally, the protester challenges the agency's best-value tradeoff decision. Specifically, the protester contends that the agency's tradeoff decision was unreasonable because it was based on a flawed and undocumented evaluation. Protest at 12. The protester also argues that, even if the underlying evaluation of Castro's technical approach was reasonable, the tradeoff unreasonably failed to consider Castro's lower-priced quotation. *Id.*

In a best-value tradeoff procurement, it is the function of the source selection authority to perform a tradeoff between price and non-price factors, that is, to determine whether one quotation's superiority under the non-price factor is worth a higher price. See *KPMG LLP*, B-420949, B-420949.2, Nov. 7, 2022, 2022 CPD ¶ 280 at 12. Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider the cost or price to the government in making its selection decision. *Id.* Before an agency can select a higher-priced offer that has been rated technically superior to a lower-priced but acceptable one, the award decision must be supported by a rational explanation of why the higher-rated offer is, in fact, superior, warranting the payment of a price premium. See *Alpha Omega Integration, LLC*, B-419812, B-419812.2, Aug. 10, 2021, 2021 CPD ¶ 302 at 7. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *Id.*

The agency's documented tradeoff decision here shows that the contracting officer compared the price and non-price factors among the three most highly rated quotations, which included the awardee's quotation, but not the protester's. See AR, Exh. 9, Summary of Award at 5. While the contracting officer stated that seven quotations were evaluated and that a "trade-off analysis was performed among all offerors considered for award," the documented tradeoff did not discuss the four quotations (including the protester's) rated marginal under the technical approach factor. *Id.* Notably, neither the contemporaneous documentation of the tradeoff analysis nor the agency's post-protest submissions offer any explanation for the agency's decision to exclude the protester's quotation from the best-value tradeoff.

While the solicitation provided for a source selection based on a best-value tradeoff where the technical approach factor was significantly more important than price, RFQ at 33, the stated tradeoff methodology did not provide that quotations rated marginal under the technical approach factor would be excluded from the tradeoff. In addition, the solicitation did not define a marginal rating as rendering a quotation ineligible for award. *Id.* at 34. Notably, none of the quotations excluded from the tradeoff, including the protester's, were rated as unacceptable under the technical approach factor. See AR, Exh. 9, Summary of Award at 3. We also note that the protester's quotation offered the lowest price of all seven quotations. See *id.* at 4.

Our Office has explained that, when awarding a contract using a best-value tradeoff, an agency cannot eliminate a technically acceptable quotation from consideration without

taking into account the relative cost of that quotation to the government. See *Qbase, LLC, et al.*, B-416377.9 *et al.*, Nov. 13, 2020, 2020 CPD ¶ 367 at 17. Moreover, a source selection authority cannot limit the tradeoff analysis to a comparison of a limited subset of the highest-rated quotations without any qualitative assessment of the technical differences between these quotations and any of the other technically acceptable, lower-priced quotations. See *R&K Enter. Sols., Inc.*, B-419919.6 *et al.*, Sept. 12, 2022, 2022 CPD ¶ 237 at 12.

Because the agency's tradeoff here excluded the protester's technically acceptable and lower priced quotation without offering any explanation for this exclusion, we find the agency's tradeoff decision to be unreasonable and inadequately documented.

CONCLUSION

For the reasons discussed above, we conclude that the agency's OCI determination of CME's quotation was unreasonable and inadequately documented. We also conclude that the agency's documentation of its evaluation of Castro's technical approach and tradeoff decision does not provide our Office with information sufficient to review the reasonableness of the agency's conclusions.

Competitive prejudice is an essential element of a viable protest, and we will only sustain a protest where the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *OGSystems, LLC*, B-417026 *et al.*, Jan. 22, 2019, 2019 CPD ¶ 66 at 18. Here, in light of the agency's unreasonable and inadequately documented OCI review, we find that Castro has established the requisite competitive prejudice as the vendor with a substantial chance of receiving the award in the event CME is disqualified due to an unmitigated OCI.

Moreover, as noted above, the marginal rating assigned to the protester's technical approach was based in part on a weakness and a deficiency for which the agency failed to adequately document its rationale. Here, we cannot say whether a reasonable evaluation of the protester's technical approach would have resulted in a different assessment of the merits of the protester's technical approach. We also cannot say whether the contracting officer would have determined that the underlying merits of the awardee's technical approach justified the payment of a price premium under a properly considered and documented tradeoff analysis. Under such circumstances, we resolve any doubts regarding prejudice in favor of the protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *KPMG LLP, supra* at 14.

RECOMMENDATION

We recommend that the FEC, consistent with our decision, meaningfully investigate, consider, and document whether CME has an OCI arising from its performance of the agency's acquisition support task order. In the event the agency identifies an OCI, it should either: (1) determine what actions would be appropriate to avoid, neutralize, or mitigate the identified OCI; or (2) determine that a waiver of the identified OCI would be

appropriate. We also recommend that the agency reevaluate Castro's quotation, consistent with this decision, and make a new source selection determination based on that reevaluation, adequately documenting the reevaluation and selection decision.

In addition, we recommend that the protester be reimbursed for its costs of filing and pursuing the protest. 4 C.F.R. § 21.8(d). The protester's certified claims for such costs, detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

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General Counsel