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Decision

Matter of: Island Creek Associates, LLC

File: B-423301.3

Date: December 5, 2025

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Craig A. Holman, Esq., Amanda J. Sherwood, Esq., and Dustin Vesey, Esq., Arnold & Porter Kaye Scholer LLP, for StraCon Services Group, LLC, the intervenor.

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Michael Willems, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request to dismiss post-award protest alleging that the awardee through its subcontractor has unmitigable organizational conflict of interests as untimely is denied where the agency had not conclusively communicated to offerors that the subcontractor was eligible to participate prior to the receipt of proposals.
 2. Protest challenging alleged conflicts are denied where the agency's investigation reasonably concluded either that no conflicts existed or that any conflicts were adequately mitigated, and the investigation gave meaningful consideration to all alleged conflicts.
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DECISION

Island Creek Associates, LLC, a small business of Saint Leonard, Maryland, challenges the issuance of a task order to StraCon Services Group, LLC, a small business of California, Maryland, pursuant to request for proposals (RFP) No. N0042123R3014, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR) under the Seaport NxG multiple award contract (MAC) seeking program management contractor support services for the Navy's multi-mission helicopter program office. Island Creek alleges that StraCon should be disqualified from award because one of its subcontractors, Precise Systems, Inc., has multiple unmitigatable organizational conflicts of interest (OCIs) as well as a personal conflict of interest.

The protest is denied.

BACKGROUND

The agency requirements at issue in this procurement are currently being performed through an incumbent contract held by Precise, and for which Island Creek is a subcontractor. Memorandum of Law (MOL) at 6. That contract was awarded in 2018, and as part of their performance of that contract both Precise and Island Creek have access to the agency's Acquisition Management System (AMS) software tool, which contains proprietary information related to various agency acquisitions. *Id.* Relevant to this protest, Precise developed the AMS tool and maintains it under a separate contract that began in 2017. *Id.* Of note, the 2018 incumbent contract for the instant requirements included a list of firms that had OCIs, and Precise was not included on the OCI list for the 2018 contract. *Id.*

On February 1, 2024, the agency issued the RFP at issue in this protest as a small business set-aside. Agency Report (AR), Tab 3, RFP at 88, 131.¹ Following 11 amendments, the solicitation set April 25, 2024, as the date for receipt of proposals. *Id.* at 100. Of note, the RFP also included a list of firms that the Navy had assessed as having OCIs, and Precise was not included on that list. AR, Tab 3.3, OCI List at 215-217. On April 10, 2024, Island Creek filed a bid protest at the United States Court of Federal Claims (COFC) challenging an unrelated procurement action. In that case, however, Island Creek alleged that the head of the procuring activity (Mr. X), which is the same procuring activity for the procurement at issue in this protest, had a personal conflict of interest because he was married to a program manager at Precise (Ms. Y), and that the agency had impermissibly taken various procurement actions designed to give Precise an advantage due to that conflict. *Island Creek Associates, LLC v. United States*, 172 Fed. Cl. 729 (2024), at 734 n.2, 735. The COFC protest was subsequently dismissed for lack of standing. *Id.* at 741. Relevant to the instant procurement, Island Creek did not file a challenge concerning Precise's alleged OCIs as they apply to this procurement prior to the time for receipt of proposals.

By the closing date, the agency received six proposals, including proposals from Island Creek and StraCon. MOL at 8. Following evaluation, the agency made award to StraCon on January 8, 2025, at a total evaluated price of \$110,696,536.² *Id.* at 9.

¹ The agency furnished the agency report tabs as a single consolidated Adobe PDF file. Because the documents are not consistently internally paginated, all page number references are to the PDF page numbers in the consolidated file.

² Our Office has jurisdiction to hear protests, such as this one, challenging the issuance or proposed issuance of a task order by a defense agency where the task order in question is valued in excess of \$35,000,000. 10 U.S.C. § 3406(f)(1).

Relevant to this protest, Precise was one of StraCon's subcontractors. Also on January 8, the agency sent out two notifications: one notification to all unsuccessful offerors, including Island Creek's corporate leadership, that StraCon had received award, and a second notification to the employees working on the incumbent effort, including five of Island Creek's employees and several employees of one of Island Creek's proposed subcontractors, discussing the award to StraCon, and transition. MOL at 9. Relevant to this protest, while the first email did not identify Precise as one of StraCon's subcontractors, the second email clearly identified Precise's role on StraCon's team.

On January 28, Island Creek filed a protest with our Office challenging various aspects of the award. See B-423301.1 Protest. On February 3, Island Creek alleged that it learned that Precise was one of StraCon's subcontractors, when one of its subcontractors notified the protester of Precise's involvement. Protester's Response to Request for Dismissal at 4. The protester then filed a supplemental protest raising various OCI allegations on February 13. See B-423301.2 Supplemental Protest. Following the submission of that supplemental protest, the agency indicated that it would investigate the alleged conflicts, and we dismissed the protest and supplemental protests as academic on February 27. *Island Creek Associates, LLC*, B-423301.1, B-423301.2 (Feb. 27, 2025) (unpublished decision).

The agency conducted two investigations into the alleged conflicts, one evaluating whether Precise had an OCI because of its role as the developer of the AMS tool, and a second investigation concerning the alleged personal conflict relating to Mr. X, a senior agency procurement official, who was allegedly married to Ms. Y, a program manager at Precise. The agency's investigations found no actual or potential conflicts of interest, and the agency notified Island Creek on July 10, 2025. This protest followed.

DISCUSSION

The current protest does not challenge any substantive features of the evaluation of either the protester's or the awardee's proposals. Rather, the protest is limited to several alleged conflicts that the protester claims are unmitigable and should exclude Precise from award in any capacity. Protest at 7-17. First, the protester argues that Precise has access to the protester's proprietary data through its work on the AMS tool, which gives Precise an unfair competitive advantage and unequal access to information. *Id.* Second, the protester argues that a senior agency official has a personal conflict because his wife was a program manager for Precise, which lead to, at minimum, the appearance that Precise had an unfair competitive advantage in the procurement. *Id.* Additionally, the protester alleges that this senior agency official was substantively involved in this procurement despite his alleged recusal from matters involving Precise. *Id.* Finally, the protester alleges that the agency's investigation into these conflicts was both unreasonable and incomplete. *Id.*

Timeliness

As a threshold matter, the agency and intervenor request that we dismiss this protest as untimely on several bases. First, the agency and intervenor argue that the solicitation included a list of firms with OCIs who were wholly or partially disqualified, and Precise was not included on that list. See Agency Req. to Dismiss at 2-3; Intervenor Req. to Dismiss at 3-7. To the extent the protester now argues that Precise should have been excluded, they contend that this is tantamount to a challenge to the OCI list published with the solicitation, and that the protester should have brought these challenges prior to the time for receipt of proposals. *Id.* Alternatively, the agency and intervenor argue that personnel who worked for the protester's subcontractors became aware that Precise was a subcontractor to the awardee in early January of 2025, and therefore the protester's early February protest was filed more than 10 days after when the protester knew or reasonably should have known that Precise was part of StraCon's team. See Agency Req. to Dismiss at 4-6; Intervenor Req. to Dismiss at 7-8.

In response, the protester argues that our decisions have made clear that a protester must only bring an OCI challenge prior to award in the specific circumstance where the agency has affirmatively advised that the conflicted firm is eligible to compete, which the agency did not do with respect to Precise in this case. Protester Response to Req. to Dismiss at 3. Moreover, the protester contends that it could not be certain that Precise was part of the awardee's team, or indeed that Precise was even competing, until early February when it learned from one of its subcontractors that Precise was StraCon's subcontractor. *Id.* at 3-6. Moreover, the protester contends that it diligently pursued this information reaching out to both the agency and its own subcontractors on January 8 asking for any information about the composition of StraCon's team. *Id.*

As a general rule, a protester is not required to protest that another firm has an impermissible OCI until after that firm has been selected for award. *REEP, Inc.*, B-290688, Sept. 20, 2002, 2002 CPD ¶ 158 at 1-2. A different rule applies, however, where a solicitation is issued on an unrestricted basis, the protester is aware of the facts giving rise to the potential OCI, and the protester has been advised by the agency that it considers the potential offeror eligible for award. *Honeywell Tech. Sols., Inc.*, B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49; *Abt Assocs., Inc.*, B-294130, Aug. 11, 2004, 2004 CPD ¶ 174 at 2; *International Sci. & Tech. Inst., Inc.*, B-259648, Jan. 12, 1995, 95-1 CPD ¶ 16 at 3-4. That is, where a protester is aware of an OCI concerning a firm, and the protester knows the agency considers that offeror eligible for award, they must bring the protest prior to the time for the closing time for receipt of proposals. See, e.g., *Honeywell Tech. Sols., Inc.*, *supra*.³

³ While the decisions cited deal with OCIs rather than personal conflicts of interest, our decisions have generally concluded that personal conflicts of government employees can be analogized in many respects to OCIs arising under FAR subpart 9.5. See *The Jones/Hill Joint Venture*, B-286194.4, *et al.*, Dec. 5, 2001, 2001 CPD ¶ 194; *DZS/Baker* (continued...)

The protester does not contest that it was aware of the underlying facts concerning these conflicts prior to the time for receipt of proposals,⁴ but rather focuses on the fact that the agency had not expressly advised that Precise was eligible to compete, and that the protester could not be certain that Precise was actually participating in the competition until well after award.

We concur with the protester. Our decisions are clear that, except in the narrow circumstance where an agency has specifically advised that they believe a firm is eligible to compete in a given procurement, a protester is not required to raise conflict issues related to that firm prior to award. Here, the agency provided a list of firms for which OCIs existed, but Precise was not on that list and there is no suggestion in the record that the list was considered exhaustive. Furthermore, while our decisions have generally concluded that personal conflicts of government employees can be analogized to OCIs arising under FAR subpart 9.5, in this case, the solicitation made no representations whatsoever concerning personal conflicts of interest. See *The Jones/Hill Joint Venture, supra.*; *DZS/Baker LLC; Morrison Knudsen Corp., supra.*; *Battelle Mem'l Inst., supra.*

In short, it would be unfair and burdensome to require a protester to make a negative inference from such a list and allege OCIs related to any and all non-excluded firms prior to the time of award, much less to require firms to raise *any* potential personal conflicts of interest where the solicitation's list did not purport to address that topic. Moreover, even setting those issues aside, while the protester in this case alleges that Precise's involvement was predictable due to its incumbency, the protester was not aware of Precise's actual involvement in the procurement until early February when it learned definitively that Precise was StraCon's subcontractor.

While the agency and intervenor object that several of the protester's employees as well as 19 employees of one of the protester's subcontractors were aware of Precise's involvement in early January, our decisions are clear that a protester generally cannot be charged with such knowledge where it was transmitted only to lower-level employees

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LLC; Morrison Knudsen Corp., B-281224 *et al.*, Jan. 12, 1999, 99-1 CPD ¶ 19 at 4; *Battelle Mem'l Inst.*, B-278673, Feb. 27, 1998, 98-1 CPD ¶ 107 at 6-7. Here, the relevance of the alleged personal conflict necessarily turns on the eligibility of Precise to compete in this specific procurement, as well as whether Precise was actually participating in this procurement. As a result, we see no reason to apply a different timeliness standard to the personal conflicts alleged in this case.

⁴ Indeed, the protester's COFC litigation, which was filed prior to the time of receipt of proposals, conclusively demonstrates that the protester was aware of at least the alleged personal conflict prior to the time for receipt of proposals. *Island Creek Associates, Inc. v. United States*, 172 Fed. Cl. 729 (2024) at 2 n.2, 4.

of the firm. In our decision in *Quintron Systems, Inc.*, B-249763, Dec. 16, 1992, 92-2 CPD ¶ 421 at 5-6 n.4, we concluded that a protest was timely notwithstanding that one of the protester's employees learned of the underlying facts nearly a month prior to the time of filing, because the protester's program manager did not learn of the matter until ten days before the protest was filed. While the agency in this case objects that the protester has not explained what position the five employees held or convincingly alleged that they were so junior that we should not impute their knowledge to the protester, those facts are not material. In *Quintron* we concluded that, notwithstanding the fact that the protester in that case did not identify the position held by the employee that learned of the information, the protest was nonetheless timely because we could not establish whether the information should be imputed to the protester and our practice is to resolve doubts about timeliness in favor of the protester. *Id.*

Here, the protester diligently sought information about StraCon's teaming arrangements both from the agency as part of its debriefing, and from its own subcontractors through prompt email inquiries. On these facts, it is clear that the protester did not have actual knowledge of Precise's involvement until February 3, and the initial protest was filed within ten days on February 13.

In sum, where the agency made no representations about Precise's eligibility in particular, and where the protester lacked actual knowledge of Precise's involvement in the competition, any earlier protest of Precise's conflicts would have been dismissed by our Office as either premature or speculative. Moreover, even were this a close case, our decisions are clear that we resolve doubts about timeliness in favor of the protester. *Quintron Sys., Inc.*, *supra* at 5-6 n.4. In short, we conclude that the protester's conflict of interest allegations are timely raised.

AMS Tool OCI

Turning to the merits of the protester's allegations, the first of the alleged OCIs involves Precise's development of the agency's AMS tool. Protest at 7-15. Specifically, the protester argues that the AMS tool contains significant quantities of proprietary data, including Island Creeks's own proprietary data. *Id.* Island Creek argues that, as the developer of this system, Precise has potentially unlimited access to that data, and therefore has both unequal access to information and an unfair competitive advantage OCI.

The FAR instructs agencies to avoid, neutralize, or mitigate significant OCIs before contract award so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.501, 9.504, 9.505. Subpart 9.5 of the FAR, and our Office's decisions, broadly categorize OCIs into three groups: biased ground rules, unequal access to non-public information, and impaired objectivity. An unequal access to information OCI exists where a firm has access to non-public information as part of its performance of a government contract, and where that information may provide the firm an unfair competitive advantage in a later competition for a government contract. FAR 9.505(b), 9.505-4; *Tatitlek Techs.*,

Inc., B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 4. The concern regarding this type of OCI is that a firm may gain a competitive advantage based on its possession of proprietary information furnished by the government, or source selection information that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. FAR 9.505(b); *Phoenix Mgmt., Inc.*, B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 3 n.6.

As discussed above, the protester initially raised this allegation as a supplemental protest to its initial protest challenging the agency's award to Stracon. In response, the agency conducted an OCI investigation. The investigation concluded that a system of access controls and other mitigations effectively neutralized any potential OCI stemming from the AMS Tool. AR, Tab 12, Contracting Officer's OCI/Personal Conflict Determination at 352-355. Specifically, the contracting officer explained that there are two software environments for the AMS Tool, a development environment and a production environment. *Id.* Precise's development team has access to both environments, but their access to the production environment, where proprietary data is actually stored, is more limited than their access to the development environment because the production environment has strict access controls concerning who may access proprietary data. *Id.*

In addition to those controls, the contracting officer concluded that, while the AMS team at Precise has access to the development environment, Precise's AMS team is firewalled off from the rest of Precise, working in a completely separate physical and network environment. *Id.* The contracting officer also found that Precise had internal controls to prevent any improper disclosure including non-disclosure agreements (NDA) signed by the AMS team, an OCI mitigation plan, and OCI policies that collectively created safeguards against any potential use or disclosure of proprietary information. *Id.* Finally, other than the instant protest, the contracting officer explained that the agency is not aware of any allegations that Precise may have improperly accessed any proprietary information or otherwise violated the NDAs in place. *Id.* Based on these facts, the contracting officer concluded that Precise as a corporate entity did not have unequal access to information or any competitive advantage regarding this procurement, because the team at Precise that has potential access to that information is adequately firewalled from the part of Precise that is involved in competitive decision-making. *Id.*

The protester contends that this investigation was inadequate primarily because the agency did not specifically audit whether Precise employees actually viewed proprietary information to conclusively determine whether any Precise employees had accessed such information. Protester's Comments at 2-5. The protester also points to apparently contradictory information in the investigation record. *Id.* For example, the protester notes that, while the contracting officer explained that the development and production environments were separated, and as a result Precise, as a company, would not have access to proprietary data, sworn statements included in the investigation suggest that, due to Precise's role in developing and maintaining the system, Precise's employees would have administrative access to the production system where proprietary data was

stored. *Id.* Given these facts, the protester alleges that the agency's investigation was incomplete and unreasonable because it did not audit the access of all of the Precise employees working on AMS. *Id.*

The identification of a conflict of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Bhate Envtl. Assocs., Inc.*, B-422557.2, B-422557.3, Jan. 3, 2025, 2025 CPD ¶ 21 at 13. In reviewing protests that challenge an agency's conflict of interest determination, GAO reviews the reasonableness of the determination; where an agency has given meaningful consideration to whether a conflict exists, GAO will not substitute its judgment for the agency's judgment, absent clear evidence that the agency's conclusion is unreasonable. *See Leidos, Inc.*, B-417994, Dec. 17, 2019, 2019 CPD ¶ 425 at 8; *Superlative Techs., Inc.; Atlantic Sys. Grp., Inc.*, B-415405 *et al.*, Jan. 5, 2018, 2018 CPD ¶ 19 at 5.

We reject the protester's arguments. First, the protester has misconstrued or mischaracterized the information contained in the investigation record. Second, agencies are not required to exhaust all possible investigative techniques in conducting an OCI investigation, they are merely required to conduct a complete and reasonable investigation that gives meaningful consideration to the alleged conflict.

Concerning the first point, the agency's investigation is clear and unequivocal that some Precise employees do have access to proprietary information in the production environment as part of their software support role, but that those employees are firewalled from the rest of Precise with separate physical space, information technology (IT) systems, and separate management. AR, Tab 12, Contracting Officer's OCI/Personal Conflict Determination at 366-370. Additionally, the investigation found that those staff have signed restrictive NDAs, and that Precise had OCI policies articulating how that function would be firewalled. *Id.* As a result, the evidence in the investigation consistently supports the agency's conclusion that Precise, as a corporate entity making competitive decisions, did not have access to proprietary information from the AMS system because of the safeguards in place. *Id.*

The alleged contradictions that the protester identifies all depend, in essence, on misreading this aspect of the investigation. The agency's investigation did not, at any point, suggest that Precise employees did not have access to proprietary data, but rather repeatedly stated that Precise, as a corporate entity, did not have such access. Simultaneously, the investigation consistently acknowledged that Precise's AMS team did in fact have such access, subject to appropriate safeguards. In light of that distinction, any alleged inconsistencies disappear, and this protest ground is without merit.

Turning to the second point, while the agency certainly could have elected to audit the access of all Precise employees to proprietary data, our decisions are clear that we will not substitute our judgment for the agency's where an agency decision maker has given meaningful consideration to an OCI. *See Science Applications Int'l Corp.*, B-293601.5, Sept. 21, 2004, 2004 CPD ¶ 201. Indeed, our decisions have consistently concluded

that an agency may reasonably conclude an OCI is mitigated by the presence of NDAs where, as here, the NDAs cover the type of information alleged to form the basis of the OCI and the agency has no reason to believe that the NDAs have been violated. See, e.g., *BAE Sys. Tech. Sols. & Servs., Inc.*, B-411810.3, June 24, 2016, 2016 CPD ¶ 174; *Deloitte Consulting LLP; ManTech Advanced Sys. Int'l, Inc.*, B-420137.7 *et al.*, July 25, 2022, 2022 CPD ¶ 200. That is to say, the agency was not required to audit the access of every Precise employee where NDAs and other safeguards that cover the information in question are in place and there is no reason to believe that those NDAs or safeguards have been circumvented.

In short, the agency's investigation concluded that a robust firewall, NDAs, and other safeguards mitigated any OCI that might exist for Precise. That conclusion was reasonable and reflected meaningful consideration of the OCI. Accordingly, we see no basis to disturb the agency's conclusions.

Personal Conflict of Interest

Next, the protester alleges a personal conflict of interest because a senior agency official (Mr. X) was married to a program manager at Precise (Ms. Y), who worked on the AMS tool. Protest at 7-17. The protester argues that this relationship led the agency to create biased ground rules, provided Precise with more and therefore unequal access to information, and impaired the agency's objectivity, or at minimum created the appearance of such conflicts. *Id.* Specifically, the protester argues both that the relationship between the senior agency official and the Precise program manager necessarily creates an impaired objectivity conflict, but also specifically argues that Mr. X shaped the requirements for this procurement to favor Precise, and that both Mr. X and Ms. Y had access to Island Creek's proprietary data through the AMS tool. *Id.*

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR 3.101-1; *Perspecta Enter. Sols., LLC*, B-418533.2 *et al.*, 2020 CPD ¶ 213 at 7. In setting out the standards of conduct that apply to the award of federal contracts, the Federal Acquisition Regulation (FAR) provides that:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.

FAR 3.101-1; *Lockheed Martin Corp.*, B-295402, Feb. 18, 2005, 2005 CPD ¶ 24 at 8.

Our decisions have also noted that personal conflicts of government employees can be analogized to OCIs arising under FAR subpart 9.5. See *The Jones/Hill Joint Venture*,

supra.; *DZS/Baker LLC*; *Morrison Knudsen Corp.*, *supra*; *Battelle Mem'l Inst.*, *supra*. Accordingly, although FAR subpart 9.5, by its terms, does not apply to government agencies or employees, it is instructive in determining whether an agency has reasonably met its obligation to avoid conflicts under FAR section 3.101-1, in that FAR subpart 9.5 establishes whether similar situations involving for-profit organizations would require avoidance, neutralization or mitigation of conflicts of interest so as to prevent an unfair competitive advantage. FAR 9.504, 9.505; see *Aetna Gov't Health Plans, Inc.*; *Found. Health Fed. Servs., Inc.*, B 254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 12.

The identification of personal conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. See *Northrop Grumman Systems Corporation--Mission Systems*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 305 at 7-10; *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. We review the reasonableness of the contracting officer's investigation and, where an agency has given meaningful consideration to whether an unfair competitive advantage exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *VSE Corp.*, B-404833.4, Nov. 21, 2011, 2011 CPD ¶ 268 at 8.

In response to the protester's allegations, the agency again conducted an investigation. The investigation found the following facts. First, the contracting officer found, on the basis of sworn statements and other evidence, that Ms. Y retired from Precise in December of 2022, about two years prior to when the solicitation in this procurement was issued, and that Ms. Y maintains no financial ties to Precise. AR, Tab 12, Contracting Officer's OCI/Personal Conflict Determination at 352-355. Additionally, Ms. Y signed several NDAs during her tenure working on the AMS tool for Precise, and Mr. X was recused from any procurement in which Precise was involved during Ms. Y's tenure at Precise. *Id.*

Moreover, while Mr. X had previously been the chief of the contracting office at the procuring activity, he left that position prior to the receipt of proposals for this procurement, and no proprietary information related to this procurement was uploaded into the AMS system until after proposals were received. *Id.* Additionally, based on email traffic and sworn statements, the contracting officer found that Mr. X's only involvement in this procurement was to provide minor feedback on early drafts of the solicitation between February and April of 2023 and January of 2024, both which occurred after Ms. Y retired from Precise. *Id.* Following Mr. X's initial involvement, the solicitation was amended 11 times revising almost every part of the RFP. *Id.* Significantly, Mr. X was not involved in reviewing or drafting any of those revisions, in the development of the performance work statement or the evaluation criteria, or in the evaluation of proposals or source selection. *Id.* Finally, while both Mr. X and Ms. Y filed sworn statements indicating that they had not accessed any of Island Creek's financial or proprietary data, the contracting officer also requested an audit of the AMS tool to assess whether Mr. X or Ms. Y accessed any proprietary information related to this

procurement and found that there was no such access by either party, consistent with their sworn statements on the matter. *Id.*

As a result, the contracting officer concluded that there was no biased ground rules or impaired objectivity conflict in this scenario because Ms. Y retired nearly two years prior to the issuance of the solicitation, and she maintains no financial ties to Precise. *Id.* This effectively ended the possibility for an actual conflict well before the solicitation was developed or issued. *Id.* Moreover, even considering the appearance of a conflict, Mr. X's involvement in this procurement was minimal and did not meaningfully affect the ground rules, and accordingly the contracting officer concluded that there was not even the appearance of a biased ground rules or impaired objectivity conflict. *Id.* With respect to the alleged unequal access to information conflict, and resulting unfair competitive advantage, the contracting officer concluded on the basis of both sworn statements, NDAs, and an audit of the relevant systems that neither Mr. X nor Ms. Y accessed any information related to this procurement, and so there was no reasonable possibility that such a conflict existed. *Id.*

In response, the protester alleges that the investigation was flawed for two principal reasons. First the protester argues that, while the agency audited Ms. Y's access to source selection sensitive information relating to this procurement and to any searches of Island Creek's CAGE code, the agency's audit of Mr. X's access only looked at whether he sought source selection information regarding this procurement and not whether he searched for Island Creek's CAGE code. Protester's Comments at 5-6. The protester alleges that this renders the investigation fatally incomplete. *Id.* Second, the protester alleges that the agency's representation that Mr. X was completely recused from all matters relating to Precise prior to December 2022 is factually false, and, in support of that allegation, produced an email showing that Mr. X was involved in an administrative investigation relating to Precise in May of 2022, prior to Ms. Y's retirement.⁵ *Id.* at 7-8.

⁵ The protester also raises other ancillary arguments concerning these alleged conflicts not addressed in this decision. We have considered these arguments and concluded that they provide no basis to sustain the protest. For example, the protester initially alleged that Ms. Y did not in fact retire from Precise in 2022, but rather only retired in December 2023, significantly closer in time to the issuance of this solicitation. Protest at 11. In the agency report and the agency's supplemental filing, the agency advanced significant arguments supported by evidence concerning Ms. Y's retirement date. MOL at 22-23; Supp. MOL at 4-5, 7-8. While the protester initially challenged the agency's conclusion in its comments, the protester's supplemental comments did not address the fulsome counter-arguments raised in the agency's supplemental filing. See Protester Comments at 6-8. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially raised arguments
(continued...)

Concerning the first allegation, the agency notes that both Mr. X and Ms. Y submitted sworn statements indicating that they had never accessed Island Creek's proprietary data. Supp. MOL at 5-9, 12. Further, for the reasons discussed above, Mr. X's role in the current procurement was extremely limited, and, because of the timing of Mr. X's departure from the procuring activity, he would not have had access to any proprietary information concerning the current procurement. *Id.* The agency argues that these facts are sufficient to support the contracting officer's conclusion and that no audit of the AMS tool was required; rather the contracting officer only requested the audit out of an excess of caution, and the audit did not reveal any information that contradicted the sworn statements offered by Mr. X and Ms. Y. *Id.*

While the protester clearly would prefer that the agency conduct a more searching audit of the AMS tool, we are unpersuaded that the agency was required to do so, or that the agency's investigation was unreasonable because it did not. While the agency does not contest that the scope of the agency's audit differed between Mr. X and Ms. Y, agency officials are entitled to a presumption of good faith absent compelling evidence to the contrary, which is not alleged in this case. More significantly, we agree with the agency that its investigation reasonably supported its conclusions even if it had not conducted the audit in question, and the limited audit did not provide any evidence that called into question the other evidence on which the agency relied. In short, we see no basis to conclude that this difference in scope was motivated by any improper motive and see no basis to question the reasonableness of the agency's investigation or its conclusions.

In response to the second allegation, the agency notes that the evidence provided by the protester suggests that a member of the protester's staff raised an administrative concern about Precise by sending an email directly to Mr. X. Supp. MOL at 5-7. In response, Mr. X sent an email arranging a phone call with Island Creek's representative, and the agency's administrative investigator who would conduct the administrative investigation. *Id.* The administrative investigator filed a sworn statement, in which he confirmed that the call involved Mr. X introducing Island Creek's representative to the agency investigator and explaining that Mr. X was recused from all matters involving Precise. *Id.* Moreover, the agency investigator confirmed that this introductory phone call was the only involvement Mr. X had in the investigation. *Id.*

In response, the protester argues that the specific terms of Mr. X's recusal required Mr. X to take no action and immediately refer the matter to his supervisor, which he did not do in this case. Protester's Supp. Comments at 4-5. Even conceding, for the sake of argument, that the protester's reading of Mr. X's recusal letter is correct, which the agency disputes, we cannot conclude that Mr. X's behavior in this context calls into question the reasonableness of the agency's conflicts investigation or the validity of Mr.

(...continued)

abandoned. See *L-3 Commc'ns Westwood Corp.*, B-295126, Jan. 19, 2005, 2005 CPD ¶ 30 at 3-5.

X's representations concerning his recusal. Here, Mr. X was only involved in the potential investigation because Island Creek's representative directly contacted him concerning the investigation, and his response was to introduce Island Creek's representative to the administrative investigator and explain that he was recused and could not take part in the investigation. While the protester contends that this was not strictly consistent with the terms of Mr. X's recusal letter, Mr. X nonetheless immediately recused himself from the matter after ensuring that Island Creek's representative had a point of contact for the investigation. Contrary to the protester's suggestion, this behavior is in no way inconsistent with the agency's finding and Mr. X's representation that he was recused from all matters relating to Precise prior to Ms. Y's retirement.

In short, the agency's conflicts investigation was reasonable and reflected meaningful consideration of the alleged conflicts. We see no basis to disturb the agency's findings.

The protest is denied.

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General Counsel