



United States Government Accountability Office
Washington, DC 20548

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Qwest Government Services, Inc.

File: B-405425.2; B-405425.3

Date: December 9, 2011

Thomas O. Mason, Esq., Francis E. Purcell, Jr., Esq., and Christopher J. Kimball, Esq., Cooley LLP, for the protester.

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter McWhorter PLC, for Verizon Business Systems, the intervenor.

Pamela Reiner Waldron, Esq., Department of the Interior, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's assessment of risk in the protester's price proposal was reasonable where the protester based its price on assumptions that were not stated in the solicitation.
 2. Protest challenging the evaluation of the protester's technical proposal is denied where the evaluation was reasonable and consistent with the solicitation.
 3. Protest that the awardee failed to include required information in a specific part of its proposal is denied, where the record shows that the solicitation was patently ambiguous as to where the information could be provided and the awardee included the information in a different part of its proposal.
-

DECISION

Qwest Government Services, Inc., of Arlington, Virginia, challenges the issuance of a task order to Verizon Business Systems, of Ashburn, Virginia, under request for proposals (RFP) No. D10PS18983, issued by the Department of the Interior (DOI) for telecommunications services. The protester argues that the agency's evaluation of the offerors' technical and price proposals was unreasonable.¹

¹ Although the solicitation anticipated award of a task order under an indefinite-delivery/indefinite-quantity contract, the solicitation stated that it sought "proposals" (continued...)

We deny the protest.

BACKGROUND

In 2003, DOI consolidated the management of its department-wide data services through a task order issued under the General Services Administration (GSA) Federal Technology Service (FTS 2001) indefinite-delivery/indefinite-quantity (ID/IQ) contract. The result was the DOI Enterprise Services Network (ESN), which supports 275,000 agency employees and volunteers. Contracting Officer (CO) Statement at 1. The ESN is a consolidated wide-area network that provides numerous data services. RFP, Statement of Work ¶ C-1. In 2008, the Office of Management and Budget required agencies to transition from the FTS 2001 contract to the successor Networx ID/IQ contract. The task order here will require the following services and equipment to support the ESN: telecommunication services, service enabling devices (SEDs), managed network services (MNS), security services, and access arrangements. Id. ¶ C-3.

The RFP was issued on March 8, 2011, to contractors holding one of the multiple awards under the GSA's Networx ID/IQ contracts.² The solicitation anticipated award of a task order with fixed-price contract line items, with a base period of approximately two and a half months, five 1-year options, and an additional final option of approximately 6 months. Offerors were advised that they would be evaluated on the basis of price, and the following non-price factors, which were listed in descending order of importance as follows: (1) transition approach and schedule; (2) quality of technical approach; (3) management and operations; and (4) experience and past performance. RFP at M-2-M-4. For purposes of award, the RFP stated that “[t]echnical factors are more important than price.” Id. at M-1.

(...continued)

and that term is used repeatedly throughout the solicitation and the procurement record. The solicitation contemplated an evaluation and source selection scheme similar to those used in negotiated procurements; accordingly whether the vendors' submissions are referred to as proposals or quotations has no effect on the issues raised. See MASAI Techs., Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 1 n.1. For the sake of consistency with the underlying materials, we will refer to the firms as “offerors” and their submissions as “proposals” throughout this decision.

² DOI issued an earlier version of the solicitation, which resulted in an award to Verizon, and protests by Qwest (B-402778.2) and AT&T Corporation (B-402778) filed in May 2010. In response to these protests, DOI cancelled the earlier solicitation, and issued the current version of the RFP.

DOI received proposals from three offerors, including Qwest and Verizon, by the closing date of March 29. The RFP advised offerors that DOI could make award without discussions; the agency conducted limited clarifications with offerors, but did not conduct discussions or request revised proposals.

The agency source selection evaluation board (SSEB) prepared a consensus report detailing the agency’s evaluation of the offerors’ technical and price proposals. The SSEB report was based on the SSEB’s consensus evaluation for each offeror’s technical proposal, and the SSEB’s price evaluation report; these reports were based on reports by the agency technical evaluation team (TET) and price evaluation panel (PEP). The final evaluation of offerors’ proposals was as follows:³

	VERIZON	QWEST	OFFEROR 3
TECHNICAL FACTOR	OUTSTANDING	MARGINAL	MARGINAL
Transition Approach	Outstanding	Marginal	Marginal
Quality of Technical Approach	Outstanding	Good	Marginal
Management and Operations	Good	Marginal	Acceptable
Experience and Past Performance	Outstanding	Acceptable	Good
PRICE EVALUATION	GOOD	MARGINAL	ACCEPTABLE
OVERALL RATING	OUTSTANDING	MARGINAL	MARGINAL
PROPOSED PRICE	\$138.8M	\$114.5M	\$149.6M

Agency Report (AR), Tab 8, SSEB Report, attach. 3.

The contracting officer (CO), who also served as the source selection authority, selected Verizon’s proposal for award of the task order. The award decision, which largely repeated or incorporated the findings of the SSEB report, agreed that Verizon’s proposal merited an overall rating of outstanding, and that Qwest’s and Offeror 3’s proposals merited ratings of marginal. AR, Tab 10, Award Decision, at 12. The CO found that although Verizon’s proposed price was higher than Qwest’s and lower than Offeror 3’s, there was no need to perform a price-technical tradeoff in light of Verizon’s “exceptional understanding of the requirements” and the risks posed by the other offerors’ proposals. *Id.* In this regard, the CO stated that “[Offeror 3]’s and Qwest’s proposed solution[s] represent significant risks and are highly unlikely of meeting the objectives of this requirement.” *Id.*

³ The agency used the following ratings for the technical factor and subfactors, and the price evaluation: outstanding, good, acceptable, marginal, and not acceptable. AR, Tab 8, SSEB Report, at 2.

The agency notified Qwest of the award to Verizon, and provided a debriefing on July 14. On July 25, Qwest filed a protest with our office (B-405425.1), challenging the award to Verizon. Prior to providing its report on the protest, DOI advised our Office that it would take corrective action by making a new source selection decision. On August 22, our Office dismissed the protest. DOI subsequently affirmed the evaluation ratings, and the selection rationale discussed above. The agency notified Qwest of the affirmed award to Verizon, and provided a debriefing on August 30. This protest followed.

DISCUSSION

Qwest argues that DOI's evaluation of its technical and price proposals was unreasonable. The protester also argues that the agency failed to recognize an omission from Verizon's proposal that made it ineligible for award. Finally, the protester argues that the agency improperly assigned strengths to the awardee's proposal based on its status as the incumbent contractor, and that those strengths were also the result of an unequal access to information organizational conflict of interest (OCI). As discussed below, we find that none of these arguments has merit.⁴

The evaluation of a proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate the proposals, but will instead examine the record to determine whether the agency's judgments are reasonable and consistent with the solicitation's evaluation factors and applicable statutes and regulations, as well as whether the agency has treated offerors equally in its evaluation. Brican Inc., B-402602, June 17, 2010, 2010 CPD

⁴ Qwest's protest raises numerous allegations concerning the evaluation of the offerors' proposals and other collateral issues. For example, the protester contends that DOI's actions in connection with this procurement reflect bias and bad faith, as evidenced by the fact that the agency took corrective action multiple times, each of which resulted in an award to Verizon, the agency's limited post-award debriefings, the agency's attempts to limit the scope of documents produced during the course of the protest. Government officials are presumed to act in good faith, and a protester's contention that contracting officials are motivated by bias or bad faith thus must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Career Innovations, LLC, B-404377.4, May 24, 2011, 2011 CPD ¶ 111 at 7-8. We find that none of the agency's actions here demonstrate bias or bad faith. We have reviewed each of Qwest's arguments, and find no basis to sustain the protest.

¶ 141 at 4; Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

Qwest's Price Evaluation

Qwest argues that DOI unreasonably assigned its proposal a rating of marginal under the price evaluation factor. As discussed above, the RFP stated that offerors would be evaluated on the basis of the four technical evaluation factors. The RFP also stated that an offeror's "cost/price proposal will be evaluated separately from the technical proposal," and that the agency would consider "whether the cost/price adequately reflect[s] an understanding of the project." RFP at M-4. The agency stated that it would evaluate whether the proposed prices were "fair, reasonable, balanced, and realistic," and for risks "which could have significant negative cost consequences for the Government." Id. at M-4-M-5.

First, DOI identified a risk because Qwest's proposed price for the Incident Response Service (INRS) requirements was approximately [deleted] percent lower than the independent government cost estimate (IGCE). AR, Tab 8, SSEB Report, attach. 2, Price Evaluation Report, at 3. Qwest argues that the record does not adequately explain the basis for the agency's evaluation, or its conclusion that the proposed price was too low. The record shows, however, that the agency found that Qwest proposed a low number of full time equivalents (FTE), and proposed to provide only low-level support for incidents that last more than 24 hours. Id. The agency stated that this was a concern because "[m]ost of the incidents the Government handles, such as child exploitation/pornography, Data Loss/Exfiltration, etc, far exceed twenty-four (24) hours in duration." Id. While Qwest claims that this evaluation imposed requirements not included in the RFP, we conclude that the agency evaluation of a risk in these circumstances was reasonable and consistent with the RFP.

Next, the agency identified a weakness because the protester's proposed price for the MNS requirements was [deleted] percent lower than the IGCE. Id. In a related concern, the agency stated that the protester did not propose a sufficient number of network circuits to meet the requirements of the DOI locations to be serviced under the Networx transition. Id. at 5. Qwest argues that DOI's evaluation was unreasonable and relied on an unstated evaluation criterion.

In its proposal, Qwest proposed to provide 2,027 circuits to support the 2,027 DOI locations identified in the solicitation and the bid model data provided to offerors, and indicated that changes from what it proposed could require a change order.⁵ AR,

⁵ As discussed below, the RFP required offerors to enter data into a bid model on the Networx Hosting Center website. This website contained data concerning the 2,027 DOI locations which required service.

Tab 6, Qwest Proposal, vol. II, at 20-21. DOI's evaluation of Qwest's proposal concluded that Qwest's proposal posed a risk as follows:

Additionally, Qwest lists roughly 2000 circuits of various types per the bid model. Qwest counts circuits based on bandwidth only, *i.e.*, multiple circuits at a single location are counted by Qwest as a single circuit only. This is a flawed approach. In this context, Qwest states in their proposal "The proposed pricing for these [contract line items] CLINs is defined for . . . the locations as defined in the evaluation model (as shown in Table 8-below). Additional locations, or changes in site type mix, may require use of standard Network CLINS . . . [and] may require [] a change order on the proposed [Network Operations and Security Center] NOSC CLINs post-award to accommodate a different site type profile." However, based on the information, contained in the RFP, regarding the required circuits and locations, the need already exceeds the estimated 2000 "circuits" as proposed[. T]his would appear to present a significant risk that Qwest, if awarded the Task Order, would state that the prices should be increased by roughly that magnitude, or more.

AR, Tab 8, attach. 2, Price Evaluation Report, at 5. With regard to this concern, one PEP evaluator's notes also stated the following:

Since we already know that the true circuit figure as stated in the RFP is roughly 2600, which is 30% higher, this would appear to present a significant risk that the vendor if awarded would state that the prices should be increased by roughly that magnitude, or more.

Supp. AR, PEP Evaluation Notes, Qwest Ratings, at 5.

Qwest contends that the RFP required offerors to base their proposed prices on a bid model that included 2,027 circuits to support the DOI locations. Protester's Comments (Oct. 13, 2011) at 26. For this reason, the protester argues that DOI's assessment of a risk for its price proposal improperly relied on an undisclosed requirement of 2,600 circuits.

The record shows that the protester misunderstood the requirements of the solicitation. DOI confirms that the information provided in the RFP's bid model indicates that there are 2,027 managed site locations where service must be provided. Supp. AR (Nov. 10, 2011) at 11-12. The agency states that this information was provided to establish a common basis of comparison between the offerors. Decl. of Agency PEP Chair (Oct. 21, 2011) ¶¶ 4-5. However, the RFP did not specify the number of circuits to be provided, and did not state that offerors could assume one circuit per site, *i.e.*, that only 2,027 circuits would be required.

In this regard, a declaration by a Qwest employee acknowledges that the solicitation identified 2,027 locations where service was to be provided. Decl. of Qwest Senior Project Manager (Oct. 13, 2011) ¶ 8. The Qwest employee further acknowledged that Qwest did not know, based on the solicitation, whether any of the locations would require more than one circuit. *Id.* ¶¶ 10-11, 13.

We think that the agency's evaluation of Qwest's price proposal was reasonable. Offerors were provided information concerning 2,027 locations, and the RFP requested that offerors provide a fixed-price proposal to provide service. As discussed above, the protester concedes that it was aware that the agency had identified 2,027 locations, but that the RFP did not disclose how many locations would require multiple circuits. The protester did not challenge the terms of the solicitation, and instead chose to qualify its fixed-price proposal with assumptions concerning the number of circuits required. Because the agency concluded that the Qwest's fixed-price proposal was based on fewer circuits than might be required by the agency—and expressly warned the agency that it could seek additional payment if its assumption proved incorrect—we think the agency reasonably concluded that Qwest's proposal posed a price risk.⁶

In sum, we think the agency's evaluation of Qwest's proposed price as marginal was reasonable, and consistent with the RFP.

Qwest's Technical Evaluation

Qwest also argues that the agency's evaluation of its proposal under the technical evaluation factors was unreasonable based on a number of errors. We discuss certain of the protester's arguments below.⁷

For example, DOI identified a risk in Qwest's technical proposal because “the Computer incident Response Capability [CIRC] proposed by Qwest will not be located in the DOI's [Advanced Security Operations Center (ASOC)].” AR, Tab 10, Award Decision, at 7. The agency explained that the protester's approach raised

⁶ In contrast, DOI states, and the protester does not dispute, that Verizon's proposal was not limited to providing a specific number of circuits. *See* Supp. AR (Nov. 10, 2011) at 13.

⁷ Although DOI provided a detailed response to each of Qwest's arguments, the protester elected not to comment on several of the agency's responses, apart from stating that it “preserves, but does not separately address” those arguments. Protester's Supp. Comments (Oct. 31, 2011), at 23 n.11. Because DOI's report on the protest responded to each protest argument, and the protester's comments did not meaningfully rebut the agency's response with regard to the “preserved” arguments, we find no basis to sustain any of those arguments.

concerns because “the level of sensitivity requires daily interaction with the appropriate personnel.” Id. As further explained in the SSEB report, the agency was concerned that during the middle of transition the security manager would be provided as a [deleted] FTE, and thus spend only [deleted] percent of his time working on the task order. AR, Tab 8, SSEB Report, Qwest Evaluation, at 5, 7; see Tab 6, Qwest Proposal, at F-5.

The protester contends that the agency’s evaluation was unreasonable because it proposed a security manager “to perform CIRC functions and provide a high level of security support to DOI security teams.” See AR, Tab 6, Qwest Proposal, vol. 1, at C.2-27. The protester further notes that its proposal stated that the security manager would be “located at DOI ASOC in order to fulfill the CIRC functions and support incident response on a daily basis.” Id. The protester argues that because its proposal stated that the CIRC “function” would be located at the ASOC, it was unreasonable for the agency to base a weakness on the fact that these requirements would be staffed only by a security manager who was provided as a [deleted] FTE.

We disagree. The RFP states that the CIRC function “shall reside at the DOI’s ASOC facility,” and that the contractor “shall provide 24 x 7 x 365 responses to security incidents reported by the DOI community.” RFP at C-13, C-14. As the agency notes, Qwest’s proposal stated that it would use a “collaborative approach [which] will allow DOI’s ASOC and [deleted] to continuously monitor the ESN, jointly assess any vulnerability to ESN or other DOI systems interconnected to ESN, respond to incidents as an integrated team and proactively mitigate risk.” AR, Tab 6, Qwest Proposal, Vol. I, at C.2-27. Because the ASOC and [deleted] are at different locations, the agency could reasonably be concerned that the security manager, who was assigned as a [deleted] FTE to oversee functions that would take place at both the ASOC and [deleted], would not be able to provide the required oversight of the CIRC function at the ASOC. AR at 8. On this record, we think that the agency’s evaluation was reasonable.

Next, DOI identified a risk in Qwest’s proposal because its communications plan “merely focuses on its internal oversight, program management, and escalation, (i.e., one-way communications up the escalation ladder), but fails to describe the feedback or communications with the DOI.” AR, Tab 10, Award Decision, at 7; see also SSEB Report, Qwest Evaluation, at 8. Qwest argues that DOI’s evaluation was based on an unreasonable interpretation of a series of charts, which show the “key interfaces between Qwest and DOI.” See AR, Tab 6, Qwest Proposal, vol. I, at F-9-F-11.

The charts and narrative in the Qwest proposal indicate lines of authority and the process for reporting problems or complaints. See id. The agency’s criticism, however, focused on a lack of a defined process for addressing the requirements of the solicitation, such as “communicating with stakeholders and the incumbent Contractors, escalating technical issues, providing customer education, reporting status, conducting meetings. . . .” RFP at C-29-C-30. Our review indicates that the

portions of Qwest's proposal cited by the protester do not clearly reflect the elements of the solicitation cited in the agency's evaluation. On this record, we think that the agency's evaluation here was also reasonable.

Next, DOI identified a concern regarding Qwest's proposed use of equipment vendors. The award decision noted that "the use of a single equipment manufacturer across [the] network and security equipment categories exposes the entire enterprise when a single vulnerability is revealed." AR, Tab 10, Award Decision, at 7-8; Tab 8, AR, Tab 8, SSEB Report, Qwest Evaluation, at 6.

Qwest argues that the agency's evaluation was unreasonable because it failed to recognize that the protester proposed different manufacturers for the network architecture ([deleted]) and security ([deleted]) equipment manufacturers. The CO states, however, that the concern cited by the agency was related to the use of a single equipment manufacturer for each category. CO Statement at 13. The agency's position is supported by the contemporaneous notes of a technical evaluator, which state that Qwest had proposed both [deleted] and [deleted] equipment, but that the use of single equipment vendors "expose[s] the entire ESN" to risk. AR, TET Notes, Qwest Ratings, at 2.

The protester also argues that the agency's evaluation was unreasonable because it was contradicted by the strength identified by the agency concerning the use of a single vendor as follows:

Qwest's proposed network architecture relies on use of all new equipment from a single manufacturer. This is a strength because it provides for tighter integration and easier management and monitoring of the network to improve DOI oversight.

AR, Tab 8, SSEB Report, Qwest Evaluation, at 5.

To the extent that the protester argues that the agency could not cite both strengths and weaknesses in the protester's proposed approach, we disagree. The record shows that the agency credited Qwest's proposed approach of using single vendors for equipment for the network architecture and security requirements, because such an approach provided for "tighter integration and easier management and monitoring of the network." *Id.* Nonetheless, as detailed above, the agency also identified a countervailing concern that a single vulnerability in a type of equipment would expose the entire network to risk. On this record, we think that the agency's evaluation was reasonable.

As illustrated by the foregoing examples, we conclude that the agency's evaluation of Qwest's technical proposal was reasonable and consistent with the RFP.

Verizon's Proposal Evaluation

Next, Qwest argues that DOI failed to recognize that Verizon omitted a mandatory table from its pricing proposal. The protester contends that the omission of this information rendered the awardee's proposal unacceptable.

As discussed below, we conclude that the RFP was patently ambiguous about where in the proposals this information could be provided, that Verizon provided the information--albeit in a different part of its proposal than Qwest--and that the agency reasonably considered the information.

The RFP required offerors to provide pricing information in two locations: (1) a bid model that would be used by the agency for the price evaluation, and (2) a written price proposal. Section B of the RFP explained that offerors were required to use the Networx Hosting Center (NHC) website to populate price tables in their bid models. RFP at B-1. For the written price proposal, the RFP stated that offerors were required to provide a table of contents and a price narrative. RFP at L-13.

As relevant here, the instructions for offerors' price narrative proposals included the following requirement:

The Offeror shall complete Table L-3[,] SEDs Suites Mapping, to provide a complete mapping of SED Device Non-Recurring Charge (DNRC) CLINs to each suite type.

Table L-3 SEDs Suites Mapping

Equipment Suite Number	DNRC CLIN	Quantity

Id. at L-14. The price narrative instructions, however, also provided offerors the following guidance as to how price table information should be submitted:

The Offeror shall enter its prices in the format of the price tables defined in Section B, Pricing, of this solicitation. . . . Price tables shall be submitted in an electronic format using the [NHC].

* * * * *

Detailed instructions for accessing and using the [NHC] to electronically populate, check, and submit proposed pricing tables, price against the Bid Model, and generate reports showing total cost, can be found in the document, *DOI ESN Networx Hosting Center User*

Instructions, located in the “Docs” section of the NHC. The price tables shall be submitted electronically only, via the NHC.

Id. at L-13, L-14 (emphasis added).

Qwest argues, and DOI acknowledges, that Verizon’s price narrative did not include Table L-3. See Supp. AR (Nov. 10, 2011) at 6-7. The protester contends that this omission rendered the awardee’s proposal unacceptable. The protester further argues that Verizon gained an unfair advantage because although the bid model did not contain any limit on the amount of data entered, the price narrative was limited to 25 pages. See RFP at L-2. In this regard, Qwest notes that its proposal used approximately 10 of its 25 pages to address Table L-3 in its price narrative. See AR, Tab 6, Qwest Proposal, vol. II, at 7-17.

DOI contends that the instructions concerning the price narrative in section L of the solicitation permitted offerors to provide the information in their bid model. Supp. AR (Nov. 10, 2011) at 7. Further, the agency notes that the NHC bid model contained a table titled “seds_suite_mapping,” which was used by both Verizon and Qwest to provide the data required under Table L-3. Agency Response to GAO Questions, Nov. 29, 2011, at 1, attachs. 1 & 2.

We think that the solicitation was ambiguous as to whether offerors were required to provide Table L-3 in the written part of their proposal. An ambiguity exists if a specification is susceptible to more than one reasonable interpretation that is consistent with the solicitation, when read as a whole. Poly-Pacific Techs., Inc., B-293925.3, May 16, 2005, 2005 CPD ¶ 100 at 3. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error (e.g., where solicitation provisions appear inconsistent on their face), while a latent ambiguity is more subtle (e.g., where the ambiguity is first identified in the context of an evaluation). Ashe Facility Servs., Inc., B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 11. Where a patent ambiguity is not challenged prior to the submission of proposals, we will dismiss as untimely any subsequent protest assertion that is based on an alternative interpretation. Bid Protest Regulations, 4 C.F.R. 21.2(a)(1) (2011); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10

Here, we think that the price narrative instructions were patently ambiguous. On the one hand, the instructions advised offerors that they “shall complete Table L-3” in order to provide “a complete mapping of SED Device Non-Recurring Charge (DNRC) CLINs to each suite type.” RFP at L-14. On the other hand, the instructions also stated that offerors were required to use the NHC website to complete the bid model for price evaluation purposes, and that “[p]rice tables shall be submitted in an electronic format using the [NHC website].” Id. at L-13. Similarly, the conclusion of the instructions stated that “[t]he price tables shall be submitted electronically only, via the NHC.” Id. at L-14. Because the RFP provided conflicting instructions as to how the pricing tables should be completed, we think that Verizon could reasonably provide, and the agency could reasonably accept, the information from Table L-3 in

Verizon's bid model. To the extent that Qwest believed that offerors should have been required to provide the information in Table L-3 within the 25-page limit of the price narrative, it did not challenge the patently ambiguous solicitation prior to submission of its proposal, and any challenge now is untimely. See U.S. Facilities, Inc., *supra*. On this record, we find no basis to sustain the protest.⁸

Unequal Treatment and Organizational Conflict of Interest

Finally, Qwest argues that DOI improperly credited Verizon with strengths in its proposal that arose from the awardee's performance of the incumbent task order. In this regard, Qwest notes that the TET evaluators credited Verizon's proposal with strengths because the company "currently support[s] [government furnished equipment (GFE)]." Supp. AR, TET Notes, Verizon Ratings, at 11-13, 17, 75. The protester also notes that the evaluators found that Verizon had "pre-validated all inventory addresses in both the [deleted]," which was considered a strength "because Verizon has already begun internal transition work and this should make the transition faster and easier for DOI." *Id.* at 11. Qwest argues that both of these strengths were improperly based on Verizon's incumbency. The protester also argues that the agency failed to recognize that Verizon had access to information through its performance of the incumbent task order that was not available to Qwest, and that the award was therefore tainted by an OCI.⁹

⁸ Qwest also argues that DOI failed to recognize that Verizon did not address the e-bonding requirements of the RFP, which rendered the awardee's proposal technically unacceptable. The SSEB report, which was provided to the protester on October 3, 2011, noted that Verizon did not completely address this requirement. AR, Tab 8, SSEB Report, Verizon Evaluation, at 10. The protester, however, did not challenge the agency's evaluation here--that is, argue that the agency should have eliminated Verizon as technically unacceptable--until it filed supplemental comments on October 31. Because the protester did not raise this argument within 10 days of when it knew or should have known of its basis, it is untimely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2), and will not be considered.

⁹ Contracting officials must avoid, neutralize or mitigate potential significant OCIs so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. Federal Acquisition Regulation (FAR) §§ 9.504(a), 9.505. As relevant here, 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; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8; see also Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 11-12.

These arguments were not timely raised. Qwest's arguments were first raised in its October 31 response to DOI's October 21 supplemental report, and were based on TET evaluation documents produced by the agency on October 25. Protester's Supp. Comments (Oct. 31, 2011) at 2-8. These issues, however, were discussed in the SSEB's evaluation report concerning Verizon's technical proposal, which was provided to the protester on October 3. In this regard, the SSEB report identified the following strengths for Verizon concerning DOI inventory and GFE:

Verizon has conducted preparatory work on their own volition which increases the likelihood they will complete the transition ahead of schedule. Verizon has pre-validated all inventory addresses in both the [deleted], has (GSA Required) [Networkx Inventory] Codes and Serving Wiring Centers . . . assigned for all locations and has prepared DOI's [Back Office Transition] inventory spreadsheet and are prepared to deliver that inventory immediate[ly] after contract award.

* * * * *

Verizon commits to support DOI GFE. This is a strength because it assures DOI's continuing ability to provide internal security monitoring and oversight. Additionally, Verizon commits to work with DOI to develop a plan to maintain DOI's GFE inventory. This is a strength because while they currently support GFE equipment, DOI is responsible for renewing and maintaining maintenance support. By agreeing to take on the maintenance responsibilities of the GFE [Verizon] exceeds the requirements especially since [] supporting GFE is not a requirement.

AR, Tab 8, SSEB Report, Verizon Evaluation, at 4, 8. Because the protester did not raise this argument within 10 days of when it knew or should have known of its basis, it is untimely. 4 C.F.R. § 21.2(a)(2).

In any event, these issues provide no basis to sustain the protest. It is well-settled that an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract—either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action. See FAR § 9.505-2(a)(3); CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Tech. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. The existence of an advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. QinetiQ North America, Inc., B-405008, B-405008.2, July 27, 2011, 2011 CPD ¶ 154 at 12. Information that an incumbent may properly learn and use to its advantage in a subsequent completion does not constitute an unequal access to information OCI.

Id.; see also Snell Enters., Inc., B-290113, B-290113.2, June 10, 2002, 2002 CPD ¶ 115 at 8-9.

Here, Qwest does not demonstrate that the information gained by Verizon through its performance of the contract provided anything more than an ordinary incumbent advantage. Moreover, the protester does not demonstrate that the agency's evaluation credited Verizon with anything more than the advantage that an offeror may legitimately possess through its performance of an incumbent task order. On this record, we find no basis to sustain the protest.

The protest is denied.

Lynn H. Gibson
General Counsel