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Decision

Matter of: Serco Inc.

File: B-407797.3, B-407797.4

Date: November 8, 2013

David M. Nadler, Esq., David Y. Yang, Esq., and Ryan P. McGovern, Esq., Dickstein Shapiro LLP, for the protester.
Robert J. Symon, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for Jacobs Technology, Inc., the intervenor.
Michael J. Kraycinovich, Esq., Department of the Army, for the agency.
Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest asserting that agency's discussions were misleading and unequal is denied where agency reasonably sought information regarding protester's proposed staffing, properly sought information regarding protester's current labor rates, and sought similar information from the awardee.
2. Protester's complaints regarding the agency's evaluation of the offerors' technical/management proposals reflect mere disagreement with the agency's judgments and, as such, provide no bases for sustaining the protest.
3. Protest challenging the agency's cost realism evaluation is denied where the agency's comprehensive evaluation record reasonably supports and adequately documents the cost/price evaluation.
4. Protester's assertions regarding an alleged conflict of interest do not provide sufficient basis for this Office to find unreasonable the contracting officer's negative determination regarding the awardee's potential for a significant conflict of interest.

DECISION

Serco Inc., of Virginia Beach, Virginia, protests the Department of the Army's award of the Global Logistics and Support Services (GLASS) contract to Jacobs Technology, Inc., of Fort Walton Beach, Florida, pursuant to request for proposals (RFP) No. W52P1J-11-R-0068. The solicitation sought proposals to provide a

broad range of support services for the Army's logistics civil augmentation program (LOGCAP)¹ and the Army Contracting Command at Rock Island, Illinois.² Serco, the incumbent contractor, protests that the agency conducted flawed discussions, misevaluated the offerors' technical/management proposals, conducted a flawed cost realism analysis, and failed to consider an alleged conflict of interest.

We deny the protest.

BACKGROUND

The agency issued the solicitation in June 2012 and contemplated award of an indefinite-delivery/indefinite-quantity (IDIQ) contract for a 1-year base period and two 1-year option periods. RFP, at 2. The solicitation contained the following three contract line item numbers (CLINs), which constitute the contract's primary performance requirements: program office support (CLIN 0001)³; deputy program manager (DPM) support (CLIN 0002);⁴ and contracting support (CLIN 0003).⁵

¹ LOGCAP is a U.S. program that uses civilian contractors to provide support for U.S. forces and government personnel by performing selected services in wartime and non-wartime operations. RFP at 2. The current LOGCAP contractors are DynCorp International LLC, Fluor Intercontinental, Inc., and Kellogg Brown and Root Services, Inc. Id.

² Although the solicitation provides for potential support for the Army Contracting Command – Rock Island's (ACC-RI) Reachback Division in addition to supporting LOGCAP, the solicitation also states: "GLASS is primarily a LOGCAP support contract." Agency Report (AR), Tab 4, RFP at 4.

³ CLIN 0001, program support, corresponds to section 5 of the performance work statement (PWS), which includes the following requirements: administrative support (answering telephone calls, preparing correspondence, handling travel documents); logistics management (operations and plans support, desk officer support, operations and research support, training and exercise support, database management support); operational planning support (forward planning, forward operator services); and project management. AR, Tab 5, PWS, at 7-21.

⁴ CLIN 0002, DPM support, corresponds with section 6 of the PWS, which requires the following support for forward deployed deputy program managers: administrative support; logistics management; and acquisition support (requirements development, proposal evaluation support, cost monitoring/variance analysis). RFP at 21-28. The solicitation provides that proposals must address both Afghanistan and Kuwait DPM support. PWS at 84-85.

⁵ CLIN 0003, contracting support, corresponds with section 7 of the PWS which includes the following requirements: technical analysis support; cost analysis support; acquisition support; and administrative support. PWS at 28-36.

RFP at 6. CLIN 0001 was a fixed-price CLIN; CLINs 0002 and 0003 were cost-plus-fixed-fee (CPFF) CLINs. RFP at 6.

The solicitation provided for award on a best-value basis, and established the following evaluation factors, listed in descending order of importance: technical/management, past performance, cost/price, and small business participation. RFP at 93. With regard to cost/price, offerors were required to provide detailed information, in formats specified by the solicitation, regarding their proposed costs/prices for various services, labor rates, levels of effort, and indirect rates. The solicitation provided that the agency would evaluate fixed-price CLINs for price reasonableness,⁶ and that the CPFF CLINs would be evaluated for both reasonableness and realism. RFP at 95. The solicitation provided that total evaluated cost/price would be calculated by adding the evaluated prices for all CLINs for each performance period, including any most probable cost adjustments for the CPFF CLINs. Id.

With regard to the technical/management evaluation factor, the solicitation provided that the agency would consider the feasibility of, and resources associated with, each offeror's proposed approach; identify strengths, weaknesses, and deficiencies in each proposal; and assign adjectival ratings of outstanding, good, acceptable, marginal or unacceptable. RFP at 93-94.

On July 18, proposals were submitted by seven offerors, including Jacobs and Serco.⁷ After evaluating those proposals, the agency established a competitive range that included Jacobs and Serco, and opened discussions. During discussions, the agency issued various solicitation amendments, sent four sets of written evaluation notices (ENs) to each offeror, conducted conference calls with the offerors following each set of ENs, and received various responses from the offerors.

Final revised proposals (FRPs) were submitted on April 24, 2013. In evaluating the FRPs under the technical/management factor, the agency's technical/management evaluation team (TMET) assigned five strengths to Jacobs' proposal and two strengths to Serco's proposal; neither proposal was assigned any weaknesses or deficiencies. More specifically, Serco and Jacobs each received strengths for their "overall analysis and understanding of the Government's requirement" and for their "quality control and corrective/action approach." AR, Tab 44, TMET Report,

⁶ The solicitation noted that "cost analysis and technical analysis techniques may also be used to assist in [determining price reasonableness]." RFP at 95.

⁷ The other offerors' proposals, and the agency's evaluation thereof, are not relevant to this protest and are not further discussed.

at 7, 14. Jacobs, but not Serco, was also credited with three additional strengths--one for [redacted];⁸ one for its [redacted],⁹ and one for its [redacted]. Id. at 7-8.

Overall, Jacobs' and Serco's FRPs were evaluated as follows:

	Technical/ Management	Past Performance	Evaluated Cost/Price	Small Business Participation
Jacobs	Outstanding	Substantial Confidence	\$46,262,846	Outstanding
Serco	Good	Substantial Confidence	\$66,159,582	Outstanding

AR, Tab 52, Comparative Analysis Report and Award Recommendation, at 10.

Thereafter, the source selection authority (SSA) selected Jacobs' proposal for award, documenting his determination in a source selection decision (SSD) that stated, in part:

I find Jacobs' proposal superior to Serco's [under the technical/management evaluation factor]. Jacobs and Serco provide a similar strength in their thorough analysis and understanding of the Government's requirement and quality control and corrective/preventive action approach. Jacobs, however, distinguishes itself through the institution of a [redacted]. Jacobs' strengths combine to provide exceptional benefit to the Government.

* * * * *

Best Value Tradeoff: Jacobs' total evaluated price is \$46.3 M[illion], which is \$19.9M less than Serco's total evaluated price of \$66.2 M. I find Jacobs' superior in the area of Technical/Management, while I find the two offerors to present similar performance risk in the areas of Past Performance and Small Business Participation. Given the relative order of importance, since Jacobs has the lower total evaluated price there is no trade off consideration. I find Jacobs' proposal to represent the best value to the Government.

AR, Tab 55, Source Selection Decision, at 5.

⁸ The TMET elaborated that Jacobs' proposed [redacted] and has merit . . . in that it recognizes the [redacted]. AR, Tab 44, TMET Report, at 7.

⁹ The TMET elaborated, "Jacobs' approach is to establish [redacted]." AR, Tab 44, TMET Report, at 8.

On June 28, the agency notified Serco that Jacob's proposal had been selected for award. Serco's protest followed.¹⁰

DISCUSSION

Serco protests that the agency: (1) conducted flawed discussions; (2) misevaluated the offerors' technical/management proposals; (3) conducted a flawed cost realism analysis; and (4) failed to consider an alleged organizational conflict of interest. We find no merit in Serco's allegations.

Agency's Discussions with the Offerors

First, Serco challenges the adequacy and propriety of the agency's discussions, arguing that Serco was misled, and that the discussions were unequal. Protest, July 15, 2013, at 9. More specifically, Serco complains that the agency's discussions improperly led Serco to increase its proposed staffing levels and increase its proposed labor rates. With regard to staffing, Serco maintains that its initial proposal "[made] extensive use of employee cross-training," and reflected "cross-leveraging its employees for rapid deployment."¹¹ Id. Serco asserts that, during discussions, the agency "told Serco to discard its more streamlined, efficient labor model," which led Serco to "remove[] cross-leveraging from its proposal per the Army's direction." Id. at 9-10; Declaration of Serco Proposal Manager at 5. With regard to its labor rates, Serco complains that the agency improperly "led Serco to increase its labor rates," because, during discussions, "the government repeatedly focused on, and asked for, Serco's current incumbent rates." Id. at 11; Supp. Protest/Comments, Aug. 26, 2013, at 16. In this regard, Serco complains that the discussions were unequal, asserting that the agency did not seek similar labor rate information from Jacobs. Protest at 12.

In conducting discussion with offerors, an agency may not consciously mislead or coerce an offeror into raising its price. Eagle Tech., Inc., B-236255, Nov. 16, 1989, 89-2 CPD ¶ 468 at 3-4. However, we will not find discussions to be improper where the agency in good faith provides accurate information to an offeror, even where the offeror uses that information to its ultimate competitive detriment. EMR, Inc., B-406625, July 17, 2012, 2012 CPD ¶ 209 at 4-5; XtremeConcepts Sys., B-406804, Aug. 31, 2012, 2012 CPD ¶ 253 at 4.

¹⁰ Serco filed an initial protest on July 15 and a supplemental protest on August 26.

¹¹ Serco defines "cross-leveraging" as "execution of an individual in more than one discipline or support area or project team," Declaration of Serco's Proposal Manager, Aug. 26, 2013, at 5, elaborating that "cross-leveraging resources allows a contractor to respond to the ebb and flow of actual requirements." Protest at 13-14.

Here, the record does not support Serco's assertions. With regard to Serco's assertion that the agency directed Serco to eliminate cross-leveraging from its proposal, the agency categorically denies this allegation.¹² Despite this dispute between the agency and the protester over what was orally communicated, the contemporaneous written record provides no support for the protester's contention. Indeed, the EN that Serco references in raising this allegation indicates that, rather than directing Serco to increase or decrease its proposed staffing, the agency was seeking additional information regarding Serco's proposed staffing approach. Specifically, the referenced EN states:

Serco's approach to [redacted] is insufficient in detail and appreciably increases the risk of unsuccessful contract performance. Serco's approach does not provide detail as to how it or its subcontractors will ramp up/down labor resources or where these labor resources will come from to support [redacted]. Serco does not identify the actual location of requirements performance. . . .

AR, Tab 25-1b, EN No. T2.

In short, contrary to Serco's assertion that this EN "told Serco to discard its more streamlined, efficient labor model," the EN gave Serco an opportunity to explain its approach, specifically requesting that Serco provide details regarding how it would "ramp up" or "ramp down" its labor resources and identify where performance would take place. The fact that Serco chose, thereafter, to limit its use of cross-leveraging in response to the agency's request for additional information does not support Serco's assertion that the discussions were misleading.¹³

Similarly, we find no basis to sustain Serco's protest on the basis of its complaint that "the government repeatedly focused on, and asked for, Serco's current incumbent rates," which allegedly "led Serco to increase its labor rates." Protest at 11; Supp. Protest/Comments, Aug. 26, 2013, at 16.

¹² Serco submitted a declaration from its proposal manager asserting that, during telephone conferences "the Army directed Serco to submit a proposal that did not permit cross-leveraging resources." Declaration by Serco's Proposal Manager, Aug. 26, 2013, at 2. In response, the agency submitted a joint declaration from the contracting officer and the supervisory contracting officer maintaining that the statements of Serco's declarant are false. Agency's Joint Declaration at 1.

¹³ Serco's assertion that the Army's discussions precluded use of cross-leveraging personnel appears to be inconsistent with Serco's own FPR, in which it apparently reduced, but did not abandon, that approach. For example, [redacted]. AR, Tab 40, Serco's FPR, at 27-28. Further, the [redacted]. Id. at A-5 through A-8.

As the agency notes, review of actual labor rates is one of several evaluation techniques that the Federal Acquisition Regulation (FAR) identifies as appropriate in performing a cost evaluation. See § FAR 15.404-1. Further, the agency notes that its EN to Serco regarding its current labor rates did not make reference to any particular contract, stating:

For those positions not proposed using actual labor rates, provide Serco's current actual labor rates for those positions that are the same or comparable to proposed job titles listed in the "CBOE [consolidated basis of estimate]--Labor" tab in DPM Support and Contracting Support Pricing Templates. For each actual labor rate provided, furnish Serco's low, high, and average actual labor rates and identify the labor category/job title, source, and time period.

AR, Tab 25-1b, EN No. C6.

Finally, there is no merit in Serco's assertion that the discussions were unequal in that similar current labor rate information was not sought from Jacobs. Indeed the record establishes that in conducting discussions with Jacobs, the agency asked virtually the identical question, seeking Jacobs' "current actual labor rates for positions that are the same or comparable." See AR, Tab 20-1b, EN No. C8. Accordingly, there is no basis for Serco's assertions that the agency's request that Serco provide its current actual labor rates constituted unequal discussions.

In summary, we have reviewed all of Serco's various complaints regarding the agency's discussions, and find no merit in them.¹⁴ Serco's protest allegations regarding the agency's discussions are denied.

Evaluation of Technical/Management Proposals

First, in challenging the agency's evaluation of technical/management proposals, Serco echoes its allegations regarding discussions, complaining that the agency improperly permitted Jacobs to employ cross-leveraging of employees while "prohibiting Serco from doing the same." Protest at 13. As noted above, the agency did not prohibit Serco from cross-leveraging its employees. Rather, it sought a more detailed explanation from Serco regarding that proposed approach. Accordingly, we do not further discuss this portion of Serco's protest.

¹⁴ Among other things, Serco asserts that, by requesting submission of "monthly pricing," the agency led Serco to believe it should propose staffing levels that would accommodate completion of any assigned task within a 1-month period, and that the agency misled Serco with regard to how it should address non-productive hours. Neither of these arguments has merit.

Next, Serco asserts that, in evaluating Jacobs' technical/management proposal, the agency "failed to assess performance risk." Id. at 14. Serco also complains that the agency "underrated" Serco's technical/management proposal as merely good "when it should have been outstanding." Protest at 16. In making this argument, Serco asserts that it should have received a strength for its transition approach because it was the incumbent.¹⁵ Id. at 16-17. With regard to the strengths Jacobs' proposal received for its proposed [redacted], Serco asserts that its proposal offered "similar" solutions. Supp. Protest/Comments at 26, 29.

In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion since the agency is responsible for defining its needs and the best method of accommodating them. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's evaluation judgments does not render those judgments unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., supra.

Here, Serco's assertions regarding the agency's technical/management evaluation are without merit. First, with regard to the assertion that the agency failed to evaluate performance risk in Jacobs' proposal, the record is to the contrary. For example, the SSA's source selection decision states:

Jacobs' thorough analysis and understanding of the Government's requirements and its approach to instituting a [redacted] provides substantial benefit to the Government. Through the depth of its analysis and technical approach, Jacobs demonstrates an excellent understanding of the requirement, and presents an integrated approach to contract performance that provides an extraordinarily high degree of confidence that this offeror not only understands the requirement, but also understands how to accomplish it successfully. . . . Jacobs offers another strength, [redacted].

AR, Tab 55, SSD, at 2.

¹⁵ Specifically, Serco asserts: "As the incumbent contractor, Serco offered zero transition risk for Phase-In." Protest at 17.

Based on the above, it is clear that the agency considered the performance risk associated with Jacobs' proposed approach and concluded it was very low. Serco's assertion that the agency "failed to assess" such risk is without merit.

With regard to Serco's assertion that the agency should have credited Serco's proposal with the additional strengths that Jacob's proposal received, Serco has failed to show that the agency's evaluation was unreasonable. With regard to transition, the contemporaneous evaluation record shows that the agency's evaluators and source selection authority discussed this matter, and concluded that Serco's proposal had only addressed transition "at a high level," was "essentially mute" with regard to areas of transition that it could have addressed, and that overall its proposal "did not provide a level of detail [regarding transition] that would merit a strength."¹⁶ AR, Tab 55, SSD, at 4. With regard to the other additional strengths that Jacobs' proposal received, Serco asserts that its own proposal offered similar solutions, but fails to demonstrate that the agency's judgments regarding the superiority of Jacobs' detailed approaches were unreasonable. Accordingly, we find no merit in Serco's various challenges to the agency's evaluation of the technical/management proposals.

Cost Realism

Next, Serco asserts that the agency failed to perform a proper cost realism analysis with regard to the cost reimbursement CLINs. In this regard, Serco asserts that Jacobs' evaluated costs/prices for the cost reimbursement CLINs are "far too low to support an Acceptable approach, much less an Outstanding one." Protest at 18. Serco's further asserts that the agency failed to apply any "outside benchmarks" in evaluating the cost realism of offerors' proposals, and thus "could not have conducted an even and consistent cost realism analysis." Protest at 19. The record is to the contrary.

When an agency evaluates proposals for the award of a cost-reimbursement contract, an offeror's proposed estimated cost of contract performance is not considered controlling since, regardless of the costs proposed by the offeror, the government is bound to pay the contractor its actual and allowable costs. Metro Machine Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 6; Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD

¹⁶ Serco's own protest contradicts its assertion that, as the incumbent, there was "zero transition risk." Specifically, in challenging the agency's consideration of its incumbent labor rates, Serco asserts that it "developed its technical approach based on the GLASS RFP, not its current work as the LOGCAP support contractor." Protest at 7. Accordingly, Serco's own protest indicates it believed there were differences in the prior contract requirements and those contemplated under the GLASS RFP.

¶ 49 at 17; see FAR § 16.301. Based on the results of the cost realism analysis, an offeror's proposed costs should be adjusted when appropriate. FAR § 15.404-1(d)(2)(ii). An agency's cost realism analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide a measure of confidence that the agency's conclusions about the most probable costs under an offeror's proposal are reasonable and realistic in view of the cost information reasonably available to the agency at the time of its evaluation. See Metro Mach. Corp., supra. We review an agency's judgment in this area only to see that the agency's cost realism evaluation was reasonably based and adequately documented. Honeywell Tech. Solutions, Inc., supra; Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 26.

Here, the extensive contemporaneous evaluation record supports the adequacy and reasonableness of the agency's cost realism evaluation. Specifically, the record shows that the agency employed several of the cost evaluation techniques identified in FAR § 15.404-1. For example, as noted above, during discussions the agency directed Jacobs to:

Provide Jacobs' current actual labor rates for those positions that are the same or comparable to proposed job titles listed in the "CBOE--Labor" tab in DPM and Contracting Support [CLINs 0002 and 0003, respectively] Templates. For each actual labor rate provided, furnish Jacobs' low, high, and average actual labor rates and identify the labor category/job title, source, and time period.

AR, Tab 20-01b, EN No. C8.

Jacobs responded by providing rates from an ongoing contract for the U.S. Army at Fort Belvoir.¹⁷ AR, Tab 20-01c, EN Response. Jacobs further represented that the PEO Soldier contract employed skills similar to those required by the GLASS contract. Id. The agency states that it reviewed and analyzed the information Jacobs provided, which included labor surveys, and had no concerns. AR, Tab 46-2b, Cost/Price Report (Jacobs), at 5. Next, the agency compared Jacobs' weighted average labor rates for each of the two CPFF CLINs to weighted average labor rates derived from the Bureau of Labor Statistics (BLS) national data with the following results.

¹⁷ The ongoing contract was the Program Executive Officer (PEO) Soldier contract that had been awarded to Jacobs in 2012.

	Jacobs' Weighted Average Labor Rate	BLS Weighted Average Labor Rate (25 th Percentile)	Jacobs' % Above/Below BLS 25 th Percentile	BLS Weighted Average Labor Rate, (Median)	Jacobs' % Above/Below BLS Median
DPM Support (CLIN 0002)	[redacted]	\$20.17	[redacted]	\$26.19	[redacted]
Contracting Support (CLIN 0003)	[redacted]	\$26.77	[redacted]	\$35.43	[redacted]

Id.

As shown in the table above, the comparison showed that Jacobs' rate was at least [redacted] percent [redacted] than the BLS data at the 25th percentile, and no more than [redacted] percent [redacted] the median of the BLS data.

With regard to the proposed level of effort, the agency's TMET performed a technical realism analysis of Jacob's proposed levels of effort for the two CPFF CLINs based on the consolidated basis of estimate (CBOE) that Jacobs submitted.¹⁸ AR, Tab 58-1, Technical Realism Analysis. The TMET concluded that "Jacobs' proposed types and quantities of labor resources appear to be adequate for the requirements of the solicitation and the offeror's unique approach." Id. at 3. Further, in concluding that Jacobs' proposed costs/prices for the CPFF CLINs were realistic and reasonable, the agency also considered the overhead costs that Jacobs proposed, its subcontractor costs, and its other direct costs (ODCs). AR, Tab 46-2b, Cost/Price Report (Jacobs), at 10-16. Finally, the agency performed similar analyses with regard to Serco's proposed costs/prices for the CPFF CLINs. AR, Tab 46-3b, Cost/Price Report (Serco).

Based on our review of the entire evaluation record, we find no basis to question the reasonableness or adequacy of the agency's cost realism analysis. We have considered all of Serco's arguments challenging the agency's evaluation and find no merit in them. Rather, Serco's complaints merely reflect its disagreements with the agency's multiple, documented judgments and, as such, provide no basis for sustaining its protest.

¹⁸ The solicitation required each offeror to submit a CBOE that identified its proposed resources and costs in a prescribed format mirroring the format of the PWS. AR, Tab 58-1, Technical Realism Analysis, at 1.

Conflict of Interest

Finally, in its supplemental protest, Serco asserts that Jacobs should have been ineligible for award due to an alleged organizational conflict of interest (OCI) flowing from the fact that Jacobs' parent corporation, Jacobs Engineering Group, competes in the construction and engineering industry, a market in which the LOGCAP contractors also compete.¹⁹ In raising this issue, Serco refers to various news articles indicating that Jacobs Engineering Group has, in the past, either competed or partnered with one or more of the LOGCAP contractors in procurements unrelated to the LOGCAP contract. Supp. Protest/Comments, Aug. 26, 2013, at 4. Serco asserts, among other things, that Jacob's objectivity in performing acquisition support for LOGCAP task order competitions could be impaired due to its parent corporation's potential interactions with the LOGCAP contractors in non-LOGCAP related matters.²⁰ Id.; Serco's Supp. Comments, Sept. 24, 2013, at 3-8.

The FAR requires contracting officials to avoid, neutralize, or mitigate significant potential conflicts of interest. FAR §§ 9.504(a), 9.505. Although we will review a contracting officer's determination regarding significant potential conflicts, we will not substitute our judgment where an agency has given reasonable consideration to the matter. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17. Further, in challenging an agency's determination, a protester must identify "hard facts" that indicate the existence or potential existence of a significant conflict; mere inference or suspicion is insufficient. TeleCommunication Sys. Inc., supra, at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

Here, section A of the RFP advised offerors that the GLASS contract requirements created the potential for OCIs and defined each of the three types of OCIs.²¹

¹⁹ As noted above, the current LOGCAP contractors are DynCorp International LLC, Fluor Intercontinental, Inc., and Kellogg Brown and Root Services, Inc.

²⁰ In responding to Serco's OCI allegation, counsel for Jacobs has submitted similar references to news articles indicating that Serco's past relationship to the LOGCAP contractors is similar to the relationship that Serco asserts creates an OCI for Jacobs--that is, that Serco has competed or partnered with one or more of the LOGCAP contractors in matters unrelated to LOGCAP. Jacobs' Request for Dismissal, Aug. 29, 2013, at 2.

²¹ The solicitation referred to impaired objectivity OCIs, unequal access to information OCIs, and biased ground rules OCIs, noting that, if the GLASS contractor were to compete for any contract for which it provides acquisition support, such OCIs could exist. RFP at 3-4.

RFP at 3. Section L of the RFP provided instructions to the offerors, referencing the section A provisions, and stating:

Offerors are required to submit the following:

(1) Statement of Non-Compete. Offerors' attention is directed to FAR subpart 9.5. All offerors who cannot adequately demonstrate the ability to avoid the Impaired Objectivity OCI as well as the ability to mitigate the Unequal Access to Information and Biased Ground Rules OCIs identified in Section A, shall submit with their proposal: A signed Statement of Non-Compete for any future contract actions for LOGCAP or ACC-RI [Army Contracting Command – Rock Island] Reachback including a statement that the offeror, any subcontractor, subsidiary, joint venture or team member, or other affiliate does not currently and shall not in the future, hold any contracts that create an OCI issue by being a work project generated under the GLASS contract.

OR

(2) OCI Mitigation Plan. Should the offeror elect to submit an OCI Mitigation Plan in lieu of the Statement of Non-Compete, the OCI Mitigation Plan shall thoroughly and completely address all current and potential OCIs, specifically addressing the three OCIs defined in Section A. . . .

RFP at 83.

Jacobs' submitted a non-compete statement with its proposal, stating among other things:

After careful review of the requirements outlined in the RFP and Federal Acquisition Regulation (FAR) paragraph 9.5, Jacobs hereby certifies that the corporation, any subcontractor, subsidiary, joint venture or team member, or other affiliate does not currently and shall not in the future, hold any contracts for LOGCAP or ACC-RI Reachback that create an OCI issue by being a work project generated under the GLASS contract.

Jacobs Request for Dismissal, Aug. 29, 2013, exh. 1.

In response to Serco's OCI protest allegations, the agency's contracting officer submitted a declaration stating that, prior to award, he considered Jacobs' non-

competitively statement and determined that it sufficiently addressed potential OCIs. Joint Declaration of Contracting Officer/Supervisory Contracting Officer, Sept. 18, 2013, at 4.

Here, Serco has not meaningfully suggested that Jacobs' proposal failed to address the potential OCIs on which the solicitation clearly focused--that is, the concern that the GLASS contractor not compete for, or participate in performing, any contract for which it provided acquisition support. As noted above, Jacobs submitted the non-competitively statement contemplated by the solicitation, representing that neither Jacobs, its subcontractors, nor any of its affiliates,²² would hold any such contract. Rather, Serco's protest is based on the asserted concern that, in performing acquisition support under the GLASS contract, Jacobs' objectivity may allegedly be impaired due to its parent corporation's involvement with the LOGCAP contractors in procurements other than the GLASS-supported procurements.

We decline to sustain Serco's protest on the basis of its OCI allegations. First, to the extent Serco's allegations are based on its assumption that Jacobs' parent corporation will subsequently compete or partner with any of the LOGCAP contractors, its protest is conjecture. We note that section H-16 of the solicitation provides that the contractor has an ongoing obligation, following award, to disclose conflicts that arise during contract performance. RFP at 26. Further, we do not view Serco's speculation regarding either the present or future potential impact of Jacobs' parent corporation's non-LOGCAP related activities on the manner in which Jacobs will perform the GLASS contract requirements as constituting the type of "hard facts" our Office requires in order to find unreasonable the contracting officer's negative determination regarding the potential for a significant conflict of interest.

The protest is denied.

Susan A. Poling
General Counsel

²² There can be no reasonable dispute that Jacobs' parent corporation falls within the definition of an "affiliate."