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Decision

Matter of: XL Associates, Inc. d/b/a XLA

File: B-417426.3

Date: January 16, 2020

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H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, CapGemini Government Solutions, LLC, for the intervenor.
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Young H. Cho, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of its own quotation under various non-price factors and selection decision is denied where the record shows that the evaluation and selection decision were reasonable and in accordance with the stated evaluation criteria.
 2. Protest asserting agency failed to meaningfully consider an alleged impaired objectivity organizational conflict of interest (OCI) is denied where the contracting officer gave meaningful consideration to the alleged conflict and reasonably concluded that no OCI or potential for an OCI existed.
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DECISION

XL Associates, Inc. d/b/a XLA, of Vienna, VA, protests the issuance of a call order under a blanket purchase agreement (BPA) to CapGemini Government Solutions, LLC (CapGemini), of McLean, Virginia, by the Department of Homeland Security, Immigration and Customs Enforcement (ICE), under request for quotations (RFQ) No. 70CDCR18Q0000018, for professional support services to conduct call center operations. XLA challenges the agency's evaluation of its quotation and selection decision, and argues that the agency failed to meaningfully consider CapGemini's alleged impaired objectivity organizational conflict of interest (OCI) arising from CapGemini's current performance of a separate call order.

We deny the protest.

BACKGROUND

The Office of Enforcement and Removal Operations (ERO) within ICE is responsible for promoting public safety and national security by removing illegal aliens from the United States through the fair enforcement of U.S. immigration laws. Agency Report (AR), Tab 8, RFQ, amend 1, encl. 1, Statement of Work (SOW), at 2.¹ In that capacity, the office operates the ERO Contact Center of Operations (ECCO). Id. The ECCO serves as a conduit for reporting a wide range of issues that are central to the efficient operations of ICE enforcement and detention apparatus. Id. The purpose of this procurement is to obtain professional support services for call center operations and includes telephonic and non-telephonic responsibilities.² Id.

The call order solicitation was issued on November 30, 2018, under Federal Acquisition Regulation (FAR) § 8.405-3, to holders of the agency's Business and Programs Solutions for Law Enforcement (BAPSLE) BPA for support services to ICE's ECCO. AR, Tab 1, RFQ, at 1. The RFQ contemplated the award of a single hybrid fixed-price/labor-hour call order with one 12-month base period and four 12-month option periods. Id. Award was to be made on a best-value tradeoff basis considering the following factors listed in descending order of importance: technical approach and understanding (technical approach); management approach and capabilities (management approach); past performance; and price. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 7. The non-price factors, when combined, were more important than price. Id. The RFQ stated that the non-price factors would be assigned confidence ratings while a price analysis would be performed to assess whether the proposed price was fair, reasonable, and balanced. Id. at 7, 9.

The agency received four quotations by the initial RFQ closing date, including those from XLA and CapGemini. Contracting Officer's Statement (COS) at 5. The agency evaluated the quotations and awarded the call order to CapGemini. Id. XLA filed its first protest and a supplemental protest with our Office challenging the agency's award to CapGemini; those protests were docketed as B-417426 and B-417426.2. Id. We dismissed the protests as academic based on the agency's notice of intent to take

¹ The RFQ was amended once. All citations to the solicitation are to the final version as amended.

² The telephonic responsibilities are for The Victims of Immigration Crime Engagement (VOICE) hotline, the Detention Reporting Information Line (DRIL), and ICE Facilitation of Return Request (FoRR) Intake. AR, Tab 8, RFQ, amend 1, encl. 1, SOW, at 2. XLA is the incumbent ECCO support services contractor, however, this procurement has a different management structure for ECCO and the solicitation included a surge support requirement to allow for vendors to react to periods of increased call volumes. AR, Tab 44, Source Selection Decision Memorandum (SSDM), at 2.

corrective action by conducting an OCI investigation, reviewing the evaluations, and issuing a new award decision. XL Assocs., Inc., B-417426, B-417426.2, Apr. 24, 2019 (unpublished decision).

After our Office dismissed XLA’s protests, the agency investigated XLA’s OCI allegation and reevaluated³ the quotations as follows:

	XLA	CapGemini
Technical Approach	Some Confidence	High Confidence
Management Approach	Low Confidence	High Confidence
Past Performance	Substantial Confidence	Substantial Confidence
Price	\$16,523,519	\$17,209,118

AR, Tab 44, SSDM, at 28.

The source selection authority (SSA) reviewed the technical evaluation panel’s (TEP) consensus evaluation under the technical approach and management approach factors, as well as the past performance evaluation and price analysis. In conducting a comparative assessment between the vendors, the SSA found that CapGemini’s quotation offered significant benefits under the two most important factors (technical approach and management approach) that were worth the 4.15 percent (or \$685,598) price premium over XLA’s quotation. Id. at 40. XLA was notified of CapGemini’s selection on October 1. After receiving a brief explanation of the selection decision, XLA filed this protest.

DISCUSSION

XLA challenges the agency’s evaluation of its quotation under the technical and management approach factors and the best-value tradeoff decision. XLA also argues that the agency failed to meaningfully consider CapGemini’s alleged impaired objectivity OCI arising from its performance of a separate call order issued under the BAPSLE BPA. Although we do not specifically address all of XLA’s arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.⁴

³ The available confidence ratings for the technical and management approach factors were high confidence, some confidence, and low confidence. RFQ, amend. 1, encl. 3, Evaluation and Instructions, at 10. Past performance was to be evaluated and assigned one of the following ratings: high confidence, substantial confidence, satisfactory confidence, limited confidence, or neutral. Id.

⁴ For example, XLA challenges the agency’s conclusion that XLA’s approach to the tableau reporting requirement included reliance on files produced by another vendor. Protest at 22-23; Protester’s Comments at 21-23. The agency argues that the involvement of another vendor in XLA’s quotation demonstrated a lack of understanding

Where, as here, an agency issues an RFQ to Federal Supply Schedule vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. DKW Commc'ns, Inc., B-414476, B-414476.2, June 23, 2017, 2017 CPD ¶ 206 at 4; HP Enter. Servs., LLC, B-411205; B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 5. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. Electrosoft Servs., Inc., B-413661, B-413661.2, Dec. 8, 2016, 2017 CPD ¶ 7 at 5.

Evaluation of XLA's Quotation

XLA challenges the agency's evaluation of its quotation under the technical approach and management approach factors. For these two factors, the RFQ stated that the agency would assign confidence ratings based on a holistic assessment of the quotations. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 7. Under the technical approach factor, the agency identified a number of attributes in XLA's quotation that raised its expectation of successful contract performance, but ICE also identified three attributes that lowered its expectation of successful contract

of the requirements. Memorandum of Law (MOL) at 27-28. Specifically, the agency concluded that the SOW does not require reliance on another vendor for the data and lowered the government's expectation of successful contract performance. See also AR, Tab 42, TEP Consensus Report (TEP Report), at 2. In its comments, XLA disputes this conclusion, arguing that the SOW does not provide any information identifying the source of the data. Protester's Comments at 21-22. In addition, XLA contends that under the incumbent contract, XLA used another vendor to generate the data and never had access to the data source for this information. Id. at 22. Based on our review of the record, we find that the agency has reasonably explained its concerns. Although XLA may have relied on another vendor in its performance of the incumbent contract, the agency found that XLA's reliance on another vendor in its quotation for portions of the upcoming effort (i.e., the requirement to "develop, implement, and track VOICE and DRIL statistical data [using] the Tableau dashboard") did not provide a satisfactory approach for the task. AR, Tab 8, RFQ, amend 1, encl. 1, SOW, at 4-5; AR, Tab 42, TEP Report, at 2; MOL at 27-28. The agency also concluded that XLA's approach could result in its inability to perform this task if the other vendor were to change its production process or not produce the information at all. AR, Tab 42, TEP Report, at 2. While XLA disagrees with the agency's judgment, it has not shown it to be unreasonable. See, e.g., SelectTech Servs. Corp., B-403986, Dec. 23, 2010, 2011 CPD ¶ 58 at 4. Accordingly, this protest ground is denied.

performance. As a result, the agency assigned a “some confidence” rating to XLA’s quotation.⁵ AR, Tab 42, TEP Report, at 2-4. Under the management approach factor, the agency identified one attribute that raised the agency’s expectation of successful contract performance, but also noted two attributes that lowered the government’s expectation of success. Thus, the agency assigned a low confidence rating to XLA’s quotation.⁶ Id. at 4-5. We address the protester’s challenges below.

Technical Approach--Surge Support

XLA first challenges the agency’s conclusion that XLA’s quotation failed to demonstrate its understanding of the surge support requirements under the technical approach factor. Protest at 20-21; Protester’s Comments at 10-13. Specifically, XLA argues that while its quotation noted a secondary benefit of the surge requirement, it also clearly demonstrated its understanding of the intended use of the surge support requirement, which the agency unreasonably ignored. Protest at 20-21; Protester’s Comments at 10-12. The agency responds that the additional descriptions in XLA’s quotation regarding the use of surge support to cover unexpected long-term absences reflected a misunderstanding of the surge support requirement thus lowering the government’s expectation of successful contract performance. MOL at 22-24.

The technical approach factor, as relevant here, required an assessment of the vendor’s clear and effective demonstration of knowledge, understanding, and technical capability to perform all requirements of the SOW. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 8. The SOW required, under the surge support task, that the contractor provide surge support for all tasks identified in the SOW when a surge support request is authorized by the contracting officer’s representative (COR). AR, Tab 8, RFQ, amend 1, encl. 1, SOW, at 5. The SOW explained that surge events generally cause a significant (in excess of 25 percent) spike in the number of calls received into the call center over a set period of time. Id. The SOW further stated that the agency estimated a maximum of 12,960 hours of surge support per year, that surge support hours will be directly associated with the duration of the impacting event, and that surge support is not to be construed as a permanent change to the contractor’s normal working hours. Id.

While XLA’s quotation indicated it would monitor the SOW’s 25 percent threshold for surge, it also stated that “the Surge Support program could also provide added flexibility

⁵ Some confidence was defined as: “The Government has ***some confidence*** that the Vendor understands the requirement, proposes a sound approach, and will be successful in performing the contract with ***some*** Government intervention.” AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 10 (bold and italics in original).

⁶ Low confidence was defined as: “The Government has ***low confidence*** that the Vendor understands the requirement, proposes a sound approach, or will be successful in performing the contract ***even with*** Government intervention.” AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 10 (bold and italics in original).

for coverage for unexpected long term medical or personal leaves of absence with the prior approval of the COR.” AR, Tab 25, XLA Tech. Quotation, at 15.

While the TEP found that XLA demonstrated its understanding of when surge support would be exercised, the TEP also found that XLA’s proposed use of the surge support task in the event of unexpected absences lowered the agency’s expectation of successful contract performance. AR, Tab 42, TEP Report, at 2. The agency explained that its intent for seeking surge support was not to address unexpected absences. Id.; see also MOL at 23-24.

XLA’s arguments provide no basis to sustain the protest. Here, the SOW provided for surge support only in the event of a significant, unexpected increase in calls, and not for any other purpose. While XLA’s quotation addressed its understanding of the intended use of this requirement--which the TEP acknowledged--the quotation also included descriptions regarding other potential uses of surge support that the agency found was inconsistent with the solicitation. MOL at 24.

In its comments on the agency report, XLA argues that the agency’s conclusion that XLA both understood and misunderstood the requirement was illogical. Protester’s Comments at 12-13. However, it is the vendor’s responsibility to submit a well-written quotation, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements; the vendor runs the risk that the agency will unfavorably evaluate its quotation where it fails to do so. The Concourse Grp., LLC, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 7. XLA’s disagreement with the agency’s evaluation is not sufficient to render the evaluation unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

On this record, we do not find the agency’s conclusion objectionable or illogical. Although, XLA’s quotation demonstrated its understanding of the intended use of the surge support requirement, it was reasonable for the agency to find XLA’s proposed secondary use to be inconsistent with the requirement, therefore lowering the agency’s confidence that XLA had a strong understanding of the requirement. See The Green Tech. Grp., LLC, B-417368, B-417368.2, June 14, 2019, 2019 CPD ¶ 219 at 7. Accordingly, this protest ground is denied.

Technical Approach--Implementation of New Server and Processing Enhancement Tool

XLA next argues that the agency unreasonably found that XLA’s quotation presented contradictory information regarding its status and approach to replacing an existing database with a new server and processing enhancement tool because its quotation clearly reflected the prototype nature of the server and XLA’s planned migration approach. Protester’s Comments at 13-20. The agency responds that the TEP found XLA’s quotation provided conflicting information regarding the status of the server and tool, and did not propose a back-up solution in the event XLA could not obtain all necessary approvals for the server. MOL at 24-27.

As discussed above, under the technical approach factor the agency would assess, among other things, the vendor's clear and effective demonstration of knowledge, understanding, and technical capability to perform all requirements of the SOW. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 8.

The SOW required, under the non-telephonic and written case review operations support task (task 2), the contractor to provide staff to adequately and consistently review all incoming written and non-telephonic complaints submitted to the Custody Programs Division and the ECCO, summarizing key points in each case, advising federal staff on the status of each case, and tracking all cases. AR, Tab 8, RFQ, amend. 1, encl. 1, SOW, at 3. The SOW required the contractor to monitor multiple internal information technology (IT) systems and email accounts to identify new complaints and inquires in real time; review and log all incoming cases into a case management system and conduct a preliminary review on the nature of the complaint/inquiry; conduct searches of various databases to assess whether the issue was previously addressed or if there was enough information to take action; and advise federal staff how to properly respond to the issues/inquires using established standard operating procedures. Id. at 3-4. The SOW also required, under the work activity tracking task (task 4), the contractor to track intake and responses to queries by: "nature of complaint, means of submission, alien, facility, victims, and topic and collect national statistics." Id. at 5. Additionally, the contractor was required to use various IT systems to research cases regarding detained and non-detained aliens; and develop, implement, and track VOICE and DRIL statistical data using the tableau dashboard. Id.

With respect to task 2, XLA's quotation stated that it was in the process of upgrading its reporting system to replace it with a robust SQL server.⁷ AR, Tab 25, XLA Tech. Quotation, at 0012. With respect to task 4, XLA noted that it "recently implemented a SQL Server database environment" and "XLA is utilizing the new SQL Server environment" to eventually complete a migration of legacy databases. Id. at 0018. XLA's quotation also stated it was implementing a significant processing enhancement using a patented technology referred to as "[DELETED]" that would permit [DELETED]. Id. at 0019.

While the TEP found that XLA's proposed approach to using a new server and processing enhancement tool raised the government's expectation of successful contract performance, the evaluators also raised several concerns regarding conflicting statements in XLA's quotation. AR, Tab 42, TEP Report, at 2-3. Specifically, the TEP was concerned that XLA's approach relied on a "newly proposed separate SQL server environment and proprietary content processing system software" that had not been approved or fully implemented. Id. The TEP also noted that XLA's quotation did not address how its proposed approach would be implemented. Id. The TEP also found

⁷ Although the parties never specifically define "SQL Server," we understand the term to refer to the relational database management system developed by Microsoft.

XLA's lack of a "back-up" solution for its new server presented a risk that the agency's requirements would not be met. Id.

On this record, XLA's arguments provide no basis to sustain the protest. The RFQ stated that under the technical approach factor, the agency would assess the vendor's clear and effective demonstration of knowledge, understanding, and technical capability to perform all requirements of the SOW. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 8. In its comments on the agency report, XLA contends that its quotation was clear and explicit concerning the prototype nature of the SQL server. Protester's Comments at 13-18. In support of its assertion, XLA provides excerpts from various sections of its quotation and contends that "[w]hen read as a whole, XLA's [quotation] clearly and articulately lays out the nature of the current server and current processes, its intention to provide services utilizing the existing Access server, and its intention to migrate to the new SQL [S]erver during the life of the contract." Id. at 18.

To the extent that XLA's quotation proposed to use a new server as part of its technical approach to perform the SOW requirements, we find reasonable the agency's conclusion that its expectation of successful performance was lowered because XLA did not specifically address how or when the server would be fully implemented, or what mitigation plans XLA proposed in the event the implementation was delayed. See MOL at 26-27. Despite its discussion throughout its technical approach about the new server and process, XLA provides no specific details regarding its implementation beyond a "review [of] the current status of our reporting infrastructure, including the SQL Server database and Tableau dashboards" as part of its transition-in approach. AR, Tab 25, XLA Tech. Quotation, at 39.

XLA also contends that the agency unreasonably conflated two separate and distinct technologies (SQL Server and [DELETED]) showing that the agency either misunderstood XLA's quotation or the underlying technologies. See Protester's Comments at 20-21. However, by the protester's own admission, [DELETED] "was to be installed on the SQL server," and "[DELETED] would be part of the SQL server" during the approval process. Id., attach. 1, Decl. of Chief Operating Officer (COO), at 3. The record shows that the concerns the agency expressed about these two proposed technologies were not "conflated," but were based on the fact that XLA's quotation lacked details regarding the implementation of these new proposed enhancements. XLA's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Accordingly, this protest ground is denied.

Management Approach--Double Counting of Attributes

Finally, XLA argues that the agency essentially improperly "double-counted" its concerns by including aspects from the agency's assessment under the technical approach factors in its evaluation of the quotation under the management approach

factor.⁸ Protester's Comments at 23-25. The agency responds that it reasonably found that these concerns lowered its expectation of successful contract performance under the management approach factor, because XLA's quotation repeated its misunderstanding of the surge support requirements in describing its management approach. The agency also noted that XLA's project management plan did not address any aspect of its implementation of XLA's proposed approach to use the new server and process. Supp. MOL at 16-19.

Under the management approach factor, the vendor's management approach would be assessed for its ability to provide and maintain the necessary personnel and overall management of the required performance as described in the SOW. AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 8. The RFQ also stated that the agency would evaluate the vendor's "[p]roject [m]anagement [p]lan [for] project personnel and what position they will fill, any proposed subcontracting arrangements, communication and coordination plans, schedule of all tasks and subtasks, meetings, and deliverables." Id.

XLA stated the following as part of its recruitment and retention strategy to support personnel needs related to its management approach:

One approach we have identified under the new [o]rder is to build a surge resource pool of continual candidates prescreened, cleared and ready to step in--either under the surge support task or to quickly fill a vacated position needed in order to maintain quality performance metrics.

AR, Tab 25, XLA Tech. Quotation, at 0028.

The TEP found that this aspect of the quotation lowered the agency's expectation of successful contract performance because XLA "repeats their misunderstanding of the intent of the [s]urge [s]upport [t]ask." The TEP also found that despite having proposed a new server and process in its technical approach, XLA's project management plan did

⁸ The agency contends that XLA's arguments are untimely because despite being aware that ICE had previously found attributes to lower the government's expectation of success both under the technical approach and management approach factors, XLA never raised arguments challenging the agency's evaluation methodology. See Supp. MOL at 15-16. We disagree. While the agency may have provided a detailed explanation of its initial evaluation to XLA in March 26, 2019, the agency did not provide XLA with a detailed explanation of its reevaluation of XLA's quotation as a result of the corrective action. Moreover, the agency report documents produced on November 8, 2019, show that the agency's post-corrective evaluation was not identical to the agency's original evaluation. Compare AR, Tab 53, Supp. Protest, Apr. 4, 2019, at 3-12 with AR, Tab 42, TEP Report. Accordingly, we decline to dismiss these protest grounds as untimely because they were raised within 10 days after the basis of protest was known. FN Mfg., LLC, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 5.

not address the timelines for the implementation or approval process as part of its management approach. AR, Tab 42, TEP Report, at 4.

On this record, we agree with the protester that the agency's conclusion regarding the surge support requirement is not supported by the record. Unlike XLA's identification of an additional use for the surge support requirement in its technical approach--which was supported by the solicitation--XLA's proposed management approach did not identify the use of the surge support requirement for unexpected long term medical or personal leaves of absence. Compare AR, Tab 25, XLA Tech. Quotation, at 15 with id. at 28. Rather, XLA proposed to build a "surge resource pool" to have "resources at the ready" to support the surge support requirement or for other purposes. Id. at 28.

While we agree that this conclusion was unreasonable, we do not find it provides a basis to sustain the protest. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 20-22.

First, based on this record, we find nothing unreasonable about the agency's conclusion that XLA failed to address its proposed timelines or approval processes for the newly proposed hardware and processes. The RFQ stated that under the management approach factor, the vendor's approach to the overall management of the required performance as described in the SOW would be evaluated and that the vendor's project management plan would be evaluated to assess the vendor's proposed approach for "communication and coordination plans [and] schedules of all tasks and subtasks, meetings, and deliverables." AR, Tab 10, RFQ, amend. 1, encl. 3, Evaluation and Instruction, at 8. Despite proposing the use of a new server and process as part of its technical approach, its management approach provided no details as to how it would implement these enhancements. See AR, Tab 25, XLA Tech. Quotation, at 21-24, 34-37.

We have stated that where the record shows that multiple weaknesses reasonably relate to the evaluation factors under which they were assigned, there is nothing inherently wrong with an agency assigning multiple weaknesses where the same flaw is relevant to multiple evaluation factors. See, e.g., Davis Def. Grp., Inc., B-417470, July 11, 2019, 2019 CPD ¶ 275 at 10; UNICCO Gov't Servs., Inc., B-409111 et al., Jan. 23, 2014, 2014 CPD ¶ 55 at 11 n.6. Notwithstanding that the attributes that lowered the agency's expectation of successful contract performance stem from overlapping factual predicates, the faults identified independently relate to XLA's technical approach and its management approach, respectively, so it is not clear that the agency's conclusions represent inappropriate double-counting. See, e.g., Davis Def. Grp., Inc., supra; Octo Consulting Grp., Inc., B-416097.3, B-416097.4, Sept. 24, 2018, 2018 CPD ¶ 339 at 5-6.

Next, the record shows that the TEP found XLA's proactive staffing approach raised the expectation of successful contract performance while the two attributes discussed above lowered the agency's expectations. And as a whole, however, the TEP had low confidence in XLA's management approach. AR, Tab 42, TEP Report, at 4. By contrast, the TEP found that CapGemini's quotation provided a staffing model that well exceeded the SOW requirements at no additional cost to the government and utilized an industry best practice calculation for call center modeling with no attributes that lowered the expectation of successful performance. Id. at 10. As a result, the agency assigned CapGemini a high confidence rating for its management approach. Id.

The SSA's comparative assessment found CapGemini's higher confidence rating was the result of CapGemini's quotation "provid[ing] a greater number of benefits that raised the [g]overnment's expectation of success and no [attributes] that lowered the [g]overnment's expectation of success." AR, Tab 44, SSDM, at 39. As a result, the SSA found CapGemini's "comprehensive management approach [to be] worth the 4.15 [percent] price premium because the [g]overnment expects significantly more benefits from Cap[G]emini's approach than from XLA's approach." Id. Notably, while XLA challenged the two conclusions that lowered the agency's expectation of successful contract performance, XLA does not argue that the TEP should have identified other features that would raise the government's expectation of successful performance.

Moreover, XLA has not challenged any aspect of the TEP's evaluation of CapGemini's quotation or the selection official's comparative assessment of these quotations. Consequently, notwithstanding our conclusion that the agency unreasonably criticized XLA's quotation under the management approach factor for XLA's misunderstanding about the surge support requirement, it does not provide a basis to sustain the protest. See, e.g., Booz Allen Hamilton, Inc., B-417418 et al., July 3, 2019, 2019 CPD ¶ 246 at 8 ("[W]here a protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the agency's evaluation of proposals are found.") Accordingly, this protest ground is denied.

Organizational Conflict of Interest

XLA also argues that ICE failed to meaningfully consider an alleged impaired objectivity OCI arising from CapGemini's performance of another call order issued under the BAPSLE BPA to provide advisory and support services for the ERO.⁹ Specifically, XLA argues that CapGemini's performance of the ERO support services call order puts it in a position to analyze data collected under the ECCO call order to make recommendations to ICE that would lead to additional or new work for CapGemini under the ECCO task

⁹ Under the ERO support services call order, CapGemini supports the ERO planning and detention management efforts to assist in capacity forecasting, and reporting of current and future detention capacity requirements of ICE detention facilities.⁹ AR, Tab 40, Program Office OCI Memo., attach. 2, ERO support service call order SOW, at B0040.

order. Protest at 1-2, 15-19; Protester's Comments at 2-9. The agency responds that the contracting officer considered CapGemini's roles under both call orders and the specific allegations raised by XLA, and determined that no OCI, or potential for an OCI, existed. MOL at 10-21.

An impaired objectivity OCI, as addressed in FAR subpart 9.5 and the decisions of our Office, arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505(a); Diversified Collection Servs., Inc., B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6. The concern in such impaired objectivity situations is that a firm's ability to render impartial advice to the government will be undermined by its relationship to the product or service being evaluated. PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

The primary responsibility for determining whether a conflict is likely to arise, and the resulting appropriate action, rests with the contracting agency. FAR § 9.504; RMG Sys., Ltd., B-281006, Dec. 18, 1998, 98-2 CPD ¶ 153 at 4. Section 9.504 of the FAR requires contracting officers to analyze planned acquisitions in order to: (1) identify and evaluate potential OCIs; and (2) avoid, neutralize, or mitigate significant potential conflicts before contract award. In evaluating a potential OCI, the FAR advises that each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. FAR § 9.505. Once an agency has given meaningful consideration to whether an OCI exists, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. See DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 6.

After the dismissal of XLA's earlier protests, the contracting officer conducted an OCI investigation that reviewed the call orders at issue and the program office's response to XLA's OCI allegations.¹⁰ AR, Tab 41, Contracting Officer's (CO) OCI Investigation, at 6. In addition to one task under the ERO support services call order identified by the program office (Custody Program Divisions support task), the contracting officer identified three other tasks under the ERO support services call order that were "broad enough to potentially include some interaction with the ECCO requirement."¹¹ Id.

¹⁰ The program office's response to the contracting officer's OCI investigation was prepared by a knowledgeable official who was, at the time, the COR and program manager for the ECCO call order, as well as being the alternate COR for the ERO support services call order. AR, Tab 41, CO OCI Investigation, at 6.

¹¹ These four tasks were identified by XLA as tasks that could lead to an impaired objectivity OCI because CapGemini could analyze the performance of, and data collected and submitted by the ECCO contractor to make management recommendations to the agency. Protest at 17-19.

For each task, the contracting officer first identified potential “overlaps” or “contact points” with the performance under the ECCO call order. Id. at 6-9. With respect to the Custody Programs Division support task, the contracting officer found that the contractor is tasked to “[a]nalyze [ECCO DRIL and VOICE] trends, volume, demographics, and operator metrics to support enforcement and removal,” by “pull[ing] data . . . from the ECCO contract to generate statistical and data reports.” Id. at 6. The contracting officer concluded that there were no concerns about impaired objectivity because “CapGemini is never tasked with evaluating contract performance under ECCO or making recommendations regarding the need for more or continuing contractor services for ECCO.” Id. In his investigation, the contracting officer also confirmed that contrary to XLA’s assertion of the existence of a “built-in check and balance” relationship between the ECCO call order and the ERO support services call order, neither call order required performance monitoring or oversight of the other. Id. at 9. With regard to the remaining three tasks, the contracting officer found that despite the potential overlaps with the ECCO call order, none of the tasks actually interacted with the ECCO call order. Id. at 7-9.

The contracting officer also confirmed that there has been no instance where the work of one of the call orders led to the agency’s decision to increase the size or scope of the other call order. Id. at 9. Rather, changes to the ECCO call order were the result of genuine increases in demand based on the government’s responses to “external forces,” and not on internal decisions based on reports created by CapGemini under the ERO support services call order. Id. The contracting officer also confirmed that the specific example of a scope increase under the ECCO call order alleged by XLA was the result of a proposal for a pilot project by a government official, not because of a request or proposal by CapGemini. Id.; see also AR, Tab 40, Program Office OCI Review, at B0005-B0006.

On this record, XLA’s arguments provide no basis to sustain the protest. Even after the agency documented its OCI analysis in response to XLA’s allegations, the protester argues that the agency’s conclusions are based on inaccurate facts and the application of an improper standard. Protester’s Comments at 3-7. In its comments on the agency report, XLA contends that the agency oversimplified CapGemini’s work under the ERO support services call order and, for the first time, argues that CapGemini provided oversight and review of XLA’s performance under the incumbent ECCO support services call order.¹² Protester’s Comments at 6; id., attach. 1, Decl. of COO, at 4. While the protester contends that it was not required to identify all potential manifestations of CapGemini’s impaired objectivity OCI when it filed its October protest,

¹² To the extent the protester provides additional examples of potential OCIs in its comments on the agency report, these new assertions are based on information XLA had when it filed its protest. Here, the protester knew the operative facts underlying the OCI allegation prior to its protest. Because the protester waited until its comments to raise this new argument, these assertions are untimely and will not be considered further. 4 C.F.R. § 21.2(a)(2); Platinum Bus. Servs., LLC, B-413947, Dec. 23, 2016, 2016 CPD ¶ 377 at 5 n.7.

we disagree. See Protester's Nov. 21, 2019 Resp. to GAO Inquiry at 2 n.1. We have clearly stated that a protester must identify hard facts that indicate the existence or potential existence of conflict. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3.

The protester also cites to our decisions in The Analysis Grp., LLC, B-401726, B-401726.2, Nov. 13, 2009, 2009 CPD ¶ 237 and Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96 in support of its OCI allegations. See Protest at 17; Protester's Comments at 6-7. We find the protester's reliance on these decisions to be misplaced. In The Analysis Grp., the record showed that the successful vendor provided advice and assistance under the awarded task order that could lead to the agency's procurement of other products and services offered by that vendor, yet the agency did not adequately consider the possibility of an impaired objectivity OCI. In Science Applications Int'l Corp., the agency acknowledged that the awardee's substantial involvement in other activities could create a conflict of interest in performing tasks under the awarded contract, yet the agency gave no consideration to the impact of such potential conflicts in selecting the awardee's proposal for award.

Unlike the situation in those decisions, XLA does not argue that a potential impaired objectivity OCI could arise in performing the tasks under the awarded ECCO support services call order. Rather, XLA's concerns pertain to CapGemini's ability to render impartial advice to the government in the performance of advisory and assistance support services under the ERO call order. In addition, our Office sustained those two protests because the record indicated that the successful vendor's performance of the awarded contract raised potential impaired objectivity concerns that the agency failed to adequately consider. See The Analysis Grp., LLC, supra, at 6-7; Science Applications Int'l Corp., supra, at 8-9. Here, the contracting officer conducted and documented his OCI investigation, specifically addressing the allegations raised by the protester and determined that there were no actual OCIs. AR, Tab 41, Contracting Officer's (CO) OCI Investigation, at 10. As discussed, once an agency has given meaningful consideration to whether an OCI exists, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. See Deva & Assocs., PC, B-415508.11, June 21, 2019, 2019 CPD ¶ 230 at 10-11; DV United, LLC, supra, at 6. Our review shows that the agency's analysis is adequately supported in the record and was reasonable. Accordingly, this protest ground is denied.

Best-Value Tradeoff

Finally, XLA argues that the selection decision was flawed because it relied on a flawed evaluation. Protest at 26-27; Protester's Comments at 25. Again, we disagree.

Where, as here, a procurement conducted pursuant to FAR subpart 8.4 provides for award on a best-value tradeoff basis, it is the function of the source selection official to

perform a price/technical tradeoff, that is, to determine whether one quotation's technical superiority is worth its higher price. NikSoft Sys. Corp., B-406179, Feb. 29, 2012, 2012 CPD ¶ 104 at 7; InnovaTech, Inc., B-402415, Apr. 8, 2010, 2010 CPD ¶ 94 at 6. An agency may properly select a more highly rated quotation over one offering a lower price where it has reasonably determined that the technical superiority outweighs the price difference. SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov't, Inc., B-413220.4 et al., May 19, 2017, 2017 CPD ¶ 173 at 15. The agency's decision is governed only by the test of rationality and consistency with the solicitation's stated evaluation scheme. Id.

The record shows that the selection official performed a comparative assessment between the vendors under each factor, identified benefits CapGemini offered under the technical approach and management approach factors--the two most important factors--and ultimately concluded that CapGemini's quotation offered significant benefits worth the 4.15 percent (or \$685,598.41) price premium over XLA's quotation. AR, Tab 44, SSDM, at 35-40. Given that XLA has not prevailed on its substantive challenges to the agency's evaluation of its quotation and that the record shows that the agency's selection decision had a reasonable basis and was properly documented, we see no basis to disturb the selection decision here.¹³

The protest is denied.

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General Counsel

¹³ We note that XLA does not challenge any aspect of the agency's evaluation of CapGemini's quotation or the selection official's comparative assessment.