

DOCUMENT FOR PUBLIC RELEASE

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

Decision

Matter of: ICI Services Corporation

File: B-418255.5; B-418255.6

Date: October 13, 2021

Shomari B. Wade, Esq., Michael J. Gardner, Esq., Brett A. Castellat, Esq., and Christopher M. O'Brien, Esq., Greenberg Traurig, LLP, for the protester. Daniel R. Forman, Esq., James G. Peyster, Esq., and Zachary H. Schroeder, Esq., Crowell & Moring LLP, for Serco, Inc., an intervenor.

Samantha Hogue, Esq., and Sabrina Hay, Esq., Department of the Navy, for the agency.

Louis A. Chiarella, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of the awardee's eligibility is denied where the record demonstrates that the agency reasonably determined the awardee to be the proper successor-in-interest to the entity which submitted the initial proposal.
2. Protest challenging the adjectival evaluation rating assigned to protester's technical proposal is denied for lack of competitive prejudice where the record demonstrates the agency's determination that the awardee was technically superior to the protester was not based on the offerors' assigned ratings but on the underlying evaluation findings.
3. Protest challenging the agency's cost realism evaluation of protester's proposal is denied where protester fails to show that it was competitively prejudiced by the action it challenges.
4. Protest that the agency failed to give adequate consideration to the awardee's potential organizational conflict of interest is dismissed where the protester fails to demonstrate any hard facts reflecting a conflict.
5. Protest challenging the agency's best-value tradeoff decision is denied where the record reflects the agency's rationale was reasonable, wholly consistent with the stated evaluation criteria, and thoroughly documented.

DECISION

ICI Services Corporation, of Virginia Beach, Virginia, protests the issuance of a task order to Serco, Inc., of Herndon, Virginia, under request for proposals (RFP) No. N00164-19-R-3502, issued by the Department of the Navy, Naval Sea Systems Command, for professional support services on behalf of the Navy's Program Manager, Ships (PMS) 317 program office. ICI contends the agency's evaluation of task order proposals and resulting award decision were improper.

We deny the protest.

BACKGROUND

The mission of PMS 317 is to design, build, outfit, and test Landing Platform Docking (LPD-17) amphibious ships and to provide for their maintenance support. Agency Report (AR), Tab 1, RFP at 8. With 11 LPD-17 ships delivered, 2 ships in construction, and the planned future procurement of 13 additional LPD-17 ships, the principal PMS 317 activities include ship acquisition, technical/system integration, ship production, testing, outfitting, government-furnished equipment/government-furnished information management, and post-delivery (e.g., sustainment, configuration management). *Id.*

The procurement here has been a long and contentious one. The RFP was issued on April 26, 2019, to holders of the Navy's SeaPort Next Generation (SeaPort-NxG) indefinite-delivery, indefinite quantity (IDIQ) contracts.¹ In general terms, the solicitation requires the contractor to provide program management and acquisition support, engineering and technical support, test and evaluation support, production management and information technology support, and post-delivery support to the PMS 317 program office. RFP at 8. Further, the RFP provided offerors with the labor categories and labor hour amounts that the contractor is to provide to the PMS 317 program office.² RFP at 4-6, 70, attach. J.7, Labor Category Qualifications.

¹ The solicitation was subsequently amended three times. All citations are to the final version of the solicitation. The SeaPort-NxG IDIQ contract, awarded in January 2019, is the successor to the Navy's SeaPort-Enhanced (SeaPort-e) IDIQ contract, which was first awarded in April 2004. Agency Partial Dismissal Req. at 1-3.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors" who submit "quotations" and are "issued" task orders, the record reflects that the solicitation was issued as a "Negotiated (RFP)," and sought "proposals" from "offerors." *Id.* at 3; Contacting Officer's Statement and Memorandum of Law (COS/MOL) at 2. For the sake of consistency with the record, we refer to the firms that competed here as offerors who submitted proposals for the award of a task order.

The RFP contemplated the issuance of a cost-plus-fixed-fee task order for a base year with four 1-year options. RFP at 4-6, 74. The solicitation established that award would be made on a best-value tradeoff basis, considering the following four evaluation factors in descending order of importance: (1) technical and management (technical); (2) staffing plan and personnel (staffing); (3) past performance; and (4) cost.³ *Id.* at 75-76. The technical factor consisted of two subfactors in descending order of importance: technical capabilities and understanding of the work; and management approach. *Id.* at 75. The non-cost factors, when combined, were significantly more important than cost. *Id.*

Four offerors, including Alion Science and Technology Corporation and ICI, the incumbent, submitted proposals by the June 4 closing date.⁴ COS/MOL at 2. An agency technical evaluation team (TET) assessed the non-cost proposals using various adjectival rating schemes that were set forth in the RFP: outstanding, good, acceptable, marginal, and unacceptable for the technical and staffing factors; and substantial confidence, satisfactory confidence, limited confidence, no confidence, or unknown confidence for the past performance factor. RFP at 76-77. A separate Navy cost evaluation team (CET) assessed the cost submissions for reasonableness and realism. On October 24, after completing its evaluation, the Navy made award to Alion. COS/MOL at 9.

On November 6, ICI filed a protest with our Office challenging the agency's evaluation and task order award to Alion. ICI Protest, B-418255, Nov. 6, 2019. Among other things, ICI protested that Alion's proposal and the Navy's evaluation thereof failed to reasonably reflect the manner in which the task order would be performed, as well as the corporate entity that would perform the work, in light of the corporate sale of Alion's NSBU to Serco during the pendency of proposal evaluations. *Id.* at 23-25. On January 8, 2020, the Navy notified our Office that it intended to take corrective action by reviewing its source selection decision.⁵ AR, Tab 5, Notice of Corrective Action, B-418255; B-418255.2, Jan. 8, 2020. On January 13, we dismissed ICI's first protest as academic. *ICI Servs. Corp.*, B-418255, B-418255.2, Jan. 13, 2020 (unpublished decision).

³ The first two evaluation factors were of equal importance. RFP at 76. While the record refers to the final evaluation factor as "total evaluated price," there is no dispute that the Navy contemplated the award of a cost-reimbursement task order. *See id.* at 75. For the sake of clarity, we refer to the final evaluation factor as "cost."

⁴ As detailed below, before the proposal closing date, Serco--another SeaPort-NxG contract holder--entered into an agreement with Alion to acquire that portion of the Alion business entity which submitted the PMS 317 proposal, *i.e.*, its Naval Systems Business Unit (NSBU). Serco and Alion subsequently completed the transaction transferring NSBU assets to Serco.

⁵ The Navy also decided to terminate the task order issued to Alion as part of its corrective action. COS/MOL at 10.

On April 9, after the Navy provided notice of its decision to exclude Alion from award of the PMS 317 task order, Alion filed a protest with our Office challenging its exclusion. Alion Protest, B-418255.3, Apr. 9, 2020. On April 20, the Navy notified our Office that it was again taking corrective action by including Alion’s proposal among those still considered eligible for award, conducting discussions with all offerors, evaluating revised proposals, and making a new award decision. AR, Tab 8, Agency Notice of Corrective Action, B-418255.3, Apr. 20, 2020. We then dismissed the Alion protest as academic. *Alion Sci. & Tech. Corp.*, B-418255.3, Apr. 23, 2020 (unpublished decision).

Subsequently, on June 18, ICI filed a protest with our Office challenging the Navy’s decision not to exclude Alion from the competition.⁶ ICI Protest, B-418255.4, June 18, 2020. On September 23, we dismissed ICI’s June 18 protest. *ICI Servs. Corp.*, B-418255.4, Sept. 23, 2020, 2020 CPD ¶ 302. We determined that our Office will not consider a protest from an offeror in the competitive range challenging an agency’s decision to include another offeror in the competitive range, where the protest was filed prior to the agency’s award decision and the possibility remained that the protester could yet receive the award. *Id.* at 3-4. Moreover, as the agency had yet to make an award decision, ICI’s allegations with respect to Alion were found to be premature. *Id.*

On November 13, after conducting discussions, the agency received offerors’ final proposal revisions (FPR). COS/MOL at 11. By May 26, 2021, the Navy’s technical and cost evaluation teams completed their evaluation of offerors’ FPRs, with the final evaluation ratings and costs for the Serco (as the successor-in-interest to Alion) and ICI proposals as follows:

	Serco	ICI
Technical	Outstanding	Good
Staffing	Outstanding	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence
Proposed Cost	\$67,714,253	\$66,878,764
Evaluated Cost	\$67,714,253	\$67,669,591

AR, Tab 29, CET Report at 1-58; Tab 30, AR, Tab 30, TET Report at 1-127.

⁶ On June 9, prior to filing its June 18 protest with our Office, ICI filed a bid protest with the U.S. Court of Federal Claims (COFC) challenging the Navy’s decision to include Alion among those offerors considered eligible for task order award. AR, Tab 11, ICI COFC Complaint No. 20-697C, June 9, 2020. On June 11, after a status conference in which COFC questioned its jurisdiction to consider ICI’s task order protest, ICI withdrew its complaint with the court. AR, Tab 13, ICI Notice of Voluntary Dismissal, COFC No. 20-697C, June 11, 2020; COS/MOL at 10.

The TET also identified strengths and weaknesses in the offerors' proposals in support of the adjectival ratings assigned. For example, with regard to the technical evaluation factor, the TET identified nine strengths and no weaknesses in Serco's proposal, and six strengths and no weaknesses in ICI's proposal. AR, Tab 30, TET Report at 35-43; Tab 32, Source Selection Decision Document (SSDD) at 7.

On June 24, the agency source selection authority (SSA) received and reviewed the evaluation ratings and findings. AR, Tab 32, SSDD at 1-13. The SSA found the Serco and ICI proposals to be equal under the staffing factor and the past performance factor. *Id.* at 23. The SSA, however, found Serco to be superior to ICI under the technical factor, and that Serco's non-cost advantages outweighed ICI's evaluated cost advantage--of \$44,662--such that Serco's proposal represented the overall best value to the agency. *Id.* at 20-23.

On June 30, the contracting officer made task order award to Serco and provided ICI with notice of same. COS/MOL at 12. On July 12, after receipt of a debriefing, ICI filed its current protest with our Office.⁷

DISCUSSION

ICI raises a multitude of challenges to the Navy's evaluation and resulting award decision. The protester first contends the agency failed to properly evaluate Serco's eligibility for award as a corporate successor-in-interest to Alion; this is the gravamen of ICI's protest. Next, ICI alleges the following: the evaluation of its technical proposal was improper; the cost realism evaluation was unreasonable; the agency failed to reasonably evaluate whether Serco had an impermissible organizational conflict of interest (OCI); and the evaluation of Serco's past performance was unreasonable. Finally, the protester claims the Navy conducted a flawed best-value tradeoff determination.⁸ We have reviewed all the issues and arguments advanced by ICI, and although we do not address them all, we find no basis on which to sustain the protest.

⁷ Because the value of the task order is over \$25 million, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts awarded under the authority granted in Title 10 of the United States Code. 10 U.S.C. § 2304c(e)(1)(B).

⁸ Raised in a supplemental protest, ICI alleges that, as a result of the Serco-Alion transaction, Serco impermissibly holds two SeaPort contracts, in violation of the "One Prime Contract Per Company" clause within the SeaPort-NxG contract. Supp. Protest at 14-15, *citing* AR, Tab 35, SeaPort-NxG Contract Clauses at 13. To be clear, ICI does not allege that Serco holds two SeaPort-NxG contracts, but rather, claims that it is a violation of the aforementioned SeaPort-NxG contract clause to hold both a SeaPort-e and a SeaPort-NxG contract at the same time--notwithstanding the fact that ICI also holds both of these contracts. See AR Tab 27, ICI FPR, Vol. I, Technical Proposal, at 72 ("We have continuously refined our task order management approach . . . in the performance of 40 prime SeaPort-e and NxG task orders"); see *also* icisrvcs.com/

(continued...)

Serco's Eligibility for Award

ICI contends the Navy failed to fully evaluate Serco's eligibility for award as a successor-in-interest. The protester alleges that Serco is not a complete successor-in-interest to Alion, as evidenced by the lack of a novation of Alion's SeaPort-NxG contract, which rendered improper the selection of, and award to, Serco. Protest at 24-29; Comments at 6-45.

As noted above, Alion--specifically, its NSBU--submitted a proposal responding to the RFP by the June 4, 2019, closing date. AR, Tab 3, Alion Proposal Cover Letter, at 1; Tab 16, Serco Discussions Response, Aug. 19, 2020, at 6. The Alion NSBU consisted of various business units, all of which supported Alion's maritime-related customers. *Id.* at 2. Within the NSBU, the Ship Systems Business Unit (SSBU) was the largest organization and "owned" the employees, facilities, and other resources that comprised Alion's PMS 317 proposal. *Id.* Likewise, it was the SSBU's cost history and past performance that were included in Alion's PMS 317 proposal. *Id.*

On May 20, 2019, prior to its proposal submission, Alion entered into a definitive agreement with Serco, another SeaPort-NxG contract holder, whereby Serco would acquire, among other things, Alion's NSBU. AR, Tab 3, Alion Proposal Cover Letter at 3. In its proposal, Alion informed the Navy about the existence of the definitive agreement with Serco, advised that the corporate transaction was expected to close later in 2019, and indicated that the "resources identified and included in this proposal will remain the same." *Id.* Specifically, Alion's proposal notified the Navy of the following:

We took the transaction into account when preparing this proposal. We structured this proposal such that the NSBU's change in ownership will not impact how we will perform the resulting task order before and after the closing. The transaction does not impact our technical, staffing, or pricing approach. All assets of Alion's NSBU, including all those required to perform our proposal, are transferring as part of this transaction. If

(...continued)

contracts.php ("We are an active participant on the Navy's SeaPort-e and SeaPort-NxG contracts, and have been awarded prime and subcontracts to support [Navy] Systems Commands and Warfare Centers across the country) (last visited Oct. 12, 2021). We find this protest ground to be untimely as ICI knew or should have known by the June 30, 2021, award date that Serco held both SeaPort-NxG and SeaPort-e contracts, and did not raise the protest issue within 10 days thereof. 4 C.F.R. § 21.2(a) (2); *Catalyst Sols., LLC*, B-416804.3, B-416804.4, Apr. 4, 2019, 2019 CPD ¶ 134 at 4 (holding that where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements since our regulations do not contemplate the piecemeal presentation or development of protest issues).

selected, we will provide the same personnel and use the same methods to perform the resulting task order that are reflected in this proposal. In addition, we will perform on the same schedule and at the same pricing terms and level of effort as proposed. To the extent our proposal identifies any products, services, or other assets to be provided by Alion teaming partners, our teaming arrangements with such partners will remain intact so as not to impact performance or price.

Id.

The Serco-Alion transaction was subsequently completed on August 1, 2019. AR, Tab 16, Serco Discussions Response, Aug. 19, 2020, at 2. As part of the completed transaction, Serco acquired the following: all NSBU employees, including all SSBU employees proposed for the PMS 317 task order; all NSBU/SSBU facilities; other NSBU assets (e.g., proposals, leases, licenses); and other federal contracts awarded to Alion's NSBU. *Id.* at 3-5. Although, Serco acquired certain Alion business units and assets, Alion continued to remain in existence as a separate entity after this corporate transaction and retained its SeaPort-NxG contract.⁹ *Id.* at 2; Tab 31, Contracting Officer Memorandum Regarding the Impact of the Serco-Alion Transaction, at 1.

On August 4, 2020, the Navy entered into discussions with all offerors regarding their PMS 317 proposals. *Id.* Because the Alion NSBU was now a part of Serco, the agency's discussions were held with Serco. COS/MOL at 11, 14. As part of the discussions with Serco, the Navy sought and received detailed information regarding the Serco-Alion transaction in order to determine whether Serco was a complete successor-in-interest to Alion for purposes of the submitted proposal. See AR, Tab 16, Serco Discussions Response, Aug. 19, 2020, at 1-27; Tab 19b, Serco Discussions Response, Oct. 20, 2020, at 1-49; Tab 19c, Serco Roster of Transferred SSBU Business Employees as of Sept. 1, 2019. Specifically, Serco confirmed that, with one minor exception, all assets and personnel initially proposed by Alion had been acquired by Serco and would continue to be used by Serco to perform the PMS 317 task order.¹⁰ AR, Tab 16, Serco Discussions Response, Aug. 19, 2020, at 6. Serco also provided information showing that as a result of the Serco-Alion transaction, and contract

⁹ After the completion of the Serco-Alion transaction, Alion submitted a novation package to the Defense Contract Management Agency (DCMA) for various federal contracts (other than Alion's SeaPort-NxG contract) awarded to the former Alion NSBU. AR, Tab 16, Serco Discussions Response, Aug. 19, 2020, at 4. DCMA subsequently recognized Serco as the successor-in-interest to Alion for these contracts, and novated the contracts from Alion to Serco. *Id.*

¹⁰ Alion's proposal included the use of a Norfolk, Virginia, facility which was not a part of the NSBU and, therefore, not part of the Serco-Alion transaction. AR, Tab 16, Serco Discussions Response, Aug. 19, 2020, at 5-6. In place of that facility, Serco proposed to use its facility in Portsmouth, Virginia in performing the PMS 317 task order. *Id.* at 5.

novations, Serco “owns” or is solely performing the contracts and task orders included within the past performance section of its PMS 317 proposal. *Id.* at 5.

The contracting officer subsequently determined that: (1) Serco had acquired the entirety of the business entity that had submitted Alion’s proposal (including the PMS 317 proposal itself) which was proposed to perform under Alion’s proposal; and (2) Serco’s purchase of Alion’s NSBU resulted in all relevant PMS 317 proposal assets--*i.e.*, employees, leases/subleases, “any and all” other SSBU resources needed to perform the task order--being transferred from Alion to Serco.¹¹ AR, Tab 31, Contracting Officer Memorandum Regarding the Impact of the Serco-Alion Transaction at 2-4. The contracting officer also concluded:

Based on the information provided by Serco in response to discussions questions, as well as in its FPR, Serco has demonstrated that it is the complete successor[-]in[-]interest to the Alion entity, NSBU/SSBU, that was proposed to perform under Alion’s initial proposal. It is also the successor[-]in[-]interest to the proposal previously submitted by Alion. As such, Serco may be substituted for Alion as an offeror under the RFP.

Id. at 2.

Our protest decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. *VSE Corp.*, B-417908, B-417908.2, Nov. 27, 2019, 2019 CPD ¶ 413 at 8. Primarily, our decisions on the subject generally focus on whether it was reasonable for an agency to reach conclusions that it did regarding the corporate transaction. *Lockheed Martin Integrated Sys., Inc.--Recon.*, B 410189.7, Aug. 10, 2017, 2017 CPD ¶ 258 at 5. We have also noted that where a corporate acquisition or restructuring does not appear likely to have a significant impact on cost or technical impact on contract performance, the corporate transaction does not render the agency’s evaluation and award decision improper. *Enterprise Servs., LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 19. Conversely, where an offeror’s proposal represents that it will perform the contract in a manner materially different from the offeror’s actual intent, an award based on such a proposal cannot stand, since both the offeror’s representations, and the agency’s reliance on such, have an adverse impact on the integrity of the procurement process. *FCi Fed., Inc.*, B-408558.7, B-408558.8, Aug. 5, 2015, 2015 CPD ¶ 245 at 7; *Wyle Labs., Inc.*, B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16 at 8.

Key in our analysis in these decisions is both whether the contracting agency was aware of the particular corporate transaction, and of the imminence and certainty of the

¹¹ The record reflects the contracting officer was aware that Alion’s proposed Norfolk facility was not part of the NSBU and did not transfer to Serco. AR, Tab 31, Contracting Officer Memorandum Regarding the Impact of the Serco-Alion Transaction at 3.

transaction. See, e.g., *Lockheed Martin Integrated Sys., Inc.*, B-410189.5, B-410189.6, Sept. 27, 2016, 2016 CPD ¶ 273 (denying protest that agency unreasonably considered a potential divestiture of one of the protester's business segments that was proposed to perform on the resulting contract where the agency was aware of the transaction and the potential impacts on the protester's proposal), *recon. denied*, *Lockheed Martin Integrated Sys., Inc.--Recon.*, *supra*; *Wyle Labs., Inc.*, *supra* (sustaining protest where procuring agency prior to award of a cost-reimbursable contract was aware of, but declined to consider in its evaluation, the awardee's proposed division into two separate firms, the awardee's intent to assign the contract to the new corporate entity, and the potential material resulting changes to the technical approach and costs proposed by the awardee), *recon. denied*, *National Aeronautics & Space Admin.--Recon.*, B-408112.3, May 14, 2014, 2014 CPD ¶ 155.

Our prior decisions regarding corporate transactions have also considered those instances involving successors-in-interest to the business entity which initially proposed. Specifically, the transfer or assignment of rights and obligations arising out of proposals is permissible where a legal entity is the complete successor-in-interest to the offeror, "which includes situations involving merger, corporate reorganization, the sale of an entire business, or *the sale of an entire portion of a business embraced by the proposal.*"¹² *Mainstream Eng'g Co., Inc.*, B-211876, July 11, 1983, 83-2 CPD ¶ 76 at 2 (emphasis added); see *MAR, Inc. et al.*, B-278929.2 *et al.*, Sept. 28, 1998, 98-2 CPD ¶ 92 at 9-10 (finding award to successor-in-interest to the firm that submitted the initial proposal is proper where the successor-in-interest acquired, among other things, the entire portion of the business embraced by the initial proposal); *Keco Indus., Inc.*, B-207114, Aug. 23, 1982, 82-2 CPD ¶ 165 at 3 (finding the agency reasonably determined the awardee to be a proper successor-in-interest when it had acquired all assets that would have been employed to perform the work); see also *J.I. Case Co.*, B-239178, Aug. 6, 1990, 90-2 CPD ¶ 108 at 3.

Here, we find no basis to sustain ICI's argument that the agency failed to fully evaluate the corporate transaction involving the awardee. As an initial matter, not only was Serco's acquisition of that portion of Alion imminent and certain--in fact, the transaction was completed prior to the agency's award decision--but the Navy was aware of the transaction and fully considered it as part of the agency's evaluation. Further, the record reflects the Navy reasonably found Serco to be the complete successor-in-interest to Alion as a result of Serco's acquisition of the entirety of the NSBU, which was the business entity that had submitted Alion's proposal and which was (with the one noted exception) proposed to perform under the proposal. AR, Tab 31, Contracting Officer Memorandum Regarding the Impact of the Serco-Alion Transaction at 2-4. We therefore find that the transfer of the NSBU from Alion to Serco is the type of transaction

¹² Moreover, these decisions all involve instances where award was made upon the proposal submitted by the predecessor entity. Here, successor Serco submitted the FPR upon which the agency's award was based. AR, Tabs 22-26, Serco FPR; Tab 32, SSDD.

encompassed by our decisions which permit the assignment of proposals when a sale involves an “entire portion of a business embraced by the proposal.” *Keco Indus., Inc., supra*. Finally, once Serco was found to be the successor-in-interest to Alion’s NSBU and Alion’s proposal, the Navy reasonably permitted Serco’s substitution for Alion as an offeror under the RFP here, and it was Serco’s subsequent FPR upon which the Navy’s award decision was based.

Central to ICI’s assertion that Serco is not a complete successor-in-interest to Alion’s proposal is the argument that because Serco did not acquire Alion’s SeaPort-NxG contract--and Alion’s SeaPort-NxG contract forms the basis for Alion’s proposal--“the entire portion of Alion’s business embraced by the proposal did not transfer.”¹³ Protest at 24; Comments at 16 (“Alion’s failure to assign the SeaPort[-NxG] Contract alone [means] that Alion did not transfer all of its assets embracing its proposal”). ICI also contends there are various other “corporate distinctions” present in Alion’s proposal (e.g., uncompensated overtime accounting practices, changes to the relevant DCMA representative) “which inherently did not transfer.” Protest at 24; see also Comments at 21-38. ICI essentially argues that without the novation of the Alion SeaPort-NxG contract and/or acquisition of the entire Alion corporate entity, Serco cannot be the complete successor-in-interest to Alion for purposes of its proposal. We disagree.

As a preliminary matter, ICI improperly conflates the standard required for a contract novation with the standard we have applied for determining a proper successor-in-interest to a business entity which submitted the initial proposal. The government may novate a contract--a mutually binding legal relationship involving the government--where “the entire portion of the assets *involved in performing the contract*” have been transferred to a third party. FAR 42.1204(a)(2) (emphasis added); FAR 2.101 (defining contract). By contrast, we have found that the transfer or assignment of rights and obligations arising out of a proposal--a unilateral offer prepared by a business concern in a negotiated procurement--is permissible in situations involving, among other things, “the sale of an entire portion of a business *embraced by the proposal*.” *Ionics Inc.*, B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290 at 5 (emphasis added); see *MAR, Inc. et al.*,

¹³ With regard to transferring and/or novating federal contracts, the Federal Acquisition Regulation (FAR) states as follows:

41 U.S.C. 6305 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor-in-interest to a Government contract when the third party’s interest in the contract arises out of the transfer of--(1) All the contractor’s assets; or (2) The entire portion of the assets involved in performing the contract. . . .

FAR 42.1204(a). An agency’s decision whether to approve or reject a novation is a matter of contract administration that our Office does not review. 4 C.F.R. § 21.5(a); *Engility Corp.*, B-416650, B-416650.2, Nov. 7, 2018, 2018 CPD ¶ 385 at 2-3 n.4.

supra; *Mainstream Eng'g Co., Inc., supra*; see also FAR 2.101 (defining offer). Quite simply, there is no requirement that the entirety of Alion's SeaPort-NxG contract be transferred, or novated, in order for Serco to be a complete successor-in-interest to Alion with respect to the entire portion of the business embraced by the Alion proposal.

We likewise find no merit to ICI's claim that the transfer or assignment of a task order proposal without the IDIQ contract under which the proposal was submitted, amounts to "selling a bid." Comments at 16, *citing, inter alia, Mainstream Eng'g Co., Inc., supra*. It is clear that the Serco-Alion transaction involved much more than merely the transfer of the PMS 317 proposal, and more importantly, Serco already held the relevant SeaPort-NxG IDIQ contract under which the PMS 317 task order was being competed. See *J.I. Case, Co., supra* (finding contract award to the low bidder's successor-in-interest to be proper where the assets transferred were more than negligible, such that the corporate transaction did not amount to the sale of a bid).

ICI also fails to establish that the Alion "corporate distinctions" which allegedly did not transfer to Serco were ones likely to have a significant cost or technical impact on performance of the task order. Our decisions regarding matters of corporate acquisition and restructuring are not intended to preclude such transactions from occurring during the proposal process. See, e.g., *PAE Aviation and Tech. Servs., LLC, supra*; *Enterprise Servs., LLC et al., supra*. Rather, our decisions in this area concern ensuring the integrity of the procurement process, and it is where a corporate acquisition or restructuring is likely to result in a contract being performed in a manner materially different from what was proposed that an award based on such a proposal cannot stand. See, e.g., *FCi Fed., Inc., supra*; *Wyle Labs., Inc., supra*. Here, ICI fails to demonstrate that Serco's acquisition of the NSBU--completed before the submissions of offerors' FPRs--would have resulted in the task order being performed in a manner materially different from what was proposed by Alion.¹⁴

¹⁴ We also find no merit to ICI's assertion that Alion's past performance was another corporate distinction in the offeror's proposal that did not transfer to Serco. See Comments at 2, 27-34. Whether Alion's past performance is properly attributable to Serco has no bearing on the determination of whether Serco is a complete successor-in-interest to Alion. While the evaluation of offerors' past performance was one of the evaluation criteria on which the agency's award decision was based, it is not an asset "that would have been employed to perform the contract," and, thus, not what we consider "the entire portion of a business embraced by the proposal." See *Keco Indus., Inc., supra* at 3.

Separately, we find the Navy's evaluation of Serco's past performance to be reasonable, as an agency properly may consider the past performance of predecessor companies. See *Harbor Servs., Inc.*, B-408325, Aug. 23, 2013, 2013 CPD ¶ 214 at 4 (finding that consideration of a predecessor firm's experience was not improper where the record indicated that the personnel and assets of the predecessor firm were "now transferred to or otherwise available to [the successor firm], providing for continuity of
(continued...)

Finally, ICI ignores the fact that the Navy's evaluation and award decision were not based on Alion's initial proposal, but on Serco's FPR. After the NSBU became part of Serco, the agency reasonably found Serco to be a proper successor-in-interest to Alion (*i.e.*, Serco had acquired that portion of the business embraced by the initial Alion proposal). This determination reasonably permitted Serco to step into the shoes of Alion for purposes of the proposal here and to submit the offeror's FPR. In general, when an agency opens or reopens discussions with offerors, offerors may revise any aspect of their proposals, including portions of their proposals which were not the subject of discussions, *CACI, Inc.-Fed.*, B-416549, Sept. 13, 2018, 2018 CPD ¶ 318 at 3. That is apparently what Serco elected to do (*i.e.*, submit a FRP with revisions that extended beyond what was covered in discussions), because there is no requirement that, as a result of discussions, Serco perform as Alion initially proposed. We also note that there is no assertion that Serco's performance of the task order would be in a manner materially different from that which Serco proposed in its FPR, which, as set forth above, is the ultimate nature of our concern regarding corporate transactions. *Lockheed Martin Integrated Sys., Inc.--Recon.*, *supra* at 7. In sum, while ICI would undoubtedly prefer that neither Alion nor Serco be found eligible for award, ICI provides no basis on which to sustain the protest here.

Technical Evaluation of ICI

ICI alleges the Navy's evaluation of its proposal under the technical factor was unreasonable and failed to follow the terms of the solicitation. Specifically, ICI argues that based upon the evaluators' findings, the Navy should have assigned ICI's proposal an "outstanding," rather than a "good," rating.¹⁵ Protest at 29-34.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4; *Sevatec, Inc.*, B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 6. In reviewing protests

(...continued)

operations between the two firms and making [the predecessor]'s experience relevant to predicting [the successor]'s successful performance of the contract").

¹⁵ ICI also protests that the agency improperly failed to recognize additional strengths in the offeror's technical proposal. The Navy addressed this issue in its report to our Office, COS/MOL at 42-49, and ICI's comments did no more than restate, essentially verbatim, its original protest allegations. *Compare* Comments at 49-51 *with* Protest at 34-36. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references, restates, or alludes to the original protest allegations without substantively rebutting the agency's position, we deem the initially raised arguments abandoned. *TCG, Inc.*, B-417610, B-417610.2, Sept. 3, 2019, 2019 CPD ¶ 312 at 3-4.

challenging an agency's evaluation of task order proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Logistics Mgmt. Inst., supra; OGSystems, LLC*, B-417026.5, B-417026.6, July 16, 2019, 2019 CPD ¶ 273 at 5.

The RFP stated that the agency's evaluation under the technical factor would "focus[] on [the] strengths, weaknesses, . . . and risks of the Offeror's proposal, resulting in the assignment of an adjectival rating. . . ." RFP at 76. The solicitation also defined a rating of "Good" as "Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength, and [the] risk of unsuccessful performance is low to moderate," while a rating of "Outstanding" was defined as "Proposal indicates an exceptional approach and understanding of the requirements and contains at least one strength, and [the] risk of unsuccessful performance is low." *Id.*

The TET identified six strengths and no weaknesses in ICI's FPR under the technical factor and concluded that those strengths warranted an assignment of a rating of "good" for that factor. AR, Tab 30 at 35-43. Specifically, the TET stated that "[b]ased on the collective benefit and impact to the program of the four (4) strengths in Subfactor A and the 2 strengths . . . in the less important Subfactor B, the proposal is viewed as having a thorough approach and understanding of the requirements and the risk of unsuccessful performance is low to moderate. . . ." *Id.* at 36; see also COS/MOL at 33-39.

ICI argues that in light of the identified proposal strengths and absence of any identified risks, the agency's rating of "good" is unreasonable. Protest at 33. The agency argues that the "good" rating was consistent with the evaluators' findings, and that ICI's proposal was simply not found to warrant an "outstanding" rating. COS/MOL at 33-39. The agency also argues that insofar as the SSA did not base the best-value tradeoff decision on the assigned adjectival ratings, but "looked beyond the ratings and analyzed the detailed TET evaluation data to identify substantive distinctions between the proposals," ICI has failed to demonstrate any prejudicial harm from the alleged error. *Id.* at 40.

We need not decide the merits of ICI's challenge to the assigned technical rating because, even if ICI were correct, ICI fails to demonstrate that it was competitively prejudiced by the error alleged. 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. *Information Mgmt. Res., Inc.*, B-418848, Aug. 24, 2020, 2020 CPD ¶ 279 at 7 n.4. Where the record establishes no reasonable possibility of prejudice, we will not sustain a protest even if defects in the procurement were found. *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 9 *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 11-12.

As detailed below, the record reflects that the SSA did not find Serco to be technically superior to ICI under the technical factor because Serco had been rated as “outstanding” as compared to ICI’s “good” rating.¹⁶ See AR, Tab 32, SSDD at 16-19. Rather, the record reflects the SSA found Serco to be technically superior to ICI because of a qualitative and quantitative comparison of the underlying strengths in each offeror’s submission. *Id.* We find such analysis to be in accordance with our consistently stated guidance that evaluation ratings, be they adjectival, numerical, or color, are but a guide to, and not a substitute for, intelligent decision-making. See, e.g., *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9; *Shumaker Trucking and Excavating Contractors, Inc.*, B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 8.

We therefore agree with the Navy that even assuming ICI had also been assigned a rating of “outstanding” under the technical factor, it would not have had any effect on the agency’s best-value determination. *Millennium Eng’g & Integration Co.*, *supra* at 9-10 (finding it unnecessary to decide whether the rating assigned to awardee’s past performance was reasonable where the protester has failed to demonstrate that it was prejudiced as a result thereof); *Hera Constructive S.A./ Synthesis S.A., Joint Venture*, B-297367, Dec. 20, 2005, 2005 CPD ¶ 225 at 5 (“We need not address the protester’s arguments regarding its past performance rating since it was not prejudiced by any alleged errors in this area”). Consequently, we deny this allegation.

Cost Realism Evaluation of ICI

ICI also protests that the agency conducted a flawed cost realism evaluation of the protester’s proposal.¹⁷ The protester contends the Navy’s application of an escalation rate to the protester’s base year labor rates was unreasonable. Protest at 36. But for the Navy’s improper cost realism adjustment, the protester argues, ICI’s cost advantage over Serco would have been greater. *Id.* at 37. We deny the allegation here because, as detailed below, we find that ICI again fails to show that it was competitively prejudiced by the action it disputes.

¹⁶ In this regard, ICI’s protest appears premised on the mistaken assumption that if it had received a rating of “outstanding,” it would have been technically equal to Serco. Protest at 38 (“ICI should have been rated “Outstanding” for Factor 1 and therefore, it should have been rated on parity with Serco for Factor 1”). We find no merit to ICI’s simplistic notion that two offerors with the same adjectival rating are *per se* equal. *Hendall Inc.--Recon.*, B-417513.5, Jan. 27, 2021, 2021 CPD ¶ 66 at 5 n.4 (“Proposals with the same adjectival ratings are not necessarily of equal quality”); *Asset Prot. & Sec. Servs., LP*, B-417024.6, B-417024.7, Apr. 6, 2020, 2020 CPD ¶ 137 at 7 (finding that proposals with identical adjectival ratings are not necessarily qualitatively equal).

¹⁷ ICI initially alleged the cost realism evaluation of Serco was also unreasonable, Protest at 37-38, but subsequently elected to withdraw this protest ground. ICI Letter to GAO, Sept. 2, 2021 at 1.

When an agency evaluates proposals for the award of a cost-reimbursement contract or task order, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs for performance. FAR 16.505(b)(3), 15.305(a)(1); *Logistics Mgmt. Inst., supra* at 6. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed.¹⁸ FAR 15.404-1(d)(1), 16.505(b)(3); *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 4. An agency's cost realism analysis requires the exercise of informed judgment, and we review an agency's judgment in this area only to see that the cost realism analysis was reasonably based and not arbitrary. *Tatitlek Techs., Inc.*, B-416711 *et al.*, Nov. 28, 2018, 2018 CPD ¶ 410 at 14. The analysis need not achieve scientific certainty; rather, the methodology employed must be reasonably adequate and provide some measure of confidence that the agency's conclusions about the most probable costs for an offeror's proposal are reasonable and realistic in view of other cost information reasonably available to the agency at the time of its evaluation. *Id.*

ICI's cost proposal included a [DELETED]% escalation rate applicable to its direct labor for all option years, and the CET found this escalation rate to be reasonable. AR, Tab 29, CET Report at 28. However, the CET also found that "ICI does not provide detail concerning why escalation was not applied to the base-year or indicate if the provided payroll [data] included escalation that would already cover the base-year." *Id.* Further, given that the payroll data submitted by ICI was dated November 3, 2020, and the estimated award date was January 15, 2021, "the Government would expect that the base-year rates should have been escalated; therefore, the Government applied [DELETED]% escalation to the base-year."¹⁹ *Id.* This resulted in the CET making an upward adjustment of approximately \$469,000 to ICI's proposed cost.²⁰ *Id.* at 27.

ICI argues the Navy's cost realism evaluation was flawed, and that ICI's payroll data should have been accepted as realistic for the base year of performance. Protest at 37. However, we need not address ICI's challenge to the agency's cost realism evaluation here, because ICI again fails to demonstrate that it was prejudiced as a result thereof. *NCI Info. Sys., Inc.*, B-417752 *et al.*, Oct. 17, 2019, 2019 CPD ¶ 363 at 9.

¹⁸ The end product of a cost realism analysis is the total estimated cost (often referred to as the "most probable cost") that the agency realistically expects to pay for the offeror's proposed effort, and it is the estimated cost, and not the offeror's proposed cost, that must be the basis of the agency's source selection determination. *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2, Oct. 2, 2015, 2016 CPD ¶ 68 at 14 n.19.

¹⁹ The Navy had instructed offerors to use January 15, 2021, as the task order start date when preparing their FPRs.

²⁰ The CET also made additional cost realism adjustments of ICI's proposed cost (e.g., subcontractor costs) which ICI does not protest. AR, Tab 29, CET Report at 27-28.

The SSA, when making the best-value award determination, noted that Serco's evaluated cost was \$44,662 higher than that of ICI. AR, Tab 32, SSDD at 21. The SSA, however, also considered the "hypothetical situation" where ICI's base year labor rates were accepted as proposed, which "would result in a Serco premium of \$497,938 (0.74%) over ICI." *Id.* The SSA also considered a second alternative situation where both ICI's base year labor rates were accepted as proposed and the agency had adjusted Serco's uncompensated overtime usage rates, which "would result in . . . a 2.70% (\$1,814,425) Serco premium over ICI." *Id.* The SSA concluded that:

Even considering both hypothetical situations where ICI's escalation is accepted as proposed and Serco's [uncompensated overtime usage amount] is lowered . . ., thereby increasing the [Serco] premium to \$1,814,425 (2.7%), I would still consider Serco to [re]present the best value to the Government as the technical advantage presented by Serco outweighs the 2.7% premium, which averages to approximately \$362,885 per year across 5 years for the additional benefits provided.

Id. at 23.

Here, the record reflects the SSA contemporaneously determined that Serco's technical advantages outweighed ICI's cost advantage even if the agency had not made the cost realism adjustment which the protester disputes. As the SSA states, even assuming that ICI's escalation rate had been accepted as proposed--and even assuming that the cost premium associated with Serco's proposal was approximately \$1.8 million (or 2.7%) over ICI's proposal--"I would still consider Serco to [re]present the best value to the Government as the technical advantage presented by Serco outweighs the 2.7% premium." AR, Tab 32, SSDD at 23.

We therefore find ICI has failed to demonstrate that it was prejudiced by that portion of the cost realism evaluation it challenges, as the record reflects that even if ICI were to prevail in this argument, it would not have affected the SSA's tradeoff determination. *NCI Info. Sys., Inc., supra* ("Based on the [cost adjustment] amount presented by [the protester], "we need not address these challenges to the agency's cost evaluation because the protester has failed to show competitive prejudice"); *Global Plus*, B-257431, B-257431.9, Dec. 14, 1994, 95-1 CPD ¶ 77 at 11 (finding it unnecessary to determine whether the agency's upward adjustments to the protester's proposed costs were proper where the record established the protester suffered no competitive prejudice as a result thereof).

Alleged Organizational Conflict of Interest

ICI also protests that the agency failed to meaningfully analyze whether Serco has an organizational conflict of interest (OCI) related to its work on the Navy's light amphibious warship (LAW) program. For the reasons discussed below, we dismiss this argument.

The FAR requires that contracting officials avoid, neutralize, or mitigate significant potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. *Tatitlek Techs., Inc.*, *supra* at 4; *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13.

As relevant here, an impaired objectivity OCI exists where a firm's work under one government contract could entail evaluation of itself, either through an assessment of performance under another contract or an evaluation of proposals. FAR 9.505-3; *Strategic Mgmt. Sols., LLC*, B-416598.3, B-416598.4, Dec. 17, 2019, 2019 CPD ¶ 426 at 5. 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 9.505-4; *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 6.

In reviewing protests that challenge an agency's conflict of interest determinations, our Office reviews the reasonableness of the agency's investigation and, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Systems Made Simple, Inc.*, B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 7. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Id.*; see *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). Moreover, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *Trailboss Enters., Inc.*, B-415970 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 10; *DGC Int'l*, B-410364.3, Apr. 22, 2015, 2015 CPD ¶ 136 at 7; see *Turner Constr. Co., Inc. v. United States*, 645 F.3d 1377, 1387 (Fed. Cir. 2011). Here, ICI fails to identify any facts--let alone hard facts--indicating the existence of an actual or potential OCI involving Serco and provides no basis to question the reasonableness of the agency's investigation.

The LAW program is intended to provide the Navy with "long-range, beachable, medium-sized ships" in support of expeditionary operations. Supplemental Memorandum of Law (Supp. MOL) at 2; see also <https://news.usni.org/2020/11/19/navy-officials-reveal-details-of-new-100m-light-amphibious-warship-concept> (last visited Oct. 12, 2021). From January to May 2020, the Navy developed the top-level requirements (TLRs) for the LAW program. Supp. MOL at 2. The Navy also conducted market research (e.g., requests for information (RFI), industry days) both before and after the completion of the LAW TLRs. *Id.* at 2-3. The RFIs identified nine design/shipbuilder teams, including Serco, with existing concepts or designs that could potentially meet LAW requirements. *Id.* at 3.

In June 2020, the Navy issued purchase orders to each design/shipbuilder team for industry studies, which the Navy used to develop the concept study/preliminary design (CS/PD) requirements for the LAW program.²¹ *Id.* As part of the LAW industry studies the Navy provided each team with: TLR information and drawings, additional LAW-related requirements, clarification documents, program schedules, and LAW program changes/updates. *Id.* By contrast, information regarding the subject PMS 317 support services requirement was not relevant to the LAW industry study participants and was, therefore, not provided to the LAW participants. *Id.* The LAW industry studies concluded in December 2020, and Serco submitted its final industry study product to the Navy on December 15, 2020. *Id.* Serco did not subsequently compete for the LAW CS/PD requirement. *Id.*

Serco's FPR here (for the PMS 317 support services effort), identified a potential OCI regarding its performance of the LAW industry study effort.²² However, Serco also explained that its potential OCI would end within 2 weeks of FPR submission and would not exist by the time task order award would occur. Specifically, "[s]ince Serco will be submitting its final deliverable to the LAW . . . effort in late November 2020, Serco does not anticipate having an actual OCI that overlaps with the start of performance under a PMS 317 task order," and that no further mitigation plan was therefore required. AR, Tab 26, Serco FPR, Vol. V, Solicitation Documentation, at 25. Serco's proposal also identified no other actual or potential OCIs. *Id.* at 25-26. The contracting officer subsequently determined that insofar as Serco's performance of the LAW industry study effort had ended in November 2020, there were no known actual or potential OCIs related to Serco's performance of the PMS 317 support services task order. AR, Tab 31, Contracting Officer Memorandum Regarding the Impact of the Serco-Alion Transaction at 4-5.

ICI argues the Navy did not sufficiently investigate whether Serco had any OCI, and the whole of ICI's allegation is as follows:

[FPRs] were due in November of 2020. Serco began work on [the LAW industry study] subcontract in July of 2020. It concluded work in December 2020. During that time, Serco *could have* had access to nonpublic information as part of its performance on the subcontract that *could be used* in this procurement--meaning Serco *could have utilized* this information in its submission of its proposal on th[is] Solicitation.

²¹ The purchase orders here were issued using PMS 317's engineering support services task order with the firm, Gibbs & Cox, Inc. Consequently, Serco was under subcontract to Gibbs & Cox. Supp. MOL at 3.

²² Without expressly stating so, Serco essentially discusses an impaired objectivity OCI, where its performance of the PMS 317 support services effort could involve reviewing Serco's work under the LAW industry study effort.

Supp. Protest at 6 (emphasis added).

As stated above, a protester must identify hard facts that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, 2020 CPD ¶ 106 at 5; *Trailboss Enters., Inc., supra*. Here, ICI does not allege any actual conflict of interest, but rather, speculates that an unequal access to information-OCI may exist because of Serco's work under the LAW industry study effort. *Id.* The Navy unequivocally states, however, that information regarding the subject PMS 317 support services competition was not provided to the LAW industry study participants, which included Serco, and that Serco's LAW industry study effort did not result in an unequal access to information (or any other) OCI. Supp. MOL at 8-13.

Moreover, ICI's comments on the agency report do no more than reassert that the Navy failed to conduct a meaningful OCI analysis, and completely fail to identify the existence of any potential or actual OCI involving Serco which the agency did not investigate. See Supp. Comments at 3-5. Based on ICI's failure to identify hard facts demonstrating the existence or potential existence of an OCI, we dismiss this allegation for failing to state a valid basis of protest. 4 C.F.R. § 21.5(f); see *Trailboss Enters., Inc., supra* at 11; *DGC Int'l, supra*.

Best-Value Determination

Finally, ICI challenges the agency's best-value determination. The protester maintains that the award decision was flawed because of the underlying errors in the agency's evaluation. ICI also argues that, as part of the best-value tradeoff decision, the SSA "merely compared the adjectival ratings between ICI and Serco" and failed to reasonably consider the qualitative value of each offeror's proposal. Comments at 54. We disagree.

Source selection officials in best-value procurements have broad discretion in making cost/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Millennium Eng'g & Integration Co., supra* at 14; *Diversified Tech. & Servs. of Va., Inc.*, B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 11. Source selection decisions must be documented, and the documentation must include the rationale for any business judgments and cost/technical tradeoffs made, including the benefits associated with the additional costs. FAR 15.308; *General Dynamics Info. Tech., Inc.*, B-406059.2, Mar. 30, 2012, 2012 CPD ¶ 138 at 4. Such documentation must be sufficient to establish that the agency was aware of the relative merits and costs of the competing proposals and that the source selection was reasonably based. *Millennium Eng'g & Integration Co., supra*; *Diversified Tech. & Servs. of Va., Inc., supra* at 12.

The SSA, when performing the best-value determination here, began by reviewing the relative importance of the RFP's stated evaluation criteria--that the technical and

management factor, and the staffing plan and personnel factor, were of equal importance; that each was more important than the past performance factor; and that the non-cost factors when combined, were significantly more important than cost. AR, Tab 32, SSDD at 3. The SSA thereafter conducted a detailed comparative assessment of the Serco and ICI proposals by evaluation factor. *Id.* at 16-21. With regard to the technical and management factor, the SSA found that Serco possessed various strengths which ICI did not:

Beyond [the aforementioned] offsetting strengths, however, Serco also had a strength in Task 2 [engineering/technical support] related to their [DELETED] that will enable the ability to quickly support emergent technical issues as the LPD transitions from Flight I to Flight II. Engineering/Technical support is a large portion of the statement of work and I consider the ability to provide quick support for emergent issues to be of significant benefit to the Government. Further, Serco's strength related to its [DELETED] is also considered as a strength of significant benefit to the program as it will [DELETED], which is of high importance to the Navy. These strengths, which I consider to be of great benefit to the program, were not offset by ICI's proposal. Additionally, Serco's proposal contained a strength in support of Task 3 [test and evaluation program support] regarding its [DELETED] that was not offset by ICI's proposal. Based on Serco's multiple strengths that were not offset by ICI's proposal, two of which were considered to be of significant benefit, and the benefits and advantages that they present to the Government, I have determined that Serco's proposal provides an advantage over ICI's proposal in [the technical capabilities and understanding of the work subfactor, within the technical and management approach factor], which is the most important Sub-factor.

Id. at 18.

The SSA conducted similar comparisons of the Serco and ICI proposals under the remaining factors and subfactors before concluding that,

Based on the order of importance of factors, Serco is superior to ICI under Factor 1 due to its superiority in the higher weighted Sub-factor (A) based on its strengths of significant benefit to the program and an additional strength in its proposal that were not offset by ICI's proposal, as compared to ICI's advantage in Sub-factor (B).

* * * * *

Considering Serco's technical superiority in Factor 1, with Factors 2 and 3 being considered equal, I have determined that Serco's technical merits justify the \$44,662 . . . premium compared to the proposal by ICI.

Id. at 22-23.

We find the agency's source selection decision was reasonable, consistent with the solicitation's stated evaluation criteria, and documented in textbook fashion. *CACI, Inc.-Fed.*, B-418110.3 *et al.*, May 22, 2020, 2020 CPD ¶ 181 at 15. As the record demonstrates, the SSA properly looked behind the evaluation ratings and reasonably considered the underlying qualitative merits and evaluated costs that distinguished the offerors' proposals. The evaluation record simply provides no support for ICI's assertion that the SSA merely compared the Serco and ICI adjectival ratings when making the award decision. Instead, the record demonstrates the SSA reviewed the underlying strengths, and what they represented, that made Serco's proposal technically superior to that of ICI. Finally, the SSA reasonably concluded that "it is my independent business judgement that Serco's [aforementioned] technical advantages justify the Navy paying the premium in cost, and represents the best value to the Government for this acquisition." AR, Tab 32, SSDD at 23. Under these circumstances, we see no basis to question the agency's decision to make award to Serco.

The protest is denied.

Edda Emmanuelli Perez
General Counsel