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# Decision

**Matter of:** Inquiries, Inc.

**File:** B-418486; B-418486.2; B-418486.3

**Date:** May 27, 2020

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Jason A. Carey, Esq., J. Hunter Bennett, Esq., Andrew R. Guy, Esq., and Peter B. Terenzio III, Esq., Covington & Burling, LLP, for the protester. Damien C. Specht, Esq., James A. Tucker, Esq., and Alissandra D. Young, Esq., Morrison & Foerster LLP, for ASRC Federal Professional Services, LLC, the intervenor. Jay P. Fraude, Esq., Defense Counterintelligence and Security Agency, for the agency. Sarah T. Zaffina, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal is denied where the evaluation was reasonable and consistent with the solicitation's evaluation criteria.
  2. Protest challenging the agency's evaluation of the awardee's corporate experience is denied where, notwithstanding apparent errors, the protester fails to demonstrate competitive prejudice.
  3. Protest that the awardee has an impaired objectivity organizational conflict of interest is denied where the record shows that while the protest was pending, the agency meaningfully considered the potential conflicts arising from current work on other contracts by companies affiliated with the awardee and reasonably determined no conflict exists.
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## DECISION

Inquiries, Inc., a small business, of Easton, Maryland, protests the award of a contract to ASRC Federal Professional Services, LLC (AFPS), also a small business, of Beltsville, Maryland, under request for proposals (RFP) No. 24362019R0004, issued by the Department of Defense, Defense Counterintelligence and Security Agency (DCSA), for case processing operation center (CPOC) services related to federal background

investigations.<sup>1</sup> Inquiries argues that the award to AFPS was improper because the agency's evaluation of proposals was unreasonable and unequal. The protester also argues that the awardee has a disqualifying organizational conflict of interest (OCI).

We deny the protest.

## BACKGROUND

DCSA provides background investigations for most government personnel, including federal applicants, employees, and contractors, and requires contractor-provided CPOC services to process federal background investigations. AR, Tab 21, RFP amend. 4 at 7.<sup>2</sup> On March 29, 2019, DCSA issued the solicitation as a small business set-aside, to provide CPOC services such as facility monitoring, case processing, program management, and implementation of the National Background Investigation System (NBIS), to which the government anticipates transitioning from the current system during the life of the contract. AR, Tab 79, Contracting Officer's Statement (COS) at 1; RFP at 8, 22.

The solicitation anticipated the award of a fixed-price contract with a base period of one year and four 1-year options. RFP at 9, 11. The RFP provided for award on a best-value tradeoff basis, considering five technical factors, past performance, and price. *Id.* at 90-98. The technical factors were: (1) management plan; (2) transition plan; (3) quality control plan; (4) staffing plan; and (5) corporate competency, which was further divided into two subfactors, corporate experience and key personnel. *Id.* at 90-93. For purposes of award, the technical factors were relatively equal, and when combined, significantly more important than past performance, which was more important than price. *Id.* at 98. The RFP notified offerors that the government was more concerned with obtaining superior technical quality and past performance than with making award to the lowest-price offeror, but that where offerors' technical and past performance ratings became more equal, price would become a distinguishing factor. *Id.*

DCSA received proposals from six offerors by the closing date of May 6. COS at 1; AR, Tab 51, Initial Source Selection Evaluation Board (SSEB) Report at 3. The SSEB rated

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<sup>1</sup> Effective October 1, 2019, all the functions, resources, and employees of the National Background Investigations Bureau (NBIB), previously part of the U.S. Office of Personnel Management (OPM), were transferred to DCSA, formerly the Defense Security Service. Executive Order No. 13869, Apr. 24, 2019, 84 Fed. Reg. 18125. Documents in the agency report (AR) may refer to NBIB, OPM, DCSA, or Department of Defense (DOD) depending on when they were drafted. Memorandum of Law (MOL) at 2 n.1; *see also* RFP at 11-12.

<sup>2</sup> The RFP was amended four times. AR Tabs 17-21. Unless otherwise noted, all references to the RFP are to the last amended version.

four of the proposals as unacceptable, and the source selection advisory council (SSAC) recommended that a competitive range consisting of the remaining two proposals be established.<sup>3</sup> COS at 2; AR, Tab 52, Initial SSAC Report at 2, 30. DSCA notified Inquiries and AFPS that their proposals were included in the competitive range, and provided them with individualized evaluation notices (ENs) that identified risks, significant weaknesses, and price issues. COS at 2. After reviewing the EN responses and determining that both proposals were at least technically acceptable, the agency closed discussions and requested final proposal revisions (FPR) by December 23. *Id.*

The SSEB evaluated the proposals as follows:<sup>4</sup>

	<b>Inquiries</b>	<b>AFPS</b>
<b>TECHNICAL</b>		
<b>Factor 1 – Management Plan</b>	Good	Good
<b>Factor 2 – Transition Plan</b>	Acceptable	Acceptable
<b>Factor 3 – Quality Control Plan</b>	Marginal	Good
<b>Factor 4 – Staffing Plan</b>	Good	Outstanding
<b>Factor 5 – Corporate Competency</b>	Good	Outstanding
<b>Key Personnel</b>	Acceptable	Acceptable
<b>Corporate Experience</b>	Good	Outstanding
<b>OVERALL TECHNICAL RATING</b>	ACCEPTABLE	GOOD
<b>PAST PERFORMANCE</b>	SATISFACTORY CONFIDENCE	SATISFACTORY CONFIDENCE
<b>Total Evaluated Price</b>	\$296,683,983	\$297,329,662

AR, Tab 55, Source Selection Decision Document (SSDD) at 5.

The SSAC recommended award to AFPS because AFPS’s proposal was technically superior to Inquiries’s proposal, and paying a premium of less than one percent for a higher-rated technical proposal was in the best interest of the government. AR, Tab 54, Final SSAC Report at 10-11. The source selection authority (SSA) conducted an independent review of the documentation, concurred with the SSAC, and selected AFPS for award. SSDD at 10.

On January 28, 2020, the agency notified Inquiries of its decision to award the contract to AFPS. AR, Tab 63, Award Notice. Inquiries timely requested and received a

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<sup>3</sup> The ratings for all the technical factors except for key personnel were: outstanding, good, acceptable, marginal, or unacceptable. RFP at 94-95. The key personnel factor was rated either acceptable or unacceptable. *Id.* at 95-96.

<sup>4</sup> The agency assigned proposals one of the following ratings under the past performance factor: satisfactory confidence, neutral confidence, or no confidence. RFP at 96.

debriefing. AR, Tab 72, Inquiries's Req. for Debriefing; AR, Tab 73, Inquiries's Post-Award Debrief; AR, Tab 74, Inquiries's Post-Award Enhanced Debriefing Resp. This protest followed.

## DISCUSSION

Inquiries challenges the agency's evaluation of proposals and argues that the award decision is improper. The protester also argues that AFPS has an organizational conflict of interest that the agency failed to consider. As discussed below, we find no basis on which to sustain the protest.<sup>5</sup>

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. See *SDS Int'l, Inc.*, B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *MVM, Inc.*, B-407779, B-407779.2, Feb. 21, 2013, 2013 CPD ¶ 76 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.* at 5-6.

### Quality Control Plan

Inquiries argues that DCSA acted unreasonably and unequally in assigning its proposal a rating of marginal under the quality control plan (QCP) factor. The protester primarily argues that the agency should not have assessed its proposal a significant weakness under the factor. Consol. & Supp. Protest at 16-21. The protester also contends that the agency treated AFPS and Inquiries disparately during the evaluation. Comments & 2d Supp. Protest at 14-17.

The RFP required offerors to develop and maintain an effective quality control program to ensure services meet the performance standards set forth in the solicitation. RFP

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<sup>5</sup> While our decision does not discuss in detail every argument raised by the protester, we have considered all of Inquiries's allegations and find that, with the exception of the arguments discussed herein, none of the arguments have merit. For example, the protester argues that the individual proposed by AFPS for the key personnel position of program manager was unavailable to perform at the required contract place of performance. Consol. & Supp. Protest at 28-32. Inquiries offered no facts to substantiate its allegation; instead, the protester simply speculated that AFPS had proposed a particular individual for the program manager position, that it would be necessary for her to relocate, and that she would be unwilling to do so. Because the protester's allegation is based on nothing more than speculation, we dismiss this protest ground as failing to furnish a legally sufficient basis for protest. 4 C.F.R. §§ 21.1(c)(4), (f).

at 8. The QCP sets out the contractor's procedures to "identify, prevent, and ensure non-recurrence of defective services" and provides the method by which the contractor will ensure its work fulfills the contract requirements. *Id.* The solicitation notified offerors that their QCPs would be evaluated to ensure that all case processing meets "[f]ederal standards for integrity, quality, training, and timeliness while maintaining high levels of customer service." *Id.* at 91.

After evaluating proposals, DCSA entered into discussions with the offerors in the competitive range and issued ENs. Inquiries's EN advised that the agency had assessed the proposal a significant weakness for failing to provide sufficient detail "regarding the level of inspection or define the pull criteria for random and routine inspections," for the agency to determine whether the proposed ratios and other information was sufficient to meet the CPOC requirements. AR, Tab 69, Inquiries's EN at 3. DCSA also advised Inquiries that its proposal did not define sample size metrics. *Id.*

Inquiries revised its proposal in response to the EN.<sup>6</sup> Inquiries's revisions included the following statement; "[w]e employ a [DELETED] ratio of Quality Control Analysts (inspectors) to clerks to ensure that sample sizes are a minimum of [DELETED] units per and tailored to each task," and explained that this ratio allows Inquiries "to find and reduce errors." AR, Tab 70, Inquiries's EN Response & FPR at 26 & 27. Inquiries also added language indicating that for several performance requirement standards, it would visually inspect [DELETED] cases per quarter. *Id.* at 34-35.

The agency decided that Inquiries's responses did not mitigate its significant weakness because the responses did not provide information as to why the proposed sample sizes were representative of the population from which they were drawn. Final SSAC Report at 6. The SSAC concluded that the significant weakness outweighed the strengths in Inquiries's proposal pertaining to its QCP, reasoning that a flaw in the method for obtaining the initial quality assessment data would have a negative impact on the overall quality of the work.<sup>7</sup> *Id.* The SSAC found that AFPS's QCP was superior to Inquiries's QCP, and the SSA concurred with that finding. SSDD at 8.

Inquiries argues that it addressed all the agency's concerns in its FPR and that the specific sample sizes it proposed were based upon the experience of its subcontractor, Next Tier Concepts (NTC), the current incumbent that has been successfully performing

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<sup>6</sup> Inquiries incorporated its individual EN responses into its proposal on December 17 and referred DCSA to this revised proposal as its FPR submission. AR, Tab 70, Inquiries's EN Response & FPR; AR, Tab 71, Inquiries's FPR Submission. We cite to AR Tab 70 for all references to Inquiries's proposal or FPR unless otherwise noted.

<sup>7</sup> The protester's proposal was assigned three strengths under the QCP factor for improving the quality control process, increasing inspections, and using root cause analysis to correct errors. AR, Tab 53, Final SSEB Report, at 10-11.

the contract since October 2014. *Consol. & Supp. Protest* at 19. Further, *Inquiries* contends that if the agency required a specific sample size for each performance requirement standard, the RFP should have included these requirements. *See id.* at 20. *Inquiries* asserts that the significant weakness should not have outweighed its proposal's three strengths, and therefore, the marginal rating was unreasonable. *Id.* Further, the protester contends the agency treated AFPS and *Inquiries* unequally because AFPS did not propose specific sample sizes at all, and DCSA assessed its proposal a weakness instead of a significant weakness. *Comments & 2d Supp. Protest* at 14-17.

In response, the contracting officer explains that although *Inquiries*'s FPR included sample sizes, the sample sizes were not justified; also, it was not evident that *Inquiries* had considered each performance requirement and understood the need for a representative sample for each item. *COS* at 5. The contracting officer further explains that the significant weakness remained because *Inquiries*'s sample sizes were unsubstantiated and the protester's methodology for developing the samples was unclear. *Id.* Also, *Inquiries*'s proposal did not specify that its sample size was based on NTC's experience. *Id.* According to the contracting officer, DCSA purposefully did not include specific sample sizes in the RFP because it expected offerors to propose appropriate sample sizes based on "industry quality standards and best practices." *Id.*

The agency has furnished a reasonable explanation for its finding of a significant weakness. Moreover, the agency has reasonably explained why *Inquiries*'s failure to show that it understood representative sample sizes outweighed the three strengths in its proposal. *Final SSAC Report* at 6. Although the protester argues that its proposal did not merit a significant weakness and therefore, a marginal rating, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. *MVM, Inc., supra*. The record does not establish that the agency's evaluation was unreasonable.

With regard to the protester's assertion of unequal treatment, the agency explains that AFPS's proposal failed to provide sufficient detail about sample size and its methodology for random selection, and thus merited a weakness. In contrast, the agency further explains that *Inquiries*'s proposal raised larger concerns regarding the protester's understanding that different item types may need different sized samples.

Agencies must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's evaluation criteria. *L3 Sec. & Detection Sys., Inc.*, B-417463, B-417463.2, July 8, 2019, 2019 CPD ¶ 248 at 4. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *Id.* Here, the protester has failed to make such a showing. The record shows that there were differences between the two proposals, which led to a different level of concern on the part of the evaluators. On this record, we have no basis to conclude that the agency's evaluation was unreasonable.

## Transition Plan

Inquiries also argues that DCSA's evaluation of the firm's transition plan was unreasonable and unequal. The protester asserts that its proposal should not have been assessed weaknesses for the experience of its transition manager, its proposed place of performance, or its 90-day timeline to complete transition activities. Consol. & Supp. Protest at 22-23. The protester argues that DCSA treated it disparately because AFPS also proposed a 90-day transition and was not assessed a weakness. Comments & 2d Supp. Protest at 31.

We find that the record demonstrates a reasonable basis for the first two weaknesses. For example, with regard to the weakness assessed to Inquiries's proposal for its proposed place of performance, the RFP required the contract to be performed at "Boyers, PA, St. Louis, MO, or at an alternate approved location." RFP at 9, 33. Inquiries proposed to use a location in [DELETED], PA, without acknowledging that government approval was required or describing how it would seek government approval. Inquiries's EN Response & FPR at 24. The agency determined the proposal did not demonstrate an understanding that government approval for the alternate site was required and that the absence of an interim operating approach for the location increased the risk of unsuccessful performance if there was a delay in the approval process or an inability to be approved. Final SSEB Report at 9-10.

The contracting offer explains that DCSA expected offerors to address all solicitation requirements in their proposals, such that if an alternate location were proposed, the proposal would include details regarding approval of the alternate location. COS at 6. As Inquiries's proposal made no mention of the required government approval in its proposal, the agency determined that the omission warranted a weakness. We find the agency's judgment reasonable and consistent with the evaluation criteria. *MVM, Inc., supra*.

The record fails to show a reasonable basis for the third weakness, however. Inquiries proposed a 90-day timeline to transition to the new contract, which was less than the 120-day period provided for in the RFP. For this, Inquiries was assessed a weakness. Although AFPS also proposed a 90-day transition timeline, it was not assessed a weakness.

Despite this disparate treatment, we see no basis to conclude that Inquiries was competitively prejudiced by the error. The record shows that Inquiries's proposal was rated acceptable under the transition plan factor despite being assigned three weaknesses (and zero strengths). Final SSEB Report at 9-10. AFPS's proposal, which was assessed no strengths or weaknesses under the factor, was likewise rated acceptable, and the SSA found that "there were no distinguishing elements in the offerors' proposals" regarding their approaches to transition. SSDD at 6. Thus, the record shows that even if Inquiries's proposal had been assessed one less weakness, its rating and status vis-à-vis AFPS's proposal (with no assessed weaknesses) would

not have changed. As a result, Inquiries's chance of receiving the award would not have improved.

Accordingly, we find that Inquiries was not competitively prejudiced by the agency's error and thus, there is no basis to sustain this protest ground. Competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *CSI Aviation, Inc.*, B-415631 *et al.*, Feb. 7, 2018, 2018 CPD ¶ 68 at 7.

### Corporate Experience

Inquiries next argues that DCSA unreasonably evaluated AFPS's corporate experience, and challenges the ratings and strengths assessed under this evaluation subfactor.<sup>8</sup> Inquiries principally argues that AFPS is a new entity without the experience warranting an outstanding rating, and that the agency should not have given AFPS credit for its affiliates' references. Consol. & Supp. Protest at 26-28; Comments & 2d Supp. Protest at 24-25. The protester contends that the agency conflates the RFP's past performance factor and corporate experience subfactor, which had distinct criteria. Supp. Comments, Apr. 8, 2020, at 12-13.

Where a protester challenges an agency's evaluation of corporate experience, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. *Addx Corp.*, B-414749 *et al.*, Aug. 28, 2017, 2017 CPD ¶ 275 at 7. An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. *Alutiiq Pac., LLC*, B-409584, B-409584.2, June 18, 2014, 2014 CPD ¶ 196 at 4. The relevant consideration is whether the resources of the parent or affiliated company--its workforce, management, facilities or other resources--will be provided or relied upon for contract performance such that the parent or affiliate will have meaningful involvement in contract performance. *Ecompex, Inc.*, B-292865.4 *et al.*, June 18, 2004, 2004 CPD ¶ 149 at 5. In this regard, while it would be appropriate to consider an affiliate's performance record where it will be involved in the contract effort or where it shares management with the offeror, *Fluor Daniel, Inc.*, B-262051, B-262051.2, Nov. 21, 1995, 95-2 CPD ¶ 241 at 12, it is inappropriate to consider an affiliate's record where that record does not bear on the likelihood of successful performance by the offeror and where there is no evidence that the affiliate will meaningfully contribute to performance.

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<sup>8</sup> Corporate experience is one of the two subfactors evaluated under the corporate competency factor. RFP at 92. Both proposals were rated as acceptable under the other subfactor, key personnel. Final SSEB Report at 8, 13.

*Vane Line Bunkering, Inc.*, B-417859, B-417859.2, Nov. 22, 2019, 2019 CPD ¶ 409 at 12.

Under the corporate experience factor, the RFP provided that the agency would evaluate proposals to determine whether offerors had experience that would enhance their ability to perform the CPOC requirements. RFP at 92. The solicitation required offerors to provide 2 to 4 examples of corporate experience describing “the work performed and how it relates to your ability to provide the [CPOC] services.” *Id.* at 85.

AFPS is a wholly-owned subsidiary of ASRC Federal Holding Company (ASRC Federal).<sup>9</sup> AR, Tab 77, AFPS’s FPR at 1. ASRC Federal provides shared services to all its subsidiaries, including support functions, which supplement “the contract Program Management Office[], mature business systems, robust process libraries with templates, and automation playbooks.” *Id.* AFPS’s proposal included four examples of the corporate experience of AFPS’s sister subsidiaries. *Id.* at 46-54. Although AFPS detailed the successes of its affiliates, none of these examples identified how the affiliates would be involved in performing the CPOC requirement. Instead, the proposal claimed that the experience of AFPS’s sister subsidiaries is relevant because AFPS will use the same management oversight, back-office tools, and business processes that ASRC Federal provides to all its subsidiaries. *Id.* at 46, 50, 52.

When the agency evaluated AFPS’s corporate experience, it decided to credit AFPS with the affiliates’ successful experience, notwithstanding the fact that the affiliates would not be directly performing the CPOC requirement. For example, AFPS received a strength for the experience of its sister subsidiary, InuTeq LLC, involving Earned Value Management and highly specialized information technology (IT). Final SSEB Report at 7. AFPS did not propose that InuTeq would be involved in performing this contract, however; rather, it claimed this experience was relevant because AFPS and InuTeq will use the same shared services. AFPS’s FPR at 46. The SSEB similarly assessed two other strengths to AFPS’s proposal for accomplishments of its affiliated firms. Final SSEB Report at 8.

We agree with Inquiries that the agency erred in crediting AFPS with the experience of AFPS’s affiliates under the corporate experience factor without considering whether the affiliates would play a meaningful role in performing the CPOC requirements. The record here shows that although AFPS’s proposal identified the experience of its affiliates, the proposal did not define any assigned role for these affiliates in performing the contract. Therefore, it was not reasonable for DCSA to assign strengths to AFPS for its affiliates’ experience where there was no indication that the sister subsidiaries would be involved in contract performance.

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<sup>9</sup> All references to AFPS’s proposal refer to its revised proposal submitted December 17, 2019, as part of its response to the DSCA’s EN, unless otherwise noted. AR, Tab 76, AFPS’s EN Response; AR, Tab 77, AFPS’s FPR.

We also disagree with the agency's contention that the RFP notified offerors that the agency would consider affiliates' experience. MOL at 20-21; COS at 7-8. The RFP provides that DCSA may consider the experience of affiliates, key personnel, and subcontractors under the past performance evaluation factor, but it does not provide for consideration of the experience of affiliates or key personnel under the corporate experience subfactor. Although there are similarities in these factors, they are evaluated with different criteria and assessed different ratings. *Compare* RFP at 94-95 (providing that technical factors will be evaluated using adjectival ratings of outstanding, good, acceptable, marginal, or unacceptable), *with* RFP at 96 (explaining that the past performance factor will be assessed for recency, relevancy, and quality, which will be combined for an overall confidence rating of satisfactory, neutral, or no confidence).

DCSA's analysis conflates the evaluation of past performance and corporate experience. The RFP established these two factors as separate and distinct from one another; in conflating the two factors, the agency undermined its assessment of the likelihood of successful performance by each offeror. By considering the experience of AFPS's sister subsidiaries that will not be involved in performing the contract in its evaluation under the corporate experience subfactor, the agency conducted its evaluation in a manner contrary to the evaluation scheme expressly established by the RFP. *See Mission Essential Pers., LLC*, B-404218.2, B-404218.3, June 14, 2011, 2011 CPD ¶ 120 at 4 (agency evaluation that conflates evaluation factors is unreasonable for failing to follow the evaluation criteria).

Despite the flaws in the agency's corporate experience evaluation, we do not find a reasonable possibility of prejudice to Inquiries. As discussed above, competitive prejudice is an essential element of every viable protest. *Armorworks Enters., LLC, supra*. The SSEB rated AFPS's proposal equal or better than Inquiries's proposal for every non-price factor. Final SSEB Report at 2-3. When the SSAC reviewed the SSEB's findings, it found that while both offerors were rated technically acceptable, AFPS's superiority in its QCP, staffing plan, and corporate competency approaches was worth the 0.2 percent price premium over Inquiries's evaluated price, and that award to AFPS was in the best interest of the government. Final SSAC Report at 11. The SSA concurred with both the SSEB and SSAC reports, and expressly found that it was in the best interest of the government to pay a 0.2 percent price premium for AFPS's QCP, staffing plan, and corporate competency approaches. SSDD at 9. Moreover, when the SSA conducted an independent analysis of the offerors' proposals, the SSA found that AFPS's proposal remained the most highly rated because Inquiries's proposal did not mitigate all the significant weaknesses raised by the ENs. *Id.* Pursuant to the SSA's additional analysis, Inquiries's significant weakness under the QCP becomes the discriminator between the proposals, notwithstanding AFPS's higher ratings under the staffing plan and corporate competency factors. *See id.*

In light of AFPS's technically superior proposal under the QCP and staffing plan factors, as well as Inquiries's failure to mitigate its significant weakness under the QCP factor, and the 0.2 percent price premium for a higher-rated technical proposal, we see no reasonable likelihood that a change in AFPS's corporate experience rating would alter

the SSA's best-value decision. On this record, we have no basis to sustain this protest ground.

### Organizational Conflict of Interest

Finally, Inquiries contends that AFPS has an unmitigable OCI because AFPS will be processing the background investigations of personnel employed by its parent company, ASRC. Consol. & Supp. Protest at 32-36. The protester contends that the agency failed to consider this impaired objectivity OCI. *Id.* at 36. In the alternative, Inquiries argues that the agency unreasonably concluded that an OCI does not exist, and that to the extent an OCI does exist, it can be mitigated through government oversight. Supp. Comments, Apr. 8, 2020, at 3-5; Third Supp. Comments, Apr. 27, 2020.

The Federal Acquisition Regulation (FAR) requires contracting officials to avoid, neutralize, or mitigate 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. As relevant here, an impaired objectivity OCI 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. We review OCI investigations for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's absent clear evidence the agency's conclusion is unreasonable. *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4. The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see also *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). 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. *TeleCommunication Sys., Inc.*, *supra*.

Here, the successful contractor will be required to provide CPOC services necessary for DCSA to carry out the agency's federal background investigation mission. This work involves facility monitoring, case processing, program management, and NBIS

implementation. RFP at 8. As relevant here, case processing involves the intake of applications, case maintenance, item level processing, and case reworking. *Id.* at 19. In laymen's terms, this means the contractor will process individual applications, to include uploading applications into the existing NBIB system, ensuring that the required information is submitted, and the application is complete; scheduling investigative interviews; and closing the case after the background investigation has been performed and a clearance determination has been made. None of these functions requires conducting the investigations. Instead, the contractor only performs administrative functions under this contract, and does not conduct background investigations or make findings about eligibility for a clearance. AR, Tab 82, OCI Determination & 3d Supp. COS, Apr. 23, 2020, at 3.

The protester further argues that AFPS should have been disqualified from the competition because AFPS is tasked with oversight of its parent company's background investigations. Consol. & Supp. Protest at 32-33. The protester contends that in processing background investigations, AFPS will be able to control the timing of background checks and could speed up its affiliates' applications, while slowing down the applications of competitors. *Id.* at 33-36. Inquiries also argues that the even while processing applications, AFPS will be making subjective judgments about "derogatory, conflicting, or unadmitted information" in the applications to be processed. *Id.* at 33; Third Supp. Comments, Apr. 27, 2020, at 3-4.

First, in response to the protester's allegation that the agency did not conduct a contemporaneous OCI investigation, we note an agency may properly investigate potential OCIs following receipt of a protest that raises this issue, which is what occurred here. *Q2 Adm'rs., LLC*, B-410028, Oct. 14, 2014, 2014 CPD ¶ 305 at 9 n.12. Specifically, when Inquiries filed its initial protest arguing that the agency had not considered an OCI created by award to AFPS, the agency elected to consider the OCI allegation as the protest proceeded. Consol. & Supp. Protest at 32-36.

At the end of the review, the contracting officer concluded that AFPS has no impaired objectivity OCI that cannot be mitigated by appropriate agency oversight.<sup>10</sup> COS at 8;

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<sup>10</sup> The contracting officer pointed out that the solicitation here expressly prohibited a contractor that is a current prime contractor with an OPM or NBIB investigative contract from submitting a proposal for or being awarded the CPOC contract. COS at 8; RFP at 89. The RFP did not limit subcontracting or teaming arrangements, however, and required contractors to submit a risk mitigation strategy in the event the contractor's approach involved subcontracting or teaming with such a company. Upon review, the government could approve or reject the mitigation plan, "when a primary contractor for another OPM investigative or investigative support Contract is going to be added as a subcontractor or team-member" during performance. RFP at 11. In response, Inquiries proposed a risk mitigation strategy for its subcontractor NTC, which is currently performing the CPOC contract, as well as providing services on the NBIS development project. Inquiries's FPR at 5.

OCI Determination & 3d Supp. COS, Apr. 23, 2020, at 2-3. In this regard, the contracting officer confirmed that the CPOC contractor does not make adjudicative decisions on background investigation applications.<sup>11</sup> OCI Determination & 3d Supp. COS, Apr. 23, 2020, at 2. The contracting officer went on to explain that while DCSA was aware there was a possible risk that AFPS could manipulate the time to process background investigation applications to its affiliates' advantage, government oversight and internal controls would reduce the possibility. COS at 8.

Specifically, DCSA's Federal Investigative Records Enterprise (FIRE) office provides oversight of the CPOC contract. OCI Determination & 3d Supp. COS, Apr. 23, 2020, at 2. FIRE regularly reviews workload reports and can easily assess whether cases are being processed unequally or at different speeds. *Id.* As part of the review, FIRE examines reports on overdue work to ensure that the work is being processed in a government-approved priority order. The agency notes it can also examine the submitting agencies identifier codes associated with each case to pinpoint which contractor is processing the case and when. *Id.* For example, FIRE would be able to ascertain whether a case associated with AFPS was being processed ahead of a case that was not. *Id.* The contracting officer contends that AFPS would be unable to prioritize certain cases without the government noticing. *Id.* Furthermore, the contracting officer observed that he was not aware of case processing issues on this contract like those alleged; according to him, such issues were "very unlikely to occur here." *Id.*

In our view, the record here does not support a conclusion that the agency's OCI determination was unreasonable. While the record shows that the contracting officer did not document the OCI determination until our Office asked for the documentation, we have no basis to conclude that the contracting officer did not consider the alleged OCI at the time he says he did. COS at 8 (stating in the contracting officer's statement of facts produced on March 19, "The possibility of misconduct by contractors is known to DCSA and the Agency believes that possibility can be addressed through internal controls."); *see also* Q2 *Adm'rs.*, *supra* (recognizing that an agency may investigate possible OCIs after the filing of bid protests). In addition, the record shows the contracting officer's documented determination is consistent with his earlier responses

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<sup>11</sup> The agency further asserts that if AFPS has an impaired objectivity OCI due to its ability to manipulate background information processing to favor its own affiliates and parent company or to harm competitors, then Inquiries also has an OCI, as both firms employ people with clearances working on other government contracts. See MOL at 24-25, COS at 8; OCI Determination & 3d Supp. COS, Apr. 23, 2020, at 2-3. The protester disputes the agency's assertion, arguing that it does not have the same impaired objectivity OCI concern as AFPS because it is a "true small business," with exponentially fewer cleared personnel employed by its affiliates than by AFPS affiliates. Comments & 2d Supp. Protest at 12. Because we conclude that the agency reasonably determined that AFPS does not have an unmitigable OCI, we need not resolve this matter.

to our Office. Although the protester argues that the contracting officer's explanations during the protest were insufficient, the documentation now produced is consistent with, and provides more detail for, those prior statements. Under these circumstances, we cannot conclude that the agency did not meaningfully consider AFPS's alleged impaired objectivity OCI or that the agency's OCI determination was unreasonable. Consequently, we find there is no basis to sustain this protest ground.

In sum, we conclude that the agency's evaluation was reasonable, and that to the extent that the agency erred in its evaluation of AFPS's corporate experience, this error did not result in competitive prejudice to the protester. Furthermore, the agency's determination that AFPS did not have an impaired objectivity OCI was reasonable.

We deny the protest.

Thomas H. Armstrong  
General Counsel