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# Decision

**Matter of:** D&G Support Services, LLC

**File:** B-419245; B-419245.3

**Date:** January 6, 2021

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Stephanie D. Wilson, Esq., and Terrence M. O'Connor, Esq., Berenzweig Leonard, LLP, for Mayvin, Inc., the intervenor.  
Christine Fontenelle, Esq., Department of Homeland Security, for the agency.  
Michael P. Grogan, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest that the awardee's quotation did not comply with the solicitation's limitation on subcontracting provisions is denied where the quotation, on its face, does not show that the awardee has not agreed to comply with the subcontracting limitation, and whether the awardee will comply is a matter of contract administration not for our review.
  2. Protest that evaluator has a personal conflict of interest that precluded an unbiased evaluation is denied where the record does not support the protester's allegations.
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## DECISION

D&G Support Services, LLC (D&G), a small business of Woodbridge, Virginia, protests the issuance of a task order to Mayvin, Inc., a small business of Annandale, Virginia, under request for quotations (RFQ) No. 70RWMD20Q00000004, issued by the Department of Homeland Security (DHS), for advisory and assistance services to the countering weapons of mass destruction systems support directorate. The protester contends that the agency's evaluation of quotations was flawed and inconsistent with the terms of the solicitation, that DHS unreasonably concluded that the awardee met applicable small business set-aside requirements, and that the appearance of a personal conflict of interest tainted the award.

We deny the protest.

## BACKGROUND

On March 30, 2020, DHS issued the solicitation under the General Services Administration's (GSA) Federal Supply Schedule (FSS) 00CORP Professional Services Schedule, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4, as a total small business set-aside. Contracting Officer's Statement (COS) at 4; Agency Report (AR), Tab 14a, Conformed RFQ at 1. The RFQ contemplated the issuance of a single time-and-materials task order, with a 7-month base period, one 5-month option period, four 1-year option periods, and an optional 6-month extension under FAR clause 52.217-8, for advisory and assistance services. *Id.* at 3. Specifically, the solicitation sought contractor support for administrative, programmatic, systems engineering, research analysis, test management, and scientific support services to the countering weapons of mass destruction (CWMD) systems support directorate (SSD), in its effort to combat the catastrophic use of a weapon of mass destruction within the United States and its territories. *Id.*, Statement of Work (SOW) at 14.

The solicitation provided for award on a best-value tradeoff basis, considering four evaluation factors, listed in descending order of importance: (1) technical capability and approach; (2) management approach; (3) past performance; and (4) price. Conformed RFQ at 89-90. Vendors were advised that, "[w]hen combined, the non-price factors are significantly more important than price" but that "[a]s quotations near equality in their technical merit, greater will be the importance of price in making the award determination." *Id.* at 90. The agency utilized an adjectival confidence-rating scheme to evaluate the non-price factors, with three possible ratings: high confidence; some confidence; and low confidence.<sup>1</sup> *Id.* at 94. The solicitation provided that while a vendor's price would not be independently rated, it would "be evaluated with respect to completeness and reasonableness based on information submitted in the quoter's price quotation." *Id.* at 92.

The solicitation required each vendor to address its "capability to perform the requirements of the SOW." *Id.* at 85. For the technical capability and approach factor, each vendor would be evaluated based on its ability to demonstrate in a "clear, comprehensive, and concise manner" an understanding of the SOW requirements, and the degree to which the firm "effectively demonstrates how it will apply the knowledge, capability and competency to successfully perform these requirements." *Id.* at 90-91. Under the management approach factor, vendors were to demonstrate "an understanding of the SOW requirements and a comprehensive, sound, and reasonable approach to identify and provide the personnel needed to manage the task order, projects, and day-to-day operations with minimal Government oversight." *Id.* at 91. For both of these factors, the RFQ further provided that vendors would be evaluated on their capability and approach to accomplishing specifically identified tasks. *See id.*

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<sup>1</sup> The past performance factor also included a neutral confidence rating, to be applied if "[n]o recent/relevant past performance is available, or the Quoter's performance record is so sparse, such that a meaningful confidence rating cannot be assigned." Conformed RFQ at 94.

For past performance, quotations would be “evaluated to assess the level of confidence the Government has that the quoter will be successful in performing the task order, and with what required level of Government monitoring.” *Id.* at 92. The solicitation further advised that the agency would consider the relevancy, recentness, quality, and lessons learned from an analysis of past performance references, where relevant was defined as “work that is similar in size, scope and complexity of this solicitation.” *Id.*

DHS received multiple quotations by the May 8 submission deadline, to include quotations from D&G and Mayvin. COS at 4. The following is a summary of the agency’s final ratings of the quotations of D&G and Mayvin:

	D&G	Mayvin
<b>Technical Capability &amp; Approach</b>	High Confidence	High Confidence
<b>Management Approach</b>	Some Confidence	High Confidence
<b>Past Performance</b>	Some Confidence	High Confidence
<b>Price</b>	\$157,115,680	\$179,098,437

AR, Tab 4, Source Selection Decision Document (SSDD) at 4.

Following the evaluation by the technical evaluation team (TET), the source selection authority (SSA) completed his own independent examination of the evaluation findings and conducted a tradeoff analysis. *Id.* at 3. The SSA decided that Mayvin’s quotation represented the best value to the government, concluding that the agency “has high confidence in Mayvin’s technical capability [and] approach, management approach, and past performance quotation, which is well balanced across all the evaluated areas and provides a fair and reasonable price.” *Id.* DHS issued the task order to Mayvin on September 21. COS at 5. Following receipt of a brief explanation of the basis for DHS’s award decision, D&G timely filed this protest.

## DISCUSSION

D&G challenges numerous aspects of the agency’s conduct of the procurement. The protester contends that the agency’s evaluation of quotations under the management approach and past performance factors was unreasonable, unequal, and inconsistent with the stated evaluation criteria, and argues that DHS’s best-value determination was flawed. Protest at 22-40; Comments and Supp. Protest at 5-78. In addition, D&G contends that the agency improperly concluded that the awardee’s quotation met certain small business set-aside requirements. Comments and Supp. Protest at 59-66; Supp. Comments at 7-12. Finally, the protester argues that DHS’s award decision was tainted by a conflict of interest, or at least the appearance of one. Protest at 40-42;

Comments and Supp. Protest at 49-54; Protester's Supp. Response at 2-6. For the following reasons, we find no basis on which to sustain the protest.<sup>2</sup>

### Management Approach

D&G challenges the agency's evaluation of its quotation under the management approach factor, for which DHS assigned an overall "some confidence" rating. Protest at 22-33. In this regard, the protester contends that DHS failed to credit its quotation with at least one positive, and unreasonably assigned multiple negatives, for its approach.<sup>3</sup> *Id.* D&G also contends that the agency improperly attributed risk to D&G's management approach, with respect to its transition plan, merely because D&G was a non-incumbent firm. Comments and Supp. Protest at 56-59. Finally, the protester argues that the agency treated vendors unequally, where DHS found positives in Mayvin's approach, but did not conclude that D&G's approach warranted positives for, what the protester claims were, similar features. *Id.* at 66-74.

In response to the protest allegations, DHS contends that the agency's evaluation under the management approach factor was reasonable, properly documented, and consistent with RFQ. Memorandum of Law (MOL) at 28-40. The agency further argues that any evaluative differences ascribed by the TET and the SSA were the result of the material differences in the offered approaches of D&G and Mayvin. Supp. MOL at 2-4. Based on our review of the record, we find no basis upon which to sustain D&G's challenges under the management approach factor.

When, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting, supra.*

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<sup>2</sup> D&G raises other collateral allegations, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provides a basis upon which to sustain the protest.

<sup>3</sup> Positive aspects of quotations were defined as elements of the quotation that increase the expectation of successful performance, whereas negative aspects were defined as elements of the quotation that lower the expectation of successful performance. AR, Tab 7, Technical Evaluation Plan at 6.

D&G challenges the agency's evaluation of its own quotation under the management approach factor, arguing that DHS unreasonably ascribed negative findings to multiple aspects of its quotation, and in one instance, failed to provide an additional positive finding. Protest at 22-40. Given the volume of allegations raised by the protester, we discuss one representative example, below. However, we have reviewed each of D&G's arguments concerning the agency evaluation under this factor, and find no basis to sustain the protest. Rather, the record demonstrates that the agency's evaluation was reasonable, adequately documented, and in accordance with the terms of the RFQ.

As one illustrative example, the RFQ required vendors to demonstrate their capability and approach to mapping their proposed labor categories in a manner that would meet or exceed the qualifications tied to the agency's labor categories. Conformed RFQ at 91. The TET's evaluation included a negative comment about D&G's approach, noting that the firm's [DELETED] GSA labor category description did not discuss information security, yet, it was mapped to the agency's Information Security Analyst labor category. AR, Tab 5, Technical Evaluation Report (Tech. Report) at 63. The TET concluded that such mapping was "not appropriate based on the broad description of the GSA labor category" used by D&G. *Id.* In response to the protester's challenge of this weakness, the contracting officer elaborates on the TET's conclusion, stating that D&G's approach was "not an appropriate mapping based upon the labor category description provided, [because] the description does not include any information security responsibilities [or] functions." COS at 31. The contracting officer goes on to indicate that "there is no evidence" in D&G's quotation that its approach will meet the agency's requirements, and that "[n]o additional information was provided to support how this labor category would meet the requirements for the Information Security Analyst position." *Id.* at 32.

The protester contends that the weakness was unwarranted. According to the protester, its proposed [DELETED] labor category references "information technology services," which "necessarily encompasses" the information security services and responsibilities required by the solicitation. Comments and Supp. Protest at 8. We, however, find nothing unreasonable with the agency's concerns about D&G's mapping, given the labor category's general reference to "information technology services." D&G's proposal lacks any explanation or detail of how its approach will translate to the more specific information security requirements outlined in the solicitation. In our view, the protester's arguments amount to nothing more than disagreement with the agency's evaluation conclusions, and are therefore insufficient to establish that the agency's evaluation was unreasonable. *DEI Consulting, supra.*

Additionally, the protester argues that the agency improperly attributed risk to D&G's quotation, simply because the protester was not the incumbent firm. Comments and Supp. Protest at 56-59; Supp. Comments at 2-7. The solicitation advised that vendors would be evaluated on their capability and approach to "[m]inimizing the transition impact, such that continuity of services will be maintained without disruption." Conformed RFQ at 91. The TET found four positives associated with D&G's approach to transition, noting, among other things, that D&G planned "to engage with incumbent

staff with the goal of capturing 100% of the high-quality incumbents to support continuity of operations[,]" and that the vendor "should be able to meet the SOW requirement because the use of incumbent personnel should help minimize the transition impact." Tab 5, Tech. Report at 66-67. However, D&G argues that the agency improperly attributed risk to the firm's transition approach, by virtue of it not being the incumbent contractor, when the agency conducted its tradeoff analysis. Comments and Supp. Protest at 58. That is, the agency erred by faulting D&G for having to capture incumbent staff, rather than offering them as part of its quotation. *Id.* at 58-59.

The record belies the protester's argument, and instead, demonstrates that, in comparing the two vendors' quotations, the SSA merely concluded that Mayvin's approach was superior. In relevant part, the SSA states in the tradeoff discussion:

Both [Mayvin and D&G] also propose transition plans that include providing incumbent staff; however, D&G will have to capture much of that staff while Mayvin's team includes a large incumbent staff and [DELETED], increasing the likelihood of keeping the incumbent personnel on board; reducing knowledge loss; and providing a low risk transition, as [DELETED] % of their proposed staff are ready to go on day one of the task order, ensuring the continuity of services, reducing the learning curve, and reducing cost to the Government.

Tab 4, SSDD at 22.

The SSA favored Mayvin's approach not because its proposed subcontractor is the incumbent firm, but because it provided a lower transition risk. By [DELETED], Mayvin increased the likelihood that incumbent personnel would remain in place. *Id.* This approach, according to the SSA and the TET, would result in other benefits, such as not requiring badge recertification and would allow Mayvin to commence performance on day one. *Id.*; Tab 5, Tech. Report at 166.

Moreover, our Office has consistently stated that a competitive advantage of an incumbent contractor, which was gained by virtue of that contractor performing the incumbent contract, is not an unfair or improper competitive advantage; an agency is not required to attempt to equalize competition to compensate for that advantage, unless there is evidence of preferential treatment or other improper action. *PRC, Inc.-Recon.*, B-274698.4, July 10, 1997, 97-2 CPD ¶ 10 at 2. Accordingly, while the record amply demonstrates that the SSA favored Mayvin's approach for its salient characteristics, not merely due to its incumbency, even if the agency's finding was predicated on Mayvin's status, we cannot conclude that such a conclusion would be in error.<sup>4</sup> The protester's challenge is denied.

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<sup>4</sup> The protester's reliance on our decision in *Consolidated Eng'g Servs., Inc.*, B-311313, Jun. 10 2008, 2008 CPD ¶ 146, is misplaced. There, our Office concluded that an agency's assumptions that non-incumbent contractors would experience problems

The protester also raises an allegation of disparate treatment concerning the agency's evaluation of vendors' approaches to ensuring delivery of quality work products. See Conformed RFQ at 91. D&G argues that the agency credited Mayvin's quotation with a positive for the firm's use of the Plan-Do-Check-Act (PDCA) continual improvement process model, but did not provide the same positive finding for D&G's approach that relied on the same model. Comments and Supp. Protest at 66-69; Supp. Comments at 12-14. Similarly, D&G contends that DHS treated vendors unequally, where Mayvin received two positives for its use of International Standards Organization (ISO) 9001:2015 processes, while D&G received only one.<sup>5</sup> Comments and Supp. Protest at 69-74; Supp. Comments at 12-14. D&G notes that both PDCA and ISO 9001 were mentioned by the SSA as positive aspects of Mayvin's quotation in the tradeoff comparison. See SSDD at 21-22.

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. See *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

Here, based on our review of the record, the differences in the agency's assessment of quotations reasonably stemmed from differences in the quotations themselves, rather than unequal treatment. For example, concerning PDCA processes, the record reflects that Mayvin's quotation provided more detail about its proposed use of PDCA for ensuring delivery of quality work products, and included a graphical explanation.

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during a contract's transition were unreasonable, where those assumptions were not founded upon any information in the offeror's quotation, and where the solicitation did not require offerors to identify or explain their transition approaches. In contrast, here, the SSA's determination that Mayvin presented a low transition risk was predicated upon the information in its quotation (for example, [DELETED] percent of Mayvin's projected staff were incumbent staff with appropriate clearances and DHS suitability findings, and thus would not require badging recertification), and the solicitation specifically called for vendors to explain their approaches for the transition (see Conformed RFQ at 91).

<sup>5</sup> ISO-9000 standards (including ISO 9001:2015) are a series of internationally recognized quality assurance standards. See *LBM Inc.*, B-286271, Dec. 1, 2000, 2000 CPD ¶ 194 at 2 n.2.

*Compare* AR, Tab 11a, Mayvin's Quotation, vol. 1, at 49-50, *with* AR, Tab 10a, D&G's Quotation, vol. 1, at 42-43. Technical evaluators have latitude in assigning ratings, which reflect their subjective judgments of a quotation's relative merits. *Complete Packaging & Shipping Supplies, Inc.*, B-412392 *et al.*, Feb. 1, 2016, 2016 CPD ¶ 28 at 7. Given the substantive differences in how their relative approaches were explained, we find no reason to conclude that the agency's judgments were unreasonable. We therefore deny this protest ground.

## Past Performance

D&G also challenges the agency's evaluation of vendors' past performance. In this regard, the protester contends that the agency deviated from the stated evaluation criteria when it assigned a "some confidence" rating to D&G's quotation. The protester specifically challenges DHS's evaluation of the size and relevancy of the firm's past performance references. Protest at 36-40; Comments and Supp. Protest at 21-48.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and size of an offeror's performance history, is a matter of discretion, which we will not disturb unless the agency's assessment is unreasonable or inconsistent with the solicitation criteria. See *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14; *Cajun Constructors, Inc.*, B-409685, July 15, 2014, 2014 CPD ¶ 212 at 5. When a protester challenges an agency's past performance evaluation, 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 the agency's rationale is adequately documented. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14; *Falcon Envtl. Servs., Inc.*, B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7.

The solicitation instructed vendors to provide past performance references that would "be evaluated to assess the level of confidence the Government has that the quoter will be successful in performing the task order, and with what required level of Government monitoring." Conformed RFQ at 92. The RFQ advised that "[t]he evaluation will consider the relevancy, recentness, and quality of past performance references" where relevance was defined as "work that is similar in size, scope and complexity of this solicitation" and where the "size portion of relevancy does not imply that quoter work experience is a one-for-one comparison." *Id.* The solicitation also provided that past performance would be evaluated to determine a vendor's capability to perform other work relevant to the SOW, and would be evaluated in three areas: relevancy and recentness; quality; and lessons learned analysis. *Id.*

D&G takes issue with the agency's application of relevancy, first with respect to considerations of size. Comments and Supp. Protest at 21-24. In this regard, the protester contends that the agency improperly determined that one of its contract references was not relevant in size, with a dollar value of \$49.7 million, even though another one of its references, with a dollar value of \$50 million, was determined to be relevant in size. *Id.*; see AR, Tab 5, Tech. Report at 71-72. The agency argues that its

evaluation was reasonable and consistent with the stated evaluation criteria. MOL at 42-44.

Given the underlying evaluation record, we have no basis to question the agency's evaluation. The protester advances no substantive argument addressing why the agency's conclusion that a contract valued at \$49.7 million was not relevant in terms of size, when compared with the solicitation's requirements, where D&G proposed a price in excess of \$150 million. Rather, the sole basis for D&G's argument is that its \$49.7 million contract is no different from D&G's \$50 million contract, which the agency found relevant in terms of size. Reliance on this comparison is misplaced for two reasons.

First, to the extent there is any discrepancy, it is not telling, by itself, absent some challenge to the underlying reasonableness of the agency's conclusion that a contract with a value of \$49.7 million is not relevant in terms of size. This is because the error could equally lie with the agency's determination that the \$50 million was relevant. Second, D&G does not explain why the agency's application of a size-relevancy threshold of \$50 million would be *per se* unreasonable. In the absence of such information or explanation, we cannot conclude that the agency's relevancy determinations with respect to size were unreasonable. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. This protest ground is denied.

In addition to its challenge to the size aspect of the agency's relevancy determination, D&G also challenges DHS's relevancy determinations more generally, arguing that the agency engaged in an unreasonably narrow evaluation. Protest at 37-40; Comments and Supp. Protest at 25-48. In this regard, the protester alleges that "DHS hyper-focuses on single subtasks in the SOW" where it "picked three tasks against which to grade past performance: Research & Development, Testing, and Acquisition & Deployment, while neglecting Front Office and Surge Support." Comments and Supp. Protest at 25, 27. The agency contends its evaluation was reasonable and consistent with the solicitation. See MOL at 44-49.

As noted above, an agency's evaluation of past performance is, by its nature, subjective, see *Glenn Def. Marine-Asia PTE, Ltd.*, B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7, and that evaluation, including the agency's assessments with regard to relevance, scope, and significance, are matters of discretion that we will not disturb absent a clear demonstration that the assessments are unreasonable or inconsistent with the solicitation criteria. *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. On this record, we cannot conclude that DHS's evaluation judgments concerning D&G's past performance were unreasonable.

The agency's focus on three particular aspects of the SOW is unobjectionable and within the agency's discretion. The evaluation record reflects that the agency did focus its evaluation on whether references were similar to the SOW requirements concerning acquisition and deployment, testing, and research and development, and did not

specifically mention the SOW requirements for front office support and surge support. See *generally* Tab 5, Tech. Report. These three areas, however, were the most substantive of the SOW's tasks. They are described, in depth, across 10 pages of the SOW, while front office and surge support cover only two. See SOW at 17-28. Moreover, the surge support task was specifically identified in the solicitation as an optional task. *Id.* at 28. Accordingly, we reject the protester's view that the agency's evaluation of past performance relevancy was unreasonably narrow.

In addition, the protester unpersuasively challenges the reasonableness of the agency's evaluation of a number of the firm's submitted past performance references.<sup>6</sup> See Comments and Supp. Protest at 28-48. For example, the protester identified a contract it currently performs for the Defense Logistics Agency's Small Business Innovative Research Program, which has a contract dollar amount of \$3.3 million. AR, Tab 10a, D&G Quotation, vol. 1, at 73-74. The TET, in evaluating this reference for relevancy, stated that the "work had some relevancy to the current SOW since the Quoter provided contract support in the area of Research & Development that was similar to the [Advisory & Assistance Services] contract[,] but that "[t]he overall size, scope, and complexity were not on par with the requirement since it was smaller in size and only covered one of the three areas in the requirement." AR, Tab 5, Tech. Report at 70.

The protester challenges the agency's finding, arguing that the narrative accompanying this reference in D&G's quotation clearly demonstrates its history of performing testing, research and development, and acquisition work. Comments and Supp. Protest at 28-32. In response, the contracting officer elaborates on the TET's findings. COS at 53-54. She specifically notes that D&G's quotation did not reference "any acquisition activities such as development of integrated lifecycle support plans, lifecycle cost estimates, systems engineering tailoring plans or [information technology] governance" or "identify any test and evaluation activities, or research and development activities as outlined in" the SOW. *Id.* at 54.

Our review of the underlying record supports the agency's overall determinations of relevancy. For example, while the protester is correct that some aspects of section 2.1.1 of the SOW are covered by this past performance reference, D&G's cherry-picking of SOW provisions is unpersuasive; the protester's reference does not contain any reasonable demonstration of the vast majority of acquisition and deployment activities delineated in the SOW. SOW at 17-22. Given that the protester has not clearly demonstrated that DHS's assessments are unreasonable or inconsistent with the solicitation criteria, we find no basis to sustain this line of argument.<sup>7</sup>

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<sup>6</sup> Given the number of challenges raised, while we discuss one emblematic example, we have reviewed each of D&G's arguments concerning the agency evaluation and find that none provides a basis to sustain the protest.

<sup>7</sup> The protester also challenges the agency's evaluation of one of Mayvin's past performance references. Comments and Supp. Protest at 76-78; Supp. Comments at 18-21. Although we do not discuss the underlying record and the contracting officer's

## Small Business Set-Aside Requirements

D&G argues the agency failed to consider that Mayvin's quotation demonstrated that it would not comply with the solicitation's required limitation on subcontracting provision. This provision provides that in the case of a contract for services (except construction), a small business concern cannot pay a firm that is not similarly situated more than 50 percent of the amount paid to the concern by the government. Comments and Supp. Protest at 59-66; see *also* 13 C.F.R § 125.6.

An agency's judgment as to whether a small business vendor can comply with the limitation on subcontracting provision is generally a matter of responsibility, and the contractor's actual compliance is a matter of contract administration; neither issue is one that our Office generally reviews. *NEIE Med. Waste Servs., LLC*, B-412793.2, Aug. 5, 2016, 2016 CPD ¶ 213 at 3-4; see *also* 4 C.F.R. § 21.5(a), (c). However, where a quotation, on its face, should lead an agency to the conclusion that a vendor could not and would not comply with the subcontracting limitation, the quotation may not form the basis for an award. See *KAES Enters., LLC*, B-408366, Aug. 7, 2013, 2013 CPD ¶ 192 at 2.

A vendor, however, need not affirmatively demonstrate compliance with the subcontracting limitations in its quotation. See *Dorado Servs., Inc.*, B-408075, B-408075.2, June 14, 2013, 2013 CPD ¶ 161 at 12. Rather, such compliance is presumed, unless specifically negated by other language in the quotation. See *Express Med. Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Accordingly, where a vendor submits a quotation in response to an RFQ that incorporates FAR clause 52.219-14, the vendor agrees to comply with the limitation, and in the absence of any contradictory language, the agency may presume that the vendor agrees to comply with the subcontracting limitations. *Id.* Instead, it is the protester who bears the burden of demonstrating that the quotation should have led the agency to conclude that the vendor did not comply with this limitation. See *KAES Enters., LLC*, *supra* at 3.

Here, the RFQ incorporated FAR clause 52.219-14 and when Mayvin submitted its quotation, there was a presumption that Mayvin agreed to comply with the subcontracting limitation. Conformed RFQ at 43 ("By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract [ . . . ] [a]t least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern."). Indeed, contrary to D&G's contention, there is nothing on the face of Mayvin's quotation affirmatively taking exception to the subcontracting limitations or demonstrating that the firm has no intention to comply with the limitations. Rather, the protester spins a speculative hypothetical analysis as to why Mayvin will not perform in compliance with the limitation.

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further explanation in detail, here, we have reviewed the agency's evaluation and find its conclusions unobjectionable.

According to D&G, based on aspects of Mayvin's quotation--to include its explanation of its team's experience, contract line item number (CLIN) pricing, and overhead costs--the firm's subcontractor, SAIC (a large business) will likely perform more than 50 percent of the requirement. Comments and Supp. Protest at 59-66. The agency's counter-analysis, showing how Mayvin's allocation of hours can support performance with SAIC performing less than 50 percent of the work, however, is, in our view, equally feasible. *Compare* Comments and Supp. Protest at 59-66 with Supp. MOL at 8. This analysis comports with the express representation in Mayvin's quotation that SAIC would perform 40 percent of the work under the contract. AR, Tab 11A, Mayvin Quotation Vol. I at ES2. Because the protester has not shown that Mayvin's quotation takes exception to the subcontracting limitation, or clearly demonstrated that Mayvin would not comply with the subcontracting limitation, the protest ground is denied.

### Conflict of Interest and Appearance of Impropriety

Finally, the protester alleges that the appearance of a personal conflict of interest tainted the agency's award. Protest at 40-42; Comments and Supp. Protest at 49-54; Protester's Supp. Response, Dec. 7, 2020, at 2-6. One of Mayvin's subcontractors, for this effort, is the incumbent contractor. The protester alleges that this firm's program manager for that effort (Ms. X) has a close personal relationship with the contracting officer's representative (COR) on that incumbent contract, who was also a member of the TET for the instant procurement (Mr. Y). Protest at 42. The protester contends this relationship created the appearance of impropriety, which DHS failed to meaningfully investigate. *Id.* The agency maintains that D&G's allegations are entirely speculative and devoid of the facts needed to establish a conflict of interest, and moreover, that Mayvin did not receive any preferential treatment. MOL at 52-53; Agency's Supp. Response, Dec. 4, 2020, at 2-3.

Contracting agencies are to avoid even the appearance of impropriety in government procurements. FAR 3.101-1. Personal conflicts of interest may arise in the context of individuals who assist the government during procurements. *See id.*; *Savannah River Alliance, LLC*, B-311126 *et al.*, Apr. 25, 2008, 2008 CPD ¶ 88 at 23. A personal conflict of interest results from a "situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract." FAR 3.1101. Contracting agencies, as a general matter, are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to ensure impartiality in the evaluation and to preserve the integrity of the procurement process. *Phacil Inc.*, B-406628, July 5, 2012, 2012 CPD ¶ 202 at 5. Where a protester alleges that an individual is biased because of his or her past experiences or relationships, we focus on whether the individual involved exerted improper influence on the procurement on behalf of the awardee, or against the protester. *Id.*; *Advanced Sys. Tech., Inc.*; *Eng'g and Prof'l Servs., Inc.*, B-241530, B-241530.2, Feb. 12, 1991, 91-1 CPD ¶ 153 at 15; *Archimania*, B-414653, Aug. 3, 2017, 2017 CPD ¶ 254 at 5.

Here, the record establishes that Mr. Y, as the COR for the predecessor contract, had a working relationship with Ms. X concerning the performance and oversight of that contract. Mr. Y Declaration, Dec. 3, 2020, at 1; Contracting Officer's Declaration, Dec. 3, 2020, at 1-2. Mr. Y provides that, "[i]n the execution of my required duties as the COR, Ms. [X] and I would communicate regularly and meet face-to-face approximately once a week to discuss various issues regarding the performance of [the contract]." Mr. Y Declaration, Dec. 3, 2020, at 1. Mr. Y also states that the pair never met one-on-one outside of work in a social setting, however, they did, along with other members of their office, "attend after work functions such as happy hours and going away parties for people that were leaving the agency." *Id.* Mr. Y further represented that he and Ms. X are identified as "friends" on the social media website, Facebook. *Id.* at 2. Finally, Mr. Y states that he was one of five members of the TET, that he held no basis in favor of Mayvin, and does not "have any financial or personal interest" in the firm for whom Ms. X is employed. *Id.*; see also Contracting Officer's Declaration, Dec. 3, 2020, at 1-2; TET Chair's Declaration, Dec. 3, 2020, at 2 (noting that each member of the TET, including Mr. Y, "signed a Conflict of Interest certifying that neither the TET members nor members of their immediate family have an actual or reasonably perceived conflicting financial interest or a non-government relationship which would cause a reasonable person having knowledge of the relevant facts to question their impartiality to participate in the evaluation of the quotations.").

Based on these facts, we find no support for the protester's contention that a conflict of interest impaired the evaluator's ability to evaluate quotations in an unbiased matter, or that the agency's award decision was tainted. A protester's claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Shinwha Elecs.*, B-290603 *et al.*, Sept. 3, 2002, 2002 CPD ¶ 154 at 5 n.6. D&G's contentions that Mr. Y's and Ms. X's interactions during the normal execution and oversight of the agency's task order provides no evidence of a conflict of interest. Moreover, the mere fact that Mr. Y and Ms. X were connected via social media, and attended social events with other members of the agency and her

firm, does not alone support the protester's attribution of unfair or prejudicial motives to the evaluator's review.<sup>8</sup> We thus find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>8</sup> D&G points to our recent decision in *Teledyne Brown Eng'g., Inc.*, B-418835, B-418835.2, Sep. 25, 2020, 2020 CPD ¶ 303, as analogous to the facts at hand. In *Teledyne*, our Office sustained an allegation of a perceived conflict of interest concerning an agency employee--tasked with various aspects of acquisition strategy/planning and solicitation drafting--who was determined to have a close personal relationship with an employee of the incumbent contractor (and who was also a subcontractor to the awardee in that protest). In that case, the agency's ethics counsel opined that the facts of the underlying personal relationship created the appearance of conflict. We found that the agency employee's conduct with the contractor-employee, which included attending weekly social gatherings (and included "competitive" foosball) for 10 years, created at least the appearance of a conflict of interest. Here, Mr. Y's contacts with Ms. X are significantly less substantial than those in *Teledyne* to warrant an apt comparison.