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Decision

Matter of: Vertex Aerospace, LLC

File: B-420073; B-420073.2

Date: November 23, 2021

J. Alex Ward, Esq., W. Jay DeVecchio, Esq., James A. Tucker, Esq., and Lyle F. Hedgecock, Esq., Morrison & Foerster LLP, for the protester.
Scott M. McCaleb, Esq., Jon W. Burd, Esq., Sarah Hansen, Esq., Nicholas L. Perry, Esq., and Teresita Regelbrugge, Esq., Wiley Rein LLP, for DynCorp International LLC, the intervenor.

Colonel Frank Yoon, Captain Jheremy K. Perkins, Michael J. Farr, Esq., Lieutenant Colonel Brian D. Teter, Lieutenant Colonel Shawn C. Tabor, and Ryan C. Springer, Esq., Department of the Air Force, for the agency.

Katherine I. Riback, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging the agency's evaluation of the awardee's proposal is sustained where the record is insufficiently documented to demonstrate that the agency meaningfully and reasonably considered whether a corporate restructuring of the awardee's business resulting from a stock purchase would have an effect on the awardee's ability to perform the task order.

DECISION

Vertex Aerospace, LLC, of Madison, Mississippi, protests the award of a task order to DynCorp International LLC, of Fort Worth, Texas, by the Department of the Air Force under solicitation No. FA3002-21-R-0001 for comprehensive flight operations support (FOS) at Vance Air Force Base (AFB), Oklahoma. The protester contends that the agency's evaluation of proposals was unreasonable and that the agency failed to adequately consider the effect of a recent corporate transaction involving DynCorp.

We sustain the protest.

BACKGROUND

The Air Force established the Aircraft Maintenance Enterprise Solutions (ACES) multiple award (MAC), indefinite-delivery, indefinite-quantity (IDIQ) contract for aircraft

maintenance services across the United States Air Force on September 1, 2020. Contracting Officer Statement (COS) at 2. The ACES MAC IDIQ contract was awarded to eight contractors, including DynCorp, Vertex, and Amentum Services, Inc. *Id.* Only these eight contractors are eligible to receive task orders under the ACES MAC IDIQ. *Id.*

On November 20, 2020, Amentum Government Services Holdings, LLC, acquired all of the outstanding shares of DynCorp's former parent holding company, DefCO Holdings, Inc. Agency Report (AR), Tab 29, Emails on Novation at 10. The intervenor, DynCorp, explains that as a result of the transaction, DefCo and all of its corporate subsidiaries, including DynCorp, became wholly owned subsidiaries of Amentum. Intervenor's Comments at 13. The intervenor also states that "[f]ollowing a series of internal reorganizations, Amentum became the immediate parent company of DynCorp." *Id.*

On December 18, the agency issued the Vance AFB FOS task order solicitation, referred to as a fair opportunity proposal request (FOPR), in accordance with Federal Acquisition Regulation (FAR) section 16.505(b), to holders of the Department of the Air Force's ACES MAC IDIQ contract. AR, Tab 3, FOPR at 1. The services to be provided under this task order include fleet management, aircraft maintenance, airfield management, aircrew flight equipment, management and human resources and all related services. AR, Tab 5i, FOPR attach. 9, Performance Work Statement (PWS) at 5.

The solicitation, which was amended twice, contemplated the award of a single task order, containing a 2-month mobilization/transition, a 10-month base period, and four 1-year option periods. AR, Tab 5i, FOPR attach. 9, PWS at 7. The FOPR identified program execution, past performance, and price, as the factors that would be evaluated for determining which proposal represented the best value to the government.¹ The solicitation provided that program execution was more important than past performance, and program execution, when combined with past performance, was significantly more important than price. AR, Tab 5, FOPR amend. 2 at 21.

In addition, the solicitation provided that the agency may provide an offeror with an interchange notice (IN). The solicitation contained the following with regard to INs:

Prior to award, the Government may at any time during the evaluation, have oral or written interchanges with one or more Offerors, in response to any evaluation factor, or any other aspect of the proposal. All Offerors will be treated fairly, but that does not mean that interchanges will be

¹ The program execution factor was divided into the following three subfactors, each included underlying elements: manning approach, program management and workforce strategy, and fleet health management. AR, Tab 5, FOPR amend. 2 at 20-21, 27-29. These subfactors would be evaluated individually, and then the agency anticipated assigning one overall adjectival rating for the program execution factor.

conducted with all Offerors or all interchanges will be of the same nature or depth.

Id.

The agency received proposals by the February 4, 2021 due date, including proposals from DynCorp and Vertex.² AR, Tab 18, Fair Opportunity Decision Document at 2. Although Amentum also holds one of the ACES MAC IDIQ contracts, it advised the agency it would not submit a proposal in response to this task order “due to strategic considerations.” AR, Tab 7, Amentum ACES Vance AFB FOPR No Bid Notice at 1.

On March 19, DynCorp submitted documentation to the Defense Contract Management Agency (DCMA), requesting novation of numerous contracts, including the ACES IDIQ contract, to Amentum Services, Inc. AR, Tab 29, Emails on Novation at 6. On May 17, DCMA granted DynCorp’s request to novate numerous contracts, including the ACES IDIQ contract, to Amentum Services, Inc. AR, Tab 17, DynCorp Novation Agreement at 2. Also on May 17, DCMA notified individual contracting officers for each contract affected by the novation and directed them to “modify the individual affected contracts identified in the attachment to incorporate the Novation Agreement.” *Id.* Relevant to the protest, the record shows that the contracting officer for this solicitation was provided with this notification from DCMA, and a complete copy of the novation agreement.³ AR, Tab 29, Emails on Novation at 4, 6.

The contracting officer received this information before the agency completed the evaluation of DynCorp’s proposal. While the contracting officer previously may have been unaware of Amentum’s acquisition of DynCorp, the May 17 notification from DCMA expressly informed the contracting officer of this fact and provided additional information. As relevant here, the documentation from DCMA stated that Amentum acquired all of DynCorp’s assets and assumed all of DynCorp’s obligations and liabilities associated with the novated contracts. AR, Tab 28, Novation Request, encl. 1 at 13. In addition, the novation request from DCMA mentioned upcoming integration and consolidation of contract performance activities between the companies, and also made reference to the use of intercompany procedures to ensure resources and employees were available. AR, Tab 28, Novation Request at 1, encl. 1 at 57.

² Although firms that compete for task orders under IDIQ contracts are generally referred to as “vendors” who submit “quotations,” and are “issued” a task order, the record reflects that the agency sought “proposals” from “offerors.” 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.

³ Of note, the email correspondence between DCMA and the Air Force contained in the record is heavily redacted. *Id.* As a result, it is not entirely clear what documents were actually attached to the May 17 email; however, the email indicates, and the agency does not dispute, that a complete copy of the novation agreement was provided.

The record does not contain a pre-award document that provides a description of what actions, if any, the contracting officer for the Vance task order took in response to receiving this information. Instead, the record shows that on June 15, Amentum responded to an inquiry from the same contracting officer concerning DynCorp's novation to Amentum, which included the following:

It is our [Amentum's] unified request to have the Legacy DI ACES IDIQ Contract, FA3002-20-D-0010, novated as described in the attached DynCorp/Amentum Novation Modification signed by DCMA on 17 May 2021. From our recent discussions, we understand that you would prefer to retain the legacy Amentum IDIQ Contract, FA3002-20-D-0012; however, we believe this will create unnecessary risks.

AR, Tab 23, June 15, 2021, Amentum Emails on Novation.⁴

Of relevance to this protest, DynCorp's proposal for this task order, submitted on February 4, made no mention of its recent acquisition by Amentum. AR, Tab 9, DynCorp Proposal. The agency's evaluation record and source selection documentation also did not reference the recent acquisition or its potential effect on performance, if any. AR, Tab 22, Fair Opportunity Selection Team (FAST) Source Selection Evaluation Report (SSEB) Report; AR, Tab 18, Fair Opportunity Decision Document; Vertex's Comments and Supp. Protest at 26. Based upon its evaluation, the agency concluded that DynCorp's higher-rated but higher-priced proposal represented the best value to the agency, and made award to that firm on July 28.⁵ AR, Tab 20, DynCorp Vance FOS TO Successful Notice.

Vertex subsequently requested and received a written debriefing. On August 2, during the debriefing process, Vertex inquired as to whether the agency communicated with the awardee regarding how the acquisition and corporate restructuring would impact the awardee's ability to perform the contract. AR, Tab 19b, Vertex Debriefing Questions at 3.

On August 9, the contracting officer requested that DCMA provide information related to the DynCorp-Amentum novation to include a new organizational chart. AR, Tab 29, Emails on Novation at 3. Then, DCMA sent an email to Amentum requesting the pre and post DynCorp-Amentum organizational charts under the ACES MAC IDIQ to "show the merger changes were just senior management and the program has the same

⁴ The agency did not provide the contracting officer's correspondence with Amentum that precipitated this email.

⁵ DynCorp's proposal received a satisfactory for the past performance factor, exceptional for the program execution factor, and its total evaluated price was \$283,022,496. AR, Tab 18, Fair Opportunity Decision Document at 10. Vertex's proposal received a satisfactory for the past performance factor, acceptable for the program execution factor, and had a total evaluated price of \$213,419,811. *Id.*

people and nothing has changed.” *Id.* at 2. Amentum responded that the organization chart and operations did not change because of the acquisition. *Id.* Amentum went on to state that “[m]ost of the impact was related to Corporate, where our indirect costs were challenged by our new owners (PE Firms).” *Id.* Thereafter, DCMA forwarded the information received from Amentum to the contracting officer. *Id.* at 1.

Also on August 9, the agency provided a written response to Vertex, in which it declined to disclose any communications the agency had with the awardee related to the corporate transaction. AR, Tab 19c, Agency Response to Debriefing Questions. Following the conclusion of Vertex’s debriefing, this protest was filed with our Office.⁶

DISCUSSION

The protester contends that the agency’s evaluation of proposals was unreasonable and disparate in some instances. The protester also argues that the agency failed to adequately consider the potential impact of the awardee recently being acquired by another firm. Our decision focuses on the protester’s challenge to the agency’s consideration of this corporate transaction, which we view as the gravamen of the protest.

In response to the protest, the agency maintains that its evaluation of proposals and award decision were reasonable and consistent with the solicitation. As to the corporate transaction issues, the agency asserts that it properly considered the fact that DynCorp had been acquired by Amentum, and contends that the recent acquisition presented no performance risk related to the task order. COS at 35.

For its part, the intervenor supports the agency’s conclusion, primarily contending that the novation package from DCMA confirmed that all of DynCorp’s resources would continue to be available for contract execution. Intervenor’s Comments at 16. In this regard, the intervenor explains that DynCorp’s resources were either transferred to Amentum as part of the reorganization, or would remain available through intracompany transfer agreements as an affiliated entity. *Id.*

In reviewing protests challenging an agency’s evaluation of proposals, including those procurements conducted pursuant to FAR subpart 16.5, our Office does not reevaluate proposals, rather we review the record to determine whether the evaluation was reasonable and consistent with the solicitation’s evaluation criteria as well as applicable procurement laws and regulations. *Tribalco, LLC*, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 7.

For the reasons discussed below, we sustain the protest on the basis that the record contains insufficient documentation and analysis for our Office to conclude that the

⁶ The task order at issue is valued in excess of \$25 million, and was placed under an IDIQ contract established by the Air Force. Accordingly, our Office has jurisdiction to consider Vertex’s protest. 10 U.S.C. § 2304c(e)(1)(B).

agency meaningfully and reasonably considered the effect of this corporate transaction on the awardee's ability to perform the task order.⁷

Corporate Transaction

Our 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. *Lockheed Martin Integrated Systems, Inc.--Recon.*, B-410189.7, Aug. 10, 2017, 2017 CPD ¶ 258 at 5. Primarily, these decisions generally focus on whether it was reasonable for an agency to reach the conclusions it did regarding the corporate transaction. *Id.* Our Office has warned, however, that where an agency is aware of an impending or already consummated corporate transaction but fails to assess the impact on proposals of the restructuring, the agency runs the risk that its failure to do so will be deemed improper, based of course, on the unique posture of that procurement and the corporate transaction at issue. *Id.*

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 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 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.*, B-408112.2, Dec. 27, 2013, 2014 CPD ¶ 16 (sustaining protest where, prior to award, the agency was aware of, but declined to consider in its evaluation, the awardee's proposed division into two separate firms and intent to assign the contract to the new corporate entity), *recon. denied*, *National Aeronautics & Space Admin.--Recon.*, B-408112.3, May 14, 2014, 2014 CPD ¶ 155.

As a preliminary matter, we conclude that under the circumstances presented, the agency was required to assess the potential impact of the transaction on DynCorp's proposal. Here, the record suggests that the contracting officer initially may not have been aware of Amentum's November 2020 acquisition of DynCorp. Additionally, DynCorp's proposal did not mention this corporate transaction, and therefore did not make any representations as to what effect, if any, the corporate transaction would have on its ability to perform the task order as proposed. Thus, as of the February 4, 2021, deadline for receipt of proposals, we find the contracting officer had no basis to conclude that a subsequent corporate restructuring might occur.

On May 17, prior to completing its evaluation of proposals (to include that of DynCorp), the procuring agency was notified by DCMA that Amentum had requested to become the successor-in-interest to DynCorp on all of its contracts via a novation request. AR, Tab 17, DynCorp Novation Agreement. According to the agency, DCMA provided the

⁷ With the exception of the protest grounds discussed in this decision, we have considered all of Vertex's allegations and find that none provide an independent basis to sustain the protest.

approved novation agreement and the underlying novation request to the agency, and directed the contracting officer to issue a modification to the ACES ID/IQ, executing the novation. AR, Tab 29, Emails on Novation at 4, 6.

DynCorp's novation request, dated March 19, 2021, referenced the November 20, 2020, acquisition of DynCorp by Amentum, and stated that as part of the integration process, it was requesting approval and execution of a novation agreement. AR, Tab 28, Novation Request at 1. Relevant here, the request then stated, as follows:

As with many other mergers and acquisitions, each legacy business has numerous legal entities. A focal point of the integration is to simplify our legal entity structure to avoid confusion and to reflect that Amentum has combined with [DynCorp] as one enterprise. Accordingly, Amentum will consolidate bidding activities and most contract performance functions under Amentum Services, Inc. via the intercompany asset transfer agreement within Enclosure 1.

Id. Enclosure 1 to the novation request included several documents, to include a novation agreement between DynCorp and Amentum, which was dated March 19. AR, Tab 28, Novation Request, encl. 1. The novation agreement provided details of the November 20, 2020, stock purchase that resulted in Amentum assuming the obligations and liabilities of DynCorp under the ACES MAC IDIQ. *Id.* at 3-7.

The novation request also included a memorandum of agreement (MOA) between DynCorp and Amentum. *Id.* at 56-59. Related to the asset transfer, the MOA stated Amentum would "have ongoing access to any DynCorp resources that may be necessary to fulfill [Amentum's] obligations, through established Amentum intercompany procedures."⁸ *Id.* at 57. With respect to employee considerations, this MOA stated that "[i]n order to minimize disruption to employees and assure a seamless transfer of business unit assets, DynCorp will remain the employer of DynCorp employees" and that "[f]ollowing novation approval and contract modifications[,] the employees shall support Amentum and transferred contract via established intercompany procedures." *Id.* at 57.

Providing further background, the intervenor explains that the novation between Amentum and DynCorp is taking place as part of a corporate reorganization within two

⁸ As to pending proposals, the MOA contained a similar provision, which states as follows:

At any time following the effective date of this agreement, DynCorp shall continue to have access to all assets, personnel, and other resources of Amentum and its subsidiaries as necessary to fulfill commitments under its current contract and pending proposals, including as necessary to avoid any material changes to a proposal submitted to the U.S. governments.

Id.

affiliated entities, the parent company and its wholly-owned subsidiary. Intervenor's Resp. to Req. for Briefing (Oct. 20, 2021) at 5. The intervenor further asserts that as a result of the November 2020 stock acquisition, Amentum is "undertaking an internal reorganization and integration of the corporate management and assets of the two affiliated entities." *Id.*

Thus, while previously unaware of Amentum's acquisition of DynCorp, after receiving the novation package from DCMA, the contracting officer had notice that the transaction was creating the possibility of a corporate restructuring to implement the novation. In particular, the novation request referenced the integration and consolidation of contract performance activities, and alluded to the use of intercompany procedures to ensure resources and employees were available. Therefore, upon receipt of DCMA's May 17 notification of the approved novation agreement, the contracting officer possessed information that should have raised questions about what effect, if any, the transaction would have on DynCorp's ability to perform the proposal it submitted on February 4.

As we have stated, consistent with our decisions in this area, when an agency becomes aware of an impending transaction prior to award--either through information in an offeror's proposal or through other information resources--and such transaction is imminent and essentially certain (or already consummated), an agency should analyze the effect on proposals of the corporate transaction at issue. *Lockheed Martin Integrated Sys., Inc.--Recon., supra.* at 6. So too here, we conclude that under the circumstances presented, the agency was required to analyze the effect of this corporate transaction on DynCorp's proposal.

We also note that the parties here provide no basis to find otherwise. On this point, neither the agency nor the intervenor contend that the agency was not required to consider the corporate transaction, and the subsequent restructuring. That is, the parties do not dispute the protester's assertion that the agency should have considered the impact of the corporate transaction on DynCorp's ability to perform the task order. Rather, the parties disagree as to the sufficiency of the agency's analysis, and whether the agency's conclusion was reasonable.

Having established that this transaction should have been considered by the agency after receipt of information about a possible restructuring from DCMA, our Office's inquiry now turns to the reasonableness of the agency's assessment of the impact of the transaction. *See Lockheed Martin Integrated Sys., Inc.--Recon., supra.* at 6. Generally, our concern regarding a corporate restructuring that occurs during a competition has been whether an offeror's proposal relies on resources that may no longer be available after the corporate restructuring. *See Honeywell Technology Solutions Inc., B-413317, B-413317.2, Oct. 5, 2016, 2017 CPD ¶ 2 at 9* (protest denied

where another firm acquired the assets of an offeror via a stock purchase agreement, the agency requested information from the offeror regarding the stock transfer and then made award to the firm).

While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. See *Ekagra Software Techs., Ltd.*, B-415978.3, B-415978.4, Oct. 25, 2018, 2018 CPD ¶ 377 at 5. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its evaluation conclusions. *Id.*; see also *Navistar Def., LLC, BAE Sys., Tactical Vehicle Sys. LP*, B-401865 *et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

As stated above, on May 17, 2021, and prior to making award to DynCorp, the agency learned of Amentum's recent acquisition of DynCorp. As noted above, the agency does not contend that it was not required to consider the corporate restructuring that resulted from the transaction. Rather, the contracting officer states that, after receiving the May correspondence from DCMA, the Air Force considered the impact the stock purchase and novation could have on DynCorp's proposed effort, and determined that there would be no material effect. COS at 35.

The record, however, does not contain any contemporaneous documentation that the agency meaningfully and reasonably considered the effect this corporate transaction could have on DynCorp's ability to perform. First, as noted, DynCorp did not address the corporate transaction in its proposal. Second, the agency acknowledges that its evaluation does not discuss the impact of the corporate transaction on DynCorp's ability to perform as proposed. Next, while the agency states that it noted during its responsibility determination that Amentum was the listed owner of DynCorp, the agency's source selection decision document does not discuss the ramifications of the acquisition. AR, Tab 18, Fair Opportunity Decision Document. Moreover, the record does not contain a *pre-award* document in which the contracting officer substantively considers the corporate transaction or any associated corporate restructuring.

Additionally, the agency urges us to deny the protest because this corporate transaction has been the subject of a separate bid protest. Specifically, the agency cites *PAE Aviation and Technical Servs., LLC*, B-417704.7, B-417704.8, June 8, 2021, 2021 CPD ¶ 293, for the proposition that the government has already considered the fact that Amentum acquired DynCorp, and concluded that the "purchase of DynCorp does not appear likely to have significant impact on cost or any technical impact on contract performance, DynCorp remained intact and retains the same resources reflected in the proposal." Memo. of Law at 39-40 *citing PAE Aviation and Technical Servs., LLC, supra* at 14.

However, the facts in that case are distinguishable from the facts presented here. In *PAE*, the agency (United States Customs and Border Protection) documented a pre-award determination that the transaction would not adversely impact that

procurement, which constituted a contemporaneous finding that was given due deference by our Office. *PAE Aviation and Technical Servs., LLC, supra* at 13-15. Here, given the lack of contemporaneous documentation, our Office has insufficient information from which to assess the adequacy and reasonableness of the agency's consideration of the effect of the corporate transaction and subsequent restructuring on the instant procurement.

In response to the protest, the agency argues that its analysis was adequate on the basis that it further considered the corporate transaction after award. As stated above, after award, the contracting officer, by way of DCMA, requested documents from Amentum concerning post-acquisition organization charts. See AR, Tab 29, Emails on Novation.

While we consider the entire record in resolving a protest, including statements and arguments in response to a protest, in determining whether an agency's selection decision is supportable, under certain circumstances, our Office will accord lesser weight to *post-hoc* arguments or analyses due to concerns that judgments made "in the heat of an adversarial process" may not represent the fair and considered judgment of the agency, which is a prerequisite of a rational evaluation and source selection process. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details will generally be considered in our review of evaluations and award determinations, so long as those explanations are credible and consistent with the contemporaneous record. *ITT Fed. Servs. Int'l Corp.*, B-283307, B-283307.2, Nov. 3, 1999, 99-2 CPD ¶ 76 at 6. Where an agency offers an explanation of its evaluation during the heat of litigation that is not borne out by the contemporaneous record, however, we generally give little weight to the later explanation. *Al Raha Grp. for Tech. Servs., Inc.; Logistics Mgmt. Int'l, Inc.*, B-411015.2, B-411015.3, Apr. 22, 2015, 2015 CPD ¶ 134 at 10.

As an initial matter, the fact that the agency did not obtain certain information regarding Amentum's acquisition of DynCorp until after the agency had completed its evaluation of proposals and made award does not absolve the agency of its obligation to meaningfully consider the corporate transaction and document that assessment. On this point, we note that the agency did not document its assessment after receiving this additional information and prior to the filing of Vertex's protest. Thus, our understanding of the agency's consideration of the corporate transaction comes entirely from assertions contained in the agency's filings with our Office that reflect considerations made during the course of this protest.

Based upon our review of the record and the parties' filings, in our judgment, we find the agency's post-award explanations to be insufficient. Contrary to the agency's contentions, the information received by the agency after award, does not appear to unequivocally confirm that the corporate transaction and reorganization had no impact on DynCorp's ability to perform the task order.

First, it is worth noting that the information received by the agency was provided by Amentum, not DynCorp. Next, we note that the information did not specifically address two important matters raised in the Amentum-DynCorp novation request; namely, the impending integration and consolidation of contract performance activities between the companies, and the intended use of intercompany procedures to ensure resources and employees were available. See AR, Tab 28, Novation Request at 1, encl. 1 at 57. Indeed, the record is devoid of any specific details explaining how these efforts will be accomplished to ensure DynCorp has the resources available to perform the task order at issue. As a result, the agency's post-protest explanations fail to address these potentially significant matters directly.

Also, the information received from Amentum should have raised some additional questions about DynCorp's ability to perform the task order. For example, Amentum states that "[m]ost of the impact was related to Corporate, where our indirect costs were challenged by our new owners." AR, Tab 29 Emails on Novation at 2. The agency did not request any additional information regarding Amentum's "challenged" indirect costs, an issue which could potentially result in pressure to lower indirect costs, and have an effect on performance. Additionally, we note that while DCMA asked Amentum to confirm that "the program has the same people and nothing has changed," Amentum's response does not plainly and unambiguously provide an affirmative response. *Id.* In the end, we do not view the agency's post-award efforts to be sufficient to remedy the failure to contemporaneously consider the effect of the corporate transaction.

In summary, based upon our review of the record, we cannot conclude that the agency meaningfully considered the effect of the corporate transaction or that the agency's conclusion was reasonable. While it could be the case that DynCorp's ability to perform the task order will not be materially affected by the corporate transaction and any associated corporate restructuring, the record before us is inadequate for us to reach that conclusion. As a result, because we are unable to assess the reasonableness of the agency's evaluation, we sustain the protest.

Competitive Prejudice

As discussed above, the record shows that the agency's evaluation of DynCorp's proposal was flawed. 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. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17.

Here, we cannot say with certainty what the agency's conclusion would have been had it meaningfully analyzed and documented the effect of the corporate transaction in question. In such circumstances, we resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. See *AT&T Corp.*, B-414886 *et al.*, Oct. 5, 2017, 2017 CPD ¶ 330 at 8.

Accordingly, we conclude that Vertex has established the requisite competitive prejudice to prevail in a bid protest.

RECOMMENDATION

We recommend that the agency conduct and properly document an analysis of the effect of the corporate transaction and restructuring at issue on the awardee's proposed approach to performing the task order here. If, during the course of its analysis, the agency determines that additional information is needed, the agency should request such information. Depending on the nature of the information requested or received, the agency should conduct discussions, as necessary. We further recommend that, upon completion of this analysis, the agency make a new source selection decision. If, after performing the reevaluation, the agency determines that a firm other than DynCorp represents the best value to the government, we further recommend that the agency terminate the task order awarded for the convenience of the government and make award to the firm selected, if otherwise proper. We also recommend that Vertex be reimbursed its costs of filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). Vertex should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel