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Decision

Matter of: American Systems Corporation

File: B-420132; B-420132.2; B-420132.3; B-420132.4

Date: December 13, 2021

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Colonel Frank Yoon, Kyle E. Gilbertson, Esq., and Erika L. Whelan Retta, Esq., Department of the Air Force, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals is denied because the record reflects that the evaluation was reasonable, consistent with the solicitation's evaluation criteria, and not conducted in a disparate manner.
 2. Protest that the awardee had multiple impaired objectivity organizational conflicts of interest is denied because, while the protest was pending, the agency meaningfully considered the potential conflicts arising from current work on other contracts and reasonably determined no conflicts exist.
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DECISION

American Systems Corporation (ASC), of Chantilly, Virginia, protests the issuance of a task order to DCS Corporation (DCS), of Alexandria, Virginia, under request for proposals (RFP) No. FA7046-21-R-0004, issued by the Department of the Air Force for fighter test services. The protester challenges numerous aspects of the agency's evaluation of proposals, and contends that the awardee has multiple unmitigated impaired objectivity organizational conflicts of interest (OCIs).

We deny the protest.

BACKGROUND

On May 21, 2021, using the fair opportunity procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to holders of General Services Administration (GSA) One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 1, Contracting Officer's Statement (COS) at 2; Tab 5, Fair Opportunity Proposal Request at 1.¹ The agency sought proposals for the provision of engineering advisory and assistance services to the Air Force Operational Test and Evaluation Center. The contractor is to provide support for fighter operational test and evaluation services at multiple locations, including Kirtland Air Force Base (AFB), New Mexico; Nellis AFB, Nevada; Edwards AFB, California; Marine Corps Air Station (MCAS) Yuma, Arizona; and at offices in Norfolk, Virginia.² *Id.*; AR, Tab 10, Performance Work Statement (PWS) at 5.

The solicitation contemplated issuance of a cost-plus-fixed-fee task order with a 1-year base period and four 1-year option periods. AR, Tab 17, RFP at 3-7, 20-31. The solicitation provided for award to be made on a best-value tradeoff basis, taking into consideration one technical evaluation factor and a cost/price factor, with the technical factor being more important than cost/price. AR, Tab 16, Instructions to Offerors/Basis of Award at 1, 5-6. With respect to cost/price, the agency would evaluate for reasonableness, realism, and balance. *Id.* at 8.

The technical factor consisted of three subfactors, which listed in descending order of importance were: (1) program management approach; (2) compliance; and (3) transition. AR, Tab 16, Instructions to Offerors/Basis of Award at 5-6. The solicitation set forth various components under each technical subfactor, and established that the agency would evaluate an offeror's proposal under each component to determine if the proposal met, more than adequately addressed, or less than adequately addressed the PWS requirements--meriting assessments of "meets," "strengths," or "weakness," respectively. *Id.* at 7. The solicitation also provided that the agency would subjectively rate proposals under each subfactor and the technical factor overall based "on the expected benefit to the government and probability of program success," assigning adjectival ratings of "very high," "high," "moderate," "low," or "unacceptable." *Id.*

¹ Citations to the agency report are to documents' Adobe PDF page numbers or to the relevant worksheet and cell number for Microsoft Excel documents.

² Although this is a task order competition under a multiple-award IDIQ contract, the agency issued the solicitation as an RFP, rather than as a request for quotations, and refers to the submission of proposals from offerors, rather than of quotations from vendors, as well as to making an "award" decision. For consistency and ease of reference to the record, we do the same.

The agency received three offers, including those submitted by ASC and DCS. AR, Tab 21, Fair Opportunity Decision Award Brief (Award Decision) at 33. The evaluators assessed ASC's and DCS's proposals as follows:

	ASC	DCS
Subfactor 1 - Program Management Approach	Moderate (0 strengths, 14 meets, 3 weaknesses)	High (6 strengths, 11 meets, 0 weaknesses)
Subfactor 2 - Compliance	Moderate (0 strengths, 1 meets, 1 weakness)	Moderate (0 strengths, 2 meets, 0 weaknesses)
Subfactor 3 - Transition	Moderate (0 strengths, 0 meets, 1 weakness)	High (1 strength, 0 meets, 0 weaknesses)
Overall Technical Factor	Moderate (0 strengths, 15 meets, 5 weaknesses)	High (7 strengths, 13 meets, 0 weaknesses)
Price	\$69,510,824	\$77,607,414

Id. at 38, 49, 89.

Based on the evaluations and an “integrated assessment of all proposals,” the fair opportunity decision authority selected DCS’s proposal as offering the best value to the government. AR, Tab 21, Award Decision at 94. The decision authority found that “the Strengths of DCS’s proposal out shown that of ASC or [the third offeror],” under the most important subfactor--program management approach. *Id.* at 92. The decision authority noted that while ASC and the third offeror proposed lower costs/prices, “both proposals contained weaknesses; [while] DCS had none.” *Id.* The decision authority looked at not just the number of weaknesses but also the nature of the weaknesses in ASC’s and the third offeror’s proposals in determining that DSC’s proposal represented the best value to the government. *Id.* Specifically, the decision authority concluded that “[t]he risk to the government of choosing a contractor with known weaknesses within their proposal is that the likely delays and required Government led training would significantly degrade the value and technical performance below reasonable levels and negatively impact the mission performance.” *Id.* Accordingly, the decision authority selected DCS for award. *Id.* at 94.

Following notification of the agency’s award decision and receipt of a debriefing, ASC filed this protest.³ See *generally* AR, Tab 22, Notice to Unsuccessful Offeror; Tab 23, Post-Award De-Briefing.

³ The Department of the Air Force issued the RFP under the OASIS IDIQ contracts established by GSA. For purposes of determining the applicable dollar value threshold for our Office’s jurisdiction to hear protests in connection with the issuance or proposed issuance of a task or delivery order, we analyze the statutory authority (*i.e.*, Title 10 or

DISCUSSION

The protester raises numerous challenges to the agency's evaluation of ASC's proposal, including arguing that the agency evaluated proposals disparately. The protester maintains that the agency should have evaluated additional strengths in ASC's proposal both on its own merit and for features that were similar to ones for which the awardee, DCS's, proposal was assessed strengths. The protester further contends that the agency unreasonably assessed weaknesses in ASC's proposal, or, in the alternative, should have assessed the same weaknesses in DCS's proposal, as ASC contends that the awardee's proposal was similarly flawed. Additionally, the protester argues that the awardee has multiple unmitigable impaired objectivity OCIs due to DCS's work on two related contracts. We find that none of the protester's arguments provides a basis to sustain the protest.⁴

Evaluation and Disparate Treatment Challenges

The protester argued that the evaluators missed numerous additional strengths, unreasonably assigned all five of the weaknesses assessed in ASC's proposal, and engaged in four instances of disparate treatment. Protest at 12-28. In its initial report to our Office the agency specifically responded to each of these individual protest arguments. COS at 9-43; AR, Tab 2, Memorandum of Law (MOL) at 10-60. In its comments on the agency's initial report the protester withdrew its arguments related to most of the missed strengths, one of the allegedly unreasonable weaknesses, and three of the alleged instances of disparate treatment. See Comments & Supp. Protest

Title 41 of the United States Code) under which the IDIQ contract was issued, rather than the authority of the agency that issued the task or delivery order. *Analytic Strategies LLC; Gemini Indus., Inc.*, B-413758.2, B-413758.3, Nov. 28, 2016, 2016 CPD ¶ 340 at 2 n.2. The GSA OASIS IDIQ contracts were established under the authority of Title 41, and thus the jurisdictional dollar threshold applicable here is \$10 million. 41 U.S.C. § 4106(f)(B)(2). The value of the protested task order exceeds this amount, and, as such, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. *Id.*

⁴ The protester also initially argued that the agency failed to follow the evaluation methodology set forth in the solicitation, and that the agency's best-value tradeoff decision was unreasonable as a result of the various alleged evaluation errors. Protest at 29-30, 35-36. The protester further contended that, even without the alleged evaluation errors, the agency's best-value tradeoff decision was unreasonable because the agency failed to explain what aspects of the awardee's proposal warranted payment of its associated price premium. *Id.* at 36-38. The protester subsequently withdrew these protest grounds. Comments & Supp. Protest at 2 n.1. Accordingly, we do not address them further.

at 2 n.1. Accordingly, we do not address the withdrawn portions of the protester's evaluation challenges further.⁵

With respect to its evaluation challenges, the protester's comments on the agency's initial report primarily focus on the protester's contentions that the agency unreasonably assessed weaknesses in ASC's proposal and evaluated in a disparate manner. See Comments & Supp. Protest at 2-15. Below, we address representative examples of both of these areas of argument. Although we do not address each of the protester's individual allegations of missed strengths, unreasonably assessed weaknesses, and disparate evaluation we have reviewed them all and conclude that none provides a basis to sustain the protest.

At the outset, we note that the evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. *Booz Allen Hamilton, Inc.*, B-419210, B-419210.2, Dec. 22, 2020, 2020 CPD ¶ 409 at 6. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency; rather, we examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Id.*; *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4. A protester's disagreement with the agency's judgments, without more, is insufficient to establish that an agency acted unreasonably. *Smartronix, Inc.*; *ManTech Advanced Sys. Int'l, Inc.*, B-411970 *et al.*, Nov. 25, 2015, 2015 CPD ¶ 373 at 20.

Further, in conducting procurements, agencies must even-handedly evaluate proposals against common requirements and evaluation criteria. *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. When a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Id.*; *Candor Solutions, LLC*, B-417950.5, B-417950.6, May 10, 2021, 2021 CPD ¶ 199 at 5.

Assessment of Weaknesses in Protester's Proposal

⁵ The withdrawn protest arguments include the protester's contentions that the agency unreasonably failed to assess strengths in ASC's proposal for its ability to retain personnel at remote locations, its [DELETED], its [DELETED], its [DELETED], the experience of its proposed task leads, its ability to supplement technical expertise through "established and previously exercised working relationships," and the benefit of its lessons learned as the incumbent contractor. Protest at 18-21. Also withdrawn is the protester's contention that the agency unreasonably assessed a weakness in ASC's proposal for a lack of detail related to site specific safety, environmental, and information assurance compliance. *Id.* at 24-26. Additionally, the protester withdrew its claims that the agency disparately evaluated by assessing strengths in DCS's proposal but not ASC's proposal for the ability to hire personnel at a remote location, having a well-structured vacancy fill strategy, and [DELETED]. *Id.* at 12-17.

The protester contends, for example, that the agency unreasonably assessed two weaknesses related to unclear roles and responsibilities and lines of authority in ASC's proposal under the program management approach subfactor. The PWS provided that the successful offeror would be required to "provide an on-site contract manager and alternate who are knowledgeable of Fighter Operational Test," who will "represent the company for administration and operational management including the ability to . . . make decisions with signature authority." PWS at 11. The PWS also set forth that assignments under the resulting task order would be conducted using work plans to plan, budget, and schedule technical efforts. *Id.* Related to these PWS requirements, the solicitation established that the agency would evaluate offerors' approaches to addressing program management staffing "[r]oles and responsibilities" and "[s]pecific on-site authorities (levels and limitations)." AR, Tab 16, Instructions to Offerors/Basis of Award at 6.

The record reflects that the evaluators assessed one weakness in ASC's proposal related to "[r]oles and responsibilities" and one weakness related to "[s]pecific on-site authorities (levels and limitations)." AR, Tab 20, Technical Evaluation Report (Tech. Eval. Rpt.) at worksheet 1.1 cells C10, C11, F10, F11, G10, G11.⁶ Specifically, the evaluators found that ASC proposed to have a "Team Lead" with full authority, that coordination would be "solely between" the team lead and the contracting officer's representative, and that there were "no backups noted." *Id.* at cell G10. The evaluators indicated they read ASC's proposal as alluding to there being only one contracting officer's representative and only one team lead, and noted that "[w]ith multiple work plans, this plan of approach will likely lead to delays in beginning work as the [team lead] has other duties as well." *Id.* at cell G11. The evaluators further concluded that ASC's proposal did not include any "discussion as to work plans and roles and responsibilities," and that they were "[n]ot sure who has ultimate authority for the work plans" within ASC's structure. *Id.* at cells G10 and G11.

Based in part on the assessment of these two weaknesses, the evaluators assigned ASC's proposal a rating of moderate under the program management approach subfactor. AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.1 cell G24. In assigning the rating, the evaluators concluded that ASC's "[p]roposal would be expected to meet but not exceed requirements," and that the "[l]ack of delegation of work plan execution and approval authority reduces benefit to [the] government and would have to be addressed." *Id.* at cell J24. The evaluators also found that ASC's "[l]imited discussion of work plan processes and authorities" increased the risk of unsuccessful implementation. *Id.* Additionally, the evaluators deemed ASC's proposal as not being expected to provide any additional benefit to the government, in part, "due to limited on site contract authority delegation." *Id.* at cell J28.

⁶ In responding to the protest, the agency produced two versions of AR, Tab 20, Tech. Eval. Rpt. We cite to the later-produced version, submitted at Electronic Protest Docketing System (Dkt.) No. 25.

The protester challenges the agency's assessment of both of these weaknesses. With respect to the evaluators' conclusion that coordination would be only between the team lead and contracting officer's representative, the protester argues that the agency misread ASC's proposal. Protest at 23. The protester contends that its "proposal explains that the [team lead] *and the [DELETED]* both will interface with the Government." *Id. citing* AR, Tab 18, ASC Technical (Tech.) Proposal at 43. Related to the evaluators' lack of clarity regarding the ultimate work plan approval authority for ASC, the protester maintains that the agency ignored information in ASC's proposal clearly establishing that its team lead possessed such authority. Protest at 23-24 *citing* AR, Tab 18, ASC Tech. Proposal at 61.

The agency explains that, contrary to the protester's assertions, ASC's proposal did not clearly communicate that both its team lead and [DELETED] would "interface with the Government." COS at 30. Rather, the evaluators relied on the representation in ASC's proposal that its team lead would be the "'single' point of contact for the Government." *Id. citing* AR, Tab 18, ASC Tech. Proposal at 44. Additionally, the agency explains that the evaluators "could not determine from ASC's proposal who had the ultimate approval authority for work plans," as the proposal stated in different places that ASC's team lead "has [DELETED]," that ASC's program manager "has [DELETED]," and also that ASC's site lead "has [DELETED] while executing the task." COS at 33-34 *citing* AR, Tab 18, ASC Tech. Proposal at 43-44, 54-56.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. *Candor Solutions, LLC, supra* at 9. Based on our review of the record, we find no basis to question the evaluators' conclusion that ASC's proposal was not clear regarding roles and responsibilities, and lines of authority. Accordingly, we deny the protester's challenges to the assessment of these two weaknesses.

Disparate Treatment

As a representative example of the protester's allegations of disparate treatment, we address the protester's contentions regarding the agency's evaluation of the proposals under the transition subfactor. The PWS provided that the successful offeror would be required to "follow the transition plan submitted as part of the proposal" and "ensure that any interruptions or delays to work in progress are minimized." PWS at 13. Related to this requirement, the solicitation established that the agency would evaluate the content of offerors' transition plans and offerors' "examples of experience on previous contract transitions, including relevant lessons learned." AR, Tab 16, Instructions to Offerors/Basis of Award at 7.

The record reflects that the evaluators assessed a weakness in ASC's proposal under the transition subfactor. AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.3 cell G3. Specifically, the evaluators found that ASC's proposal included "terms like 'current staff have valid [common access cards]' and 'we bring a staff requiring no knowledge

transfer . . . Day 1’,” despite it being unclear from where ASC’s staff would bring requisite knowledge for new tasks not being performed under the current contract. *Id.* at cell H3. Additionally, the evaluators noted that ASC’s proposal referenced “multiple recent and relevant transitions” indicating a limited risk to successful implementation. *Id.* at cell K7. Based on their assessment of ASC’s transition plan and its examples of transition experience, the evaluators assigned ASC’s proposal a rating of moderate under the transition subfactor, concluding that ACS’s proposal was adequate but did “not address [the] full spectrum of expected work plan execution” which “could reduce the benefit to the government due to extended training timelines to gain relevant specific airframe expertise.” *Id.* at cells H9, K9.

The record also reflects that the evaluators assessed a strength in DCS’s proposal under the transition subfactor. AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.3 cell L3. The evaluators found DCS’s transition plan to be “[v]ery thorough and comprehensive,” with steps to “develop [a] full understanding of current organization and ongoing work requirements,” a “logical low risk transition schedule,” and “[DELETED].” *Id.* at cell O3. The evaluators also noted that DCS’s proposal detailed recent and relevant transition experience for similar contracts, indicating a “high probability of success in meeting time based goals for complete transition.” *Id.* at cell R7. Based on their assessment, the evaluators assigned DCS’s proposal a rating of high under the transition subfactor, concluding that the proposal was “expected to meet or exceed time and adequacy requirements” and that “increased benefit to the government is expected due to [DELETED].” *Id.* at cells N9, R9.

The protester maintains that it was unreasonable for the agency to assess a weakness in ASC’s proposal under the transition subfactor because its proposal “explained how its work as the incumbent would ensure a successful and seamless transition.” Protest at 27. Additionally, the protester contends that the agency’s evaluation evidences disparate treatment because ASC’s “approach will result in practically no transition risk” as ASC “is currently performing the incumbent contract, while DCS “will face additional transition risk because it does not have the incumbent staff available.” *Id.* at 17. According to ASC, it was unreasonable for the agency to assess a weakness in ASC’s proposal but not in DCS’s proposal under the transition subfactor given the lower transition risk presented by ASC as the incumbent. *Id.*

The agency explains that ASC is “simply incorrect” when the protester asserts that ASC is “performing the exact same requirement,” and that “it was inaccurate for [ASC] to say that ASC has staff in place that will possess program knowledge on Day 1.” COS at 16 citing AR, Tab 18, ASC’s Tech. Proposal at 76-78. The agency represents that ASC’s proposal “is full of examples where the company failed to understand that it was not proposing on the exact same requirement it is currently performing,” which demonstrated to the evaluators “that ASC misunderstood the scope of the PWS.” *Id.* The agency notes that ASC’s current contract “does not have the variety of [aircraft] platforms expected in the future, does not have work plans, and does not have a Management Information System (MIS)” as required by the PWS at issue here. COS at 17. In contrast to the evaluators’ concern that ASC’s focus on its incumbency

indicated a lack of understanding of the full scope of the new PWS, the evaluators felt that DCS's transition plan was thorough, comprehensive, and deserving of a strength. *Id.* at 17-18.

Based on our review of the record, we find reasonable the evaluators' assessment that DCS's detailed transition plan, including a [DELETED], differed materially from ASC's focus on its ability to provide a "seamless transition" due to its incumbency. *Compare* AR, Tab 18, ASC's Tech. Proposal at 28, 75-78 and AR, Tab 19, DCS's Tech. Proposal at 59-70. Moreover, as our Office has stated consistently, there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign to or reserve for the incumbent offeror the highest rating. *AKAL Security, Inc.*, B-417840.4, Apr. 27, 2020, 2020 CPD ¶ 160 at 6. Accordingly, we deny this aspect of the protester's challenge to the agency's evaluation under the transition subfactor.

In addition to finding that ASC's proposal focused too heavily on its incumbency without acknowledging the need for transition related to the PWS's new tasks, the evaluators based their assessment of a weakness in part on ASC's focus on work for the F-35 aircraft platform, at the expense of other aircraft. Notably, the evaluators found that ASC's proposal,

specifically mentions F-35, however presents no viable plan for F-15, F-22, and F-15EX support. Page 39 speaks repeatedly to '[DELETED] and [DELETED],' however the real need will also be for F-22, F-15, and F-15EX engineering and analysis support. It appears this company is focused in one platform but had not fully presented a plan for the other platforms.

AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.3 cell H3. The protester also challenges this portion of the weakness assigned to its proposal.

Specifically, the protester argues that the solicitation required offerors to submit a transition plan to "ensure that any interruptions or delays to *work in progress* are minimized," and that the only work currently in progress is related to the F-35. Protest at 27. The protester contends that the PWS does not reference F-22 or F-15 transition work, and that "[a]t present, there is no F-22 or F-15 tasking, so this work is irrelevant to the transition period." *Id.* at 27-28. The protester further maintains that this portion of the weakness assessed in its proposal evidences additional disparate treatment because the evaluators did not assess a similar weakness in DCS's proposal even though it also did not provide a specific transition plan for the F-22, F-15, or F-15 EX. Comments & Supp. Protest at 15.

The agency acknowledges that the PWS "did not specify individual aircraft platforms," as it was instead meant to encompass a "variety of platforms expected in the future." COS at 17. The agency explains that this portion of the weakness assessed in ASC's proposal was not based on a PWS requirement for offerors to propose transition plans for individual aircraft platforms, but was based on ASC's focus on its incumbency as the

basis for its transition plan. Supp. COS-MOL at 14-15. As noted by the evaluators, ASC's proposal touted its ability to provide "staff requiring no knowledge transfer . . . Day 1," but because ASC's incumbent work "did not include the F-15, F-22, and F-15EX platforms," it was not clear to the evaluators how ASC's reliance on its incumbency provided the requisite knowledge for transition on Day 1. AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.3 cell K3; Supp. COS-MOL at 14.

The agency maintains that DCS's proposal did not merit assessment of the same weakness because it did not rely on incumbency as the basis for its transition plan. Supp. COS-MOL at 15. Rather, as noted by the evaluators, DCS proposed "[DELETED]" as a first step in its transition plan so it could "[DELETED]." *Id. citing* AR, Tab 20, Tech. Eval. Rpt. at worksheet 1.3 cell O3. The agency contends that it reasonably "assessed DCS a Strength because it committed to developing a full understanding of the current organization and ongoing work requirements, instead of relying on 'incumbent' experience and failing to address the new Solicitation's requirements like [ASC]." Supp. COS-MOL at 16.

In reviewing an agency's evaluation, our Office will not limit its review to contemporaneously documented evidence, but instead will consider all the information provided, including a party's arguments and explanations. *Serco, Inc.*, B-406683, B-406683.2, Aug. 3, 2012, 2012 CPD ¶ 216 at 7. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial 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 as long as those explanations are credible and consistent with the contemporaneous record. *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

Based on our review of the record, we find the agency's explanation here to be consistent with the contemporaneous evaluation record, and note that it provides additional details regarding the evaluators' findings and conclusions. While the agency's explanation of the different evaluation results for ASC's focus on the F-35 aircraft platform to the exclusion of other platforms compared to DCS's not specifying any particular aircraft platform is nuanced, we cannot say it is unreasonable. Accordingly, we also deny this aspect of the protester's challenge to the agency's evaluation under the transition subfactor.⁷ See *e.g.*, *Candor Solutions, LLC*, *supra* at 7

⁷ In any event, even if we had found error in the agency's assessment of a weakness in ASC's proposal--but not in DCS's proposal--for not including a transition plan specific to the F-22, F-15, and F-15EX aircraft platforms, we conclude that any such error does not provide a basis to sustain the protest. Competitive prejudice is an essential element of any viable protest; when the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis

(denying protest alleging disparate evaluation of offerors' proposed approaches to candidate pipelines when the differences in the firms' proposals were not stark, but the proposals were not exactly the same or substantially similar).

Organizational Conflicts of Interest

In addition to challenging the agency's evaluation of proposals, the protester contends that DCS's work under the "Fighter Bomber Cross-Cutter" (or "cross-cutter") contract and the F-35 Joint Program Office (or "F-35 JPO") contract give rise to unmitigable impaired objectivity OCIs. See Protest at 30-35; Comments & Supp. Protest at 15-36; 2nd Supp. Protest at 9-18; 3rd Supp. Protest at 7-18; Supp. Comments at 12-24. In response to the protest, the agency conducted an OCI analysis and concluded that issuance of the fighter test services task order to DCS does not create any impaired objectivity OCIs. AR, Tab 24, OCI Determination and Findings (D&F) at 1; Supp. COS-MOL attach A, add. 1 to OCI D&F at 1, 8; 2nd Supp. AR, add. 2 to OCI D&F at 1.

The FAR requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. An impaired objectivity OCI, as described in the FAR and the decisions of our Office, arises when 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 compromised by its relationship to the product or service being evaluated. See e.g., *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 12 (sustaining protest because awardee would be required under a separate contract to evaluate the quality of services it would provide under the protested task order); *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7

for finding prejudice, and our Office will not sustain the protest. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 17.

Here, as noted above, the evaluators assessed a single weakness in ASC's proposed transition approach on the basis of multiple elements, one of which was ASC's focus on the F-35 aircraft platform to the exclusion of other platforms. Thus, the removal of this basis for the assessed weakness would not result in removal of the weakness altogether. Similarly, the evaluators assessed a strength in DCS's proposed transition approach on the basis of multiple elements, such that the assessment of this weakness would only be considered in conjunction with the other elements that the evaluators had found to warrant a strength under this evaluation subfactor. Accordingly, whether this weakness was removed from ASC's evaluation or added to DCS's evaluation, DCS's proposal would remain higher-rated than ASC's proposal under the transition subfactor and higher-rated overall, and the protester has withdrawn its challenge to the agency's decision that DCS's higher technical rating warranted payment of its associated price premium. See Supp. COS-MOL at 12-14.

(sustaining protest because the agency did not meaningfully consider potential OCIs arising from the award of a contract to a firm for the evaluation of weapons systems, including systems produced by the awardee and its competitors).

We review the reasonableness of a contracting officer's OCI investigation and, when an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgement for the agency's, absent clear evidence that the agency's conclusion is unreasonable. *Deloitte Consulting, LLP*, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 8. In this regard, 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. *Guident Techs., Inc.*, *supra* at 7; *TeleCommunication Sys. Inc.*, *supra* at 3; see also *PAI Corp. v. United States*, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

Here, the protester argues that the agency's issuance to DCS of the fighter test services task order at issue here "will require DCS to provide 'independent' operational testing of the same fighter aircraft [for] which DCS will provide engineering support [during] the acquisition and design phases of the procurement[s]" under the cross-cutter and F-35 JPO contracts. Protest at 33. The protester maintains that this "presents a textbook example of a situation where a contractor is put in a position to make judgments or recommendations that would have the effect of directly influencing its own well-being." *Id.* at 34. Specifically, the protester represents, "this arrangement puts DCS directly in the position of being able to advocate on its own behalf regarding the adequacy of its engineering solutions" provided under the cross-cutter contract and of "its acquisition management work performed for the F-35 JPO" contract. *Id.* The protester's contentions are not supported by the record. Although we do not address every permutation of the protester's OCI allegations below, we have reviewed them all and conclude that none provides a basis to sustain the protest.

Cross-Cutter Contract

The record reflects that the contracting officer and the contracting officer's "technical point of contact" reviewed the PWS for the cross-cutter contract.⁸ The cross-cutter PWS establishes the following scope:

The Air Force Program Executive Office (PEO) for Fighters & Bombers (F/B) (AFPEO/WW) has the collective Air Force Materiel Command

⁸ The full title of the contract is:

Engineering, Professional, and Administrative Support Services (EPASS)
In Support of Program Executive Officer for Fighters & Bombers
Directorate (AFLCMC/WW) Cross Cutter A-10 Division (WWA), B-1
Division (WWN), B-2 Division (WWZ), B-52 Division (WWD), Plans &

(AFMC) mission responsibility for life-cycle management of the PEO portfolio, which includes the A-10, A-29, B-1, B-2, B-52, and Foreign Military Sales (FMS) Attack Systems Programs, in support of the United States Air Force (USAF), United States Navy (USN), and 30 coalition allies. In addition[,] the WWX [Plans and Program Division] and WWO [Operations Management Division] sections of this PWS support the entire F/B Directorate at 17 different locations and other PEO platforms (F-15, F-16, F-22, F-35, B-21, and WWG) providing the entire PEO portfolio support staff.

AR, Tab 25, Cross-Cutter Contract at 194.

As relevant here, the contracting officer's analysis includes an explanation of the difference between the various aircraft platforms to be supported under this task order. AR, Tab 24, OCI D&F at 4-6. Traditionally, "bombers" are used in air-to-ground combat; they drop bombs but generally do not launch powered weapons (*i.e.*, weapons that use thrust rather than gravity), and include aircraft platforms such as the B-1, B-2, and B-52. *Id.* at 4-5. The Air Force explains that modern "fighter-bombers," which are also known as "Attack aircraft," can drop bombs and launch powered weapons like air-to-air missiles, and include aircraft platforms such as the A-10, A-12, and AV-8B). *Id.* at 6. On the other hand, "fighters" are used in air-to-air combat; they have, as their primary weapons systems, powered weapons (*e.g.*, guided missiles), and include aircraft platforms such as the F-15, F-16, F-22, and F-35. *Id.* Dual role (or "strike") fighters are a newer class of aircraft that "can perform both the fighter and bomber mission sets equally well," and include aircraft platforms such as the F/A-18 or Joint Strike Fighter. *Id.*

The contracting officer represents that all of the engineering work to be performed by DCS under the cross-cutter contract "is specific to bombers (B-1, B-2, B-21)," "fighter-bombers, specifically the A-10," and to "the next generation combat platform[, which] could be [a] bomber, fighter-bomber, or strike fighter." AR, Tab 24, OCI D&F at 6. In contrast, under the fighter test services task order at issue here, DCS will provide engineering support specific to fighter aircraft platforms. See PWS at 5. The contracting officer notes that "[t]he only fighter work in the [cross-cutter] contract is . . . in Section 1.0 of the PWS," and is "to provide office administration support, not engineering" services to the agency's Plans and Programs Division (WWX) and Operations Management Division (WWO) located at Wright-Patterson AFB, Ohio. AR, Tab 24, OCI D&F at 6. Whereas, under the fighter test services task order solicitation here, DCS will provide engineering support to the agency's Operational Test and Evaluation Center, a separate organization located at Kirtland AFB, New Mexico. See PWS at 5. The contracting officer found that DCS's work under the protested fighter

Program Division (WWX), Attack Systems Division (WWB), Management Operations Division (WWO).

AR, Tab 24, OCI D&F at 2; Tab 25, Cross-Cutter Contract at 186.

test services task order would not put DCS “in the position to advocate on its own behalf regarding the adequacy of its engineering solutions for fighter aircraft” provided under the cross-cutter contract because DCS is providing only administrative, not engineering, support relative to fighter aircraft under that contract. AR, Tab 24, OCI D&F at 3.

The protester takes issue with the contracting officer’s findings, arguing that its “review of the Agency Report confirms that the PWS for the Fighter & Bomber Cross-Cutter contract requires DCS to perform ‘Engineering, Professional, and Administrative Support Services (EPASS)’ on the fighter aircraft that are the subject of the [protested fighter test services] task order (e.g., F-15, F-16, F-22, F-35.” Comments & Supp. Protest at 18 *citing* AR, Tab 25, Cross-Cutter Contract at 186, 194. The protester contends that DCS’s program management and engineering work under the cross-cutter contract will relate to fighter aircraft such as the F-15, F-16, F-22, and F-35. Comments & Supp. Protest at 23 *citing* AR, Tab 25, Cross-Cutter Contract at 201-205.

Additionally, the protester maintains that DCS’s work under the cross-cutter contract will “include program management and engineering tasks that directly relate to creating test plans, and evaluating test results, for the F-15, F-16, F-22, and F-35 fighter aircraft--the very fighter aircraft that DCS will be conducting ‘independent’ operational testing of under the [protested fighter test services] task order.” Comments & Supp. Protest at 24-25 (emphasis omitted) *citing* AR, Tab 25, Cross-Cutter Contract at 206-207. The protester argues that DCS will be able to advocate on its own behalf as its work under the cross-cutter contract will involve “providing key and highly influential technical leadership regarding the full range of program management of fighter aircraft programs--including the operational testing of such aircraft.” *Id.* In sum, the protester argues that the purpose of the cross-cutter contract is “to support the ‘life-cycle management’ of the entire portfolio” of both fighters and bombers, and is “not limited to bombers or fighter-bombers in any way.” Comments & Supp. Protest at 26.

For its part, DCS, as the intervenor, notes that “while the [contract line item numbers] CLINs in the Fighter Bomber Cross-Cutter contract specifically identify labor for fighter[-] bombers (i.e., A-10, B-1, B-2, and B-52), none of the CLINs are for the F-35.”

Intervenor Comments at 5 *citing* AR, Tab 25, Cross-Cutter Contract at 3-95.

Additionally, “[w]hile the CLINs include labor for the WWO and WWX divisions . . . none of the work for those divisions is engineering support.” *Id.* DCS maintains that the protester’s OCI allegation is “based on a misreading of the Fighter Bomber Cross-Cutter PWS.” *Id.* Based on our review of the record, we agree. See AR, Tab 25, Cross-Cutter Contract at 3-95, 187-193, 194-197, 201-207, 210-215, 253-256, 274-276, 291-292, 308-310, 313-315, 317-321.

We find that the agency gave meaningful consideration to whether the awardee has an impaired objectivity OCI, and reasonably concluded that the scope of DCS’s work under the cross-cutter contract as it relates to fighter aircraft platforms is to provide administrative, rather than engineering, support. While the protester expresses a different view of the cross-cutter contract’s scope, it has not presented the hard facts necessary for us to find the agency unreasonably concluded no impaired objectivity OCI exists here. See *Guident Techs., Inc., supra* at 10 (denying OCI allegation because

there was no basis in the PWSs at issue to support the protester's assertion that the awardee would need to perform evaluative work directly affecting its commercial interests). Accordingly, we deny the protester's OCI allegations related to the cross-cutter contract.

F-35 JPO Contract

As part of its initial protest, ASC argues that a job posting on DCS's website indicated DCS held "another contract to perform 'acquisition management' for the 'F-35 JPO'," that would give rise to an additional impaired objectivity OCI. Protest at 33. DCS explains that it works as a subcontractor to the prime contractor, Amelex, Inc., on the F-35 JPO contract, the purpose of which is:

to provide the F-35 Joint Program Office (JPO) with Program Management (PM) Contractor Support Services (CSS) in support of the System Development and Demonstration (SDD), the Follow-on Development (FoD), the Low Rate Initial and Full Rate Production (LRIP/FRP), as well as the sustainment engineering efforts on the F-35 Program.

Intervenor Comments at 7; F-35 JPO Contract Statement of Work (SOW) at 1.⁹

DCS represents that, under its subcontract with Amelex,¹⁰ DCS provides six positions for the F-35 JPO contract. Intervenor Comments at 7. Specifically, DCS identifies the following: (1) lightning support team administrative assistant/administrative assistant; (2) senior acquisition management/program analyst; (3) acquisition management/program analyst; (4) process improvement analyst/program analyst; (5) export compliance support specialist; and (6) strategic communications analyst/program analyst. *Id.* With respect to the acquisition management job posting cited by ASC as support for its OCI allegation, DCS maintains that "DCS does not provide this position to Amelex." *Id.* Rather, "DCS posted the job position on its website on behalf of Amelex and at Amelex's request in August 2021 after another Amelex subcontractor, who had filled this position, departed Amelex's team." *Id.*

The record reflects that the agency analyzed the F-35 JPO contract's SOW and information about DCS's subcontract with Amelex, and found that DCS "is a small subcontractor for the F-35 JPO effort," that "its requirements are limited to six positions," and that none of those positions "is directly related to the [protested fighter test services task order] contract requirements." Supp. COS-MOL attach. A, add. 1 to OCI D&F at 4. The contracting officer's analysis explains that the positions provided by DCS relate to F-35 JPO contract tasks for: (1) contract management support; (2) JSF [joint strike fighter] program management support; (3) technical, analytical, and acquisition support; and (4) operational support. *Id.* Based on a review of the relevant position descriptions

⁹ The F-35 JPO Contract SOW was submitted by DCS, as the intervenor, at Dkt. No. 26.

¹⁰ Amelex is American Electronics, Inc. See 2nd Supp. AR, add. 2 to OCI D&F at 2.

and task areas, the contracting officer concluded that the work “does not in any way relate to the work to be performed under the [protested fighter test services] Task Order” as “[t]he F-35 JPO support is strictly administrative and does not include engineering, testing, or making decisions that would increase the well-being of DCS.” *Id.* at 7-8.

The protester takes issue with the contracting officer’s finding that DCS will not perform engineering work under the F-35 JPO contract. Instead, ASC contends that four of the six positions performed by DCS under the F-35 JPO contract encompass work providing critical program management and technical recommendations for all aspects of the F-35 program, as well as participating on and/or supporting the F-35 integrated product team. 2nd Supp. Protest at 6-8 *citing* F-35 JPO Contract SOW at 34, 49-50, 79-80. The protester maintains that this work includes collecting, completing, organizing, and interpreting technical data relating to aircraft acquisition and product programs. 2nd Supp. Protest at 8. Thus, the protester argues, under the F-35 JPO contract DCS “will review and interpret the technical data from the ‘independent’ operational tests [it] performed on F-35 fighter aircraft” under the protested fighter test services task order. *Id.* DCS would then be in a position to “make recommendations regarding DCS’[s] analysis of the purportedly ‘independent’ operational tests DCS performed.” *Id.* Additionally, the protester maintains that DCS’s subcontractor relationship with Amelex creates an additional unmitigated impaired objectivity OCI, as DCS would be “in a position to make judgments or recommendations” about not only its own engineering work, but also that of its prime contractor Amelex in ways “that can logically have the effect of directly influencing DCS’[s] own well-being.” *Id.* at 8, 11-12.

The agency responds that differences between “operational testing” performed by the agency’s Operational Test and Evaluation Center and “program management and developmental testing” performed by the agency’s F-35 JPO unit “sufficiently prevent a contractor from developing competing interests which would undermine its ability to provide impartial advice to either” agency unit. 2nd Supp. AR, add. 2 to OCI D&F at 1. The agency maintains that the protester’s claim--that if DCS provides support to testing or engineering services under the F-35 JPO contract those services would then be tested by the agency’s Operational Test and Evaluation Center under the protested task order--“conflate[s] requirements associated with weapons systems acquisition program management, developmental testing, and operational testing to artificially create the appearance of an OCI where none is possible.” *Id.* at 2-3.

As relevant here, the contracting officer’s OCI analysis explains the relationship between the various parties involved in the multiple phases of the F-35’s life cycle. The contracting officer represents that Lockheed Martin is producing the F-35 airframe, Pratt & Whitney is producing the F-35 engines, and the agency’s JPO unit is the office that oversees the acquisition of the F-35 major weapons system. 2nd Supp. AR, add. 2 to OCI D&F at 3. The contracting officer explains that as part of its mission, the JPO unit provides “developmental testing, which includes sustainment engineering.” *Id.* “Development testing is used by program managers to manage and reduce risks during development, verify that products are compliant with contractual and technical

requirements, prepare for OT [operational testing], and inform decision makers throughout the life cycle.” *Id.* at 3-4. The contracting officer notes that development testing is considered an inherently governmental function, and while “contractors may assist with conducting tests . . . they do not perform them independently nor develop the requirements against which tests are measured.” *Id.* at 4.

In sum, the agency’s JPO unit oversees the F-35 acquisition effort and conducts developmental testing of deliverables produced by Lockheed Martin and Pratt & Whitney, among other contractors. 2nd Supp. AR, add. 2 to OCI D&F at 4. JPO may contract for assistance in performing its program management and developmental testing functions, to include the provision of associated engineering services, but the contractors that assist with the developmental testing efforts (such as Amelex and DCS) are not creating the F-35 engineering specifications nor do they “develop the standards by which the F-35 and its components are evaluated.” *Id.*

In contrast with the JPO’s responsibilities, the contracting officer explains that the agency’s Operational Test and Evaluation Center conducts “operational testing for the purpose of supporting development, weapons systems fielding decisions, and warfighter understanding of capabilities and limitations.” 2nd Supp. AR, add. 2 to OCI D&F at 4. Operational tests occur at a later stage in a weapons system’s life cycle, and are “conducted *independently of the development of the product.*” *Id.* Operational testing uses design information from the development contractors (e.g., Lockheed Martin and Pratt & Whitney) rather than from the JPO contractors (e.g., Amelex and DCS) “to gain an understanding of the design and operation of the product in order to develop operational test strategies and scenarios.” *Id.* at 4-5. Similar to developmental testing, operational testing also is considered an inherently governmental function. *Id.* at 4. Further, the reports resulting from operational tests are provided to the “Director of Operational Test and Evaluation (DOT&E) at the Office of the Undersecretary of Defense (OUSD),” rather than to the program office, here the agency’s JPO unit. *Id.* at 5. Generally, only information about any deficiencies discovered, rather than the entire operational test report, is shared with the program office. *Id.* at 5. Based on the above analysis, the contracting officer determined that DCS’s work under the F-35 JPO contract does not create an impaired objectivity OCI nor does DCS’s subcontractor relationship with Amelex. 2nd Supp. AR, add. 2 to OCI D&F at 6. Taking into account the considerable discretion afforded contracting officers and the absence of hard facts to the contrary, we have no basis on which to find unreasonable the contracting officer’s determination that an impaired objectivity OCI does not arise from DCS’s and Amelex’s work on the F-35 JPO contract. See F-35 JPO Contract SOW at 1, 3-4, 6-17, 21, 34-35, 49-50, 58, 67, 79-80, 92; see e.g. *Superlative Techs., Inc.; Atlantic Systems Group, Inc.*, B-415405 *et al.*, Jan. 5, 2018, 2018 CPD ¶ 19 at 11 (denying protest alleging that awardee for a cyber-related technical operations support contract had an impaired objectivity OCI arising from work under a separate cyber-related program, planning, and environment operations support task order for the same office within the agency). Accordingly, we deny the protester’s OCI allegations related to the F-35 JPO contract.

The protest is denied.

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General Counsel