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Decision

Matter of: H P Enterprise Services, LLC

File: B-409169.3; B-409169.4

Date: June 16, 2014

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DIGEST

1. Protest challenging the acceptability of the awardee's proposed technical solution is denied where record demonstrates that the agency reasonably found that the awardee's proposed technical solution demonstrated compliance with the solicitation requirements.
2. Protest challenging the agency's evaluation of the awardee's price is denied where the agency reasonably concluded that the awardee's price was accurate, complete, and reasonable in accordance with the solicitation, and where the solicitation did not require a price realism analysis.
3. Protest asserting that the agency's pre-award communications with the awardee constituted unequal discussions is denied where the exchanges were not essential to determine the acceptability of the awardee's proposal, and did not provide the awardee an opportunity to materially revise or modify its proposal.
4. Protest challenging the agency's analysis of whether the awardee had an organizational conflict of interest is denied where the protester does not allege "hard facts" which indicate the existence of a conflict.

5. Protest challenging the agency's selection decision is denied where the record shows that the agency's best-value decision was reasonable, and the protest amounts to no more than disagreement with the agency's judgments.

DECISION

HP Enterprise Services, LLC (HPES), of Herndon, Virginia, protests the award of a contract to XTec, Inc., of Miami, Florida, by the Department of Homeland Security (DHS) under request for proposals (RFP) No. HSHQDC-13-R-00047 for products and services to support DHS's implementation of Homeland Security Presidential Directive 12 (HSPD-12). The protester challenges the agency's evaluation of the awardee's proposal; asserts the agency engaged in unequal discussions; contends that the agency failed to analyze the awardee's organizational conflict of interest; and argues that the award decision was unreasonable.

We deny the protest.

BACKGROUND

Homeland Security Presidential Directive-12

HSPD-12 was issued on August 27, 2004, in an effort to enhance security, increase efficiency, reduce identity fraud, protect personal privacy, and deter terrorist threats. The directive required the establishment of a standard for identification of federal employees and contractors. Homeland Security Presidential Directive (HSPD-12), "Policy for a Common Identification Standard for Federal Employees and Contractors" (Aug. 27, 2004). HSPD-12 requires the use of a common identification card for access to federally-controlled facilities and information systems.

HSPD-12 requires the National Institute of Standards and Technology (NIST) to issue standards for a secure and reliable form of identification. On February 25, 2005, NIST issued Federal Information Processing Standard Publication 201 (FIPS 201), Personal Identity Verification (PIV) of Federal Employees and Contractors. See XTec, Inc., B-299744.2, B-299744.3, Aug. 6, 2007, 2007 CPD ¶ 148 at 2. In order to assist agencies with implementing the FIPS 201 requirements, the Office of Management and Budget (OMB) established GSA as the "executive agency" for government-wide acquisition of the products and services necessary to implement the HSPD-12 mandate. Id. As the executive agency, GSA is responsible for making available products and services that meet all applicable federal standards and requirements, to include FIPS 201, for acquisition by federal agencies. Id.

In conjunction with NIST, GSA identified 22 categories of products/services which must comply with specific requirements contained in FIPS 201. Id. In May 2006, GSA established a FIPS 201 evaluation program to ensure that commercial products in the 22 identified categories are FIPS 201 compliant. Id. Under this

program, products and services are tested in laboratories to ensure conformance with FIPS 201 standards. Id. When a product/service is determined to be FIPS 201 compliant, GSA issues an approval letter, which specifies the supplier, the Approved Products List (APL) category (e.g., PIV smart card), an approved product name, and the version/part number. Id. Products/services receiving an approval letter under one of the 22 categories are then publicly listed on what is known as the GSA-APL. Id. at 2-3. As it relates to this protest, “electronic personalization” products and services are within the 22 categories of products and services which must be approved as compliant with the requirements of FIPS 201. Pursuant to OMB guidance, when agencies seek to acquire products or services within the 22 FIPS 201 categories, they can only acquire those products and services which have been approved by GSA--that is, those products and services listed on the APL. Id. Approved products/services for the 22 categories are posted on the idmanagement.gov website. Id. at 3.

The Current Solicitation

DHS issued the solicitation at issue here on May 24, 2013, to acquire an identity management system/credential management system (IDMS/CMS) solution to support the continued implementation and sustainment of DHS’s HSPD-12 program. RFP at 28. DHS’s IDMS/CMS serves as the focal point for aggregating and correlating personnel information concerning DHS employees and contractors. Id. The IDMS portion manages the lifecycle of personnel data and related attributes for the purposes of identification and access management. Id. The CMS functionality supports the issuance of a PIV card to all qualified DHS personnel, and is responsible for managing the disposition of credentials for personnel and associated data managed by the IDMS. Id.

The RFP contemplated the award of an indefinite-delivery, indefinite-quantity (ID/IQ) contract for a one-year base period with nine one-year option periods. Id. at 24. The RFP sought a full range of program management support, engineering services, labor, materials, and equipment required to build, install, integrate, test, deploy, manage, operate, and maintain the HSPD-12 IDMS/CMS solution. Id. at 30. Under the technical factor, the solicitation required offerors to demonstrate their knowledge, understanding, and technical ability to meet the performance work statement (PWS) requirements. Id. at 120. As relevant here, the PWS provided eight specific technical tasks as follows: (1) design, development, test, implement, and maintain and support the IDMS/CMS; (2) seamless and expedited transition of the IDMS and CMS; (3) DHS PIV card enrollment and issuance workstations; (4) operations and maintenance support plan; (5) support for the development, implementation, and maintenance of an IDMS/CMS test and development environment; (6) HSPD-12 systems engineering lifecycle documentation and process, (7) IDMS/CMS ongoing implementation requirements, and (8) enterprise IDMS and CMS. Id. at 33-52.

The solicitation advised that the contract would be awarded on a best-value basis, using a two-step evaluation process. Id. at 132. Under the first step, the agency was to assess whether an offeror possessed a current top secret facility security clearance, whether the offeror has experience implementing an IDMS/CMS solution across a distributed enterprise environment, and whether the offeror is a certified integrator on the GSA qualified HSPD-12 service provider list.¹ Id. at 129. Offerors meeting the evaluation criteria of the first step would then be evaluated against the criteria applicable to the second step. Id. at 132. The second step evaluation would consider the following evaluation factors listed in descending order of importance: (1) technical approach, (2) management approach, (3) past performance, (4) small business subcontracting plan, and (5) price. Id. at 129-131. The solicitation stated that the non-price factors when combined were “significantly more important” than price. Id. at 131. The solicitation stated that the agency’s evaluation under the technical factor would consider whether an offeror’s proposal demonstrated technical expertise for meeting the requirements of the PWS. Id. at 129.

With regard to price, the solicitation established that DHS would evaluate the accuracy, completeness, and reasonableness of an offeror’s price. The RFP provided that an offeror’s price would be evaluated using the pricing model data provided by each offeror to establish an ID/IQ contract-level evaluated price. Id. at 131. The RFP explained that the price assessment would verify that prices are included for all solicitation requirements, that figures are correctly calculated, and that prices are presented in an adequate format. Id.

Evaluation and Award

Eight offerors, including HPES and XTec, submitted proposals in response to the RFP by the closing date of July 8, 2013. Contracting Officer’s Statement at 4. All offerors were determined to meet the evaluation factors of the first step, and on July 22 the offerors were informed of the results of the evaluation. Id. The agency conducted discussions with all offerors, and received final proposal revisions on September 17. Id. at 5. On September 26, the source selection authority selected HPES for award. Id. at 6. On September 27, HPES and XTec were notified of the award selection. Id.

XTec received a debriefing from DHS on October 22, and filed a protest with our Office on October 24. The agency informed our Office of its intent to take corrective action on November 19. DHS stated that as part of its corrective action, the agency would re-evaluate the proposals, and issue a new award decision. We dismissed XTec’s protest on November 20. See XTec, B-409169; B-409169.2 (Nov. 20, 2013).

¹ GSA’s qualified HSPD-12 service provider list is distinct from GSA’s list of approved products (GSA-APL).

On January 22, 2014, the agency completed its re-evaluation of the proposals and concluded that discussions were necessary. Contracting Officer's Statement at 9. After receipt of the agency's discussion questions, the offerors submitted their final proposal revisions by the January 30 closing date. Id. The agency's evaluation resulted in the following ratings for HPES and XTec:

	HPES	XTEC
Technical	Outstanding	Outstanding
Management	Outstanding	Outstanding
Past Performance	Outstanding	Outstanding
Small Business	Outstanding	Outstanding
Price	\$53,040,456	\$38,906,029

Agency Report (AR), Tab E2, Source Selection Decision, at 7.²

On February 25, the source selection authority concluded that XTec's proposal provided the best value to DHS. Id. at 14. In reaching this conclusion, the source selection authority explained that "despite HP[ES]'s technical approach and solution providing more advantages and benefits when compared to XTec's due to its system features, these enhanced capabilities do not warrant the price premium . . . and XTec's technical approach also has significant advantages." Id. at 9. HPES and XTec were notified of DHS's award decision on February 28. Contracting Officer's Statement at 10. HPES received a debriefing on March 7, and filed the current protest with our Office on March 12.

DISCUSSION

HPES challenges the agency's evaluation of XTec's proposal, and asserts that DHS's award decision was unreasonable. The protester also contends that the agency engaged in unequal discussions with XTec, and failed to analyze XTec's organizational conflict of interest. Although we discuss only certain representative examples of the arguments raised by the protester, we have reviewed each of the arguments, and find no basis to sustain the protest.

² The agency assigned one of the following possible ratings under the technical and management factor: outstanding, good, acceptable, marginal, or unacceptable. AR, Tab E2, Source Selection Decision, at 3. The possible past performance rating were: outstanding, acceptable, unacceptable, or neutral. Id. at 4. The possible small business subcontracting plan ratings were: outstanding, good, acceptable, or unacceptable. Id. at 5.

Evaluation of XTec's Technical Proposal

HPES asserts that the agency's evaluation of XTec's proposal was unreasonable because the agency waived material requirements of the solicitation to find XTec's proposal technically acceptable. Specifically, HPES argues that: (1) XTec failed to offer a GSA-approved HSPD-12 system that meets the requirements mandated by the solicitation, and (2) XTec's proposal did not satisfy the RFP requirements for an open, standards-based, non-proprietary IDMS/CMS solution that is capable of interfacing with other systems and products. As discussed below, we find no merit to these arguments.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7. In reviewing protests of an agency's evaluation of an offeror's technical proposal, our Office does not reevaluate proposals; rather, we review the evaluation to determine if it was reasonable, consistent with the solicitation's evaluation scheme, as well as procurement statutes and regulations, and adequately documented. Wackenhut Servs., Inc., B-400240, B-400240.2, Sept. 10, 2008, 2008 CPD ¶ 184 at 6.

HPES first argues that the agency's evaluation of XTec's proposal was unreasonable because although XTec's IDMS/CMS solution, known as AuthentX XANODE26SR (AuthentX) is listed on the GSA approved products list (APL), the APL entry for that solution contains a notation or restriction indicating that the awardee's solution does not offer a GSA-approved HSPD-12 system that is validated with respect to its ability to provide digital certificates. The protester contends that the RFP required offerors to demonstrate that their solutions are validated with respect to the ability to provide digital certificates, and that the awardee's solution is therefore technically unacceptable. For the reasons discussed below, we conclude that the agency's evaluation of XTec's proposal was reasonable.

The RFP required an offeror to propose "equipment, parts, and material, . . . , from the relevant approved GSA approved products list" as part of the offeror's solution to design, develop, test, implement, and maintain and support its IDMS/CMS solution. RFP at 34. The PWS section of the RFP also stated that an offeror's IDMS/CMS solution would be required to deliver specific capabilities, including: "a FIPS 201 compliant card which includes [a] PIV Certificate, [a] PIV Digital Signature Certificate, [a] PIV Asymmetric Card Authentication Certificate (also known as Card Authentication Key (CAK)), and [a] PIV Encryption Certificate (on card escrow and server.)" Id. at 35.

HPES alleges that XTec's IDMS/CMS does not provide the functionality required by the RFP because XTec's solution is not capable of creating PIV cards with digital certificates that have been validated by the GSA-APL process. While the protester does not dispute that XTec's AuthentX product is listed on the GSA-APL, as required by the solicitation, HPES argues that XTec's GSA-APL listing contains a notation, which restricts the use of XTec's digital certificates.³ HPES contends that XTec's product is unacceptable with these "restrictions"⁴ because the solicitation required an offeror's IDMS/CMS solution to be listed on the GSA-APL of FIPS 201 compliant devices, and be certified to provide all of the certificates identified in the PWS. Protest at 13. In response, DHS contends that it reasonably evaluated XTec's product, and concluded that it met the RFP requirement to provide equipment, parts, and material from the relevant approved GSA approved products list. In this regard, the agency asserts that the solicitation did not require an offeror to be validated by a GSA lab in the manner that the protester claims. AR at 9.

Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that reasonably gives effect to all its provisions. Solec Corp., B-299266, Mar. 5, 2007, 2007 CPD ¶ 42 at 2. We will not read a provision restrictively where the terms of the solicitation do not indicate that such a restrictive interpretation was intended by the agency. Id. Based upon our review of the solicitation, as well as the GSA-APL, FIPS 201 publications, and associated standards, we find that HPES has not established that the solicitation required an offeror's IDMS/CMS solution to be certified to provide the digital certificates identified in the PWS.

As discussed above, the solicitation required that the equipment, parts, and material used in an offeror's solution be on the relevant GSA-APL. As also discussed above, there is no dispute that XTec's AuthentX product was listed on the relevant GSA-APL. The PWS also required that XTec's solution have the capability to

³ Within the "restrictions / tested with" column of XTec's GSA-APL entry, the following language appears, "Digital Signature Certificate, Key Management Certificate, and Card Authentication Certificate support was not validated." See GSA-APL, www.idmanagement.gov (March 30, 2014).

⁴ The agency and intervenor disagree with the protester's classification of the notation as a "restriction," arguing that the notation was a testing limitation and not a restriction on XTec's capability to provide the digital certificates. In this regard, the intervenor contends that the statement is nothing more than a notation that GSA approved XTec's AuthentX product, but did so without conducting testing on the digital certificates. XTec Comments at 4. As we discuss herein, the solicitation language does not require GSA-APL certification of an offeror's capability to provide digital certificates; thus, we need not address whether the GSA-APL notation was a "restriction" or "tested with" notation.

produce a FIPS-compliant card which includes a PIV Authentication Certificate, a PIV Digital Signature Certificate, a PIV Asymmetric Card Authentication Certificate, and a PIV Encryption Certificate. HPES does not specifically assert that XTec lacks the capability to provide these certificates; rather, HPES contends that the solicitation required these digital certificates to be certified through the GSA-APL process. We find no support for HPES's assertion. In effect, HPES's reading of the solicitation would transform the solicitation requirement for GSA-approved equipment, parts, and material, into a new requirement that an offeror must demonstrate GSA-approved capability to issue a card with the digital certificates; HPES interpretation is not reasonable. The plain language of the solicitation did not require an offeror's capability to provide the digital certificates to be validated by the GSA-APL process as a prerequisite for award. See RFP at 35. Accordingly, we find that the agency reasonably concluded that XTec's AuthentX product met the solicitation requirement to provide equipment, parts, and material listed on the relevant GSA-APL; we find no basis to sustain the protest.

Next, HPES asserts that the agency's evaluation of XTec's proposal effectively waived what the protester contends is the solicitation requirement for an open, standards-based, non-proprietary HSPD-12 solution. In support of its allegation, HPES cites to sole-source justifications issued by DHS for awards to XTec which mention interoperability issues concerning the awardee's solution. See, e.g., Protest Exhibits 10-13 (DHS Limited Source Justifications). Thus, HPES argues that the agency's evaluation was unreasonable because XTec's proposal cannot meet the solicitation requirements and is technically unacceptable.

The solicitation referenced DHS's open, standards-based, non-proprietary requirement in various locations. For example, the RFP established that the IDMS/CMS solution must "[h]ave data and user interfaces that are standards-based and/or widely accepted communication protocols to increase usability and interconnectivity with external systems," "[d]eliver a standards based Enrollment and Issuance Workstation Station," and "[p]rovide standardized PIV card management interface specifications." RFP at 35, 37-38. The draft functional requirements document, which was attached to the solicitation, also provided that the IDMS/CMS solution "[p]rovide an open, non-proprietary, FIPS 201 compliant, industry standards-based interface and authentication for all DHS PIV equipment." RFP, Appendix 1 § 3.11.2.

In response to HPES's allegations, DHS asserts that the solicitation did not require an open, standards-based, non-proprietary solution in the narrow, literal manner suggested by the protester, as all offerors have proprietary software in their products. See AR at 19. Instead, the agency argues that the solicitation required only that an offeror's IDMS/CMS solution provide open, standards-based, non-proprietary interfaces to permit an offeror's solution to interact with internal and external products and systems.

Based upon our review of the solicitation language, we conclude that HPES's interpretation of the solicitation's requirement for an open, standards-based, non-proprietary solution is not reasonable. In this regard, the solicitation required that an offeror propose standards-based, open, and non-proprietary interfaces, so that the solution could work with internal DHS components and components from other vendors. See RFP at 35, 37-38; Appendix 1 § 3.11.2. The solicitation did not require an offeror's entire solution to be open, standards-based, and non-proprietary as the protester suggests. The record shows that DHS evaluated XTec's proposed solution and determined it met the solicitation's interoperability requirements; we see nothing unreasonable about this determination. AR, Tab D3, XTec Consensus Technical Evaluation (Feb. 25, 2014), at 1 (XTec demonstrates "a system that is comprehensive, sound, interoperable, and efficient.")

Moreover, to the extent that the protester alleges that XTec's proposed solution is unacceptable because the agency previously cited to interoperability issues with the XTec product as a rationale for prior sole source awards, the protest lacks merit. Our Office has repeatedly stated that each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another for purposes of a bid protest. Westbrook Indus., Inc. B-248854, Sept. 28, 1992, 92-2 CPD ¶ 213, at 3. Simply stated, even if DHS had previously believed that the solution offered by XTec on prior contracts was not open, standards-based, or non-proprietary, this prior determination does not demonstrate that the agency's current evaluation was unreasonable.

XTec's technical proposal stated that its "issuance module" provides a standards-based, open interface that enables DHS to implement multiple enrollment and issuance work station configurations from various vendors. AR, Tab C16, XTec Technical Proposal, at 1, 7, 18. XTec's proposal explained that this innovation, which uses an issuance module running on its IDMS/CMS and an issuance module running on the enrollment/issuance workstations (EIWS) to integrate EIWS from other vendors, is "the first of its kind implemented in the Federal market, [and] provides DHS with unprecedented levels of interoperability and efficiency for a complete solution." Id. at 18. The agency assigned a strength for this aspect of XTec's proposal. AR, Tab D3, XTec Consensus Technical Evaluation (Feb. 25, 2014), at 2. The agency concluded that XTec provided a comprehensive and sound approach to integrating other vendors' EIWS into its IDMS/CMS solution, which was a benefit to DHS. The agency also concluded that "XTec's written proposal and OCD [operational capabilities demonstration] present a complete, feasible, sound, interoperable, scalable, efficient, and usable technical approach for accomplishing the requirements of the Performance Work Statement." Id. at 1. On this record, we conclude that HPES has not demonstrated that XTec's proposed solution failed to meet any solicitation requirements.

Evaluation of XTec's Price

Next, HPES argues that DHS failed to reasonably evaluate whether XTec's proposed price was consistent with and included all of the work set forth in its technical proposal. The protester also asserts that the agency failed to analyze price reductions in XTec's final proposal revision.

The solicitation stated that the agency would assess the accuracy, completeness, and reasonableness of an offeror's price. RFP at 131. The RFP also stated that the price evaluators would verify that prices are included for all RFP requirements, that figures are correctly calculated, and that prices are presented in an adequate format. Id.

DHS's evaluation of XTec's price compared the awardee's labor rates with its current GSA schedule, its historical rates, and the independent government estimate. AR, Tab D13, XTec Price Analysis Report, at 1-3. XTec's labor rates were also compared to the labor rates proposed by each offeror. Id. Based upon this analysis, the agency determined that XTec's labor rates appeared to be accurate, complete, and reasonable. Id. at 3. The evaluators also reviewed XTec's non-labor pricing, comparing it with XTec's GSA schedule prices and other offerors. Id. at 3-6. DHS concluded that XTec's non-labor rates were also accurate, complete, and reasonable. Id. at 6. The agency additionally reviewed XTec's rationale for its final proposal revision reduction in price, and concluded that the majority of the difference between XTec's final price and its previously proposed price was attributable to hardware/software price reductions and reductions in associated maintenance. AR, Tab D12, Consolidated Business Report, at 31-33.

We find nothing unreasonable about the agency's evaluation of XTec's price. While the protester urges us to conclude that the agency failed to verify that XTec provided prices for all RFP requirements, we see nothing to support this allegation. The agency thoroughly reviewed XTec's labor and non-labor rates and additionally analyzed XTec's price reduction justifications. Accordingly, we find no basis to sustain the protest.

To the extent that HPES argues that the agency failed to evaluate whether XTec's price was consistent with its technical proposal, the solicitation did not require a price realism analysis. As our decisions make clear, price reasonableness and price realism are distinct concepts. The purpose of a price reasonableness review is to determine whether the prices offered are too high, as opposed to too low. Logistics 2020, Inc., B-408543, B-408543.3, Nov. 6, 2013, 2013 CPD ¶ 258 at 7. Here, the RFP admonishment that prices would be reviewed for "completeness" cannot reasonably be construed as providing for a price realism analysis involving a comparison of an offeror's price to its unique approach to the work. See Phoenix Mgmt., Inc., B-406142.3, May 17, 2012, 2013 CPD ¶ 154 at 7. Accordingly, we find

that the agency's evaluation of XTec's price was reasonable and in accordance with the solicitation's criteria.⁵

Exchanges with XTec

Next, HPES contends that DHS engaged in unequal discussions with XTec during a post-final proposal submission exchange between XTec and DHS. The protester alleges that these communications amounted to unequal discussions because the exchanges were necessary to determine the acceptability of XTec's proposal and/or permitted a revision to XTec's proposal. The agency contends that the exchanges did not result in any material modification of XTec's proposal, nor did the agency's evaluation of the awardee's proposal depend on such exchanges. For the reasons discussed below, we agree with the agency.

Clarifications are limited exchanges between an agency and an offeror for the purpose of clarifying certain aspects of a proposal, and do not give an offeror the opportunity to revise or modify its proposal. Federal Acquisition Regulation (FAR) §15.306(a)(2); Booz Allen Hamilton, Inc., B-405993, B-405993.2, Jan. 19, 2012, 2012 CPD ¶ 30 at 12. Discussions, on the other hand, occur when a contracting officer communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal in some material respect. Highmark Medicare Servs., Inc., et al., B-401062.5 et al., Oct. 29, 2010, 2010 CPD ¶ 285 at 11; Gulf Copper Ship Repair, Inc., B-293706.5, Sept. 10, 2004, 2005 CPD ¶ 108 at 6; see FAR § 15.306(d).

Where, as here, there is a dispute regarding whether exchanges between an agency and an offeror constituted discussions, we look at whether an offeror has been afforded an opportunity to revise or modify its proposal. Booz Allen Hamilton, Inc., supra, at 12. Exchanges that do not permit an offeror to revise or modify its proposal, but rather permit the offeror to explain or clarify what the offeror has already proposed to do, are clarifications and not discussions. Allied Tech. Grp., Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 6; SRS Techs., B-291618.2, B-291618.3, Feb. 24, 2003, 2003 CPD ¶ 70 at 3 n.4.

⁵ Similarly, we find no merit to the protester's allegations that the agency improperly relaxed the solicitation requirements by allowing XTec to improperly exclude required costs from its price, such as: costs associated with maintaining existing EIWS; software licenses; and, continuing XTec's "Executive Premier" maintenance. We have reviewed each of these allegations and find that the agency reasonably concluded that XTec's price was accurate, complete, and reasonable, and included the cost associated with all tasks required by the solicitation.

The allegation that the agency conducted discussions here arose from an exchange between DHS and XTec on the day the agency announced its selection decision. Specifically, on February 28, 2014, the agency notified the unsuccessful offerors, including HPES, of its award decision. That same day, the agency notified XTec of its award decision and requested signature of the contract and task order. Supp. AR at 7. In response to DHS's notice, XTec asked the agency a series of questions. The agency held a conference call with XTec to answer each of the questions. The agency summarized its oral responses to XTec's questions as follows, in relevant part:⁶

XTec: DHS currently has 157 XTec enrollment stations in service [under XTec's incumbent contract]. What is the plan to maintain the existing EIWS population? How will the maintenance of these stations be contracted? We assume these will be maintained under the current sole source contract.

DHS: The maintenance of these stations will be paid for under the sole source [incumbent contract].

XTec: Based on the BAFO [best and final offer] XTec was asked to remove the cost for Network compatibility which we did. How will this be added back into the contract to allow for the complete solution?

DHS: [T]his was a major issue . . . DHS understood XTec's pricing to be for a complete solution and that if it did not include all costs then [the contracting officer] could not award the contract. . . . XTec indicated that it would not require additional costs to be added back into the contract. [The contracting officer] requested that they state this in writing. XTec submitted the following confirmation in writing, "Per your request, I would like to state in writing (in reference to our question #9) that XTec confirms our price for enrollment station is all-inclusive of a complete solution."

XTec: [T]he scope of work for a non-incumbent transitioning to a new system versus the incumbent system which was a simple upgrade is quite different. How do you see this process moving forward? We believe the labor mix would be more equivalent to our current sole source contract versus what was listed in the SOW for this procurement.

⁶ HPES does not object to the agency's summary of these conference call responses.

DHS: This was not discussed specifically. . . . [The contracting officer] did indicate that the base task order which was being awarded concurrently with the IDIQ contract was not negotiable, but that [DHS] would negotiate labor mix for future task orders.

XTec: What is the plan for the EIWS replacements? . . .
Understanding the actual plan and accurate number for these replacements will help in understanding any additional licensing costs?

DHS: This was not discussed specifically. . . . DHS and XTec agreed that these questions would be addressed in detail post-award.

AR, Tab I2, Agency Summary of Conference Call, at 1-3.

In response to the protester's assertions, the agency states that it did not permit XTec to submit any proposal revisions, and that the questions asked by XTec did not alter in any way its previously-made award decision. Supp. AR at 7. The agency also states that its award decision only relied upon information in XTec's final proposal revision and did not rely on the exchanges with XTec to find XTec's proposal acceptable. Contracting Officer's Statement at 14.

While we understand the concerns raised by HPES about whether this exchange indicates that XTec may have misunderstood certain elements of the solicitation, the record here provides no support for HPES's assertion that the agency conducted prejudicially unequal discussions. There is simply no evidence that DHS, at the time of the alleged unequal discussions, used or intended to use information provided by XTec to determine XTec's acceptability. We additionally cannot find any evidence that DHS permitted XTec to make any material changes to its proposal. The exchanges between XTec and the agency demonstrate no more than clarifications and contract administration matters. In sum, there is no support in the record for the protester's assertions. In these circumstances, there is no basis to conclude that the agency improperly conducted discussions with only one offeror. See AlliedBarton Sec. Servs. LLC, B-299978 et al., Oct. 9, 2007, 2007 CPD ¶ 186.

XTec Organizational Conflict of Interest

Next, HPES argues that XTec's role as the incumbent contractor supporting HSPD-12 created an unfair competitive advantage due to an organizational conflict of interest. As explained below, we conclude that HPES failed to identify hard facts to support its allegations of an OCI; furthermore, the contracting officer has considered these issues and, in our view, reasonably determined that no organizational conflict of interest exists.

The FAR requires that contracting officials avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Found. Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. To demonstrate that an agency's OCI determination is arbitrary or capricious, 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. Pillar Sys. Corp., B-408221, July 11, 2013, 2013 CPD ¶ 172 at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). As relevant here, an unequal access to information OCI exists where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition for a government contract. FAR §§ 9.505(b), 9.505-4; CapRock Gov't Solutions, Inc.; ARTEL, Inc.; Segovia, Inc., B-402490 et al., May 11, 2010, 2010 CPD ¶ 124 at 25; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8.

The solicitation included the following section concerning OCIs:

The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting apply to offerors that currently, or in the past, have provided program management and administrative support services to DHS Program Offices that are directly involved in the implementation of HSPD-12 and me[e]t one of the following criteria: (1) have had access to non-public information that is relevant/useful in preparing an offer that gives it an unfair advantage in the competition of a later contract or (2) drafting or providing input to specifications related to this procurement.

RFP at 18. The solicitation required an offeror to self-report whether it is aware of any facts which create any actual or potential OCI. Id. at 19.

HPES argues that the solicitation explicitly recognized that an actual or potential OCI may exist due to an offeror's prior involvement in the implementation of HSPD-12. HPES asserts that despite DHS's recognition of an actual or potential OCI, the agency failed to evaluate whether XTec's incumbent work created the potential for XTec to obtain an unfair competitive advantage.

On this record, we find that HPES's protest arguments lack the hard facts required for our Office to sustain the protest. Although cast as an OCI argument, HPES essentially contends that XTec was the incumbent contractor, and thus, XTec had a competitive advantage in the competition. HPES did not, however, provide any hard facts that XTec prepared the RFP or set its ground rules, had unequal access to non-public information of the nature that gives rise to an OCI, or otherwise had impaired objectivity in its performance of this contract.

As we have long held, an offeror may possess unique information, advantages, and capabilities due to its prior experience under a government contract--either as an incumbent contractor or otherwise; further, the government is not necessarily required to equalize competition to compensate for such an advantage, unless there is evidence of preferential treatment or other improper action (which HPES did not show here). CACI, Inc.-Fed., B-403064.2, Jan. 28, 2011, 2011 CPD ¶ 31 at 10; MASAI Techs. Corp., B-298880.3, B-298880.4, Sept. 10, 2007, 2007 CPD ¶ 179 at 8. Thus, the existence of an advantage in and of itself does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. Council for Adult & Experiential Learning, B-299798.2, Aug. 28, 2007, 2007 CPD ¶ 151 at 6; Government Bus. Servs. Group, B-287052 et al., Mar. 27, 2001, 2001 CPD ¶ 58 at 10.

We also disagree with HPES's assertion that DHS failed to consider whether an actual or potential OCI existed. The record reflects that the contracting officer conducted an investigation of actual and potential OCIs prior to issuing the solicitation. Specifically, the contracting officer prepared a memo for the head of the contracting activity that documented his findings of a known potential conflict with one offeror, who chose not to compete in the current procurement. AR, Tab G1, OCI Analysis, at 1-5. The contracting officer's assessment also noted that he had no other concerns regarding an actual or potential OCI with any other offeror. Id. at 3. In this regard, the contracting officer determined that there was no evidence of any unauthorized disclosures of draft procurement documentation to any contractors. Contracting Officer's Supp. Statement (May 5, 2014) at 1.

While both XTec and HPES provided prior support and services to DHS in support of HPDS-12, neither offeror self-reported that it had access to non-public information that was relevant in preparing its offer or drafted or provided input to specifications related to this procurement. AR, Tab C4, HPES Business and Pricing (July 8, 2013); AR, Tab C22, XTec Proposal Addendum (Sept. 17, 2013), at 15. Under the circumstances here, the protester's contentions amount to no more than speculation that XTec had unequal access to competitively useful information, and as such provides no basis to find that XTec had a conflict of interest.

Best Value Decision

Finally, HPES asserts that DHS's award decision was unreasonable. HPES argues that the source selection authority failed to look behind the overall adjectival ratings or perform a meaningful best-value analysis, and thereby improperly converted the procurement into a lowest-priced technically-acceptable competition. HPES also contends that the agency's evaluation departed from the best value scheme announced in the solicitation when it treated both offerors as technically equivalent, despite finding that HPES's proposal contained more advantages and benefits under the most important factor--technical approach.

In response, the agency contends that the evaluation record demonstrates that DHS did not award the contract based solely on XTec's low price. Rather, the record shows that the source selection authority conducted a tradeoff analysis between the non-price and price factors in accordance with the solicitation. We agree with the agency.

Source selection officials in negotiated best-value procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. World Airways, Inc., B-402674, June 25, 2010, 2010 CPD ¶ 284 at 12. Even where, as here, price is stated to be of less importance than technical merit, an agency may properly select a lower-rated, lower-priced proposal if the agency reasonably concludes that the price premium involved in selecting the higher-rated proposal is not justified. Aegis Def. Servs., Ltd., B-403226 et al., Oct. 1, 2010, 2010 CPD ¶ 238 at 10. A protester's mere disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 8.

As discussed above, the solicitation provided that the agency's evaluation would consider the following evaluation factors listed in descending order of importance: (1) technical approach, (2) management approach, (3) past performance, (4) small business, and (5) price. RFP at 129-131. The solicitation stated that the non-price factors, when combined, were "significantly more important" than price. Id. The solicitation also advised that DHS would use a tradeoff process among the non-price and price factors in making its best value award decision. Id. The RFP explained that as the offerors' technical evaluations become more equal, price would become more important in making the award decision. Id. Finally, the solicitation noted that the agency may award to other than the highest technical rated proposal, if DHS determined that a price premium was not warranted. Id.

The source selection authority's assessment of each offeror's technical proposal reviewed the identified significant strengths, strengths, and weaknesses. The tradeoff decision acknowledged the several advantages of HPES's proposal regarding its technical approach but concluded that the advantages were not worth the associated price premium:

Although [HPES] is considered to propose a significantly more advantageous and beneficial technical proposal based on its technical approach's significant strengths and strengths, most of which are for system features which collectively provide greater benefit to the Government through increased capabilities beyond what is required in the scope of work, these system features are not considered to warrant a price premium of approximately \$1.4 million annually. . . . Despite the advantages of [HPES]'s technical approach, its system features are not considered to increase capability in such a way that the Government would increase efficiencies to a point in which the additional costs would be offset. . . . These conclusions, in combination with the fact that XTec also significantly exceeded requirements for its technical approach due to its ability to meet 100% of the functional requirements on the day of award and had strengths related to its solution, . . . demonstrate that although [HPES] provided a superior technical approach, XTec proposed an overall superior proposal when taking into account the merits of its technical approach, superior management approach, and the price differential. . . . Therefore, XTec provides a better value when comparing non-price and price factors to [HPES].

AR, Tab E2, Source Selection Decision, at 7-9.

On this record, we find DHS's source selection decision to be reasonable and consistent with the stated evaluation criteria. The source selection authority reviewed the in-depth evaluation findings, acknowledged the advantages of the protester's technical approach, and conducted a tradeoff concluding that the increased benefits of HPES proposal did not offset the approximate \$14 million (\$1.4 million annually) difference in price. Id. at 9. Although HPES apparently disagrees with this judgment, it has not shown the judgment to be unreasonable.

We deny the protest.

Susan A. Poling
General Counsel