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## Decision

**Matter of:** A-P-T Research, Inc.

**File:** B-413731.2

**Date:** April 3, 2017

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J. Dale Gipson, Esq., Tracy A. Marion, Esq., and Katherine E. McGuire, Esq., Lanier Ford Shaver & Payne PC, for the protester. Jonathan T. Williams, Esq., Patrick T. Rothwell, Esq., Julia Di Vito, Esq., and Ambika J. Biggs, Esq., Piliero Mazza PLLC, for Alphaport, Inc., the intervenor. Brian M. Stanford, Esq., Victoria H. Kauffman, Esq., and Tracy Lee Belford, Esq., National Aeronautics and Space Administration, for the agency. Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that agency miscalculated awardee's proposal under the mission suitability factor and the cost realism assessment is sustained where non-incumbent awardee proposed high retention rate for incumbent employees, agency determined that awardee's proposed professional compensation was at low end of the experience and compensation scales used for evaluation, and contemporaneous record lacked a reasoned basis for finding awardee's professional compensation or proposed costs to be acceptable or realistic.
  2. Protest that agency failed to reasonably analyze a potential impaired objectivity organizational conflict of interest (OCI) posed by the awardee's major subcontractor, and the awardee's proposed OCI mitigation plan, is sustained where the contemporaneous record reflected only pre-solicitation analysis of the potential for OCIs, and lacked any documentation to support the agency's argument that the evaluation of proposals had assessed the OCI and found the awardee's proposed mitigation plan to be sufficient.
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### DECISION

A-P-T Research, Inc., of Huntsville, Alabama, a small business, protests the award of a contract to Alphaport, Inc., of Cleveland, Ohio, also a small business, under request for proposals (RFP) No. NNK16567219R, issued by the National Aeronautics and Space Administration (NASA), for various support services.

A-P-T argues that NASA misevaluated Alphaport's proposal, failed to conduct a reasonable cost realism analysis, failed to mitigate or avoid an organizational conflict of interest (OCI) posed by Alphaport's major subcontractor, and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

NASA issued the RFP on January 22, 2016, seeking proposals from small businesses to provide a variety of safety and mission assurance support services (SMASS),<sup>1</sup> principally mission assurance, engineering, and risk assessment. RFP attach. J-01, Performance Work Statement (PWS), at 2. The PWS organized the requirements into general areas, which were contract/program management, technical integration, plus seven technical disciplines: safety and reliability engineering and assurance, quality engineering and assurance, software safety and assurance, range safety, independent assessments, meteorology and calibration support activities, and expendable launch vehicle payload safety program. Id. at 2-16. The RFP also noted that the services would include reviewing the work of other contractors and NASA organizations on existing and future programs. Id. at 2.

Given the scope of services under the PWS, the RFP expressly recognized the potential for impaired objectivity or unfair competitive advantage OCIs, and specified that the SMASS III contractor would be ineligible to be involved at any level on specifically-identified contracts. RFP at 19. The RFP continued by specifying a second set of contracts, one of which was identified as "Kennedy LX<sup>2</sup> Services II" (KLXS), that presented potential OCIs, and directed any offeror that would be performing work under these latter contracts to provide notice and an OCI mitigation plan. Id.

NASA was to award a single cost-plus-fixed-fee level of effort contract for a two-year base period and three option years, to the firm whose proposal provided the best value. RFP at 14, 71, 98. The proposal offering the best value would be determined based on an evaluation of the proposals under three factors, in descending order of importance: cost, mission suitability, and past performance. RFP at 98. When combined, the mission suitability and past performance factors

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<sup>1</sup> The incumbent contract, known as SMASS II, is a 4-year cost-reimbursement contract that NASA awarded to A-P-T in 2012. The RFP at issue here, and the resulting contract, are thus referred to as SMASS III.

<sup>2</sup> LX is a NASA designation for the agency's ground systems development and operations program.

were to be approximately equal in importance to the cost factor. Id. The past performance factor is not at issue here.

With respect to cost, the RFP provided estimates for both estimated “level of effort hours” and “optional flex hours,” for five safety and mission assurance (SMA) engineer labor categories, three specialist labor categories, and an analyst labor category. RFP at 6-7,<sup>3</sup> 92. The RFP specified the experience, skills, and description for each category. RFP attach. J-03, Government Standard Labor Categories Table, at 1-2.

Under the mission suitability factor, the RFP identified two subfactors: management approach, and technical approach, which were to be weighted 600 points and 400 points, respectively. Id. at 99. The management approach subfactor was to assess the offeror’s proposed program management, key personnel, organizational structure and corporate resources, total compensation plan, phase-in approach, and the management aspects of a sample scenario response. Id. at 99-100. As part of the phase-in approach, offerors were to specify an incumbent capture rate as a percentage of the total workforce, and to justify the rate and methods used to achieve it. Id. at 84. The total compensation plan evaluation was to include the assessment of professional employee compensation provision, described in Federal Acquisition Regulation (FAR) § 52.222-46. Id. at 100.

Under the technical approach subfactor, the agency would assess the proposed staffing approach and the technical aspects of the same sample scenario response. Id. at 100-01. The source selection plan provided a table by which point scores would be used to assign an adjectival rating: excellent (91-100 percent of available points), very good (71-90 percent), good (51-70 percent), fair (31-50 percent), or poor (0-30 percent). AR Tab 5, Source Selection Plan, attach. C; accord NASA FAR Supplement § 1815.305(a)(3).<sup>4</sup>

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<sup>3</sup> The first eight pages of the RFP that NASA produced as an exhibit to the Agency Report (AR) were labeled as “Attachment J-02” and were unnumbered (except for serial document numbering added later). Compare AR Tab 2 (RFP), attach. J-02 at 00028 (unnumbered page), with Protest exh. A at 6 (same RFP page with consistent page numbering). In this decision, the page numbering has been restored when citing to the RFP, to be consistent with the page numbers on the document during the competition.

<sup>4</sup> Although portions of the NASA FAR Supplement are codified in title 48 of the Code of Federal Regulations, at chapter 18, the provision cited above, and other provisions that NASA deemed to affect only the internal operating procedures of the government, and to not require codification through rulemaking, are made available only online at [www.hq.nasa.gov/office/procurement/regs/nfstoc.htm](http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm) (last visited Mar. 28, 2017).

The RFP directed offerors to submit costs based on estimated hours for each labor category for each year using spreadsheets that accompanied the RFP, as well as a fixed fee. RFP at 88. The RFP explained that in practice, if the contractor’s effort was lower than 95 percent of the estimated hours in the RFP for a particular period, the fixed fee would be equitably adjusted downward. RFP at 6-7. Correspondingly, the solicitation advised that if the contracting officer exercised what the RFP terms “optional flex hours” for more than 105 percent of the RFP estimate for a contract period,<sup>5</sup> the agency would increase the fixed fee on a pro rata basis. Id. at 7. The RFP provided that the evaluation of cost proposals would assess both reasonableness and realism.

NASA received proposals from four offerors, including A-P-T and Alphaport. NASA evaluated the proposals, established a competitive range comprised of A-P-T and Alphaport, held discussions, and requested final proposal revisions (FPR). After receiving and evaluating FPRs, NASA awarded the contract to Alphaport on September 15, after which A-P-T filed a protest with our Office. On October 18, NASA announced that it would take corrective action by reevaluating the FPRs and making a new source selection decision, which resulted in our Office dismissing the protest as academic.

The reevaluation results are as set forth below:

	<b>A-P-T Research</b>	<b>Alphaport</b>
Management Approach Subfactor	Very Good (540 points)	Very Good (540 points)
Technical Approach Subfactor	Good (268 points)	Good (280 points)
<b>Mission Suitability Factor</b>	<b>808 points</b>	<b>820 points</b>
<b>Past Performance</b>	<b>Very High Confidence</b>	<b>Moderate Confidence</b>
<b>Probable Cost</b>	<b>\$57.0 million</b>	<b>\$48.1 million</b>

AR Tab 16.01, Source Evaluation Board (SEB) Briefing Slides, at 55.

The source selection authority’s (SSA) decision document stated that during corrective action, the SEB removed a weakness assigned to Alphaport’s total compensation plan under the mission suitability factor.<sup>6</sup> He stated that the SEB had

<sup>5</sup> The estimated hours differed significantly among performance periods. For example, the level of effort estimate for the 2-year base period was 235,000 hours plus 45,000 estimated flex hours, while for option year 1, the level of effort estimate was 80,240 hours plus 70,000 estimated flex hours.

<sup>6</sup> The evaluation of Alphaport’s initial proposal had assigned a weakness on the basis of the “Alphaport team proposing at or below the [DELETED] percentile [of the (continued...)]

“described what occurred during the process of discussions and how the SEB determined that the weakness was resolved,” and expressly concurred with the SEB’s analysis. AR Tab 16.03, Source Selection Statement, at 5, 8. The SSA noted the adjectival ratings and point scores for both offerors, and the specific strengths assigned to each, and concluded that despite small score differences, neither offeror’s approach provided a qualitative advantage or meaningful discriminator under the mission suitability factor. Id. at 8. As a whole, the SSA concluded that, notwithstanding the past performance rating differences, “both offerors’ demonstrate[d] sufficient capability . . . to adequately perform the requirements of the SMASS III contract.” Id. at 8.

The SSA also agreed with the SEB’s cost evaluation. In this regard, the SSA noted that the SEB made an upward adjustment to Alphaport’s proposed costs based on the direct labor rates of Alphaport’s major subcontractor. Id. at 7. The SSA also noted that Alphaport’s direct labor rates were “within an average range (in some cases slightly below average)” of the SEB’s data, and that the proposed rates, as adjusted by the SEB, were realistic. Id. at 9. The SSA noted that no adjustments were made to A-P-T’s proposed costs. Id. at 7.

In making his selection decision, the SSA concluded that Alphaport’s lower evaluated cost provided a significant advantage, that the results of the mission suitability evaluation provided no advantage for either offeror, and that A-P-T’s higher rating for past performance was not “materially significant” because past performance was the least significant evaluation factor. As a result, the SSA concluded that A-P-T’s high past performance rating did not justify paying A-P-T’s significantly higher probable cost. Id. at 9. After NASA awarded the contract to Alphaport on December 23, this protest followed.

## ANALYSIS

A-P-T challenges the evaluation of Alphaport’s professional compensation plan--both as an element of the management approach subfactor and as a matter of cost realism--and argues that NASA made an unreasonable source selection decision. A-P-T also argues that Alphaport’s major subcontractor presented an unmitigated OCI that NASA failed to properly consider. We address each argument below, and conclude that the evaluation of Alphaport’s professional compensation plan under both the management approach subfactor and the cost realism analysis was unreasonable and inconsistent with the RFP. We also conclude that the

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(...continued)

commercial salary survey pay data] and at the low end of the experience level and the risk associated with the Alphaport team’s ability to capture a qualified workforce.” AR Tab 15.02, Final Direct Labor Rate Analysis for Alphaport, at 6.

contemporaneous record does not show that NASA considered Alphaport's OCI mitigation plan. Accordingly, we sustain the protest.

#### Professional Compensation Plan Evaluation

A-P-T notes that NASA, during the first evaluation, recognized that the low levels of professional compensation proposed by Alphaport and its major subcontractor raised doubts about the firm's ability to retain a high percentage of the incumbent staff--that is, A-P-T's current employees.<sup>7</sup> Nevertheless, A-P-T argues that in evaluating the FPRs, NASA unreasonably abandoned its earlier conclusions and instead assigned Alphaport a rating of very good under the management approach subfactor. Protest at 11-15. Further, A-P-T argues that NASA improperly assessed Alphaport's proposed professional compensation by comparing the plan to the low end of the ranges in commercial salary surveys. A-P-T also argues that NASA should have compared Alphaport's proposed compensation levels to the actual compensation currently paid to the incumbent staff. Id. at 12. The protester bases its argument not only on the terms of the RFP, including the provision at FAR § 52.222-46, but also on Alphaport's technical approach, which identified a very high retention rate of [DELETED] percent for incumbent professional staff. Thus, A-P-T argues, the evaluation of Alphaport's compensation plan, its phase-in plan, and the realism of its costs all depended on a flawed assessment of whether Alphaport would be able to retain incumbent employees. Protester's Comments at 2-5.

NASA explains that its evaluation of each offeror's total compensation plan under the management approach subfactor,<sup>8</sup> and the assessment of employee compensation as part of the cost realism analysis, was essentially a single "integrated" evaluation. AR at 2. NASA states that the SEB concluded that the government estimate had used only a single aggregate labor rate, which could not

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<sup>7</sup> Alphaport's proposal stated that its approach involved retaining incumbent employees to meet [DELETED] percent of the staffing, providing the remainder as [DELETED] percent from company resources, and the final [DELETED] percent through external hires. AR Tab 13.12, Alphaport FPR, vol. IV, at 24, 26.

<sup>8</sup> The RFP provided that NASA would evaluate each offeror's total compensation plan under the management approach subfactor of the mission suitability factor. RFP at 100. More specifically, the RFP stated that the

Total Compensation Plan for all positions will be evaluated in accordance with FAR 52.222-46 . . . and for the feasibility and effectiveness in retaining, recruiting qualified personnel, and capturing incumbent personnel as it relates to compensation.

Id.

be used to assess compensation for the nine specific labor categories. AR at 5; AR Tab 15.02, Final Direct Labor Rate Analysis for Alphaport, at 1. The SEB also concluded that burdened labor rates from the incumbent contract could not be meaningfully compared to proposed compensation.<sup>9</sup> Id. The SEB also noted that the SMASS II cost submissions used 23 engineering labor classifications, while the SMASS III RFP requested costs in only 5 engineering labor categories, which made a comparison of the rates under the 2 contracts less meaningful. Id. The SEB then considered salary data from other contracts at Kennedy Space Center that used labor classifications that were the same or similar to those in the RFP, and ultimately concluded that none of them were appropriate for use in its evaluation. Id. at 2.

NASA explains that since the SEB found no other appropriate tool to assess proposed compensation, it elected to use commercial salary data from salary.com and from the Economic Research Institute. Id. However, since those surveys had no SMA engineering classifications, the SEB selected labor classifications from the surveys the board viewed as relevant. Upon comparing that data to the compensation proposed by Alphaport and its major subcontractor, Millennium Engineering & Integration (MEI), the SEB determined that the proposed compensation for engineering classifications was near or below the [DELETED] percentile, id. at 4-5, and that Alphaport's method of establishing its proposed compensation from its salary survey data was unclear. AR at 7. The SEB also noted that both Alphaport and MEI proposed compensation using the low end of the experience required for each position. AR Tab 15.02, Direct Labor Rate Analysis for Alphaport, at 4-6.

During discussions, Alphaport was informed that the evaluators had identified the company's low proposed professional compensation as a weakness. In its FPR, Alphaport submitted details from the commercial salary surveys it used to determine the appropriate compensation levels, and explained that it had developed its proposed compensation by selecting a single labor classification that would best match the performance requirements in the RFP for each labor category. AR Tab 12.13, Alphaport Email Discussions Response (June 28, 2016), at 2. The firm explained that for the SMA engineer categories 1 through 3, it used the average of the [DELETED] percentiles of the selected labor classification from its surveys. Id. For the SMA engineer 4 category, Alphaport averaged the [DELETED] percentile salary of one labor classification and the [DELETED] salary of another to establish

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<sup>9</sup> The final evaluation deleted as "improperly included" and "not appropriate" a finding from the original evaluation that incumbent's professional compensation for fiscal year 2016 was comparable to the 50th percentile of commercial salary surveys for one engineering labor category and "equal to or greater than" the 75th percentile for the other four. AR Tab 14.01, Mission Suitability Final Findings for Alphaport, at 5.

the proposed compensation. Id. For the SMA engineer 5 category, Alphaport averaged the [DELETED] percentiles of the labor classification that it had selected from its surveys. Id.

During the reevaluation performed in response to A-P-T's earlier protest (which also challenged the evaluation of Alphaport's proposed compensation), the SEB concluded that Alphaport's use of survey salary rates from multiple labor classifications was "more appropriate" and provided a better estimate for the RFP's requirements (by which we infer meant that the FPR use of survey salary rates in the FPR was evaluated as being more appropriate and better than the evaluators had assessed in Alphaport's initial proposal).<sup>10</sup> AR Tab 15.02, Final Direct Labor Rate Analysis for Alphaport, at 6. Specifically, the agency's analysis showed that the proposed compensation in Alphaport's FPR for its SMA engineer categories 1 through 3 was at the [DELETED] percentile of one survey, and was closer to the [DELETED] of the other survey. Id. at 7. The compensation for the top two labor categories (SMA Engineers 4 and 5) was at or near the [DELETED]. Id. On the other hand, for MEI, the revised analysis showed that the compensation proposed for engineers in the middle three labor classifications (SMA Engineers 2 through 4) were at compensation levels below the [DELETED] percentile. Id. at 8. The SEB concluded that MEI's proposed costs should be adjusted upward by approximately \$600,000, to represent the probable cost of MEI paying its engineers at the [DELETED] percentile of the compensation survey data. Id. After this adjustment, the SEB concluded that the proposed compensation rates for Alphaport and MEI were reasonable and realistic.<sup>11</sup> Id. at 9.

In reviewing protests against allegedly improper evaluations, it is not our role to reevaluate proposals. Rather, our Office examines the record to determine whether the agency's evaluation was reasonable and in accord with the solicitation's stated evaluation criteria. Wackenhut Int'l, Inc., B-286193, Dec. 11, 2001, 2001 CPD ¶ 8

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<sup>10</sup> Before NASA took corrective action, the evaluators removed the weakness assessed to Alphaport's FPR under the management approach subfactor even though the SEB concluded that MEI's proposed compensation was still below the [DELETED] percentile for the three engineer labor categories for which it would supply staff. AR Tab 14.01, Final Mission Suitability Findings for Alphaport, at 7. That evaluation had stated simply that "[t]he SEB did not consider this to be a risk that the contractor would not perform its approach successfully," and instead concluded that the issue posed a cost risk that would result in an upward adjustment to MEI's probable costs.

<sup>11</sup> While the revised SEB analysis provided more detail about Alphaport's explanation of the rationale for its proposed compensation levels, the corrective action analysis does not adequately explain the SEB's reasoning for deleting the weakness originally identified in the management approach subfactor evaluation.



at 6 (agency failed to evaluate compensation plans as provided in RFP). Where, as here, an agency evaluates proposals for the award of a cost-reimbursement type contract, the agency is required to perform a cost realism evaluation to determine the extent to which each offeror's proposed costs represent what the contract costs are likely to be. FAR § 15.404-1(d). Ordinarily, such an evaluation involves consideration of not only the realism of the various elements of each offeror's proposed cost, but also consideration of whether each offeror's proposed cost reflects a clear understanding of the requirements to be performed, and is consistent with the unique methods and materials described in each offeror's technical proposal. CALNET, Inc., B-413386.2, B-413386.3, Oct. 28, 2016, 2016 CPD ¶ 318 at 4, 6.

Furthermore, where a cost-reimbursement contract's cost is driven in significant measure by labor costs, the procuring agency is required to evaluate each offeror's direct labor rates to ensure that they are realistic. Id. at 6. The purpose of a review of compensation for professional employees under the provision at FAR § 52.222-46 is to determine whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. Compare MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 10 (sustaining protest where professional compensation evaluation was not adequately documented and relied on data that did not support a meaningful analysis); with MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 11 (denying subsequent protest where reasonable reevaluation of professional compensation had been documented).

In our view, we find that the record contains no meaningful explanation of how the agency concluded that Alphaport would be able to retain **[DELETED]** percent of the incumbent employees at the compensation offered.<sup>12</sup> Our review of the contemporaneous record here reveals only conclusory and general statements that the agency's earlier concerns about the realism of Alphaport's compensation were addressed during discussions. Specifically, there is no explanation of how the agency has reconciled its earlier concerns about the apparent inconsistency between Alphaport's claims that it would retain a high percentage of incumbent personnel, despite the significant decreases it had proposed in compensation. The record does not, for example, suggest that NASA had identified specific reasons

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<sup>12</sup> Indeed, given that NASA's current SMASS II contract with A-P-T is a cost-reimbursement contract, the SEB's statement that it could not compare proposed compensation levels to the compensation provided to A-P-T's incumbent employees is not persuasive. Additionally, since we conclude that the agency's evaluation of professional compensation was unreasonable under the facts here, we need not express a view on A-P-T's argument that FAR § 52.222-46 requires a direct comparison of proposed compensation and actual incumbent compensation rates.

that SMA engineers would agree to lower-than-average compensation levels, such as the work being perceived as relatively simple, an abundance of eligible candidates in the market keeping compensation levels low, or counterbalancing fringe benefits. See AT&T Gov't Sols., Inc., B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 22-23 (agency analysis of overall compensation as realistic that compared plans and national data was reasonable even though awardee's fringe benefit rate was lower than incumbent's).

Since the record provides no explanation for NASA's conclusion that Alphaport's compensation plan is realistic for achieving its technical approach, or that the resulting proposed costs were realistic, we find the evaluation unreasonable. Consequently, since the SSA's best-value determination was based on the conclusion that Alphaport had resolved concerns about its total compensation plan and that, as a result, the offerors exhibited no meaningful differences under the mission suitability factor and the adjusted costs for Alphaport were realistic, we have no basis to conclude that the decision is reasonable. Accordingly we sustain A-P-T's challenges to NASA's evaluation of Alphaport's proposal under the management approach subfactor of the mission suitability factor, and to NASA's cost realism analysis.

#### OCI Mitigation

The RFP incorporated the clause at NASA FAR Supplement § 1852.209-71, advising that the pending contract could result in impaired objectivity or unfair competitive advantage OCIs. RFP at 18. The clause identified contracts that the SMASS III prime contractor would be ineligible to hold as a prime contractor or subcontractor, and also identified other contracts that could give rise to potential OCIs, one of which was the KLXS contract. Id. at 19. The clause directed offerors to provide notification to the contracting officer, and to submit an acceptable OCI mitigation plan, before performing work on any of the listed contracts. Id. A separate OCI mitigation plan clause stated that the contractor was required to identify conflicts immediately, to submit a proposed plan of action within 7 days, and to implement the plan as approved by the contracting officer. RFP at 26.

In its proposal, Alphaport affirmed that its own operations did not pose an OCI risk, but it identified MEI as its major subcontractor. Alphaport's proposal acknowledged that the SMASS III services involved oversight and assessment of MEI's performance as the KLXS contractor and could present an impaired objectivity OCI. AR Tab 13, Alphaport FPR, at 27. Alphaport proposed that it would mitigate that potential OCI by "ensur[ing] that [MEI] will not fulfill any Safety and Mission Assurance positions supporting" the ground systems development and operations program, to which MEI provides support as the KLXS contractor. Id. at 38.

A-P-T argues that Alphaport's proposed mitigation understated the significance of the OCI as being merely potential.<sup>13</sup> Additionally, A-P-T argues that the OCI arose not only from MEI's role as the KLXS contractor, but also because Alphaport's proposed program manager for the SMASS III contract was, until recently, an MEI employee. Protest at 18. A-P-T argues that these facts render ineffective the proposed mitigation of the OCI by having MEI not involved in the support of grounds systems development and operations--which A-P-T refers to as a "firewall." Protest at 17-18. A-P-T argues that an impaired objectivity OCI here cannot be mitigated by a firewall, and therefore Alphaport's proposal should have been disqualified. Id. at 17. Furthermore, A-P-T argues that the contemporaneous record reflects no meaningful assessment of the OCI or Alphaport's proposed mitigation, and that the agency's explanations during this protest, in its agency report and contracting officer's statement, are conclusory. Protester's Comments at 14.

As an initial matter, NASA responds that A-P-T has not shown hard facts demonstrating the existence of or potential for an OCI. AR at 19. In that regard, our Office has explained that a protester must identify hard facts that indicate the existence or potential existence of an OCI; mere inference or suspicion of an actual or potential conflict is not enough. Platinum Bus. Servs., LLC, B-413947, Dec. 23, 2016, 2016 CPD ¶ 377 at 4. NASA's pre-RFP assessment of potential OCI issues (drafted before the RFP was issued) specifically found that

OCI considerations do not preclude the KLXS-II prime contractor from participating in the SMASS III procurement . . . . However, a mitigation plan will still be required to address potential conflicts between SMASS III and the offeror's roles in KLXS II and under other prime contract and subcontract arrangements.

AR Tab 01, Contracting Officer's Memorandum for Record on Organizational Conflict of Interest Identification and Evaluation for the Safety and Mission Assurance Support Services III, at 4. Alphaport's FPR identified MEI's role as the KLXS prime contractor, and likewise noted the potential for an OCI. AR Tab 13, Alphaport FPR, vol. IV, at 37-40.<sup>14</sup>

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<sup>13</sup> A-P-T notes that as the SMASS II contractor, it is required to assess MEI's work on the KLXS contract to determine whether the firm's products meet safety and mission assurance standards, and A-P-T asserts that such assessments are also within the scope of the SMASS III PWS. Protest at 17.

<sup>14</sup> In fact, A-P-T notes that its role as the SMASS II contractor has required oversight of MEI performance on the KLXS contract, and that this role continues in the PWS for the SMASS III contract. Protester's Comments at 11; Protest exh. G, Declaration of SMASS II Program Manager, at 1.

The potential for an impaired objectivity OCI, which principally concerns the contractor's ability to perform its contractual obligations free of improper bias, arises where "a contractor . . . will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interest." FAR § 9.505-3. As NASA concisely summarized, some of the functions of the SMASS III contract involve "risk assessments, inspections, investigations, engineering analyses, and evaluations of work performed by" NASA contractors, which expressly included the KLXS contractor. RFP attach. L-06 (Past Performance Questionnaire) at 1. In our view, the situation here presents sufficiently hard facts to demonstrate the existence of, or potential for, an OCI.

NASA argues that the SEB reviewed Alphaport's proposed OCI mitigation plan, and found it to be appropriate. AR at 19-21. Specifically, NASA argues that the SEB reviewed a labor distribution and mapping template in Alphaport's proposal to discern that the program supported by MEI's KLXS contract would not be overseen by MEI staff in performing the SMASS III contract. AR at 21. Accordingly, NASA argues that all OCI concerns were clearly addressed and mitigated. Id.

Our Office reviews an agency's OCI investigation for reasonableness, and so, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Social Impact, Inc., B-412941, B-412941.2, July 8, 2016, 2016 CPD ¶ 203 at 5. More generally, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. Depending on the facts and judgments present, the use of firewalled subcontractors may be reasonably assessed as a sufficient means to mitigate an impaired objectivity OCI. E.g., id. at 6.

Thus, the question presented here is whether the contracting officer reasonably assessed the OCI mitigation approach in Alphaport's FPR. Our review of the contemporaneous record identified only a brief discussion by the evaluators of Alphaport's approach to staffing the function that MEI supports under the KLXS contract, but even that discussion makes no specific reference to OCI mitigation. See AR Tab 14.01, Mission Suitability Final Findings for Alphaport, at 10. NASA cites only to the labor distribution and mapping template in Alphaport's FPR (rather than to any contemporaneous consideration of a possible OCI) as support for the agency's assertion that it conducted an appropriate OCI review. See Contracting Officer's Statement at 27-28; AR at 20-21 (citing Alphaport FPR). In short, the contemporaneous record does not document an assessment of Alphaport's OCI mitigation plan as required (and as the agency's own pre-RFP OCI assessment seemed to anticipate). As a result, we also sustain the protest on this basis.

## RECOMMENDATION

We recommend that NASA reevaluate Alphaport's proposal with regard to the consistency and realism of its proposed retention rate for incumbent employees under the mission suitability evaluation factor. We also recommend that NASA reevaluate Alphaport's compensation plan with respect to the cost realism assessment. We further recommend that NASA assess the potential OCI posed by MEI's role as a major subcontractor to Alphaport, and the firm's proposed OCI mitigation plan,<sup>15</sup> and document the agency's conclusions and proceed accordingly. At the conclusion of these reassessments, we recommend that NASA make a new source selection decision. If the result of these efforts is the selection for award of an offeror other than Alphaport, we recommend that NASA terminate the contract for the convenience of the government, and make a new award. Finally, we recommend that NASA reimburse A-P-T for its costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with § 21.8(f) of our Bid Protest Regulations, A-P-T's claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of this decision.

The protest is sustained.

Susan A. Poling  
General Counsel

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<sup>15</sup> This assessment should include any consideration of whether employment of a former MEI employee as project manager affects the feasibility of the mitigation plan.