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## Decision

**Matter of:** MayaTech Corporation

**File:** B-400491.4; B-400491.5

**Date:** February 25, 2009

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Jonathan D. Shaffer, Esq., John S. Pachter, Esq., and Mary Pat Gregory, Esq., Smith, Pachter, McWhorter, PLC, for the protester.

Rand L. Allen, Esq., and Jon W. Bud, Esq., Wiley Rein, LLP, for JBS International, Inc., an intervenor.

Mogy E. Omatete, Esq., Department of Health and Human Services, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that corrective action in response to protest is inadequate is denied; proposed corrective action--issuing new solicitation and assigning new contracting personnel to conduct procurement--is adequate to address concern that e-mail sent by project manager during course of original competition created appearance of impropriety.

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### **DECISION**

MayaTech Corporation, of Silver Spring, Maryland, protests the corrective action taken by the Department of Health and Human Services (HHS) in response to a previous protest MayaTech filed regarding issuance of a task order under request for task order proposals (RFTOP) No. 270-08-0256, for technical assistance services.

We deny the protest.

The RFTOP was issued on May 23, 2008, and after HHS received and evaluated proposals, MayaTech's proposal was eliminated from the competitive range. On August 22, MayaTech filed a protest with our Office in which it argued, among other things, that the procurement was tainted by impropriety because an agency project officer had asked program management personnel, prior to selection of the successful vendor, to identify specific MayaTech employees (MayaTech was a subcontractor under the prior contract for the requirement) that they would want to work with under the new task order. The agency reviewed the protest and decided to take corrective action, which included issuing a new RFTOP and appointing new

contracting personnel to conduct the procurement. As a result, on October 2, we dismissed the protest as academic (B-400491, 400491.2, Oct. 2, 2008).

MayaTech now maintains that the corrective action was not sufficient to rectify the impropriety on which its original protest was founded. Regarding that impropriety, in investigating the matter, the agency found that the project officer had sent an e-mail to personnel task leads, with a copy to a member of the technical evaluation panel (TEP), asking how many people were needed to perform the requirement and which current MayaTech personnel they liked or did not like. Agency Report (AR) at 3; E-mail from Project Officer, Aug. 22, 2008. The project officer subsequently explained that he sent the e-mail to determine the number of employees needed and whether there were any performance issues to be addressed while a new contract was being negotiated. He stated that he did not send the e-mail to anyone outside the unit and did not discuss the content of the e-mail with any contractor. AR at 3.<sup>1</sup> While the agency concluded that there was no effect on the competition—since the e-mail was sent after the TEP members had provided their final scores—it believed the fact that the e-mail had been sent to a member of the TEP before the selection decision created the appearance of an impropriety that warranted corrective action. AR at 3. The agency thus canceled the task order that had been issued, issued a new, amended RFTOP on November 13, appointed a new TEP, a new project officer, and a new contracting officer with no connection to the original procurement, and sequestered from the procurement the project officer who wrote the e-mail, and those who received it. *Id.*<sup>2</sup>

MayaTech asserts that the e-mail undermined the integrity of the entire evaluation because the project officer intended to provide the names of current MayaTech staff to a competitor and guide the contractor to recruit those personnel. MayaTech also asserts that agency personnel, some of whom the protester alleges have prior relationships with the successful vendor or other competitors were apparently working to benefit these other firms by revealing MayaTech's assets during the procurement. According to MayaTech, in lieu of the agency's conducting a new procurement, the contracting officer should have reviewed the TEP file, discarded any unfounded comments by the "tainted" TEP member, and made a new award determination based on the evaluation already performed. Alternatively, the

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<sup>1</sup>All recipients of the e-mail likewise submitted declarations that they did not discuss the e-mail with any competitor on the procurement.

<sup>2</sup>One recipient forwarded the e-mail to another person, and a second recipient copied others when he responded to it. The agency does not intend to sequester these later recipients, as they have no role in the procurement. Agency Statement, Jan. 26, 2009.

contracting officer should have reevaluated the original proposals.<sup>3</sup> Supplemental Protest at 1-2.

In negotiated procurements, agencies have broad discretion to take corrective action where they determine that such action is necessary to ensure fair and impartial competition. An agency need not conclude that a protest is certain to be sustained before it may take corrective action; where the agency has reasonable concern that there were errors in the procurement, even if the protest could be denied, we view it as within the agency's discretion to take corrective action. See Main Bldg. Maint., Inc., B-279191.3, Aug. 5, 1998, 98-2 CPD ¶ 47 at 3. We will not object to the specific corrective action proposed, so long as it is appropriate to remedy the concern that caused the agency to take the action. Id.

HHS's corrective action appears to be a reasonable means of addressing the identified appearance of impropriety, and MayaTech's assertions do not provide a basis for us to reach a different conclusion. MayaTech's protest essentially comes down to its position that, instead of conducting a new procurement, the agency should have done no more than reevaluate the proposals. While this arguably would be an appropriate approach to avoid providing vendors an opportunity to take advantage of improperly disclosed information in preparing their new or revised proposals, there is no evidence that information was ever disclosed to offerors here. In this regard, the agency denies that the project officer or other agency personnel intended to provide the names of MayaTech staff to competitors, or that it was attempting to benefit any other competitor, and there is no evidence in the record establishing otherwise. AR at 3; E-mail from Project Officer, Aug. 22, 2008. Further, MayaTech has provided no evidence demonstrating that any agency personnel had a prior relationship with the successful vendor or any other competitor, or that information was ever disclosed to any vendor as a result of the e-mail in question. Under these circumstances, given that the apparent impropriety brought into question the integrity of the procurement process as a general matter, we see nothing objectionable in the agency's decision, essentially, to conduct an entirely new competition with different contracting personnel. It certainly falls within the agency's broad discretion in this regard. Main Bldg. Maint., Inc., supra, at 3.

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>3</sup> MayaTech does not specify what unfounded comments it is referencing. We believe that MayaTech is referring to any negative remarks regarding its proposal made by the member of the TEP who received the e-mail.