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IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

MAYVIN, INC., *Plaintiff*, v. THE UNITED STATES, *Defendant*, v. ADVANCED TECHNOLOGY LEADERS, INC., and STRACON SERVICES GROUP, LLC, *Defendant-Intervenors*.	)	Case No. 23-2128 C (Judge Somers)

PLAINTIFF MAYVIN, INC.'S MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD

Pursuant to Rule 52.1(c) of the Rules of the United States Court of Federal Claims, Plaintiff Mayvin, Inc. ("Mayvin" or "Plaintiff"), through counsel, respectfully submits this Motion for Judgment on the Administrative Record. As further discussed in its contemporaneously filed Memorandum in Support of its Motion for Judgment on the Administrative Record ("Memorandum"), Defendant United States ("Defendant"), acting through the Army Contracting Command-Orlando (the "Agency"), violated applicable regulations and acted in a manner that is arbitrary, capricious, or otherwise not in accordance with the law in making its corrective action decisions on remand in the related matter, *WILL Tech., Inc. v. United States*, No. 1:23-cv-00930C-ZNS.

[redacted]

Specifically, the record confirms that the announced corrective action is improper because (i) the Contracting Officer's decision to allow awardee Advanced Technology Leaders, Inc. ("ATL") to remain in the competition violated FAR 9.506, (ii) the Contracting Officer's failure to exclude ATL on the basis that its proposal contained a material misrepresentation is unreasonable and unsupported by the record, (iii) the Contracting Officer's determination that ATL was in the competitive range at the time of the original contract award and is, therefore, eligible to submit a revised proposal is unreasonable, an abuse of discretion, and contrary to the record, and (iv) the Contracting Officer failed to provide any coherent and reasonable explanation as to why offerors will be allowed to revise past performance proposals and modify their teams in response to the revised benchmark labor rates.

Accordingly, the Court should sustain this protest; declare that the Agency's announced corrective action as set forth in the Remand Decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; and permanently enjoin the Agency from proceeding with its announced corrective action, including (i) enjoining the Agency from permitting ATL to submit a revised proposal and being further evaluated for award and (ii) enjoining the Agency from permitting offerors to revise aspects of their proposal that are not directly related to the Army's revised benchmark labor rates included in an amendment to the RFP.

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Date: January 26, 2024

Respectfully submitted,

s/ Stephanie D. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Motion for Judgment on the Administrative Record was filed via CM/ECF with the Court on January 26, 2024.

s/ Stephanie D. Wilson
Stephanie D. Wilson
Counsel for Mayvin, Inc.

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PLAINTIFF MAYVIN, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR JUDGMENT ON THE ADMINISTRATIVE RECORD

Date: January 26, 2024

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INTRODUCTION

Plaintiff Mayvin, Inc. ("Mayvin" or "Plaintiff") filed this corrective action bid protest seeking declaratory and injunctive relief against Defendant United States (the "Government" or "Defendant"), acting through the Army Contracting Command-Orlando (the "Army" or "Agency"), to prohibit the Army from proceeding with the corrective action decision under Solicitation W900KK-21-R-0035 (the "Solicitation" or "RFP") set forth in its October 31, 2023 Notice of Decision on Remand ("Remand Decision") filed in *WILL Tech., Inc. v. United States*, No. 1:23-cv-00930C-ZNS (the "Consolidated Protest").[1] Although Mayvin agrees that corrective action in this procurement is necessary, the record confirms that the announced corrective action is improper because (i) the Contracting Officer's decision to allow ATL to remain in the competition violated FAR 9.506, (ii) the Contracting Officer's failure to exclude ATL on the basis that its proposal contained a material misrepresentation is unreasonable, arbitrary, capricious, and unsupported by the record, (iii) the Contracting Officer's determination that ATL was in the competitive range at the time of the original contract award and is, therefore, eligible to submit a revised proposal is arbitrary, capricious, an abuse of discretion, and contrary to the record, and (iv) the Contracting Officer failed to provide any coherent and reasonable explanation as to why offerors will be allowed to revise past performance proposals and modify their teams in response to the revised benchmark labor rates.

[1] Mayvin, WILL Technology, Inc. ("WTI"), and StraCon Services Group, LLC ("StraCon") each filed protests challenging the Army's award of the Systems Engineering and Technical Assistance III contract ("SETA III" or "Contract") to Advanced Technology Leaders, Inc. ("ATL") pursuant to the Solicitation. Those protests were consolidated into a single action, *WILL Tech., Inc. v. United States*, No. 1:23-cv-00930C-ZNS.

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QUESTIONS PRESENTED

1. Whether the Contracting Officer violated FAR 9.506 when he failed to seek the approval or direction of the head of the contracting activity prior to determining that ATL could remain in the competition despite the existence of a significant OCI in its proposal.

2. Whether the Agency's decision to let ATL remain in the competition despite ATL's material misrepresentation to the Agency regarding its major subcontractor's OCI lacks a rational basis and is arbitrary, capricious, and an abuse of discretion.

3. Whether the Agency's determination that ATL's proposal was in the competitive range at the time of the original contract award and ATL is eligible submit a revised proposal lacks a rational basis and is arbitrary, capricious, and an abuse of discretion.

4. Whether the Agency provided a reasonable and coherent explanation as to why allowing offerors in the competitive range to submit revised past performance proposals and modified teams is rationally related to the amended benchmark labor rates.

5. Whether Mayvin is entitled to injunctive relief.

STATEMENT OF FACTS

I. The Solicitation

On September 15, 2021, the Agency released the Solicitation to procure Systems Engineering and Technical Assistance ("SETA") support services ("SETA III" or "Contract") as a set-aside for women-owned small businesses. *See* ECF No. 35 at AR 442.

A. Evaluation Factors

The Solicitation had four evaluation factors: Factor 1 – Management Approach, Factor 2 – Initial Task Order Approach, Factor 3 – Past Performance, and Factor 4 – Price. Only Factor 4 is relevant to this corrective action bid protest. The Solicitation provided that price proposals would be evaluated for "(1) completeness, (2) total evaluated price[,] (3) price fairness and

[redacted]

reasonableness, (4) unbalanced pricing, and (5) Total Compensation Plan." ECF No. 35 at AR 537. The Solicitation further provided that offerors' Total Compensation Plans were to be evaluated in accordance with FAR 52.222-46 to ensure that the plans reflected "a sound management approach and understanding of the contract requirements." *Id.* at AR 538. The evaluation was to "include an assessment of the Offeror's ability to provide uninterrupted high-quality work." *Id.* Additionally, offerors were required to provide their Base Hourly Labor Rates in Attachment 2, which would "be evaluated using techniques the Government deems appropriate such as comparison to recognized compensation surveys and comparison to information provided by the incumbent." *Id.*

Section M.10.5 of the Solicitation governing Total Compensation Plans was amended multiple times. Its final version provided that "[a]t a minimum, the Government has determined that the Department of Labor Rates provided within Attachment 11 will be used for evaluation of the realism of an Offeror's proposed Total Compensation Plan as the rates provided are the Government's benchmark of the estimates of the minimum realistic average Base Hourly Labor Rates considered adequate to recruit and retain a stable and qualified workforce." *Id.* Additionally, the professional compensation proposed by the offerors would "be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation." *Id.*

B. Organizational Conflicts of Interest Provisions

The Solicitation included comprehensive instructions regarding organizational conflicts of interest ("OCIs"). ECF No. 35 at AR 525-27. Under Solicitation Section L.7.5.7.1(a), "[t]he Contracting Officer shall not award a contract until he determines that no organizational conflict of interest (OCI) exists or any conflict of interest is reasonably resolved." *Id.* at AR 525. An offeror's mitigation plan "must be deemed acceptable" before the offeror is "eligible to receive an award." *Id.* at AR 525-26.

[redacted]

Solicitation Section L.7.5.7.1(b) provides the following description outlining the potential for an OCI to arise:

> (b) Description of Potential Conflict. The contract provides for Systems Engineering and Technical Assistance (SETA) to PEO STRI and Army Contracting Command (ACC) – Orlando in direct support of PEO STRI. The services will include related activities in support of all aspects of providing responsive integrated and interoperable infrastructure for Simulation, Training, Testing, and Instrumentation Solutions and Acquisition Services for the Army. Major PEO STRI Programs that SETA personnel will support are the Synthetic Training Environment (STE), Persistent Cyber Training Environment (PCTE), International Programs Office (IPO), Instrumentable Multiple Integrated Laser Engagement System (I-MILES), Medical Simulation, and Army Training Aids, Devices, Simulators and Simulations (TADSS) Maintenance Program. There are 3 general categories of OCI (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. To date, the Contracting Officer has not identified facts supporting an OCI on the part of any known potential offeror.

Id. at AR 526. PWS Section 4.8.3 further illuminates the nature of the conflict:

> (b) Description of Potential Conflict. The SETA III contractor will assist in defining requirements, assist in building requirements packages, and assist in proposal evaluations. These actions would cause a conflict if the SETA III contractor attempts to submit proposals for requirements where it provided this support. Additionally, the SETA III contractor is imbedded with PEO STRI personnel so while not directly tied to a requirement the SETA III contractor could still have a conflict if its personnel have been made privy to information about other requirements that provide it a competitive advantage.

Id. at AR 51.

The PWS makes clear that the OCI concern regarding SETA III is significant, stating definitively "that the SETA III contract award ***will create*** a potential organizational conflict of interest (OCI) on the future competition for any PEO STRI requirement other than a follow-on action related to this effort (i.e. SETA IV or its replacement)," and that this " potential OCI ***will exist*** for any prime contractor, ***subcontractor***, joint venture, or other teammate involved in contract performance." ECF No. 35 at AR 51 (emphasis added). Due to the nature of the OCI, the Contracting Officer "determined the identified OCI cannot be successfully neutralized or

[redacted]

mitigated." *Id.* Accordingly, if the awardee or any of its subcontractors had such an OCI, it would be "ineligible to perform as a supplier, a subcontract supplier, or a consultant to a supplier ***for any other requirement within PEO STRI for the life of the SETA III contract plus one year***." *Id.* (emphasis added). Such a "restriction is necessary to avoid unfair competitive advantage or potential bias on other competitions wherein SETA III personnel may be utilized to provide support." *Id.*

Importantly, the Solicitation puts the responsibility on the offeror to apply "the principles of FAR Subpart 9.5" and "assess whether there is an organizational conflict of interest associated with the proposal it submits." ECF No. 35 at AR 526. If the offeror identifies a potential OCI associated with its offer, it "must explain the actions it intends to use to resolve" it and "must submit information describing the potential conflict and indicate in Section K, 'OCI REPRESENTATION,' that information concerning a conflict of interest is provided." *Id.* "If no conflict is identified, then the offeror must indicate that 'No conflict of interest exists.'" *Id.* The Solicitation provides the following additional instructions to offerors:

> (1) Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other Government organizations, in their proposal. The contracting officer will use this information to determine whether resolution of those conflicts will be required.
> (2) If the Offeror's proposed action to resolve an organizational conflict of interest is not acceptable, the Contracting Officer will notify the Offeror, providing the reasons why its proposed resolution is not considered acceptable and allow the Offeror a reasonable opportunity to respond before making a final decision on the organizational conflict of interest.

Id.

Pursuant to the Solicitation, when an offeror submits its proposal, it is representing that, "to the best of its knowledge and belief, . . . (1) there are no relevant facts that ***could give rise*** to an OCI, as defined in FAR Part 2; or (2) the Offeror has disclosed all relevant information

[redacted]

regarding any ***actual or potential*** conflicts of interest." *Id.* (emphasis added). The Solicitation cautions that "[i]f the successful Offeror was aware, or should have been aware, of an OCI before award of this contract and did not fully disclose that conflict to the Contracting Officer, the Government may terminate the contract for default." *Id.* Finally, "[t]he agency reserves the right to waive the requirements of FAR 9.5, in accordance with FAR 9.503." *Id.* at AR 527.

II. Prior Protests and Agency's Actions on Remand.

After the Agency notified offerors that it was awarding the SETA III Contract to ATL, Mayvin, WTI, and StraCon each filed protests challenging the Army's award decision. Those protests were consolidated into a single action, *WILL Tech., Inc. v. United States*, No. 1:23-cv-00930C-ZNS. The United States sought a voluntary remand to investigate allegations that the Agency improperly evaluated ATL's proposed team for OCIs and the Army improperly evaluated each offeror's Total Compensation Plan. ECF No. 35 at AR 1. The Court granted the United States's motion for remand and ordered the Agency to conduct an investigation into whether ATL had an OCI and analyze the Agency's compliance with FAR 52.222-46 in its evaluations of the offerors' Total Compensation Plans. *Id.* at AR 1.

The Agency determined that the award to ATL was improper due to the OCI related to its major subcontractor, Seneca Global Services ("Seneca"), but that ATL would be permitted to remain in the competition after accepting ATL's proposal to remove Seneca from its proposal. *Id.* at AR 1-2. The Agency also determined that some of the minimum benchmark labor rates provided in the Solicitation were too low and will need to be raised. *Id.* at AR 2. Based on these conclusions, the Contracting Officer concluded that "[a]mending the RFP and allowing new proposals from all offerors in the competitive range will remedy the issue" and that "all offerors, ***including ATL***, will have the opportunity to submit revised proposals." *Id.* at AR 1-3 (emphasis added).

[redacted]

A. The Agency's OCI Investigation.

The Contracting Officer investigated ATL and its proposal for potential OCIs involving ATL's major subcontractor, Seneca, based on impaired objectivity and unequal access to information.[2] On October 12, 2023, the Contracting Officer submitted a Memorandum for Record summarizing his investigation and providing his findings and conclusions ("October 12 MFR"). ECF No. 35 at AR 4-31. As part of the investigation, the Contracting Officer reviewed the two Seneca PEO STRI contracts: (1) its prime contract for the Project Manager Cyber, Test and Training ("PM CT2") Test Enterprise Support for Transitions ("TEST") contract and (2) its prime contract for the PM CT2 Persistent Cyber Training Environment ("PCTE") Contract Support Services ("CSS") contract ("PCTE contract"). *Id.* at AR 11-18. The Contracting Officer noted that the PCTE "contract was not disclosed in ATL's proposal." *Id.* at AR 15.

On August 4, 2023, after the OCI allegations had been raised but before the Court had ruled on the Government's request for a voluntary remand, ATL sent an "unprompted letter" to the Contracting Officer (the "August 4 letter") in an attempt to justify its exclusion of Seneca's PCTE contract, making the following arguments: "1) there were no hard facts to support the existence of a potential significant OCI at the time of proposal submission, and 2) the potential OCI was not deemed significant." *Id.* at AR 10. ATL further argued that, for multiple reasons, Seneca's participation as a major PEO STRI subcontractor did not provide ATL with an unfair competitive advantage. *Id.* at AR 10-11. With its letter, ATL included the Declaration of [redacted], a [redacted] with Seneca, in which she states that Seneca decided not to disclose the PCTE contract because it was "essentially support work for PEO STRI" and, in Seneca's opinion, does not require the exercise of the type of judgment that would constitute impaired objectivity. ECF

[2] Mayvin is not challenging the Contracting Officer's determination regarding the unequal access to information OCI and thus has not provided details of that investigation here.

[redacted]

No. 35 at AR 437. ATL also provided an OCI mitigation plan proposing to implement a firewall limiting Seneca's performance to efforts other than PCTE and a series of questions and answers. *Id.* at AR 198-211.

In the October 12 MFR, after summarizing ATL's initial explanations and arguments relating to the OCI concerns, the Contracting Officer provided his analysis and conclusions from his investigation. *See* ECF No. 35 at AR 4-31. Referencing FAR 9.505, the Contracting Officer stated that "each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contracts to determine if an OCI exists and whether any such OCI can be avoided, neutralized, or mitigated in some ways." *Id.* at AR 19. The Contracting Officer noted that the two underlying principles guiding his "assessment involve preventing the existence of conflicting roles that might bias a contractor's judgment and preventing an unfair competitive advantage." *Id.*

The Contracting Officer began by summarizing the definition of an impaired objectivity OCI, which "arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests." *Id.* The Contracting Officer considered the following factors in his investigation:

> i. The specific language of the solicitation;
> ii. The historical role of SETA contractors in the PEO STRI workplace;
> iii. The nature of the SETA III requirement;
> iv. The expected role of the SETA III contractor; and,
> v. The nature of Seneca's current contracts;

Id. at AR 20. After applying these factors, the Contracting Officer preliminarily concluded that: (a) the award of the SETA III contract to ATL was inconsistent with PWS Section 4.8.3, which provided a detailed description of the potential OCI, (b) no mechanism existed to effectively neutralize the OCI, and (c) ATL's proposal to construct a firewall limiting Seneca's performance

[redacted]

to efforts other than the PCTE contract was insufficient to neutralize or mitigate the OCI. *Id.* at AR 20-24.

First, the Contracting Officer noted that "[t]he RFP and PWS put all offerors on notice that award of the SETA III contract creates a potential OCI on the future competition for any PEO STRI requirement other than a follow-on action related to the SETA effort," and that "[t]he risk of OCI in this instance is so great that offerors were put on notice that it 'cannot be successfully neutralized or mitigated.'" ECF No. 35 at AR 21. Irrespective of the "the arguable clarity" of the PWS as it pertains to "the viability of continued performance of existing contracts held by team members such as Seneca," "the impaired objectivity that arises from the unprecedented access SETA III contractors and team members are afforded creates impaired objectivity issues for a team that holds active contracts with PEO STRI." *Id.* This is so because "[t]here is an inordinate potential for the SETA III contractor to use its access and information obtained as part of contract performance to affect its other financial interests." *Id.* at AR 22.

Even if ATL and Seneca chose not "to take advantage of that potential, it does not change the fact that the potential to affect Seneca's other interests exists," and the Agency "has a need for a SETA III advisory contractor that is providing advice free from the influence of other financial interests." *Id.* Therefore, the Contracting Officer concluded "that ATL's proposed team which includes Seneca as a major subcontractor, has a significant impaired objectivity organizational conflict of interest and award to this team was not in accordance with the limitations described in ¶ 4.8.3 of the Performance Work Statement." *Id.*

Second, the Contracting Officer concluded that, given the "unparalleled" access SETA III team members have within PEO STRI, "the Government has identified no methodology that would allow for the neutralization or mitigation of the identified OCI." *Id.*

[redacted]

Third, the Contracting Officer concluded that ATL's proposal to implement a firewall limiting Seneca's performance to efforts other than PCTE was an inadequate OCI remedy. ECF No. 35 at AR 23. In its August 4 letter, ATL provided an updated OCI mitigation plan that included a proposal to "implement a firewall such that any SETA III information pertaining to PCTE that is provided by PEO STRI to ATL will not be available to SENECA." *Id.* at AR 200. In rejecting this proposal as ineffective, the Contracting Officer reasoned that "SETA contractors are privy to information about programs and decision makers who are making decisions about programs within PEO STRI that may be competing with PM CT2, and thereby PCTE, for resources." *Id.* at AR 23. Even with the proposed firewall, ATL and Seneca could still "use their role as SETA contractor to influence those decisions in such a way as to have a positive financial impact on [their] own business interests." *Id.* at AR 24.

In addition, the Contracting Officer rejected a handful of ATL's arguments from its August 4 letter contesting the Contracting Officer's conflict concerns. ATL argued that no conflict existed because the SETA III contract would not require ATL or Seneca to use their subjective judgment in providing input to the Agency. ECF No. 35 at AR 204-05. The Contracting Officer disagreed, noting PWS Section 3.2.13.2's Program Execution and Oversight provision, which provides that "[t]he Contractor shall assist in performing comprehensive analyses of program, project and system requirements, translate requirements to discrete, attainable objectives, provide recommendation on making decisions involving cost, schedule, and technical performance and associated trade-offs, and establish priorities, goals, milestones, and manpower requirements for tasks in support of major project objectives." *Id.* at AR 24-25. Accordingly, the Contracting Officer stated that "[t]he subjective judgment required of the SETA contractor at multiple levels of contract performance is essential to the SETA III effort." *Id.* at AR 25.

[redacted]

The Contracting Officer also rejected ATL's argument that there was no conflict concern because there was a low likelihood of a SETA III task order being issued to support PM CT2, noting that "[t]he SETA program has provided the primary contractor support to PM CT2 for over 10 years, which includes the entirety of PCTE's lifecycle." ECF No. 35 at AR 25. Because of this, it would be reasonable to assume that PCTE would be supported either directly or indirectly by the SETA III program. *Id.* at AR 27. The Contracting Officer expressed concern that this assumption by ATL raised questions about ATL's understanding of the SETA requirement. *Id.* at AR 25.

Further, the Contracting Officer rejected ATL's argument that PM CT2's use of overlapping service contracts does not create a significant OCI, reiterating that SETA III team members would have unparalleled organizational access which gives the SETA III contractor immense "power to influence other activities and contracting decisions within PEO STRI." *Id.* at AR 27. Finally, the Contracting Officer rejected ATL's request for a waiver of the OCI, stating that the OCI "investigation has revealed that acceptance of ATL's proposal would not be consistent with the important limitations on the competition set forth in the PWS," and that "the Government has appropriate and serious concerns about the conflicting financial interests ATL, with its teammate Seneca, has given its current contractual relationships within PEO STRI." *Id.* at AR 27-28.

Based on the investigation and analysis, the Contracting Officer identified "serious concerns regarding ATL and its conflicting financial interests." *Id*. Pursuant to Solicitation Section L.7.5.7.1(c)(2), the Contracting Officer gave ATL an opportunity to respond to its identified concerns, sending it a letter on September 26, 2023, and requesting a response by October 4, 2023. *Id.* at AR 28-29.

[redacted]

On October 4, 2023, ATL provided its response letter to the Contracting Officer, in which it proposed to remedy the OCI by terminating its teaming agreement with Seneca and requested permission to substitute new past performance examples to replace the two Seneca examples provided in its proposal. ECF No. 35 at AR 548-53. Without analyzing the sufficiency or propriety of ATL's proposal as submitted or seeking the approval or direction of the head of the contracting activity regarding ATL's proposal, the Contracting Officer stated that, "[p]er FAR 15.306, I have determined allowing such modifications to ATL's past performance will require engaging in discussions and authorizing proposal revisions by all offerors in the competitive range at the time of award." *Id.* at AR 29. The Contracting Officer then concluded, again without any documented analysis of the sufficiency of the proposal to remedy the identified OCI or input from the head of the contracting activity, that "[b]ased on the [sic] ATL's planned termination of its teaming agreement with Seneca, I have determined that the OCI's created by Seneca will be resolved." *Id.* at AR 30.

In his October 31, 2023 Memorandum for Record documenting his remand decision ("October 31 MFR"), the Contracting Officer noted that "[r]egarding the OCI, the Army identified multiple indicators of an OCI related to Seneca, the proposed team member of ATL" and that he "determined that the award to ATL was improper on the basis of the issues identified in the OCI investigation, and the award to ATL is to be terminated." ECF No. 35 at AR 1. He further stated that "ATL will have the opportunity to update its past performance proposal and modify its team as part of that process." *Id.* at AR 2. However, the Contracting Officer did note that to be able to evaluate ATL's revised team and past performance submissions, the Agency would need to hold discussions "with all offerors in the competitive range." *Id.* at AR 1-2.

[redacted]

B. The Agency's Review of its Compliance with FAR 52.222-46.

On October 27, 2023, the Agency's Program Team submitted a Memorandum for Record summarizing its findings regarding its market research and FAR 52.222-46's evaluation requirements ("October 27 MFR"). ECF No. 35 at AR 555-70. Based on this review, the Agency concluded that the rates provided from the market research and incumbent metrics were higher than the minimum benchmarks currently provided for in the Solicitation. *Id.* at AR 568. Accordingly, the Agency concluded that the Solicitation needed to be amended "to provide the updated minimum benchmarks using the methodology" outlined in the Program Team's memorandum. *Id.* at AR 568-69.

III. The Agency's Decision on Remand.

On October 31, 2023, the Army filed its Remand Decision, which stated that the Army had completed its investigation and review, and decided the following:

> 1. The award to ATL was improper, in light of the potential for an OCI involving Seneca. Accordingly, the decision to award the contract to ATL is rescinded, and the contract executed with ATL will be terminated for convenience.
>
> 2. In order to ensure compliance with 48 C.F.R. § 52.222-46, the Request for Proposals (RFP) must be amended to increase at least some, if not all, of the labor rates provided in RFP Attachment 11 as the "Government's benchmarks of the estimate of the minimum realistic average Base Hourly Labor Rates considered adequate to recruit and retain . . . a qualified workforce."
>
> 3. The contracting officer has not yet determined the precise labor rates that will be used in an amended RFP. Rather, as stated above, the contracting officer has determined only that at least some of the labor rates stated in RFP Attachment 11 should be increased through an amendment to the RFP.
>
> 4. After the Army determines the appropriate rates to use in RFP Attachment 11, terminates the original award to ATL, and amends the RFP accordingly, offerors in the competitive range at the time the original award decision was made (including ATL) will be allowed an opportunity to amend all aspects of their proposals. To be clear, ATL will have the opportunity to submit a revised proposal that no longer relies on a teaming agreement with Seneca.

[redacted]

5. After the activities discussed above, the Army will reevaluate the proposals within the competitive range.

6. The Army reserves its rights to take any additional actions that it deems appropriate as the procurement process continues.

See Defendant's Notice of the Agency's Remand Decision ("Remand Decision"), *WILL Tech.*, No. 1:23-cv-00930C-ZNS, ECF No. 38 at 2-3.

On December 8, 2023, Mayvin dismissed without prejudice its initial complaint based on the corrective action set forth in the Agency's Remand Decision, reserving its right to file a new complaint challenging the corrective action set forth in the Agency's Remand Decision. *See* Plaintiff Mayvin, Inc.'s Notice of Dismissal Without Prejudice, *WILL Tech.*, No. 1:23-cv-00930C-ZNS, ECF No. 47. Mayvin subsequently filed the Complaint in this action on December 15, 2023.

JURISDICTION AND STANDING

I. The Court has Subject Matter Jurisdiction to Hear this Bid Protest.

The Tucker Act provides this Court with jurisdiction to "render judgment on an action by an interested party objecting to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1). This jurisdiction "includes the review of a procuring agency's decision to take corrective action." *Jacobs Tech. Inc. v. United States*, 131 Fed. Cl. 430, 444 (2017) (*Jacobs II*); *see, e.g., Wildflower Int'l, Ltd. v. United States*, 105 Fed. Cl. 362, 382-83 (2012) ("[T]his court possesses broad bid protest jurisdiction that encompasses a protest of corrective action executed during the course of a procurement."). "A challenge to a procuring agency's corrective action can be characterized either as a pre-award protest [] or as a claim of an 'alleged violation of statute or regulation in connection with a procurement or a proposed procurement[.]'" *Jacobs II*, 131 Fed. Cl. at 443-44 (internal citations omitted).

[redacted]

Moreover, the Court has jurisdiction over corrective action protests "even when such action is not fully implemented." *Sys. Application & Techs., Inc. v. United States*, 691 F.3d 1374, 1381 (Fed. Cir. 2012). Here, Mayvin is challenging the scope of the Agency's corrective action as arbitrary, capricious, an abuse of discretion, and in violation of FAR 9.506. These claims fall directly within the Court's jurisdiction. *See Jacobs II*, 131 Fed. Cl. at 444 (holding that a bid protest challenging the Army's decision to take corrective action and the scope of that corrective action falls within the court's jurisdiction).

II. Mayvin has Standing to Bring this Bid Protest.

Mayvin has standing to bring this protest because it is an interested party as defined under the Competition in Contracting Act ("CICA"), 31 U.S.C. § 3551. *See Am. Fed'n of Gov't Emps., AFL-CIO v. United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001) ("We therefore construe the term 'interested party' in § 1491(b)(1) in accordance with the CICA, and hold that standing under § 1491(b)(1) is limited to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract."). To establish standing in this pre-award bid protest matter, Mayvin must demonstrate that it (1) is an actual or prospective bidder and (2) possesses a direct economic interest that would be affected by the award of the Contract or by the failure to award that contract. *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009).

A protester must demonstrate prejudice to prove a direct economic interest in a pre-award bid protest matter, and the United States Court of Appeals for the Federal Circuit ("Federal Circuit") has defined such prejudice as "a non-trivial competitive injury which can be addressed by judicial relief." *Id.* at 1361 (quoting *WinStar Commc'ns, Inc. v. United States,* 41 Fed. Cl. 748, 763 (1998)); *see also Sys. Application & Techs.*, 691 F.3d at 1382. This Court has held that a non-trivial competitive injury exists if the plaintiff has been "deprived of the opportunity to fully and

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fairly compete[.]" *Magnum Opus, Inc. v. United States*, 94 Fed. Cl. 512, 531 (2010) (holding that "there is no meaningful way to further assess the prejudice to the plaintiff after examination of the merits") (citing *Distributed Solutions, Inc. v. United States*, 539 F.3d 1340, 1345 (Fed. Cir. 2008)).

It cannot be disputed that Mayvin was an actual offeror in the original procurement and is a prospective offeror in any post-corrective action procurement. Additionally, Mayvin has a direct economic interest that would be affected by a new award of the Contract made pursuant to the Agency's arbitrary, capricious, and irrational corrective action. *See* 31 U.S.C. § 3551(2)(A); *Delaney Const. Corp. v. United States*, 56 Fed. Cl. 470, 474 (2003) ("With respect to the proposed corrective action, plaintiff is a prospective offeror whose direct economic interest would be affected by the new award of the contract which would occur on the basis of the corrective action at issue."). Moreover, Mayvin has suffered a non-trivial competitive injury that can be redressed by judicial relief because Mayvin "has a definite economic stake in the solicitation being carried out in accordance with applicable laws and regulations." *See Weeks Marine*, 575 F.3d at 1362.

STANDARDS OF REVIEW

I. Review of an Agency's Procurement Decision

The Federal Circuit has stated that corrective action challenges are reviewed "under the APA's 'highly deferential' 'rational basis' standard." *Dell Fed. Sys., L.P. v. United States,* 906 F.3d 982, 992 (Fed. Cir. 2018) (quoting *Croman Corp. v. United States*, 724 F.3d 1357, 1363, 1367 (Fed. Cir. 2013) (internal quotation marks and citation omitted). Under the APA's rational basis standard, "a reviewing court shall set aside the agency action if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Croman Corp.*, 724 F.3d at 1363 (internal quotation marks and citation omitted); *see* 5 U.S.C. § 706(2)(A).

Although the Federal Circuit in *Dell Federal* confirmed that the corrective action need not be "narrowly targeted" to the procurement defects the agency is trying to remedy, the corrective

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action still must be "rationally related" to the procurement defect. *See Dell Fed. Sys.*, 906 F.3d at 992-95. As the Federal Circuit stated in *Dell Federal*, "the rational basis test asks 'whether the contracting agency provided a coherent and reasonable explanation of its exercise of discretion.'" *Id.* at 992 (quoting *Banknote Corp. of Am., Inc. v. United States*, 365 F.3d 1345, 1351 (Fed. Cir. 2004). In conducting this analysis, "the court must review the agency's explanation of its corrective action decision to determine whether the action was within the agency's discretion." *Clarke Health Care Prod., Inc. v. United States*, 149 Fed. Cl. 440, 446 (2020). Additionally, "[c]ourts have found an agency's decision to be arbitrary and capricious when the agency 'entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or [the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'" *Alabama Aircraft Indus., Inc.-Birmingham v. United States*, 586 F.3d 1372, 1375 (Fed. Cir. 2009) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

II. Injunctive Relief

The Court may grant injunctive relief where it finds that an Agency's decision is arbitrary, capricious, an abuse of discretion, or the result of a prejudicial violation of procurement law. *See Prof'l Serv. Indus., Inc. v. United States*, 129 Fed. Cl. 190, 207-08 (2016). "In deciding whether a permanent injunction should issue, a court considers: (1) whether, as it must, the plaintiff has succeeded on the merits of the case; (2) whether the plaintiff will suffer irreparable harm if the court withholds injunctive relief; (3) whether the balance of hardships to the respective parties favors the grant of injunctive relief; and (4) whether it is in the public interest to grant injunctive relief." *PGBA, LLC v. United State*s, 389 F.3d 1219, 1228-29 (Fed. Cir. 2004).

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ARGUMENT

I. The Contracting Officer's Decision to Allow ATL to Remain in the Competition without Approval or Direction of the Head of the Contracting Activity Violates FAR 9.506.

FAR Subpart 9.506 prescribes detailed "responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest." 48 C.F.R. § 9.500. To this end, FAR 9.506 requires contracting officers to follow specific protocols to resolve certain identified OCIs. The procedural requirements of FAR 9.506 are triggered "[i]f the contracting officer decides that a particular acquisition involves a ***significant*** **potential organizational conflict of interest[**.]" 48 C.F.R. § 9.506(b) (emphasis added); *see, e.g., Paradyme Mgmt., Inc. v. United States*, 167 Fed. Cl. 180, 190-91 (2023) (noting that the requirements of FAR 9.506 apply only if the contracting officer concludes that a significant potential OCI exists).

If the contracting officer determines that a significant potential OCI exists, the contracting officer must submit a written analysis to the chief of the contracting office which includes "a recommended course of action for avoiding, neutralizing, or mitigating" the identified OCI. 48 C.F.R. § 9.506(b); *see, e.g., Jacobs Tech. Inc. v. United States*, 100 Fed. Cl. 198, 210 (2011) (*Jacobs I*) ("For significant OCIs, the contracting officer must document the analysis and submit a recommendation for corrective action to the head of the contracting agency.")

It is then the chief of the contracting office's responsibility to review the contracting officer's analysis and proposed remedy, "[c]onsider the benefits and detriments to the Government and prospective contractors," and "[a]pprove, modify, or reject the recommendations in writing." 48 C.F.R. § 9.506(c). The contracting officer must then, "[b]efore awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity." *Id.*; *see, e.g., Point Blank Enterprises, Inc. v. United States*, 168 Fed. Cl. 676, 686 n.4 (2023) (noting that the contracting officer's role in addressing significant

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OCIs is one of recommendation and that the final judgment rests in the hands of the chief of the contracting office).

Though FAR 9.506 contemplates the identification, evaluation, and resolution of a particular OCI before the solicitation is issued, "the contracting officer has an ongoing responsibility to identify and evaluate potential OCIs." *Jacobs I*, 100 Fed. Cl. at 210. This ongoing responsibility includes a determination of whether the potential OCIs are significant. *Id.* (citing 48 C.F.R. § 9.504(a)). "Understandably, in many cases, the evidence of a potential OCI surfaces after the award or the OCI allegation is not raised with the agency until litigation ensues." *Point Blank Enterprises*, 168 Fed. Cl. at 684. In these cases, the contracting officer has "broad discretion in conducting this preliminary OCI analysis," *id.*, but, once the contracting officer concludes that a significant OCI exists, the mandatory requirements of FAR 9.506(b) apply. *See Jacobs I*, 100 Fed. Cl. at 210 (providing that FAR 9.506(b) must be complied with for significant OCIs).

In this case, the potential for an OCI within the SETA III program was properly identified before the Solicitation was issued and, accordingly, Section 4.8.3 was added to the PWS to inform offerors that the SETA III contract would create a potential OCI on future competitions for other PEO STRI requirements. ECF No. 35 at AR 7. However, due to ATL's failure to disclose Seneca's potential OCI related to its existing PEO STRI contracts and all information relevant to that potential OCI in its proposal, the specific OCI concerns regarding ATL and its proposed subcontractor Seneca were not identified until after the original award was issued. Once informed of the potential OCI through the Consolidated Protest, the Contracting Officer had an ongoing responsibility to evaluate the potential OCI pursuant to the terms of FAR Part 9.5.

Upon investigating the allegations of an OCI involving ATL and its proposed subcontractor Seneca, the Contracting Officer concluded that ATL and its team had "a ***significant*** impaired

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objectivity organizational conflict of interest." ECF No. 35 at AR 22 (emphasis added). The Contracting Officer deemed the OCI to be so significant that it concluded the award to ATL was improper and needed to be terminated. *Id.* at AR 1. This "significance" conclusion triggered the procedural requirements of FAR 9.506. However, rather than comply with the FAR and submit a proposed remedy to the chief of the contracting office for approval, the Contracting Officer simply accepted ATL's proposed remedy without further evaluation or analysis.

In his October 12 MFR, the Contracting Officer notes that ATL, in response to the investigation, "proposes to remedy the OCI by terminating its teaming agreement with Seneca." ECF No. 35 at AR 29. In the next sentence, the Contracting Officer notes that ATL has requested permission to substitute new past performance examples in place of Seneca. *Id.* Then, the Contracting Officer notes that permitting such past performance modifications would require, pursuant to FAR 15.306, engaging in discussions and permitting the offerors in the competitive range at the time of award to revise their proposals. *Id.* Nowhere in the October 12 MFR, nor anywhere else in the record, does the Contracting Officer indicate that he has (1) considered whether ATL's proposed remedy was appropriate given the seriousness of ATL's material misrepresentation in its proposal regarding the OCI of its major subcontractor, Seneca, (2) submitted a written analysis of the significant OCI and proposed resolution from ATL to the chief of the contracting office, or (3) received approval from the chief of the contracting office to proceed with the proposed resolution to the OCI.

Indeed, the Contracting Officer states, "[b]ased on the [sic] ATL's planned termination of its teaming agreement with Seneca, ***I have determined*** that the OCI's created by Seneca will be resolved." ECF No. 35 at AR 30 (emphasis added). Therefore, the Contracting Officer "improperly usurped the authority granted to the chief of the contracting office" to approve proposed

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resolutions to *significant* OCIs. *Filtration Dev. Co., LLC v. United States*, 60 Fed. Cl. 371, 384 (2004), *petition for enforcement denied*, 63 Fed. Cl. 418 (2005).

In *Filtration Development*, the award of a contract for helicopter engine filter kits to Aerospace Filtration Systems ("AFS") was at issue. 60 Fed. Cl. at 373-75. AFS was a division of Westar Corporation, who performed systems engineering and technical direction tasks relating to the filters. *Id*. at 373-74. Army personnel identified the conflict in these circumstances and implemented "two unsigned and unapproved mitigation plans." *Id.* at 374. The Army personnel informed the contracting officer for the helicopter engine filter kits contract that "the appropriate measures were in place" to mitigate the conflict. *Id.* at 374-75. Based on this representation, the contracting officer "concluded that a significant potential OCI did not exist." *Id.* at 375. A prospective bidder filed suit, alleging in part that the contracting officer "failed to obtain approval for a mitigation plan from the appropriate personnel." *Id.* at 377. The court held that a significant OCI did in fact exist and that the contracting officer "failed to abide by the procedures set forth in § 9.506" by concluding that the OCI was sufficiently mitigated without obtaining approval from the chief of the contracting office. *Id.* at 378.

As in *Filtration Development*, the Contracting Officer in this case failed to abide by the procedures set forth in § 9.506 by failing to obtain approval from the chief of the contracting office for ATL's proposed OCI remedy. The Contracting Officer made a decision he was not "empowered to make" and "exceeded [his] authority by concluding that the appropriate safeguards were in place to eliminate the conflict." *Id*. Without the "approval or [] signature" of the chief of the contracting office, the OCI remedy proposed by ATL and adopted by the Contracting Officer "cannot be given binding effect." *Id.* at 384. While it is undeniably true that contracting officers are afforded discretion in the identification of OCIs, it is equally true that a contracting officer "has

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the discretion neither to ignore the FAR nor to render any of its provisions moribund. To hold otherwise would, if nothing else, run counter to the long-standing reasons for having the OCI regulations in the first place." *NetStar-1 Gov't Consulting, Inc. v. United States*, 101 Fed. Cl. 511, 527 (2011), *aff'd*, 473 Fed. Appx. 902 (Fed. Cir. 2012).

There is no genuine issue of any of the above-mentioned facts which are material to the resolution of this claim. Therefore, the Court should enjoin the Contracting Officer's decisions on remand to (1) accept ATL's proposed OCI remedy and (2) allow ATL to remain in the competition, submit a new past performance proposal, and modify its team.

II. The Contracting Officer's Failure to Exclude ATL on the Basis that its Proposal Contained a Material Misrepresentation is Unreasonable and Unsupported by the Record.

It is well-established that misrepresentations in an offeror's proposal that materially influence the agency's consideration of a proposal should disqualify the proposal from further consideration. *See Glob. K9 Prot. Grp., LLC v. United States*, No. 23-210, 2023 WL 8940893, at *17 (Fed. Cl. Dec. 22, 2023); *see also Plan. Rsch. Corp. v. United States*, 971 F.2d 736, 741 (Fed. Cir. 1992). "To establish a material misrepresentation, plaintiff[s] must demonstrate that (1) [the awardee] made a false statement; and (2) the [agency] relied on that false statement in selecting [the awardee's] proposal for the contract award." *Glob. K9 Prot. Grp.*, 2023 WL 8940893 at *17 (quoting *Blue & Gold Fleet, LP v. United States*, 70 Fed. Cl. 487, 495 (2006), *aff'd sub nom. Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308 (Fed. Cir. 2007)).

ATL made a material misrepresentation when it failed to disclose the potential OCI of its major subcontractor, Seneca, as required by the Solicitation. The Contracting Officer did not provide a coherent and reasonable explanation of his decision not to exclude ATL despite this material misrepresentation. Allowing ATL to not only remain in the competition despite failing to disclose Seneca's OCI, but also to completely revise its proposal, casts doubt on the integrity of

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the competitive procurement process. *See Glob. K9 Prot. Grp.*, 2023 WL 8940893 at *17 ("Any further consideration of [a proposal with a material misrepresentation] would provoke suspicion and mistrust and reduce confidence in the competitive procurement system."). Therefore, the Contracting Officer's decision to allow ATL to remain in the competition despite the material misrepresentation is unreasonable and unsupported by the record.

A. ATL's Proposal Contained Material Misrepresentation.

1. ATL Made a Misrepresentation in Its Proposal When It Failed to Disclose Seneca's OCI.

The Solicitation instructions and the PWS put all offerors on notice that the award of the SETA III Contract creates a potential OCI for the awardee and any of its teammates on the future competition for any PEO STRI requirement other than a follow-on procurement of the SETA III effort. PWS Section 4.8.3(a) states:

> 4.8.3 Notice Of Potential Future Organizational Conflicts Of Interest
>
> (a) Notice. The Contracting Officer has determined that the SETA III contract award will create a potential organizational conflict of interest (OCI) on the future competition for any PEO STRI requirement other than a follow-on action related to this effort (i.e. SETA IV or its replacement). The potential OCI will exist for any prime contractor, subcontractor, joint venture, or other teammate involved in contract performance. All offerors are invited to review FAR Subpart 9.5 -- Organizational Conflicts of Interest. ***In this case, the Contracting Officer has determined the identified OCI cannot be successfully neutralized or mitigated***. Therefore, the awardee of this contract is ineligible to perform as a supplier, a subcontract supplier, or a consultant to a supplier for any other requirement within PEO STRI for the life of the SETA III contract plus one year. This restriction is necessary to avoid unfair competitive advantage or potential bias on other competitions wherein SETA III personnel may be utilized to provide support.
>
> (b) Description of Potential Conflict. The SETA III contractor will assist in defining requirements, assist in building requirements packages, and assist in proposal evaluations. These actions would cause a conflict if the SETA III contractor attempts to submit proposals for requirements where it provided this support. Additionally, the SETA III contractor is imbedded with PEO STRI personnel so while not directly tied to a requirement the SETA III contractor could still have a conflict if its personnel have been made privy to information about other requirements that provide it a competitive advantage.

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ECF No. 35 at AR 51 (emphasis added). As the Contracting Officer highlighted in his October 12 MFR, the Solicitation "put all offerors on notice that award of the SETA III contract creates a potential OCI on the future competition for any PEO STRI requirement other than a follow-on action related to the SETA effort" and "inform[ed] Offerors that this potential OCI would exist not only for any prime contractor but ***any subcontractor*** or teammate involved in contract performance." *Id.* at AR 21 (emphasis added).

Additionally, Section L.7.5.7.1(b) of the Solicitation informed offerors that SETA III personnel would support the PCTE. *Id.* at AR 526. Section L.7.5.7.1.(c) stated that "[a]pplying the principles of FAR Subpart 9.5, each Offeror ***shall assess*** whether there is an organizational conflict of interest associated with the proposal it submits." *Id.* (emphasis added). As relevant to this SETA III procurement, FAR 9.505-1(a)(2) states:

> A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not . . . [b]e a subcontractor or consultant to a supplier of the system or any of its major components.

48 C.F.R. § 9.505-1(a)(2). The Solicitation further stated that "[i]f the offeror identifies a potential organizational conflict of interest associated with its offer, the offeror ***must submit*** information describing the potential conflict and indicate in Section K, 'OCI REPRESENTATION' that Information concerning a conflict of interest is provided." ECF No. 35 at AR 526 (emphasis added). Section L.7.5.7.1(d) advised offerors that by submitting an offer, it was representing "to the best of its knowledge and belief, that – (1) there are ***no relevant fact***s that could give rise to an OCI, as defined in FAR Part 2; or (2) the Offeror ***has disclosed*** all relevant information regarding any actual or potential conflicts of interest." *Id.* (emphasis added).

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Seneca's [redacted], [redacted], confirmed in her declaration that Seneca was aware that the Solicitation required the disclosure of potential OCIs, Seneca was aware of the potential OCI regarding the PCTE task order, and Seneca made an intentional decision not to disclose this potential OCI in its proposal. [redacted] declaration includes the following statements:

> 6. Volume V of ATL's proposal shows SENECA ***did not disclose a possible OCI*** arising from SENECA being awarded a task order by ACC-O to support PCTE. ***SENECA's decision not to disclose*** its task order to support PCTE was not made in a cavalier manner. SENECA's Code of Business Ethics and Conduct has a section on OCIs that requires SENECA's management to be ever vigilant for potential OCIs. Consistent with SENECA's Code of Business Ethics and Conduct, ***the potential OCI between SENECA providing support services on PCTE and SETA III was the subject of considerable internal deliberations.***
>
> 9. The consensus reached internally at SENECA from discussions in which I participated was that ***any potential OCI was not significant*** because SENECA's work on both our prime PCTE contract and the SETA III contract was essentially support work for PEO STRI. Moreover, if one probes deeper into the support work, there did not appear to be any instances of SENECA having an opportunity to exercise judgment that might lend itself to impaired objectivity.
>
> 15. … In my opinion, the spreadsheet provides the detailed analysis to support the conclusion that, even were a PM CT2 support task order to be issued under SETA III, the potential for an OCI is extremely low. As to the OCI alleged in StraCon' s complaint, I believe the analysis fully supports a conclusion that Seneca's PCTE work does not constitute a significant potential OCI.

ECF No. 35 at AR 435-37, 439-40 (emphasis added). [redacted] also confirmed that she was Seneca's lead in assisting ATL in preparing its proposal and that she was involved in providing information for Seneca's OCI certification. *Id.* at AR 440-41.

[redacted] declaration confirms that Seneca was aware of a potential OCI related to its task order to support PCTE and that it made an intentional decision not to disclose that OCI because, in Seneca's opinion, "any potential OCI was not significant." *Id.* at AR 437. Seneca and

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ATL's determination that Seneca's potential OCI related to its PCTE work was "not significant" is unreasonable and unjustified. As the Contracting Officer noted in his October 12 MFR:

> The access to facilities, information and decision makers afforded SETA III team members, including Seneca, will provide ATL and Seneca the opportunity to use information gleaned from SETA III contract performance in a way that supports the financial interests of Seneca on its separate contracts supporting PM CT2. In particular, if ATL and its current team are permitted to proceed with the award of the SETA III effort, ATL and Seneca will be in a position to influence, directly or indirectly, budgeting and workload decisions relative to efforts associated with PM CT2. Additionally, ATL and Seneca would be in a position to influence whether options are exercised on an existing Seneca contract and/or whether other Seneca contracts are extended or allocated additional tasks. Such influence can directly affect Seneca's financial interests under the TEST IDIQ and the PCTE CSS contract.
>
> There is an inordinate potential for the SETA III contractor to use its access and information obtained as part of contract performance to affect its other financial interests. While ATL and Seneca may not choose to take advantage of that potential, it does not change the fact that the potential to affect Seneca's other interests exists. The Government has a need for a SETA III advisory contractor that is providing advice free from the influence of other financial interests.
>
> Given this, it is my opinion that ATL's proposed team which includes Seneca as a major subcontractor, has a significant impaired objectivity organizational conflict of interest and award to this team was not in accordance with the limitations described in ¶ 4.8.3 of the Performance Work Statement.

Id. at AR 21-22. Moreover, as the Contracting Officer noted, ATL's assertions that there is no conflict of interest—because the SETA III contractor is not called upon to use its subjective judgment and the likelihood of award of a SETA III task order to support PM CT2 is low—are inaccurate and unsupported by facts. *Id.* at AR 24-25.

Not only was Seneca's determination that "any potential OCI was not significant" patently unreasonable in light of PWS Section 4.8.3, which states that the potential OCI on future performance for any PEO STRI requirement other than a recompete of SETA III "cannot be successfully neutralized or mitigation," but the Solicitation did not leave this determination up to the offeror. ECF No. 35 at AR 51. Rather, the Solicitation Section L.7.5.7.1(c) explicitly instructed

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offerors that if it identified a "potential" OCI, it was required to submit information describing the potential conflict and affirm that it "disclosed all relevant information regarding any actual ***or potential*** conflicts of interest." *Id.* at AR 526. It is undisputed that ATL failed to disclose these potential conflicts and all relevant information regarding them and misrepresented that it did not have any OCIs.

2. The Agency Relied on ATL's Misrepresentation of Seneca's OCIs When Selecting ATL for Award.

A misrepresentation in an offeror's proposal triggers disqualification of that proposal when the misrepresentation materially influences an agency's award decision. To establish a material misrepresentation, the protester must show that the agency relied on the false statement in selecting the proposal for award. *Blue & Gold Fleet*, 70 Fed. Cl. at 495.

The Contracting Officer's decision to terminate the award to ATL upon learning of Seneca's OCI confirms that the Agency did rely on ATL's misrepresentation in its proposal that neither ATL nor any of its subcontractors had an actual or potential OCI in deciding to award ATL the contract. If the existence of Seneca's potential OCI was immaterial to the Agency's award decision, then there would have been no reason for the Agency to terminate its award to ATL based on the issues identified in the OCI investigation. As the Contracting Officer stated in his October 31 MFR:

> ***Regarding the OCI, the Army identified multiple indicators of an OCI related to Seneca, the proposed team member of ATL.*** (Encl 1, OCI Investigation). ATL was provided the opportunity to respond to those preliminary findings. ATL responded by seeking to remedy the OCI issue by terminating its teaming agreement with Seneca and moving forward without the benefit of the Seneca past performance information provided in its technical proposal. ***Based on this, I have determined that the award to ATL was improper on the basis of the issues identified in the OCI investigation, and the award to ATL is to be terminated.***

ECF No. 35 at AR 1 (emphasis added). This was also confirmed in the Government's filing with the Court in the prior Consolidated Protest.

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> On October 31, 2023, the contracting officer made the following decisions:
> 1. ***The award to ATL was improper, in light of the potential for an OCI involving Seneca***. Accordingly, the decision to award the contract to ATL is rescinded, and the contract executed with ATL will be terminated for convenience.

See Remand Decision, *WILL Tech., Inc. v. United States*, No. 1:23-cv-00930C-ZNS, ECF No. 38 (emphasis added). Thus, because ATL's misrepresentation that Seneca did not have a potential OCI materially influenced the Agency's decision to award the contract to ATL, this Court must find that ATL's proposal contained a material misrepresentation. *See Glob. K9 Prot. Grp.*, 2023 WL 8940893 at *17; *Blue & Gold Fleet*, 70 Fed. Cl. at 495.

B. The Agency Did Not Provide a Coherent and Reasonable Explanation of its Decision to Allow ATL to Remain in the Competition Despite is Material Misrepresentation.

As this Court and the Federal Circuit have recognized, when a proposal contains a material misrepresentation that materially influences a contract award, the proposal should be disqualified from consideration "[t]o preserve the integrity of the solicitation process." *Blue & Gold Fleet*, 70 Fed. Cl. at 495; *Plan. Rsch. Corp.*, 971 F.2d at 741 ("[T]he submission of a misstatement, as made in the instant procurement, which materially influences consideration of a proposal should disqualify the proposal."). This Court's statement in *Blue & Gold Fleet* has been repeatedly reaffirmed by this Court. *See Optimization Consulting, Inc. v. United States*, 115 Fed. Cl. 78, 99 (2013); *Golden IT, LLC v. United States*, 157 Fed. Cl. 680, 701 (2022); *LightBox Parent, L.P. v. United States*, 162 Fed. Cl. 143, 152 (2022); *Connected Glob. Sols., LLC v. United States*, 162 Fed. Cl. 720, 746 (2022).

In *Planning Research Corporation*, the Federal Circuit explained the rationale for disqualifying such proposals: "'[W]e believe that the submission of a misstatement . . . which materially influences consideration of a proposal should disqualify the proposal. . . . Any further consideration of the proposal in these circumstances would provoke suspicion and mistrust and

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reduce confidence in the competitive procurement system.'" 971 F.2d at 741 (quoting *Informatics, Inc.*, 57 Comp. Gen. 217, 225, B-188566, 78-1 CPD ¶ 53, 1978 WL 13361 (Comp. Gen. Jan. 20, 1978).

Although GAO decisions are not binding on this Court, GAO's analysis and decision in *Aetna Gov't Health Plans, Inc.,* B-254397 *et al.*, 95-2 CPD ¶ 129, 1995 WL 449806 (Comp. Gen. July 27, 1995), is persuasive authority here given the similarity of the material misrepresentation at issue. In *Aetna*, the protesters challenged the award of a contract to QualMed alleging that there was an undisclosed OCI involving an affiliate of QualMed's proposed subcontractor, Value Health. In that protest, GAO found that a significant OCI existed and "[n]either QualMed nor any of the Value Health entities took reasonable steps to ensure that the [OCI] plan that purported to identify the conflict disclosed the relevant facts fully and correctly." *Aetna Gov't Health Plans*, B-254397 *et al.* at *14. GAO found that the handling of the OCI "on the part of all the parties involved constituted a serious deficiency in this procurement and one that, ***absent unequivocal corrective action***, casts doubt on the integrity of the competitive procurement process." *Id.* (emphasis added). Although GAO did not find that the parties acted in bad faith, it found "that they failed to adequately discharge their responsibilities." *Id.*

Based on these findings, GAO concluded that neither QualMed nor its subcontractor's "conduct was such that the award should be left undisturbed" and that "[t]here is no overriding reason to allow for providing a second opportunity for the entities to act more responsibly and in compliance with the governing regulation." *Id.* GAO also held that QualMed, as the prime contractor, "must bear responsibility for the deficiencies in the representations made to [the agency] by its proposed subcontractor regarding this procurement." *Id.* (citing *TeleLink Research,*

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Inc.—Recon., B-247052.2, 92-2 CPD ¶ 208 (Comp. Gen. Sept. 28, 1992) (subcontractor's alleged misrepresentation attributed to offeror)).

For these same reasons, ATL should be held responsible for the material misrepresentation in its proposal that there were no OCIs, as well as for the deficiencies in the representations made by its major subcontractor, Seneca. As discussed above, PWS Section 4.8.3 clearly stated that the potential OCI on future performance for any PEO STRI requirement other than a recompete of SETA III "cannot be successfully neutralized or mitigated," and Solicitation Section L.5.7.1 explicitly required offerors to submit information describing the potential conflict, regardless of whether it was significant or not, and affirm that it "disclosed all relevant information regarding any actual or potential conflicts of interest." ECF No. 35 at AR 51, 526. It is undisputed that ATL and Seneca failed to identify the potential conflict and fully and accurately disclose all relevant facts to the Agency.

The Contracting Officer's determination that ATL's major subcontractor, Seneca, had a potential OCI that could not be mitigated and that the award to ATL was improper on this basis is reasonable and well documented in the record, and Mayvin does not challenge this determination. However, the record is devoid of *any* explanation, let alone a "coherent and reasonable explanation," as to why ATL should be permitted to remain in the competition despite its failure to identify Seneca's potential OCI and fully disclose all relevant facts to the Agency. ATL's misrepresentation materially influenced the Agency's decision to award the contract to ATL and allowing ATL to remain in the competition despite this serious deficiency casts doubt on the integrity of the procurement process. *See Aetna Gov't Health Plans*, B-254397 *et al.* at *14. Thus, ATL should be disqualified from further consideration to preserve the integrity of the procurement

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process. *See Blue & Gold Fleet*, 70 Fed. Cl. at 495; *Plan. Rsch. Corp.*, 971 F.2d at 741. Accordingly, the Court should enjoin the Agency from allowing ATL to remain in the competition.

III. The Contracting Officer's Determination that ATL is an Offeror within the Competitive Range at the Time of Contract Award is Irrational and Inconsistent with the Contracting Officer's Findings on Remand.

In the Remand Decision filed with this Court in the Consolidated Protest, the United States represented that the Contracting Officer decided that after the Agency amends the Solicitation to revise the benchmark labor rates, "offerors in the ***competitive range at the time the original award decision was made (including ATL)*** will be allowed an opportunity to amend all aspects of their proposals." *See* Remand Decision, *WILL Tech.*, No. 1:23-cv-00930C-ZNS, ECF No. 38 at 2-3 (emphasis added). The United States further stated that, "[t]o be clear, ATL will have the opportunity to submit a revised proposal that no longer relies on a teaming agreement with Seneca." *Id.* The United States' statements before this Court in the Consolidated Protest are confirmed in the record. In his October 31 MFR, the Contracting Officer stated, "discussions must be held with all offerors in the competitive range at the time of the original award decision" and that "ATL will have the opportunity to update its past performance proposal and modify its team as part of that process." ECF No. 35 at AR 2. Because ATL could not have been awarded the Contract based on the proposal that was before the Agency at the time of award—and thus, not in the competitive range—it was arbitrary, capricious, and an abuse of discretion for the Contracting Officer to determine on remand that ATL will remain in the competition and be allowed an opportunity to amend all aspects of its proposal.

During the original evaluation of the proposals, sixteen of the seventeen proposals the Agency received in response to the Solicitation were included in the competitive range. ECF No. 35 at AR 588, 589 ("Sixteen Offerors remain in the competitive range."). The seventeenth proposal was eliminated from the competition "for compliance." *Id.* at AR 588. After the competitive range

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was determined, Amendment Number 0004 was issued on January 20, 2022, to only the sixteen offerors in the competitive pool. *Id.* Additionally, the Agency conducted three rounds of discussions with the sixteen offerors in the competitive range. *Id.* at AR 590. ATL's inclusion in the competitive range during the evaluation process was in error and only a result of the material misrepresentations made in its proposal that neither it nor any of its first-tier subcontractors had any OCIs. *Id.* at AR 140 ("Based on our internal review and the similar assessments conducted by Team ATL members, ATL is pleased to confirm there are no actual, potential, or perceived OCIs."). In reality, ATL's inclusion of Seneca as a major subcontractor, despite its significant, unmitigable OCI the Contracting Officer has now determined exists, violated the terms of the Solicitation and FAR 9.505-1. Had ATL's proposal accurately reflected the significant, unmitigable OCI the Contracting Officer has now determined exists, it would not—and could not—have been included in the competitive range at the time of the award. *See HBI-GF, JV*, B-415036, 2017 CPD ¶ 331, 2017 WL 5494281, at *6 (Comp. Gen. Nov. 13, 2017) (holding that agency's elimination of protester from competitive range as a result of OCI was reasonable and within the CO's discretion).

A. ATL's Proposal Violated FAR 9.505-1 and the Solicitation Terms Making It Ineligible for Award.

First, FAR 9.505-1(a)(2) states that "[a] contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not . . . [b]e a subcontractor or consultant to a supplier of the system or any of its major components." 48 C.F.R. § 9.505-1(a)(2). Further FAR 9.505-1(b) explains that "[i]n performing [systems engineering and technical direction] activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors." *Id.*

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at 9.505-1(b). Accordingly, "this contractor should not be in a position to make decisions favoring its own products or capabilities." *Id.*

Seneca holds two active contracts performing similar work to the SETA III Contract supporting the PM CT2 program within the PEO STRI office. *See* ECF No. 35 at AR 11-18. Thus, as the Contracting Officer explains in his October 12 MFR, if Seneca were allowed to perform on the SETA III Contract, "ATL and Seneca [would] be in a position to influence" decisions within PEO STRI that "support[] the financial interests of Seneca on its separate contracts supporting PM CT2." *Id.* at AR 21. Accordingly, because ATL's proposal includes Seneca as a major subcontractor for the SETA III Contract, ATL's proposal violates FAR 9.505-1.

Second, ATL's proposal expressly violates the Solicitation provisions relating to OCIs. Section L.7.5.7.1(c) of the Solicitation, applying the principles of FAR Subpart 9.5, required each offeror to assess whether there was an OCI associated with its proposal. ECF No. 5 at AR 526. ATL spectacularly failed to reasonably assess whether its proposal contained an OCI as required by Section L.7.5.7.1(c). ATL did not ensure that Seneca disclosed the relevant facts for both of its PEO STRI contracts fully and accurately. ATL did not independently assess whether Seneca's PEO STRI contracts would create an actual or even potential OCI. ATL did not provide a mitigation plan regarding Seneca's existing PEO STRI contracts. Rather, ATL falsely asserted that, "there are no actual, potential, or perceived OCIs." *Id.* at AR 140.

Moreover, Section 4.8.3 of the PWS explicitly put all the offerors on notice that award of the SETA III Contract would create an OCI for any future PEO STRI contracts other than a follow-on contract related to the SETA effort. *See* ECF No. 35 at AR 51. The PWS explained that this OCI applies to both the prime and any subcontractors and is so great that it "cannot be successfully neutralized or mitigated." *Id.* Again, despite the unambiguous Solicitation terms, neither ATL nor

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Seneca took reasonable steps to assess whether there was an OCI associated with ATL's inclusion of Seneca as a major subcontractor or to ensure that Seneca disclosed the relevant facts of both its PEO STRI contracts fully and accurately.

Not only does the record reflect that ATL's proposal was ineligible for award, but the Contracting Officer himself determined that ATL was ineligible for award. In the October 12 MFR, the Contracting Officer found that awarding the SETA III Contract to ATL was not consistent with limitations set forth in the PWS ¶ 4.8.3 and that "acceptance of ATL's proposal would not be consistent with the important limitations on the competition set forth in the PWS." *Id.* at AR 27.

In sum, it is clear that ATL's proposal at the time the original award decision was made, which included Seneca as its major subcontractor, violated the terms of the Solicitation as well as FAR 9.505-1, and thus, ATL was ineligible for award and could not have been included in the competitive range. Accordingly, it was arbitrary, capricious, and an abuse of discretion for the Agency to consider ATL to be in the competitive range at the time of award when implementing its announced corrective action.

B. Conducting Discussions with ATL to Allow for the Submission of a New Team and Past Performance Violates the FAR and ATL Cannot Get into Competitive Range Via Discussions.

In his October 12 MFR, the Contracting Officer determined that "in order for ATL to remove Seneca as a team member and still be considered for the SETA III effort, ATL's new team and past performance will need to be evaluated." ECF No. 35 at AR 30. Further, relying on FAR 15.306, the Contracting Officer "determined allowing such modifications to ATL's past performance will require engaging in discussions and authorizing proposal revisions by all offerors in the competitive range at the time of award." *Id.* at AR 29. However, because it would be arbitrary, capricious, and an abuse of discretion for the Agency to now find that ATL was properly

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included in the competitive range at the time of the original award decision, it would be improper and a violation of both FAR 15.306 and FAR 15.307 for the Agency to now conduct discussions with ATL to allow ATL to submit a revised proposal with new team members. Moreover, ATL cannot use discussions to get back into the competitive range.

It is undisputed that the Agency established a competitive range for this procurement. FAR 15.306(d) explains that exchanges with offerors after the receipt of proposals ***but after the establishment of the competitive range*** constitute "negotiations" and "are undertaken with the intent of allowing the offeror to revise its proposal." "Negotiations" in competitive procurements like this one "take place after establishment of the competitive range and are called discussions." 48 C.F.R. § 15.306(d). In sum, under FAR 15.306, after the Agency has established a competitive range, it can only engage in exchanges that result in proposal revisions with offerors that are in the competitive range.

The Contracting Officer acknowledged that in order to be able to consider ATL's proposed revisions to its past performance proposal, "***discussions*** must be held with all offerors in the competitive range at the time of the original award decision." ECF No. 35 at AR 1-2. However, now that the OCI in ATL's proposal has come to light, it would be arbitrary, capricious, and an abuse of discretion for the Agency to conclude that ATL was properly included in the competitive range at the time of award. FAR 15.307(a) provides: "If an offerors [sic] proposal is eliminated or otherwise removed from the competitive range, ***no further revisions to that offeror's proposal shall be accepted or considered***." (emphasis added). Thus, the Agency's announced corrective action that allows ATL—who was not properly included in the competitive range at the time of the original award—to substantively revise its proposal violates FAR 15.307(a).

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Accordingly, the Court should enjoin the Agency from allowing ATL to remain in the competition and submit a revised proposal as any discussions would violate FAR 15.306 and 15.307 because ATL was not in the competitive range at the time of award.

IV. The Agency Did Not Provide a Coherent and Reasonable Explanation of its Decision to Allow Offerors to Revise Past Performance Proposals and Modify Their Teams in Response to the Revised Labor Rates.

In the context of a challenge to corrective action, the corrective action must be "rationally related" to the procurement defect it is trying to correct. *See Dell Fed. Sys.*, 906 F.3d at 992-95. The rational basis test asks "whether the contracting agency provided a coherent and reasonable explanation of its exercise of discretion." *Id.* at 992 (quoting *Banknote Corp. of Am.*, 365 F.3d at 1351). Thus, to assess the reasonableness of the Agency's corrective action, the Court "must review the agency's explanation of its corrective action[.]" *Clarke Health Care Prod.*, 149 Fed. Cl. at 446. "Where the government provides inadequate detail about the corrective action or it is untethered to alleged procurement improprieties, the corrective action lacks a rational basis." *AccelGov, LLC v. United States*, 166 Fed. Cl. 606, 611 (2023) (citing *Clarke Health Care Prod.*, 149 Fed. Cl. at 447).

The record includes a detailed analysis and explanation as to how the Contracting Officer, with the support of the Program Team, re-evaluated the benchmark labor rates and came to the conclusion that an amendment to the solicitation was required to provide updated benchmark labor rates. ECF No. 35 at AR 2-3, 555-70. Mayvin does not challenge the Contracting Officer's decision to amend the solicitation to include updated benchmark labor rates.

However, neither Contracting Officer's October 30 MFR nor the Program Team's October 27 MFR provides any coherent and reasonable explanation as to why permitting offerors to revise their past performance proposals and modify their teams is rationally related to the amendment of the benchmark labor rates. "Without an adequate record to review, the court cannot evaluate

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whether the agency had a rational basis for the action taken." *Clarke Health Care Prod.*, 149 Fed. Cl. at 447 (citing *Dell Fed. Sys.*, 906 F.3d at 992.)).

In fact, the record confirms that the only reason the Contracting Officer decided to provide all offerors the opportunity to revise their past performance proposals and modify their teams was to allow ATL to still be considered for the SETA III effort. In his October 12 MFR on the OCI investigation, the Contracting Officer stated:

> Based on the ATL's planned termination of its teaming agreement with Seneca, I have determined that the OCI's created by Seneca will be resolved; ***however, in order for ATL to remove Seneca as a team member and still be considered for the SETA III effort, ATL's new team and past performance will need to be evaluated.*** Exchanges with offerors that result in changes to a proposal are permissible; however, discussions are required to be held with all offerors in the competitive range. ***Given that, it is my decision to terminate ATL's current award and provide all offeror's*** [sic] ***the opportunity to submit revised proposals.***

ECF No. 35 at AR 30 (emphasis added). This statement confirms that the Contracting Officer's decision to allow offerors to revise their past performance and modify their teams was made solely to allow ATL to remove Seneca as a team member and still be considered for award, and was unrelated to the Agency's determination that it needed to revise the benchmark labor rates.

As discussed above, it was unreasonable and an abuse of discretion for the Contracting Officer not to disqualify ATL for its material misrepresentations in its proposal, as allowing ATL to remain in the competition under such circumstances casts doubt on the integrity of the procurement process. *See Blue & Gold Fleet*, 70 Fed. Cl. at 495; *Plan. Rsch. Corp.*, 971 F.2d at 741. Additionally, it was unreasonable for the Contracting Officer to conclude that ATL was in the competitive range at the time of award when its proposal was ineligible for award. Thus, the Agency cannot rely on finding a way for ATL to remain in the competition as "a coherent and reasonable explanation of its exercise of discretion" to allow offerors to revise their past performance proposals and modify their teams in response to the Agency amending the benchmark

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labor rates. *Dell Fed. Sys.*, 906 F.3d at 992 (quotation omitted). The Court should find that the proposed corrective action is unreasonable, as there is no coherent or reasonable explanation in the record that would support allowing offerors to revise their past performance proposals and modify their team in response to the proposed benchmark labor rates. Accordingly, the Court should enjoin the Agency from proceeding with its plan to allow offerors to revise their past performance proposals and modify their teams in response to a Solicitation amendment that revises only the proposed benchmark rates.

V. Mayvin is Entitled to Injunctive Relief.

Mayvin respectfully asks the Court to issue a permanent injunction that bars the Agency from proceeding with its arbitrary and capricious stated corrective action. The Court may grant injunctive relief where it finds that an Agency's award decision is arbitrary, capricious, an abuse of discretion, or the result of a prejudicial violation of procurement law. *See Prof'l Serv. Indus.*, 129 Fed. Cl. at 207-08. "In deciding whether a permanent injunction should issue, a court considers: (1) whether, as it must, the plaintiff has succeeded on the merits of the case; (2) whether the plaintiff will suffer irreparable harm if the court withholds injunctive relief; (3) whether the balance of hardships to the respective parties favors the grant of injunctive relief; and (4) whether it is in the public interest to grant injunctive relief." *PGBA, LLC*, 389 F.3d at 1228-29.

As demonstrated above, Mayvin has established an exceptionally strong likelihood of success on the merits. On multiple grounds, the Agency's stated corrective action lacks a rational basis, is arbitrary and capricious, and constitutes an abuse of discretion. The Agency's stated corrective action is aimed at and has the effect of irrationally providing ATL with a second bite at the apple to compete for the contract award, despite ATL's material misrepresentations, clear violations of the terms of the Solicitation, and clear violations of applicable regulations. As such, the Agency—rather than rationally conclude that ATL is ineligible for the revised procurement—

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rewards ATL for its actions and, in the process, commits multiple violations which can only be remedied by injunctive relief.

If the Court does not grant a permanent injunction, Mayvin will suffer irreparable harm for which it has no adequate remedy at law, because it will have to recompete for a contract in a patently unfair competitive marketplace which has been tailored to accommodate and benefit ATL. Mayvin will lose the opportunity to fairly compete for the Contract, in addition to the lost profits Mayvin would have earned if awarded the Contract. *See Serco Inc. v. United States*, 81 Fed. Cl. 463, 502 (2008) (stating that "the loss of valuable business" which is derived "from a lost opportunity to compete on a level playing field for a contract, has been found sufficient to prove irreparable harm") (citations omitted). The Agency, on the other hand, will not experience a hardship as a result of an injunction preventing it from moving forward with an irrational and unlawful corrective action. Even with the elimination of ATL from consideration, there has been robust competition for this effort and there are fifteen other offerors that remain in the competitive range. Allowing offerors to completely revise their proposals and make wholesale changes to their proposed teams unrelated to the revised benchmark labor rates would unnecessarily extend the time needed to evaluate revised proposals and further delay award in this procurement that has already been going on for more than two years. The balance of harms thus weighs in favor of Mayvin.

Finally, the public interest demonstrably favors injunctive relief because "the public has a strong interest in preserving the integrity of the procurement process." *United Int'l Investigative Serv. Inc. v. United States*, 41 Fed. Cl. 312, 323 (1998) (citation omitted). An injunction in this case will restore integrity to this procurement process by remedying the Agency's regulatory violations and its irrational decision to reward ATL for its material misrepresentations and

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violations of the Solicitation. Indeed, "the public has an overriding interest in the fairness of the federal procurement process," *Prof'l Serv. Indus., Inc.*, 129 Fed. Cl. at 208, and "an injunction to enforce procurement law and preserve competition as much as possible serves the public interest." *Sierra Nevada Corp. v. United States*, 154 Fed. Cl. 424, 441 (2021); *see also Ian, Evan & Alexander Corp. v. United States*, 136 Fed. Cl. 390, 429 (2018) ("An important public interest is served through conducting 'honest, open, and fair competition' under the FAR, because such competition improves the overall value delivered to the government in the long term.") (citation omitted)).

Therefore, because all four factors weigh in favor of Mayvin, the balance of the equities weighs in favor of a permanent injunction enjoining the Agency from taking its stated corrective action.

CONCLUSION

For the foregoing reasons, the Court should sustain this protest; declare that the Agency's announced corrective action as set forth in the Remand Decision is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; and permanently enjoin the Agency from proceeding with its announced corrective action as set forth in the Remand Decision, including (i) enjoining the Agency from permitting ATL to submit a revised proposal and being further evaluated for award, and (ii) enjoining the Agency from permitting offerors to revise aspects of their proposal that are not directly related to the offerors' revised proposed labor rates in response to the Army's revised benchmark labor rates included in an amendment to the RFP.

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Respectfully submitted,

s/ Stephanie D. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Memorandum in Support of its Motion for Judgment on the Administrative Record was filed via CM/ECF with the Court on January 26, 2024.

s/ Stephanie D. Wilson

Stephanie D. Wilson
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