

August 17, 2023

VIA: EPDS

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U.S. Government Accountability Office
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REDACTED VERSION

Attn: Procurement Law Control Group

Re: **Protest of GovCIO, LLC**
Under Solicitation No. 36C10D22Q0026

Dear Sir or Madam:

GovCIO, LLC ("GovCIO") respectfully submits this protest of the award of a task order to General Dynamics Information Technology, Inc. ("GDIT") by the Department of Veterans Affairs ("VA"), Veterans Benefits Administration ("VBA") under Request for Task Order Response No. 36C10D22Q0026 ("RTOR"). The task order is for File-to-File Conversion Service ("FCSS") with File Indexing Management and was awarded under the VA's Veterans Intake, Conversion, and Communications Services ("VICCS") multiple-award indefinite-delivery, indefinite-quantity ("IDIQ") contract.

After initially selecting GovCIO for award as the best overall value, the VA has abandoned that decision in favor of GDIT, selecting GDIT's proposal at a totally unnecessary, additional price premium of \$158 million, or 65%, compared to GovCIO. Since the VA could not justify such an extreme price difference in a best value tradeoff, it avoided this obstacle by finding GovCIO's proposal [REDACTED]. As GDIT argued in its initial protest, which the GAO sustained (*see Gen. Dynamics Info. Tech., Inc.*, B-421290, B-421290.2, March 1, 2023, 2023 CPD ¶ 60), there are "numerous anomalies that raise fundamental questions about the process by which the Agency conducted this procurement." Exhibit ("Ex.") 1 (Redacted GDIT Comments and Supp. Protest) at 2-3. The agency's decision to abandon GovCIO as the best overall value likewise raises multiple issues and anomalies. These include:

- GDIT's improper attempt to influence the reevaluation by prompting its subcontractor, Exela Technologies, Inc. ("Exela"), to rescind its commitment to GovCIO and request that GovCIO notify the VA for the sole purpose of undermining GovCIO's proposal and the VA's reevaluation.

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- GDIT's violation of antitrust principles by improperly restraining trade, seeking to eliminate GDIT's only competition by preventing Exela from supporting GovCIO even if GDIT lost the award.
- GDIT's failure to notify the VA before award that Exela sold a significant portion of its scanning business, including assets and related maintenance services, thereby undermining a material aspect of GDIT's proposal.
- The VA's inexcusable decision not to open discussions to permit GovCIO to address an "ambiguity" that was introduced into GovCIO's proposal *as a direct result of GDIT, not GovCIO*, or to respond to the VA's new interpretation of the Capabilities and Experience element. Even without GDIT's undue influence, in a competition between just two offerors representing a price difference of \$158 million, there was no reasonable basis for the VA to "recommend" award without discussions.
- The VA's decision to reevaluate only GovCIO's proposal, subjecting GovCIO to a far more exacting and scrutinizing standard, while preserving the original evaluation team's assessment of GDIT's proposal. The result was an unfair, apples-to-oranges comparison of proposals.
- The VA's unreasonable evaluation of GovCIO's Capabilities and Experience and abandonment of its initial interpretation of the RTOR, leading to the assignment of [REDACTED]. The VA previously and accurately assessed that GovCIO had ten years of relevant experience, yet on reevaluation, used this very factor and its new interpretation of its own RTOR to undermine GovCIO's proposal.
- The VA's unreasonable removal of [REDACTED] GovCIO's [REDACTED] strengths without explanation, and failure to evaluate GovCIO's proposal for any other strengths.
- The VA's indefensible decision to rate GovCIO [REDACTED] under the Past Performance Factor on the basis that it [REDACTED]. The rating violates the plain terms of the RTOR, the FAR, the GAO's decision, *and is even contrary to GDIT's previous protest arguments*, where GDIT conceded that, [REDACTED].

These and other serious issues demonstrate that the VA's evaluation and award decision were flawed. The GAO should sustain this protest and recommend that the VA take appropriate corrective action.

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PRELIMINARY MATTERS

A. Protester Information

GovCIO's mailing address is 4000 Legato Road, Suite 600, Fairfax, VA 22033. GovCIO is represented by Venable LLP. All correspondence in relation to this protest should be sent to James Y. Boland, Venable LLP, 1850 Towers Crescent Plaza, Suite 400, Tysons, VA 22182; telephone: (703) 760-1997; email: jyboland@venable.com.

B. Agency Information

The Contracting Officer is Marty Bost. The VA's address is 1800 G Street NW, Washington DC 20006. Ex. 2 (RTOR) at 1. The Contracting Officer's email address is [REDACTED]. *Id.* at 35. A copy of this protest will be sent to the Contracting Officer.

C. Timeliness and Jurisdiction

On August 7, 2023, GovCIO received notice of the award of the task order to GDIT. *See* Ex. 3 (2023 Award Notice). On August 8, 2023, GovCIO timely requested a post-award debriefing. The VA provided GovCIO with its required debriefing on August 11, 2023. Ex. 4 (Debriefing). This protest is timely because it is filed within ten days of August 7, 2023, when the VA notified GovCIO that it awarded the task order to GDIT. *See* 4 C.F.R. § 21.2(a)(2).

The GAO has jurisdiction over this task order protest because the protested order, which was placed under a civilian agency multiple-award IDIQ contract, is valued in excess of \$10 million. *See* 41 U.S.C. § 4106(f)(1)(B); Ex. 3 (2023 Award Notice) (providing task order award price of \$399,641,439.16).

D. Interested Party Status

GovCIO is an interested party to protest because it is an actual offeror and original awardee whose direct economic interest has been adversely affected by the VA's flawed evaluation. But for the agency's unreasonable and prejudicial actions described in this protest, GovCIO would have represented the best value to the VA. GovCIO is therefore an "interested party" pursuant to 4 C.F.R. § 21.0(a) and is authorized to file this protest by 4 C.F.R. § 21.1(a).

E. Statutory Stay of Performance

Since GovCIO is filing this protest within 10 days of the date of award, the VA is required to stay performance under the task order pending the GAO's resolution of this protest. *See* 31

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U.S.C. § 3553(d)(4)(A) (stating that the automatic stay applies if a protest is filed within 10 days of award or 5 days of a debriefing, whichever is “later”).

F. Request for a Protective Order

Pursuant to 4 C.F.R. §§ 21.1(d)(1) and 21.4(a), GovCIO requests that the GAO issue a protective order controlling the treatment of proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms, contained within this protest and likely to be produced in the Agency Report.

G. Request for a Hearing

In accordance with 4 C.F.R. § 21.7(a), GovCIO requests that the GAO hold a hearing. As discussed below, this protest raises credible allegations regarding GDIT’s effort to materially influence GovCIO’s proposal during the reevaluation. During the previous GDIT protest, the GAO held a hearing in response to GDIT’s allegations that GovCIO misrepresented the existence of a commitment with Exela. GDIT withdrew its ground after the hearing, yet during the subsequent reevaluation, GDIT influenced Exela to send a letter to GovCIO rescinding such commitment—the only purpose of which was to influence GovCIO’s proposal while it was being reevaluated. As these important issues, which go to GDIT’s conduct and eligibility for award, are not going to be evidenced in the VA’s record, a hearing or other appropriate fact finding is the only appropriate means of resolving this protest ground.

RELEVANT FACTS

A. The FCSS Task Order RTOR

The mission of the VBA “is to provide Veterans, service members, and their families the benefits they have earned through their military service to the United States.” Ex. 5 (PWS) at 7. In recent years, it “has undertaken several efforts to improve the end-to-end claims process,” including enhancements to various VBA systems and services, but “more must be done to increase efficiencies.” *Id.*

In that regard, on September 20, 2022, the VA issued the subject RTOR pursuant to Federal Acquisition Regulation (“FAR”) subpart 16.5 to VICCS IDIQ vendors, requesting proposals for “File-to-File Conversion Service with File Indexing Management.” Ex. 2 (RTOR) at 36. The FCSS task order awardee will “extract, receive, control, and convert source material to standardized, indexed, and searchable Portable Document Format (PDF) (PDF Image plus Text) electronic documents,” “incorporate quality assurance activities and validation into multiple steps of the conversion process to ensure that VA receives images and data which support its business needs,” and “also support onsite Government-contracted third-party auditing throughout the periods of



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performance.” Ex. 5 (PWS) at 10. The source material consists of Benefit Claim Files (“C-files”), Official Military Personnel Files (“OMPFs”), Service Treatment Records (“STRs”), and “Records from other Government or Military entities,” including the Veterans Health Administration, National Guard Units, and Adjutants General Offices. *Id.* at 11.

According to the PWS, “VA requires document conversion services for an estimated 1.3 billion images ([sic] split between approximately 437 million images in the base period and approximately 437 million images in each option period, if exercised.” *Id.* at 10 (emphasis removed). The VA “will order a guaranteed minimum volume of 196 million images split between approximately 65 million images in the base period and approximately 65 million images in each option period, if exercised.” *Id.* at 11.

The RTOR instructed offerors to submit their responses in three volumes—Volume I, Technical; Volume II, Past Performance; and Volume III, Price—reflecting the three evaluation factors that the VA would use in determining the award. Ex. 2 (RTOR) at 36-37. The RTOR also contained provisions governing the enforceability of offeror’s responses. For example, pursuant to RTOR § E.1.4.1:

The response/submission must set forth full, accurate and complete information as required by this RTOR. The Government will rely on such information in the award of the task order. By submission of the response, the Contractor agrees that all items proposed (if applicable e.g., key personnel, subcontractors, plans, etc.) will be utilized for the duration of the contract and any substitutions will require prior Contracting Officer’s approval.

Id. at 37. Further, an offeror “shall be held responsible for the validity of all information supplied in its response/submission, including that provided by potential subcontractors. Should subsequent investigation disclose that the fact and conditions were not as stated, the response/submission may be rejected.” *Id.* The government reserved to itself the right to “award a Task Order to other than the Contractor submitting the lowest price(s) or highest technically rated.” *Id.*

The RTOR’s evaluation factors included Technical, Past Performance, and Price, and “[n]on-price factors (Technical is more important than Past Performance) when combined, are significantly more important than price.” *Id.* at 37.

1. Volume I – Technical

Under Volume I – Technical, offerors were to “submit a detailed narrative that addresses the following three technical elements” including Technical Approach, Staffing Approach, and Capabilities and Experience. *Id.* at 38. “These elements comprise the Technical factor and are not in addition to it.” *Id.* The RTOR provides that “[t]he Government will rate a Contractor’s Technical



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response at the factor level by team consensus, using an adjectival rating that most accurately defines the Contractor's technical merit considering all elements identified in this section." *Id.* at 43. This adjectival rating would "include[] consideration of the significant strengths, strengths, significant weaknesses, weaknesses, and deficiencies of all elements. The RTOR further provided that the three technical elements are "equally important" and that "[a] rating will not be given at the element level or by an individual rater." *Id.*

i. Technical Element 1 – Technical Approach

For Element 1 – Technical Approach, the RTOR provided the following:

E.1.5.1.1. Element 1 - Technical Approach: (narrative shall address the following-30-page limit):

E.1.5.1.1.1. Approach demonstrates a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the tasks and the extent to which uncertainties are identified and resolutions proposed.

E.1.5.1.1.2. Approach is workable and the end results achievable. Approach demonstrates methods and capacity in successfully meeting and/or exceeding the total estimated quantity of 1.20 million daily source material for the base and 1.20 million daily source material per option period in a timely manner.

E.1.5.1.1.3. Approach has clearly demonstrated their ability to provide PWS tasks effectively and efficiently in respect to the following:

a) The Contractor's comprehensive approach to Quality Control and Management and Risk Management as required in PWS 5.1.1, *Contractor Project Management Plan*, and PWS 6.3, *Quality Control Plan*, to ensure task performance meets the standards outlined in the PWS 7.0, *Performance Requirements Summary (PRS)*. The risk approach shall include any identified risks, anticipated risks, and recommendations for managing the risks.

b) The Contractor's approach to ensure the timely planning, development, and implementation of PWS Task 5.5, *Source Material Conversion*, that meets the functional requirements of the Government. The description shall include, at a



minimum, development, testing, implementation, integration, documentation, training, and any planned operational support.

c) The Contractor's detailed approach and the controls to be implemented in support of safeguarding and tracking source materials and the VA information they contain to minimize damage and/or avoid compromise in any form from the point of receipt through return shipment, as outlined in PWS 5.3, *Source Material Custodial Requirements*.

d) The Contractor's approach to ensure the timely planning, development, and implementation of PWS 5.3.2, *Source Material Tracking Service*, that meets the functional requirements of the Government. The description shall include, at a minimum, development, testing, implementation, integration, documentation, training, and any planned operational support.

e) Comprehensive description of any planned resources to be utilized in support of PWS Task 5.5, *Source Material Conversion*, including planned physical infrastructure, technologies for use, and experience with high volume conversion services, including any planned subcontractor resources. The description shall address scalability of resources that may be impacted by surges in source material volumes.

f) The Contractor's approach to ensuring the Conversion Service is available to VBA users 99.5% of the time for access to all services, including the SMTS, reporting functions, and access to all digitized images and associated metadata exclusive of planned, approved downtime for maintenance, as outlined in PWS 5.3, *Source Material Custodial Requirements*, and PWS 6.7, *Service Level Agreement*.

g) The Contractor's description of the measurement approaches for the Acceptable Quality Levels (AQLs) identified in Section 7.0, *Performance Requirements*



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Summary including recommendations for additional AQLs for performance measurement.

Id. at 38-39.

ii. Technical Element 2 – Staffing Approach

For Element 2 – Staffing Approach, the RTOR provided the following:

E.1.5.1.2. Element 2 - Staffing Approach: (narrative shall address the following-10-page limit).

E.1.5.1.2.1. Approach demonstrates the availability and degree of commitment of personnel with the required technical expertise for the successful completion of all required tasks. Key Personnel’s resumes demonstrate professional experience such as Education and Specialized Training, Work History, Employee Status as it relates to the requirements of the PWS.

E.1.5.1.2.2. Approach demonstrates the offerors planned organizational chart for the first 180 days of performance. The organizational chart shall include all planned positions with the named resources (including and directly identifying subcontractor resources) who will be working on those positions for the first 180 days.

E.1.5.1.2.3. Approach has a relevant estimate of level of effort for each task to include labor categories/labor mix and associated hours for all team members across the prime and any proposed sub-contractors. The Offeror shall also identify any needed software licenses or services to be used or purchased and include them in the level of effort.

E.1.5.1.2.4. Approach has a relevant Onboarding process that identifies the needed skillsets for additional resources beyond those named in the organization chart, finds the right people in their firm and in their Subcontractor’s firms, obtains those individuals, and onboards them swiftly.

Id. at 39.

iii. Technical Element 3 – Capability and Experience

For Element 3 – Capability and Experience, the RTOR provided that the VA would “evaluate and measure capability and experience to determine the extent to which the vendor has



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previously provided recent and relevant services in support of the various tasks listed in PWS or similar tasks in respect to the following”:

- Project Management Plan
- Receipt, handling, shipping, storing, preparation, and conversion services of OMPF or similar records.
- Source Material Tracking Service (SMTS)
- Creation and Management of Upload Service to VBMS or similar systems
- Creation of a Document Management, Advanced Search and Storage service[.]

Id. at 39. The RTOR instructed offerors to “submit a Capabilities and Experience volume directly addressing the criteria above” and provided that they “may use their experience, prior entity experience, Subcontractor experience and personnel experience to respond.” *Id.* The RTOR noted generally that offerors should “address 2 or more examples of projects of similar size, scope, and complexity,” but did not define these terms or list them as evaluation criteria for award. *Id.*

The RTOR also provided that “VBA will evaluate much more advantageously those performance examples where the critical technical personnel involved are proposed for this task order as part of the project team on the organization chart.” *Id.* For each example, offerors were required to describe “where they (including Subcontractors) have successfully delivered services projects of similar size, scope, and complexity,” “how they (including Subcontractors) implemented solutions to deliver efficient outcomes to customers,” “the specific measurable customer outcomes of these engagements,” “when this project was successfully completed/over what period of time,” “who from their firm (including Subcontractors) led these successful projects, and will disclose and confirm whether the same team is proposed on the organization chart,” and “if/how they have acquired a deep and current understanding of VBA’s processes and how they will apply this knowledge to their effort.” *Id.* at 40.

B. Volume II – Past Performance

Under Volume II – Past Performance Information, offerors were to “discuss their performance on no more than two projects which are recent and relevant,” and “[t]he Volume 2 past performance information shall correlate with the two [Past Performance Questionnaires].” *Id.* at 40 (emphasis removed). Further, “[n]o more than two PPQs shall be submitted,” and “[o]ne of the PPQs submitted must be for the proposed Prime contractor/offeror for this requirement.” *Id.* (emphasis removed).

The RTOR defined “recency” as “[c]ontracts/purchase orders/task orders that are 75% complete or completed within the past five years from the date responses are due,” and it defined



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“relevancy” as “a contract that is similar in size and scope of the requirements in the solicitation.” *Id.* Per the RTOR, “[s]imilar in size means the total price of the contract, the number of staff, the number of users served, the number of locations served, etc.,” “[s]cope compares how well the requirements in the RFQ’s PWS align with those of the past performance referenced,” and “[q]uality is defined as performance which is satisfactory or better and will be used to assess the risk associated with successful contract performance.” *Id.*

The RTOR provided that the agency would “conduct a Past Performance evaluation based upon the Past Performance of the Vendor (and major sub-contractor) as it relates to the probability of successful performance of the work required by the solicitation,” taking into consideration “if each Vendor demonstrated recent and relevant record of performance in supplying services that met the contract requirements.” *Id.* at 43. The “threshold questions” of recency and relevancy would not be adjectivally evaluated, but “once a reference is determined to meet these requirements, the government will evaluate the actual reference to determine the Vendor’s performance record and assess the quality of the past performance.” *Id.* “For a reference to be considered, it must be both recent and relevant.” *Id.*

In evaluating past performance, the agency would “use the information provided in the Vendor’s PPQ and may use data obtained from other sources,” such as “the Past Performance Information Retrieval System (PPIRS), Federal Awardee Performance and Integrity Information System (FAPIS), Electronic Subcontract Reporting System (eSRS), or other databases; interviews with Program Managers, Contracting Officers, and other Officials.” *Id.* The VA “reserve[d] the right to obtain and evaluate Past Performance information from any source it deems appropriate.” *Id.* An adjectival rating for past performance would be given at the factor level by team consensus, and “[a] Vendor with no Past Performance shall be evaluated as ‘Neutral’.” *Id.*

C. Volume III – Price

According to the RTOR, “[t]he purpose of the Price evaluation is to provide an assessment of the reasonableness of the proposed price.” *Id.* at 41. Furthermore,

While FAR 15 procedures do not apply to this RTOR, the Contracting Officer will use the price analysis techniques provided in FAR 15.404-1 in order to determine reasonableness. For Price to be reasonable, it must represent a Price that provides best value to the Government when consideration is given to prices in the market, (market conditions may be evidenced by other competitive responses), and technical and functional capabilities of the Contractor.

Id. In short, the agency would “evaluate price to determine whether it is considered fair and reasonable.” *Id.* at 44.



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D. Best Value Determination

The RTOR provided that the VA intended to award only one task order, and that the award decision “will be made based on the best overall (i.e., best value) responses that are determined to be the most beneficial to the Government, with appropriate consideration given to the three evaluation factors: Technical, Past Performance, and Price.” *Id.* It instructed that “Technical is more important than Past Performance and when combined, the non-price factors are significantly more important than price.” *Id.* The VA would “award the task order to the Respondent that proposes the best value to the Government,” and it cautioned offerors “that the awards may not necessarily be made to the lowest Price response or the most highly rated technical responses.” *Id.*

E. GovCIO’s Proposal—A “Value-Added Low-Risk Approach Based on Demonstrated VBA Program Success”

GovCIO timely submitted its proposal, offering the VA a “[redacted]” approach on the task order and a team that “[redacted]

[redacted] See (GovCIO Proposal – Technical) at 1-1; see also *id.* (“

[redacted]”). Team GovCIO’s proposal “[redacted]

[redacted]” *Id.*

GovCIO’s team [redacted]

[redacted] *Id.* (emphasis added). As an added reassurance, but not a material aspect of its proposal, GovCIO also [redacted]

[redacted]” who “[redacted]

[redacted]” *Id.* at 1-1 – 1-2 (emphasis removed). This proposal [redacted]

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reference was to Exela, an incumbent scanning vendor. GovCIO did not need Exela to perform, but added an indirect reference to Exela as a way to further strengthen GovCIO's proposal.¹

GovCIO also "[redacted] and, "[redacted] *Id.* at 1-2.

For its Past Performance information, GovCIO detailed [redacted]. The VA assigned GovCIO "[redacted] ratings under both contracts on its most recent CPAR for management, schedule, quality, and cost control. *See generally* (GovCIO Proposal – Past Performance). GovCIO explained that it also "[redacted] *See* (GovCIO Proposal – Technical) at 1-25. In supporting GovCIO's services "[redacted] *Id.* at 1. In supporting "[redacted] *Id.* at 3.

Given GovCIO's [redacted] Ex. 18 (Declaration of [redacted]) ¶ 10(a). The contract [redacted], but it also [redacted] *Id.* For example, [redacted] *Id.* The [redacted]

¹ The VA also knew this fact from GovCIO's original kick-off meeting. GovCIO's presentation did not indicate that it needed Exela to perform and GovCIO explained that its partner, Data Dimensions, was equipped to handle C-Files at its facility in Janesville, WI if Exela was unable to join GovCIO's team.

[redacted]

[REDACTED] *Id.* A [REDACTED]
[REDACTED] *Id.*

F. GovCIO Awarded FCSS Task Order as the Best Value

By the October 5, 2022 closing date for task order proposals, the VA had received proposals from two offerors, GovCIO and GDIT. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 3 (citing “AR, Tab 41, Award Decision Document” (“2022 ADD”) at 1). The VA’s technical evaluation panel (“TEP”)² evaluated the two proposals and assigned GDIT an adjectival rating of Good for the Technical Factor and Low Risk for the Past Performance Factor. *Id.* (citing 2022 ADD at 1, 6). GDIT’s price was \$399,641,439. *Id.* For GovCIO, the TEP assigned an adjectival rating of [REDACTED] for the Technical Factor and [REDACTED] for the Past Performance Factor. *Id.* GovCIO’s price, however, was \$241,593,949—a significant 65% savings for the VA and taxpayers compared to incumbent GDIT’s price tag for scanning services. *Id.*

For the Technical Factor, the TEP assigned GDIT’s proposal eight strengths and three weaknesses—culminating in its Good rating—and GovCIO’s proposal [REDACTED] [REDACTED]—resulting in its [REDACTED] rating. *Id.* (citing 2022 ADD at 2, 4). For Past Performance, the VA concluded that both GovCIO and GDIT had provided recent and relevant references, and it assigned to both proposals a rating of [REDACTED]. *Id.* (citing 2022 ADD at 6).

While GDIT’s proposal received a higher adjectival rating than GovCIO’s under the Technical Factor, the VA concluded that there were “no significant advantages or disadvantages between the offers to justify the payment of the price difference associated with GDIT’s offer, *given the level of technical competence available at GCIO’s lower price.*” *Id.* (citing 2022 ADD at 7) (emphasis added). Conducting its best value determination, the VA concluded that “it is not in the best interest of the Government to award to a contractor with a higher-rated, higher-priced (by \$158M) offer,” and it selected GovCIO’s proposal for award. *Id.*

On November 10, 2022, the VA officially awarded the FCSS task order to GovCIO. *See* Ex. 6 (2022 Award Notice); Ex. 7 (2022 Debriefing).

² For the technical factor, the VA assigned proposals one of the following ratings: (1) excellent, (2) good, (3) satisfactory, or (4) marginal. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 3 (citing ADD at 2). For the past performance factor, the agency assigned proposals one of the following ratings: (1) neutral, (2) low risk, (3) moderate risk, or (4) high risk. *Id.* (citing ADD at 6).

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G. GDIT's Protest and Withdrawal of Its Primary Protest Grounds

On November 21, 2022, GDIT protested the VA's award decision at GAO. *See generally* Ex. 8 (Redacted GDIT Protest). GDIT's initial protest grounds alleged that the VA misevaluated GovCIO's proposal under the Technical Factor—primarily arguing that GovCIO lacked the capability to perform the requirements—and under the Past Performance Factor—contending that GovCIO's examples were not relevant and suggesting that, in contrast, GDIT “possesses uniquely qualified experience” simply given its status as the incumbent. *Id.* at 25.

GDIT subsequently withdrew its protest ground regarding GovCIO's capability to perform the task order requirements. *See* Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 4 n.2. But GDIT then as argued in a supplemental protest that GovCIO “materially misrepresented its reliance on GDIT's incumbent subcontractors, including Exela Technologies, Inc.” Ex. 9 (GDIT Withdrawal of Misrep. Protest); *see* Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 4-8. On February 8, 2023, the GAO convened a hearing to further develop the record regarding GDIT's material misrepresentation allegation. The day after the hearing, GDIT alerted the GAO that it “withdraws its protest allegation that awardee GovCIO materially misrepresented its reliance on GDIT's incumbent subcontractors, including Exela Technologies, Inc.” Ex. 9 (GDIT Withdrawal of Misrep. Protest). GDIT conceded that it “reach[ed] this decision based on GAO's feedback following [the] hearing.” *Id.*; *see also Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 4 n.5 (“Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. The protester withdrew a number of challenges to the evaluation of the awardee's proposal. The protester also withdrew its argument that the awardee's proposal contained material misrepresentations regarding agreements with its proposed subcontractors, following a hearing conducted by our Office to further develop the record regarding this matter.”) (citation omitted).

The GAO nonetheless sustained the protest regarding two aspects of the evaluation and the adequacy of the VA's explanation or documentation. First, the GAO concluded that the VA did not reasonably explain the basis for its determination of the relevance of GovCIO's past performance references; second, the GAO “agree[d] with the protester that one aspect of one strength assigned to the awardee's proposal under the capability and experience element was inconsistent with the solicitation's evaluation criteria.” *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 5 (emphasis added). The GAO's determinations focused not on any technical shortcoming of GovCIO's proposal, but rather on the VA's inadequate documentation of certain aspects of its award determination. *See, e.g., id.* at 9 (“[T]he agency does not reasonably explain how it concluded that the awardee's past performance references were similar in size to the solicitation requirements.”). The GAO also rejected GDIT's attempts to turn its own status as the incumbent into a sort of litmus test for other offerors to meet. *See, e.g., id.* at 12 (“[T]o the extent [GDIT's] arguments rely on differences between what [GDIT] contend are its own staffing levels for the



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incumbent contracts and its proposed staffing for the solicitation, and the awardee's proposed level of effort, we find no basis to sustain the protest.”).

Ultimately, the GAO recommended that the VA reevaluate GovCIO's proposal consistent with the opinion and “make a new award decision that ensures that the comparison of the offerors' proposals is consistent with the solicitation's award criteria, adequately supported, and adequately documented.” *Id.* at 22.

H. GDIT Seeks to Influence the Reevaluation by Persuading Exela to Rescind its Commitment to Support GovCIO and Direct GovCIO to Notify the VA

As GDIT learned, its allegation that GovCIO misrepresented the existence of a commitment from Exela had no merit. Unsuccessful in its attempt to disqualify GovCIO, GDIT pivoted its strategy toward deliberate interference in the competition—all in the midst of the VA's corrective action—by apparently compelling (possibly threatening) its incumbent subcontractor to insert itself into the dispute between potential prime awardees, for no other reason than to undermine GovCIO's proposal and steer the VA's reevaluation toward GDIT. *See* Ex. 18 (Declaration of [REDACTED]) ¶¶ 2-6.

On March 31, 2023, GovCIO received a letter from Exela Technologies, Inc. (“Exela”) stating the following in relevant part:

During the protest, it became apparent that there was some confusion as to whether Exela would, or could, potentially work as a subcontractor to GovCIO on the VICCS Program if the Task Order was awarded to GovCIO. I write to clarify Exela's position with regard to this issue.

To be clear, Exela is a teaming partner and subcontractor to GDIT under the VICCS Program. Under both the teaming Agreement and the Subcontract Agreement between Exela and GDIT, Exela is committed that it “will not team with or otherwise submit a proposal, either as a Prime Contractor or as a Subcontractor, under the [VICCS] Program during the term of this Agreement and any resulting Subcontract” for the work described in our agreement with GDIT. Consistent with the terms of the exclusivity provisions, Exela will not team with nor submit a proposal to GovCIO or any company other than GDIT for certain work under the VICCS Program.

Accordingly, GovCIO is not authorized to represent to the Department of Veterans Affairs (the “VA”) that it is teamed with Exela or that Exela has agreed to perform work for GovCIO as a subcontractor on the VICCS Task Order. To the extent that any individuals formerly affiliated with Exela provided any contrary information

[REDACTED]

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to GovCIO, those individuals were not authorized to make those representations and those representations do not reflect Exela's position. *We request that GovCIO make clear to the VA our position articulated herein.*

Ex. 10 (Exela Letter to GovCIO) at 1 (emphasis added). Thus, Exela not only rescinded its previous commitment to support GovCIO and falsely suggested that Exela's previous commitment to GovCIO was not authorized, but specifically requested that GovCIO communicate this fact to the VA. The only plausible reason for Exela, a non-offeror, to include such a direction is that GDIT directed Exela to do so. Such notice would achieve GDIT's earlier failed attempt at undermining GovCIO's proposal based on its commitment with Exela.

On April 4, 2023, GovCIO (through its counsel) informed the VA, in part, that:

[A]s requested by Exela, we are communicating to the VA, on behalf of GovCIO, that GovCIO is not authorized to represent that it is "teamed with Exela or that Exela has agreed to perform work for GovCIO as a subcontractor on the VICCS Task Order." As you know, GovCIO stated in its proposal that it [REDACTED], and [REDACTED], GovCIO Tech Vol. at 1-1. GovCIO made this representation with respect to Exela based on the express and unambiguous direction and authorization from Exela, including its CEO.

Ex. 11 (GovCIO Letter to VA) at 2.

I. Prior to Completion of the VA's Corrective Action, Exela—GDIT's Incumbent File Scanning Subcontractor—Divests a Significant Portion of Its File Scanning Division

On June 9, 2023, while the VA's corrective action and reevaluation remained ongoing, Exela issued a press release touting "that the Company completed the sale of its high-speed scanner manufacturing and maintenance business, including the Intelliscan family of products, ('the Business') to Imaging Business Machines, LLC ('ibml')." The press release further stated,

Under ibml's ownership, the Business will continue to provide the complete suite of scanning products and services for our customers, providing a seamless transition.

Exela will continue to focus on providing the best business process automation solutions for our customers' needs. Additionally, the company will continue to provide its set of Smart Office solutions, including Smart Lockers.

[REDACTED]

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“We are grateful to *our employees who will be joining ibml* and we look forward to working with them as a partner. The transaction is a win-win for all constituents but most importantly it is a win for our customers,” noted Executive Chairman, Par Chadha.

“I am pleased to welcome the team from Exela and excited to add Exela’s high-volume scanner products to ibml’s market-leading portfolio of solutions,” said Martin Birch, CEO of ibml. “The additional expertise and offerings will provide our customers with a more diverse portfolio of best-in-class high volume intelligent scanning solutions, and the ability to bring greater innovation to their document intensive business processes.”

Ex. 12 (Press Release - Exela Sale of Scanner Business) at 1 (emphasis added). The purchaser of Exela’s assets, ibml, is a member of GovCIO’s team for this procurement to provide “[REDACTED]” See (GovCIO Proposal – Technical) at 1-24 – 1-26.

As explained below, GovCIO’s debriefing revealed that the VA did not reevaluate GDIT’s proposal before selecting GDIT for award. Ex. 13 (Redacted FCSS Award Decision Document (“ADD”)) at 3. This fact confirms that GDIT did not provide timely notice to the VA that its reliance on Exela to perform critical aspects of the task order was no longer accurate, as the RTOR required. By selling its scanning assets, Exela is no longer capable of performing certain services that GDIT represented to the VA in its proposal, including the provision of hardware and ability to scale. GDIT must find another vendor to perform, yet did not disclose this fact to the VA.

J. Following Delay in Corrective Action, and Without Explanation, VA Terminates for Convenience Award to GovCIO and Awards the Task Order to GDIT

On July 10, 2023, over four months after the GAO’s decision and the presumed start of corrective action, the VA abruptly “terminate[d] completely Task Order No. 36C10D23N0001 . . . for the Government’s convenience under the clause entitled 52.212-4(I),” and thereafter failed to provide any explanation or detail to GovCIO as to the reasoning or motivation behind the termination. See Ex. 14 (FCSS T4C Letter) at 1.

Between March and August 2023, GovCIO made multiple attempts to find out basic information about the status of the corrective action and the VA’s unexplained decision to terminate GovCIO’s task order, including communications with leadership in the VA’s Office of Acquisition, Logistics, and Construction, Office of General Counsel, and VBA, but nobody in the VA would provide information.

[REDACTED]

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On August 7, 2023, nearly a month after the termination, the VA informed GovCIO that its “quote for the subject solicitation was unsuccessful and that a quote revision will not be considered.” Ex. 3 (2023 Award Notice) at 1. The notice provided that the VA had awarded the task order to GDIT at a price of \$399,641,439.16, and that the award “was based on a best value determination.” *Id.*

The VA unnecessarily kept GovCIO in the dark for nearly a month regarding why it terminated its task order. The FAR states that “[a]n essential consideration in every aspect of the [Federal Acquisition] System is maintaining the public’s trust,” and “[n]ot only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness.” FAR 1.102-2(c). “Fairness and openness require open communication among team members, internal and external customers, and the public.” *Id.* There was no reason for the VA not to provide offerors with timely information regarding the corrective action. There was also no reason to terminate GovCIO’s task order without any explanation, forcing GovCIO to wait nearly a month to determine if the VA had selected GDIT for award. The VA’s repeated disregard of the FAR’s guiding principles regarding fairness and openness with the public underscores the lack of fairness seen throughout the reevaluation and award decision, as described in more detail below.

GovCIO timely requested a debriefing, which the VA provided on August 11, 2023. *See* Ex. 4 (Debriefing); Ex. 13 (ADD). The debriefing consisted of a debriefing letter and a redacted version of the VA’s Best Value Determination and Award Decision. *Id.* The ADD made abundantly clear that the VA did not conduct a fair or reasonable reevaluation addressing the narrow documentation issues identified in the GAO’s decision, but instead targeted GovCIO’s proposal with excessive scrutiny, applying a far more exacting standard than it applied to GDIT. The VA went beyond the GAO’s recommendation to document its evaluation in several areas and instead reevaluated GovCIO’s entire proposal, evidently with a new evaluation team and/or a new set of instructions and guided by GDIT’s protest itself (rather than GovCIO’s proposal). The result was the complete abandonment of nearly everything the VA had said about GovCIO’s proposal before. At the same time, the VA did not even look at GDIT’s proposal a second time, creating a situation where the only two proposals in the competition were evaluated on different information and guidelines, at different times, and apparently by different people. The VA abandoned its initial evaluation of GovCIO, yet never thought that its initial evaluation of GDIT’s proposal warranted a similar redo.

The ADD also confirmed the impact of GDIT’s improper influence of the reevaluation, observing:

Of particular note, VA Office of General Counsel received a letter from GovCIO’s counsel on April 4, 2023, which indicated that one of its prospective subcontractors was no longer available. . . . In its April 4, 2023 letter, GovCIO expressed it made this representation with respect to Exela. As outlined further below, GovCIO’s

[REDACTED]

indication it no longer could rely upon the participation of Exela significantly increased the risk to the Government of GovCIO's successful performance of the contract, as there is substantial ambiguity as to who and how GovCIO would be able to perform the required tasks.

Ex. 13 (ADD) at 3. Despite the VA Office of General Counsel's full understanding of the facts and GDIT's previous efforts to use Exela to eliminate GovCIO's proposal, the VA apparently never considered the significance of the fact that GDIT's hands were all over Exela's March 31 letter. The VA not only turned a blind eye to GDIT's interference, but inappropriately used the notice to undermine GovCIO's proposal during the reevaluation. As evident throughout the ADD, the agency treated the letter as a key factor driving its dramatically different reevaluation results.

K. Technical Evaluation

The ADD detailed the adjectival ratings and definitions for the Technical Factor:

Rating	Description
Exceptional	The Quote meets requirements and indicates an exceptional approach and understanding of the requirements. Quote contains strengths that should substantially benefit the program. There are no weaknesses or deficiencies. The relative risk associated with the technical quote is very low.
Good	The Quote meets requirements and indicates a thorough approach and understanding of the requirements. Quote contains strengths that should benefit the program. Weaknesses, if any, are offset by strengths. There are no deficiencies. The relative risk associated with the technical quote is low.
Satisfactory	The Quote meets requirements and indicates an adequate approach and understanding of the requirements. Quote has weaknesses that are not offset by strengths. There are no deficiencies. The relative risk associated with the technical quote is moderate.
Marginal	The Quote does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. Quote contains numerous weaknesses which are not offset by strengths. There are no deficiencies. The relative risk associated with the technical quote is substantial.
Unsatisfactory	The Quote does not clearly meet requirements and contains significant weaknesses and/or deficiencies. The relative risk associated with the technical quote is unacceptable and not awardable.



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Id. at 5.

Turning to the Technical Evaluation, the ADD summarized the re-evaluation as follows:



Id. at 7. As seen above, the VA eliminated [REDACTED] of GovCIO's original strengths while increasing weaknesses and significant weaknesses. The primary target of the new TEB's evaluation of GovCIO's proposal was under the Capabilities and Experience element, resulting in [REDACTED] weaknesses and [REDACTED] significant weaknesses in this single element. *Id.* at 11-12. Yet, while applying greater scrutiny and a more exacting standard to GovCIO's proposal, the VA did not even look at GDIT's proposal again. *Id.* at 3. The VA irrationally assumed that the TEB's initial evaluation of GovCIO was seriously flawed, but its evaluation of GDIT's proposal was somehow flawless. As a result, GDIT's original technical rating of Good remained while the VA adjusted its previous evaluation of GovCIO's technical proposal from [REDACTED] to [REDACTED]. *Id.* at 17.

First, GovCIO received the following ratings for Element 1 (Technical Approach) of the Technical Factor:

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Id. at 8-9. Nothing in the debriefing explains why the VA eliminated an initial Technical Approach strength assigned to GovCIO:

[REDACTED]

Ex. 7 (2022 Debriefing) at 1. Since GovCIO's proposal did not change, there was no reasonable basis for the VA to abandon this original assessment without explanation.

[REDACTED]

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Next, GovCIO received the following ratings for Element 2 (Staffing Approach) of the Technical Factor:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Ex. 13 (ADD) at 10.

As to Element 3 of the Technical Factor (Capability and Experience), GovCIO received the following ratings:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Id. at 11-12.

Contrary to the above assessment, the RTOR did not require that GovCIO [REDACTED] —the VA overlooked the portion of the evaluation criteria stating, “or similar tasks” and “or similar records.” Ex. 2 (RTOR) at 39. The VA also disregarded the fact that the evaluation criteria provided for an assessment based on relevant experience with five broad categories of services, each with equal weight. *Id.* The above evaluation, in contrast, held GovCIO to a standard that only GDIT could

[REDACTED]

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meet, requiring GovCIO to [REDACTED]

Under the agency's unreasonable standard, no other "similar" contract exists, making the RTOR a disguised, de facto sole-source procurement for GDIT.

In sum, the TEB assigned GovCIO a Technical rating of [REDACTED] and claimed that [REDACTED] and that "the April 4, 2023 letter stating Exela would no longer be participating as one of GovCIO's subcontractors creates substantial ambiguity as to who would perform the required tasks." Ex. 13 (ADD) at 12.

L. Past Performance Evaluation

The ADD detailed the following adjectival ratings used for the Past Performance factor:

Rating	Definitions
Neutral	No current and/or relevant past performance record is available; therefore, the Vendor may not be evaluated favorably or unfavorably.
Low Risk	Based on the Vendor's performance record, low risk exists that the Vendor will not successfully perform the required effort.
Moderate Risk	Based on the Vendor's performance record, moderate risk exists that the Vendor will not successfully perform the required effort.
High Risk	Based on the Vendor's performance record, substantial risk exists that the Vendor will not successfully perform the required effort.

Id. at 6.

In evaluating GovCIO's past performance, the new TEB assigned GovCIO a rating of [REDACTED] in stark contrast to the [REDACTED] rating it received initially, finding [REDACTED]. *Id.* at 15. According to the TEB, "[REDACTED] but [REDACTED]" *Id.* According to the TEB, GovCIO "[REDACTED]

[REDACTED]

[REDACTED] .” *Id.*

Notably, the TEB’s about-face assignment of a [REDACTED] past performance rating to GovCIO, [REDACTED], is contrary to the express terms of the RTOR and FAR, and goes beyond anything ever said previously by the GAO, the VA, and even ultimately GDIT. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 [REDACTED]

[REDACTED]

GROUND OF PROTEST

A. GDIT Failed To Notify The VA That A Material Aspect Of Its Technical Proposal Was No Longer True

The GAO has held that “offerors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of proposals.” *Pioneering Evolution, LLC*, B-412016, Dec. 8, 2015, 2015 CPD ¶ 385 at 7. The GAO will sustain a protest when an offeror fails to notify an agency that key resources or other material aspects of its proposed technical approach changes before award. In *Greenleaf Constr. Co., Inc.*, B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19, for example, the GAO sustained a protest where the offeror failed to notify the agency before award that certain resources were no longer committed or available as proposed. The GAO explained:

Based on our review of the record, we find that HUD’s evaluation of CLF’s proposal was unreasonable because it was based on aspects of CLF’s proposed resources and technical approach that, after the submission of CLF’s FPR, and unbeknownst to the agency, materially changed such that the agency never evaluated the awardee’s actual resources and technical approach as they existed at the time of award.

³ The VA did not demonstrate how it determined that [REDACTED]

[REDACTED]

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Id. at 3.

Although most GAO cases applying this principle arise in the context of key personnel, the GAO will sustain a protest where an offeror fails to notify the agency that key resources upon which its technical approach relied are no longer available. An offeror's failure to be transparent is a form of material misrepresentation that warrants rejection of the offeror's proposal.

In *Dual, Inc.*, B-280719, No. 12, 1998, 98-2 CPD ¶ 133, the GAO sustained a protest where "the record shows that Camber agreed to sell the division which it stated would perform significant TSA work and to transfer the employees of that division to the acquiring company [and] Camber did not notify the Air Force of the sale agreement." *Id.* at 3. The protester argued that Camber effectively misrepresented a material aspect of its technical approach—specifically, Camber's proposal that its "Flight Simulation Division would be the main operating location for performing contract work was a material misrepresentation that included the wholesale substitution of facilities, equipment, numerous personnel, and experience associated with the Flight Simulation Division." *Id.* The GAO agreed, explaining:

Since the agency's evaluation of Camber's proposal was based upon Camber's representation that it would perform much of the TSA contract with its own employees, when, in fact, that will not be the case, the evaluation is flawed. Therefore, the SSA's best value determination and selection of Camber as the second awardee under the partial small business set-aside, which was based entirely upon the results of the flawed evaluation, is also suspect.

In these circumstances, Camber had an obligation to advise the agency of the sale, at the very latest on June 28, when it agreed to the sale and lease back of facilities. See *Professional Safety Consultants Co., Inc.*, B-247331, Apr. 29, 1992, 92-1 CPD ¶ 404 at 4. See also *Mantech Field Eng'g Corp.*, *supra*. Because Camber did not do so, the agency's evaluation and its selection of Camber were based upon representations concerning Camber's personnel that were no longer true. The award was based on Camber's proposal representations, and to allow such an award to stand in spite of the fact that Camber had not disclosed to the agency that it would not perform the contract as proposed would call into the question the integrity of the competition.

Id. at 5.

Notably, the GAO rejected the intervenor's contention in *Dual* that it made arrangements with other personnel or subcontractors to ensure performance notwithstanding the sale of the division, explaining "the fact is that the agency evaluated Camber's proposal and performance risks on the basis of the Flight Simulation Division and its employees, not on the basis of personnel




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from other divisions or subcontractors doing the work.” *Id.* at 4. Thus, it is not acceptable for an awardee to respond to a material change to its proposal by arguing that it made separate arrangements to accommodate the change, since those arrangements were not before the evaluating agency.

Here, GDIT failed to notify the VA that a material aspect of its proposal—its known reliance on Exela to perform a large percentage of the high-volume scanning and essential aspect of the requirement—was no longer true. It is public knowledge that Exela is a key incumbent subcontractor supporting GDIT’s current incumbent effort. GovCIO understands from direct conversations with Exela that it is currently supporting GDIT and planned to continue supporting GDIT if GDIT won the FCSS task order. It is also apparent to GovCIO that Exela is a key subcontractor on GDIT’s team based on GDIT’s protest challenging GovCIO’s representation that it had a commitment with Exela to support GovCIO’s performance after award. *See, e.g.*, Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 7 (comparing GDIT’s allegations against GovCIO’s commitment with Exela to the decision in *Integration Techs. Grp., Inc.*, B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 and referring to “existing agreements with GDIT[]”).

The GAO’s decision in response to GDIT’s protest revealed that GDIT received a strength because “GDIT indicates currently approved, active capacity to meet the processing requirements of the task immediately upon award. This increases confidence that the offeror will be able to deliver the volume of required document conversion services within the expected delivery schedule.” *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 12. GDIT insisted during its previous protest that maintaining current production levels is necessary to meet the VA’s requirement. *See* Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 9 (“To be clear, the record confirms that the current production level will be necessary for performance.”). A key component of GDIT’s alleged “active capacity” is its relationship with Exela.

In June 2023, multiple media outlets reported that Exela sold its high-volume scanner and North America hardware maintenance businesses to ibml. *See, e.g.*, Ex. 12 (Press Release - Exela Sale of Scanner Business). The sale included the BancTec IntelliScan scanners used by Exela to support GDIT’s incumbent file scanning services. In addition, all of Exela’s employees used to produce and maintain these scanners are now ibml employees. The Birmingham Business Journal reported that ibml will gain 100 employees out of the deal and that “[t]he company’s CEO said the deal will lead to more investment in the Birmingham campus,” *see* <https://www.bizjournals.com/birmingham/news/2023/06/12/bham-based-ibml-acquires-intelliscan.html>, a location not addressed in GDIT’s proposal or evaluated by the VA. Thus, to the extent GDIT’s proposal relied on Exela’s resources—including physical scanning assets, experienced employees, and physical infrastructure and locations—GDIT’s proposal is not accurate, cannot justify any strengths assigned, does not clearly meet requirements, and is deficient.



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GDIT and Exela would need to compete with other vendors to secure ibml assets and enter into new agreements with ibml to obtain scanners and maintenance services that GDIT relied on to perform the requirements, introducing a new layer of subcontracting that GDIT did not address in its proposal. Since Exela's sale occurred after proposal submission, GDIT's proposal does not indicate that it has a contractual relationship with ibml or any other vendor to meet the VA's high-volume scanning needs and other RTOR requirements. Even if GDIT already made arrangements to work with ibml, GDIT's proposal also does not explain how it will manage a new layer of subcontracting, nor did the VA evaluate it (as discussed below, the VA assigned a significant weakness to GovCIO for not adequately explaining the roles and responsibilities of subcontractors).

GDIT's core reliance on a vendor who no longer possesses the essential assets, maintenance capabilities, and employees to perform key portions of the RTOR as proposed represents a clear deficiency in GDIT's proposal. Had GDIT notified the VA that key elements of proposed technical approach were no longer true, as the GAO requires, GDIT would have lost all of its strengths associated with such things as transition, capacity, and ability to meet surge demands. RTOR Section E.1.5.1.1.3, for example, required GDIT to address "planned resources to be used for PWS 5.5 including planned physical infrastructure, technologies, scalability of resources impacted by surges in volumes." The elimination of Exela's assets from GDIT's team undermines GDIT's ability to address this and other similar requirements. Without explaining how it will maintain continuity of services or perform without this portion of Exela's business, GDIT's proposal does not demonstrate a "workable" solution that is "achievable." Had GDIT notified the VA as required, its proposal would have resulted in the assignment of multiple significant weaknesses, a deficiency, and an Unsatisfactory rating under the Technical factor and the Technical Approach and Staffing Approach elements, and possibly the Capabilities and Experience element if GDIT relied on Exela.

In fact, the significant weaknesses that the VA just assigned to GovCIO on reevaluation apply more so to GDIT since, as discussed below, GovCIO did not even rely on Exela, whereas Exela was a key aspect of GDIT's proposal.

- The VA [REDACTED]
[REDACTED]
[REDACTED]. The VA's statement in GovCIO's debriefing necessarily applies to GDIT as well:
[REDACTED]
[REDACTED]

[REDACTED]

- The VA [REDACTED]
[REDACTED] " Again, the same is true for GDIT's proposal in the absence of Exela and its critical resources. Unlike GovCIO, *who did not rely on Exela* but instead proposed Exela as an additional value-added resource, it is publicly known that GDIT relied on Exela for its technical solution as an exclusive provider. The loss of Exela's key assets and personnel must also mean that there is "[REDACTED]" as to how GDIT will actually perform the work and whether GDIT has the "[REDACTED]"
- The VA [REDACTED]
[REDACTED] The VA explained that the "[REDACTED]"
[REDACTED] The VA also explained that [REDACTED]
[REDACTED] The debriefing explained that [REDACTED]
[REDACTED] " But the same became true for GDIT before award. GDIT relied on Exela to meet requirements but that is not possible since Exela no longer possesses the assets and infrastructure. At a minimum, that same "[REDACTED]" should have pertained to GDIT's proposed [REDACTED] as well.
- To the extent GDIT relied on Exela under the [REDACTED] element, the same issues arises. The VA [REDACTED]
[REDACTED] If the VA gave GDIT credit for Exela's experience, that experience no longer exists. Thus, the VA was required to downgrade GDIT's proposal under the [REDACTED] element.
- Overall, the VA explained that GovCIO deserved an [REDACTED] rating due in large part to these [REDACTED] and the "the April 4, 2023 letter stating Exela would no longer be participating as one of GovCIO's subcontractors [which] creates substantial ambiguity as to who would perform the required tasks." Since Exela cannot perform key tasks for GDIT either, the same concern applies to GDIT's proposal.

[REDACTED]

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GDIT was obligated to notify the VA of the material change to its proposal, but failed to do so. It is impossible for GDIT not to have known about the sale in June, at least six weeks before the VA awarded the task order to GDIT. Since Exela was an incumbent subcontractor, the sale of its core scanning unit and related assets would require both multiple communications to and from Exela and GDIT about its current subcontract, as well as GDIT's plan to obtain scanning services from ibml or another vendor.

The RTOR specifically advised offerors that they must submit "full, accurate and complete information," that the VBA would rely on all proposal information including the identification of "subcontractors" and "plans," and that "any substitutions will require prior Contracting Officer's approval." Ex. 2 (RTOR) at 37. The RTOR further cautioned that an offeror "shall be held responsible for the validity of all information supplied in its response/submission, including that provided by potential subcontractors" and that failure to be transparent is grounds for rejection of a proposal. *Id.* By failing to provide notice to the VA and seeking the Contracting Officer's permission to substitute Exela as one of its subcontractor (or adding a subcontractor of Exela), GDIT violated the RTOR. The VA should have rejected its proposal since its information about its subcontractor, Exela, was not full, accurate, or complete.

GDIT's lack of transparency in this regard is particularly unreasonable given the aggressive position it took against GovCIO. GDIT first alleged in its earlier protest that GovCIO misrepresented its commitment with Exela to support the GovCIO team after award. When that allegation proved false after a hearing before the GAO, GDIT directed or threatened Exela to send a letter to GovCIO demanding that GovCIO notify the VA that Exela would not support the GovCIO team if GovCIO won the task order. GDIT knew that by sending this letter, GovCIO would have an obligation to inform the VA to avoid a second argument from GDIT that GovCIO misrepresented its agreement with Exela. The only purpose in directing Exela to send this letter was to setup a future misrepresentation argument or to sabotage GovCIO's proposal and influence the VA's ongoing corrective action.

Unlike GDIT, GovCIO did the right thing and notified the VA upon receipt of Exela's letter. Yet when faced with a similar development, for a much more significant portion of its technical proposal—the sale of Exela's scanning service to a third party not mentioned in GDIT's proposal—GDIT apparently stayed silent and failed to provide notice to the VA. GovCIO not only acted with transparency, but its proposal did not even rely on Exela, whereas the sale of Exela's scanning unit materially affected multiple aspects of GDIT's proposal.

Moreover, ibml—the purchaser of all of Exela's scanning assets and maintenance services—was already listed as a "[REDACTED]" vendor in GovCIO's proposal. This means that the sale of Exela not only undercut GDIT's proposal, but further strengthened the value of GovCIO's existing partnership with ibml. And yet, as discussed below, the VA handled the Exela sale in exactly the opposite way—downgrading GovCIO with [REDACTED] significant weaknesses despite the fact

[REDACTED]

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that Exela's sale to ibml could only strengthen GovCIO's proposal while disregarding major weaknesses and deficiencies in GDIT's proposal stemming from the loss of Exela's business unit related to scanning assets.

To the extent GDIT argues that Exela could still secure assets from ibml or other parties to meet requirements and that it still intends to subcontract to Exela, the GAO has already rejected such an argument. In *Dual*, B-280719, the GAO explained that the agency evaluated the awardee's "proposal and performance risks on the basis of the Flight Simulation Division and its employees, not on the basis of personnel from other divisions or subcontractors doing the work." *Id.* at 4. Here, the VA has not evaluated any technical approach that addresses how GDIT is going to perform after Exela's sale of its scanning assets. Thus, even if GDIT planned for the sale, its proposal does not say how.

GDIT's failure to notify the VA that a material aspect of its proposal was no longer true represents a material misrepresentation and should result in the disqualification of GDIT's proposal (as noted below, it also implicates GDIT's responsibility for this procurement). At a minimum, the sale of Exela's scanning division completely undercuts GDIT's technical approach, requiring the VA to assign multiple significant weaknesses and a deficiency to GDIT's proposal for not addressing key requirements. Without any plan laid out in its proposal to meet the VA's scanning needs without the business unit of Exela, GDIT's proposal represents significant performance risk and should have received an Unsatisfactory rating.

Alternatively, the VA should have opened discussions to permit both GDIT and GovCIO an opportunity to revise their proposals, especially given the VA's decision to downgrade GovCIO's proposal when, through no fault of GovCIO (and at the instigation of GDIT), GovCIO had to notify the VA that Exela was rescinding its commitment to support GovCIO.

B. The VA Should Have Found GDIT Non-Responsible Due To Its Attempt To Gain An Unfair Competitive Advantage And Apparent Violation Of Antitrust Laws, or Otherwise Disqualified GDIT Due To Its Attempt to Influence The Procurement

As the GAO already knows from GDIT's previous protest, including the hearing and testimony of key witnesses, Exela committed to supporting GovCIO's performance of the task order after award and authorized GovCIO to include specific language in its proposal representing that it had a commitment with this incumbent vendor. GDIT argued that GovCIO had materially misrepresented this commitment, but ultimately withdrew that protest argument after the hearing. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 3 n.5 ("The protester also withdrew its argument that the awardee's proposal contained material misrepresentations regarding agreements with its proposed subcontractors, following a hearing conducted by our Office to further develop the record regarding this matter.").



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On March 31, 2023, one month after the GAO issued its decision, Exela sent a letter to GovCIO falsely implying that it had never authorized GovCIO to represent that it had a commitment to support GovCIO in the event GovCIO won the task order, rescinding its previous commitment to support GovCIO, and requesting that GovCIO notify the VA that Exela would not support GovCIO after award. *See* Ex. 10 (Exela Letter to GovCIO). It is readily apparent, and should have been apparent to the VA, that GDIT orchestrated Exela's letter, whether directly or through indirect corporate intimidation and pressure.⁴ *See* Ex. 18 (Declaration of [REDACTED]) ¶¶ 2-6.

As a non-offeror, Exela would have no reason to send such a letter to GovCIO, especially the portion of the letter directing GovCIO what to say to the VA in connection with its proposal. *Id.* ¶ 5-6. The only reason Exela would include such a demand is to accommodate threats from GDIT or otherwise do GDIT's bidding, as GDIT needed Exela to disavow its commitment with GovCIO. *Id.* Having first failed to demonstrate that GovCIO misrepresented a commitment it received from Exela, GDIT sought to create a "misrepresentation" by compelling Exela to send its letter so that GDIT could argue that GovCIO's proposal now contained a misrepresentation or was otherwise deficient. *Id.* The VA was surprisingly not troubled about using the notice provided by GovCIO to convene a new TEB and assign multiple significant weaknesses to GovCIO's proposal without apparently asking any questions or investigating to determine the extent to which GDIT orchestrated these events. The VA's apparent disinterest and lack of curiosity was unreasonable.

Under these circumstances, where an offeror in a head-to-head competition actively seeks to influence the evaluation and undermine its competitor's proposal, the GAO should recommend that the VA disqualify GDIT from the competition on the basis of these actions alone and also the basis that the VA should have found GDIT non-responsible. Through no fault of its own, GovCIO submitted a proposal that included [REDACTED]

[REDACTED] including Exela. As GovCIO's sworn and credible testimony demonstrated, [REDACTED]

[REDACTED]. *See id.* ¶¶ 2-6. The sole purpose of this letter was

⁴ Exela's financial troubles are public and well documented. *See, e.g.*, Ex. 15 (SEC Press Release – Dec. 19, 2022) ("The Securities and Exchange Commission today announced settled charges against Exela Technologies, Inc., . . . for reporting, controls, and record keeping violations."); Ex. 16 (InvestorPlace – March 2, 2023) ("Overall, Exela Technologies is a fiscal failure."); Ex. 17 (InvestorPlace – Feb. 19, 2023) ("Over the last twelve months, XELA stock has plunged by nearly 99.6%. . . . [I]t's best to stay as far away as you can from this penny stock."). If GDIT threatened Exela with legal action, Exela would likely oblige to avoid costly litigation. GDIT also has a history of threatening and coercing Exela. *See* Ex. 18 (Declaration of [REDACTED]) (explaining that on multiple occasions, Exela would tell GovCIO that it was receiving pressure from GDIT leadership).

[REDACTED]

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to not only undermine GovCIO's chances of receiving the award, but to clear the field of GDIT's only competition through improper means. *Id.* It is one thing for a key person or subcontractor to withdraw from an offeror's team prior to award on his or her own initiative. But it is something entirely different when the only other competitor is behind it, orchestrating a change to its competitor's proposal for the purpose of taking out the competition or otherwise gaining an unfair advantage. This is exactly what GDIT did here.

First, GDIT's conduct gives rise to an unfair competitive advantage and creates a clear appearance of impropriety. FAR 3.101-1 states that "[t]ransactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct." FAR 1.102-2© states that "[a]n essential consideration in every aspect of the [Federal Acquisition] System is maintaining the public's trust," and that "[n]ot only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness." The GAO has recently said that "a proposal may be properly disqualified based on the appearance of an unfair competitive advantage, as long as the determination is based on facts and not suspicion or innuendo." *CACI, Inc. - Fed.*, B-421224, Jan. 23, 2023, 2023 CPD ¶ 35 at 12. "Whether an appearance of impropriety based on an alleged unfair competitive advantage exists depends on the circumstances in each case." *Id.*

The GAO has adopted the Federal Circuit's "disinterested observer" standard to determine if whether an appearance of impropriety based on an alleged unfair competitive advantage exists under FAR 3.101. *See Booz Allen Hamilton, Inc.*, B-418125, Jan. 15, 2020, 202 CPD ¶ 28 at 8 ("there is no appearance of impropriety when a[a] disinterested observer knowing all the facts and the applicable law would see nothing improper") (quoting *R & W Flammann GmbH v. United States*, 339 F.3d 1320, 1324 (Fed. Cir. 2003)).

Any disinterested observer would view the present circumstances as unfair, improper, and corrupting the integrity of the procurement process. GDIT lost the re-compete in a head-to-head competition with GovCIO at an insurmountable price difference. To get around this significant disadvantage during the reevaluation, GDIT directed, pressured, or threatened Exela to send a letter to GovCIO rescinding Exela's previous commitment to support GovCIO, including the false implication that Exela never authorized GovCIO to include the representation in its proposal. *See Ex. 18 (Declaration of [REDACTED])* ¶¶ 2-6. Throughout this process, GovCIO did nothing wrong. It reasonably relied on Exela's commitment and submitted its proposal on that basis. Knowing that it was too late for GovCIO to change its proposal (unless the VA opened discussions, which the VA unreasonably and questionably decided not to do⁵), GDIT influenced Exela to send

⁵ To the extent the record shows that GDIT also communicated with the VA to discourage it from opening discussions, this further reinforces GDIT's improper conduct and attempt to rig the competition in its favor.

[REDACTED]

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the letter for the sole purpose of undermining GovCIO's proposal. *Id.* GovCIO was thus powerless to prevent its only competitor, GDIT, from sabotaging the competition.

Remarkably, the VA did not consider any of this or how GDIT's conduct, and actions entirely outside of GovCIO's control, and through no fault of GovCIO, ultimately undermined its proposal without any chance to remedy the harm. These actions create a clear appearance of impropriety, gave GDIT an unfair competitive advantage, and undermine the integrity of the procurement. The GAO should not condone (and thus incentivize) such improper corporate intimidation and gaming of competitions. GDIT's conduct in prompting the March 31 letter is disqualifying, and the VA's handling of it was unreasonable.

Second, the VA also did not consider the fact that GDIT's actions with respect to this procurement violate antitrust laws and how that fact disqualifies GDIT for this particular task order. FAR 3.303(b) states that the "antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect." FAR 3.303(c) adds that "[p]ractices or events that may evidence violations of the antitrust laws include—(9) Assertions ... competitors of offerors, that an agreement to restrain trade exists." See also FAR 1.102(b)(1)(iii) (one of the "guiding principles" of the FAR is "[p]romoting competition"); FAR 1.102-2(a)(5) ("It is the policy of the [Federal Acquisition] System to promote competition in the acquisition process.").

"Every contract ... or conspiracy, in restraint of trade or commerce among the several States ... is declared to be illegal." 15 U.S.C. § 1. The VA must "report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws." FAR 3.303(a). While the adjudication of antitrust issues is "outside [the] purview" of GAO, *Office Design Grp.*, B-415853.3, *et al.*, July 16, 2018, 2018 CPD ¶ 265 at 9 n.6, GAO has also "recognized that such allegations should be considered by the contracting officer in the contest of a responsibility determination," *In re TFA, Inc.*, B-243875, Sept. 11, 1991, 91-2 CPD ¶ 239. Because of this, GAO can affirmatively raise these issues to the agency, who then has an obligation to refer them to the Department of Justice. See *Kola Nut Travel, Inc.*, B-296090.4, Aug. 25, 2005, 2005 CPD ¶ 184 at 9 n.12 ("This Office subsequently conducted a conference call with counsel for all of the parties to discuss the matter, expressing concern that some of the indicia of antitrust violations listed in FAR § 3.303 may exist. Following this Office's expression of concern, the agency advised our Office that it had referred the matter to the Department of Justice (DOJ) as contemplated by FAR § 3.303.").

Here, such an agreement to restrain trade exists, and such a restraint was improperly ignored by the contracting officer when making his responsibility determination. GDIT apparently entered into an agreement with Exela to restrain trade, allegedly preventing Exela from supporting any other contractor besides GDIT, *even if GDIT lost the recompetete for this task order*. In other words, GDIT did not merely agree with Exela that it would be exclusive to the GDIT team for the



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task order competition, but that GDIT would not allow Exela to support any other awardee even after GDIT no longer had a contract to provide file scanning services to the VA. The only purpose of such an extreme restraint on trade is to unlawfully eliminate competition by creating a de facto sole-source environment. If Exela's scanning resources are necessary to have sufficient capacity to perform the task order, then GDIT can corner the entire market by locking up Exela into an agreement that not only prevents Exela from teaming with others, but allegedly preventing Exela from working with others even if GDIT loses the task order.

GovCIO is not objecting to the mere existence of a non-compete agreement in response to a particular solicitation, but GDIT violated antitrust laws by taking it one step further when it prevented Exela from working with GovCIO after GDIT no longer has any contract for VA file scanning services—i.e., barring Exela from working with anyone else on any task order issued under the VICCS contract, and then using that restraint on trade to influence GovCIO's proposal and the reevaluation.⁶ GDIT has no legitimate business interest in preventing Exela from working with the new awardee if GDIT no longer holds the task order with the VA. *See Parikh v. Family Care Ctr., Inc.*, 273 Va. 284, 291 (2007) (reversing trial court's enforcement of noncompete because plaintiff had no legitimate business interest to protect where it was unable to compete in same field); *Omniplex World Servs. Corp. v. US Investigation Servs.*, 270 Va. 246, 250 (2005) (holding noncompete was "overbroad and unenforceable" where there it restricted defendant from performing work that was not in competition with plaintiff); *Modern Environments, Inc. v. Stinnett*, 263 Va. 491, 495 (2002) (explaining there is no legitimate business interest in prohibiting competition "in any capacity").

GDIT's anti-competition scheme worked. GDIT apparently used its unlawfully broad noncompete to manipulate Exela into directing GovCIO to notify the VA that it had rescinded its commitment to support GovCIO for the sole purpose of restraining trade and eliminating GDIT's *only competitor* standing in the way of its substantially inflated \$400 million proposal. GDIT significantly overpriced this scanning contract—a \$158 million price premium over GovCIO—based in part on its confidence that no other competition could exist.

Each of the above issues, standing alone, disqualify GDIT for award. But the VA also unreasonably failed to consider both GDIT's efforts to influence the procurement through improper means and GDIT's effort to restrain trade when making its responsibility determination. Since the debriefing states that the VA did not even reevaluate GDIT's proposal, it is likely the VA did not conduct a responsibility determination at all when selecting GDIT for award, much less investigate and consider both of these troubling and "suspect" events. FAR 9.104-1(d) requires

⁶ In addition to GDIT's interference under the FCSS procurement, GDIT also interfered with Exela working with GovCIO under the [REDACTED], Ex. 18 (Declaration of [REDACTED]) ¶ 4.

[REDACTED]

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a contractor to “[h]ave a satisfactory record of integrity and business ethics” to be found responsible, yet there is no evidence that the VA considered any of this, including GDIT’s calculated actions in this procurement to set-up a de facto sole-source award, when assessing GDIT’s responsibility.

Engaging in a scheme to undermine another offeror’s proposal during a reevaluation or entering into an agreement to restrain trade and deprive the VA of competition—and then use that agreement to undermine another proposal—does not reflect the level of integrity or business ethics necessary to receive an award. “Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect.” FAR 3.303(b). The facts and additional evidence that should be developed during a hearing will confirm that the VA did not reasonably investigate or consider relevant evidence in making its responsibility determination.

In addition to these two grounds affecting GDIT’s responsibility, the VA was also required to consider GDIT’s lack of transparency when Exela sold its scanning division and thus materially undermined GDIT’s proposal. The GAO’s precedent requires offerors to provide timely notice to the agency before award, but GDIT stayed silent. GDIT’s lack of transparency is a form of misrepresentation that deceived the VA into believing GDIT’s proposal would provide the VA far more technical merit and value than the VA will actually receive.

“GAO will review challenges to an agency’s affirmative responsibility determination when the protester presents specific evidence that the contracting officer may have unreasonably ignored information that, by its nature, would be expected to have a strong bearing on whether the agency should find the awardee responsible.” *Homesafe Alliance, LLC*, B-418266.5, Oct. 21, 2020, 2020 CPD ¶ 350 (protest sustained where the agency’s responsibility determination did not consider the role of a corporate parent who had a record of misconduct). Moreover, allegations of antitrust violations “should be considered by the contracting officer in the context of a responsibility determination.” *TFA*, B-243875.

Since GDIT (a) improperly influenced the corrective action by prompting Exela’s letter, (b) engaged in an unlawful scheme to restrain trade in violation of anti-trust laws, and (c) failed to timely disclose the sale of Exela and its impact on GDIT’s proposal, GDIT is ineligible for award and should have been found non-responsible for purposes of this task order.

C. The VA’s Decision or “Recommendation” Not To Hold Discussions Was Unreasonable and Arbitrary

GovCIO’s debriefing states that “[d]iscussions were not required, and award was recommended on initial offers.” It is unclear who “recommended” that the VA award the task order based only on initial offers, but that recommendation was plainly unreasonable and arbitrary in light of all of the relevant facts before the agency.



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Agency action is arbitrary and capricious if the agency (1) “has relied on factors which Congress has not intended it to consider,” (2) “entirely failed to consider an important aspect of the problem,” (3) “offered an explanation for its decision that runs counter to the evidence before the agency,” or (4) “is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The GAO will review an agency’s conduct of negotiations or discussions “to ensure that an agency has not conducted itself in an arbitrary manner, or negotiated in bad faith or a manner inconsistent with the [solicitation.]” *Blue Origin Federation, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783, July 30, 2021, 2021 CPD ¶ 265 at 25 (citing the Supreme Court’s definition of arbitrary agency action in *Motor Vehicle Mfrs. Ass’n*). The GAO has said that “an agency must document its evaluation judgments in sufficient detail to show that they are not arbitrary.” *Konica Minolta Bus. Sols. USA, Inc.*, B-418800, Sept. 4, 2020, 2020 CPD ¶ 292 at 4 n.4.

The VA’s “recommendation” and ultimate decision to proceed without discussions was unreasonable for several reasons.

First, GovCIO’s April 4 letter regarding Exela resulted in the assignment of [REDACTED] significant weaknesses and an [REDACTED] rating to GovCIO. As the VA should have been well aware, Exela’s March 31 letter did not appear out of thin air, but was instead designed by GDIT specifically to result in the assignment of significant weaknesses to GovCIO. None of this was the fault or responsibility of GovCIO, and preventing this improper interference was out of GovCIO’s control.

Knowing that Exela’s letter was designed to affect the competition, it is incomprehensible that the VA did not open discussions and permit GovCIO to resolve the alleged “substantial ambiguity” created by Exela’s letter. Since all of this was beyond GovCIO’s control, and was in fact instigated by GDIT, the VA should have opened discussions to prevent GDIT from gaining an unfair competitive advantage and ensure the integrity of the procurement—a central agency requirement. The VA had not yet held discussions, so there was no legitimate reason to refrain from opening a second or third round. *Cf. Pioneering Evolution, Inc.*, B-412016, Dec. 8, 2015, 2015 CPD ¶ 385 at 7 (finding decision not to open discussions reasonable where the agency had “already engaged in two rounds of discussions” and thus “reasonably declined to reopen a third round of discussions”).

“Not only must the [Federal Acquisition] System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness.” Moreover, “[t]ransactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct.” FAR 3.101-1. Since Exela’s letter tainted the integrity of the procurement, and opening discussions would have remedied this issue, it was unreasonable and arbitrary for the VA to proceed with a procurement without discussions, effectively

[REDACTED]

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“recommending” to proceed with award knowing that the integrity of the competition was compromised.

Second, the ADD states that the “VA opted against reopening discussions with both GovCIO and GDIT, especially because pricing on this task order has already been disclosed through the protests.” The VA never held discussions in this procurement, so opening discussions to address a situation outside of GovCIO’s control and initiated by GDIT would not have been “reopening discussions.” Regardless of this error, the VA’s reliance on the fact that pricing had already been disclosed through GDIT’s protest as a reason not to open discussions was itself unreasonable.

Opening discussions after the release of GovCIO’s winning price through the initial award can prejudice *GovCIO*, but that prejudice pales in comparison to the multiple significant weaknesses assigned to GovCIO as a result of the VA not opening discussions. It makes no sense to cause disqualifying prejudice to GovCIO, as the VA did here, for the sake of preventing relatively minor prejudice to GovCIO associated with the release of its price.

To the extent the VA was considering prejudice to GDIT, that too was an unreasonable consideration *since GDIT orchestrated the March 31 Exela letter* creating “substantial ambiguity” in GovCIO’s proposal. It is incomprehensible that the VA would disregard GDIT’s manipulation of the competition and then refuse to attempt any remedy for GovCIO because it might hurt *GDIT’s* chances of securing a significantly overpriced task order. The VA’s justification for not opening discussions was unreasonable and arbitrary.

Third, the VA’s “recommendation” not to open discussions was unreasonable for the simple fact that the VA was presented with just two offers representing a price difference of \$158 million. By rating GovCIO [REDACTED] on the basis that GovCIO’s proposal [REDACTED], the VA was in a position where only GDIT remained, leaving the VA with no choice other than to pay an unnecessary price premium of \$158 million in the absence of discussions. “It is the policy of the [Federal Acquisition] System to promote competition in the acquisition process.” FAR 1.102-2(a)(6). Instead of promoting competition and likely saving taxpayers \$158 million, the VA chose to proceed with award instead of opening discussions. This decision was unreasonable and contrary to the FAR.

Fourth, it was unreasonable for the VA to proceed without discussions knowing that the other central reason for rating GovCIO’s proposal [REDACTED] was the [REDACTED] weaknesses assigned to GovCIO’s Capabilities and Experience based on the conclusion that GovCIO’s two projects ([REDACTED]) were not [REDACTED], because the VA [REDACTED]. The VA penalized GovCIO throughout the Past Performance and Capabilities and Experience reevaluations for [REDACTED]

[REDACTED]

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[REDACTED] GovCIO's proposed [REDACTED] and [REDACTED] contracts and the FCSS task order. *See, e.g.*, Ex. 13 (ADD) at 12 ([REDACTED])

[REDACTED]; *id.* at 16 (assigning GovCIO a [REDACTED] Past Performance rating because [REDACTED])

All the while, the VA knew that [REDACTED]

[REDACTED], Ex. 18 (Declaration of [REDACTED]) ¶ 7. The [REDACTED]

[REDACTED], *Id.* ¶ 10.

[REDACTED], *Id.* In fact, [REDACTED]

[REDACTED], *Id.* A [REDACTED]

[REDACTED], *Id.*

[REDACTED], Ex. 13 (ADD) at 16. Further, [REDACTED]

[REDACTED], *Id.* The VA [REDACTED]

In short, the VA knew that all of the substantive criticisms of GovCIO's capabilities, experience, and past performance reflected in the debriefing were pure fiction. GovCIO [REDACTED], yet the VA acted as though GovCIO is incapable of doing the work. The VA then did nothing to promote competition, even though it knew that GDIT was the only other offeror. Especially under these circumstances, where the alternative was no competition at all, the VA cannot articulate a reasonable basis for deciding that it was in the VA's best interest to proceed without discussions.

"The primary objective of discussions is to maximize the Government's ability to obtain best value." Moreover, "[t]he role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs." FAR 1.102(d). The VA violated this principle by "recommending" not to open discussions. Any alleged advantages associated with GDIT were more than offset by the [REDACTED]

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substantial price premium associated with its proposal, and the VA already knew this. Had the VA opened discussions, GovCIO would have been able to resolve all or some of its weaknesses and, at the very least, been in a position to be considered for award under the RTOR's best value scheme.

The VA does not have any excuse for not opening discussions. Six weeks after the GAO issued its decision in response to GDIT's protest, the new TEB took just two weeks to reevaluate GovCIO's proposal. The VA then took more than three months before announcing the award, demonstrating that time and additional delays were of no concern for the VA. The VA easily could have opened discussions during this same time period. Had it done so, GovCIO could have resolved the agency's evaluated concerns, improved its proposal, and offered the VA significant savings. *See* Ex. 18 (Declaration of [REDACTED]). The FAR mandates that agencies officials exercise "sound business judgment," but the VA violated this requirement by electing not to open discussions.

D. The VA's Assignment of An [REDACTED] Technical Factor Rating To GovCIO Was Unreasonable

1. The VA's Assignment Of Significant Weaknesses To GovCIO Due To Exela's Recission Of Its Commitment To Support GovCIO Was Unreasonable

As detailed above, on April 4, 2023, GovCIO (through its counsel) informed the VA, in part, that:

[A]s requested by Exela, we are communicating to the VA, on behalf of GovCIO, that GovCIO is not authorized to represent that it is "teamed with Exela or that Exela has agreed to perform work for GovCIO as a subcontractor on the VICCS Task Order." As you know, GovCIO stated in its proposal that [REDACTED]

[REDACTED] GovCIO Tech Vol. at 1-1. GovCIO made this representation with respect to Exela based on the express and unambiguous direction and authorization from Exela, including its CEO.

Ex. 11 (GovCIO Letter to VA) at 2. For its candidness and transparency about a single, non-essential and otherwise unnamed potential subcontractor on the task order, the VA penalized GovCIO with [REDACTED] significant weaknesses, contributing to its overall [REDACTED] rating. Neither of these significant weaknesses are defensible under the terms of the RTOR.

First, the VA assigned GovCIO the following [REDACTED]

[REDACTED];

[REDACTED]

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Ex. 13 (ADD) at 9. The VA's interpretation of the letter and its effect on GovCIO's comprehensive and fully resourced team was unreasonable.

While the letter noted Exela's non-participation on GovCIO's team, it did not introduce any [REDACTED]. The letter did not report or suggest any [REDACTED]. It was unreasonable for the VA to [REDACTED].

Additionally, nowhere in the weakness does the VA document why Exela's presence was central to GovCIO's capabilities, nor can it. GovCIO's proposal [REDACTED]. In other words, GovCIO's [REDACTED]. This was the only portion of GovCIO's proposal that the VA should have disregarded.

The VA did not initially assign a strength for this aspect of GovCIO's proposal, indicating that the VA did not see particular merit in Exela's inclusion anyway. Yet the VA has now determined that [REDACTED], as if Exela played a prominent role in GovCIO's proposal. The VA unreasonably evaluated GovCIO based on Exela's departure—penalizing GovCIO with [REDACTED] redundant weaknesses because Exela was not on its team, as if the baseline



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for evaluation assumed Exela would be part of the team—rather than GovCIO’s actual proposed approach.

The RTOR required GovCIO to provide a “[c]omprehensive description of any planned resources to be utilized in support of PWS Task 5.5, Source Material Conversion, . . . including any planned subcontractor resources.” Ex. 2 (RTOR) at 38. Accordingly, GovCIO presented in detail

[REDACTED]

[REDACTED]” (GovCIO Proposal – Technical) at 1-26 (bold removed, italics added). In fact, GovCIO’s proposal made clear that

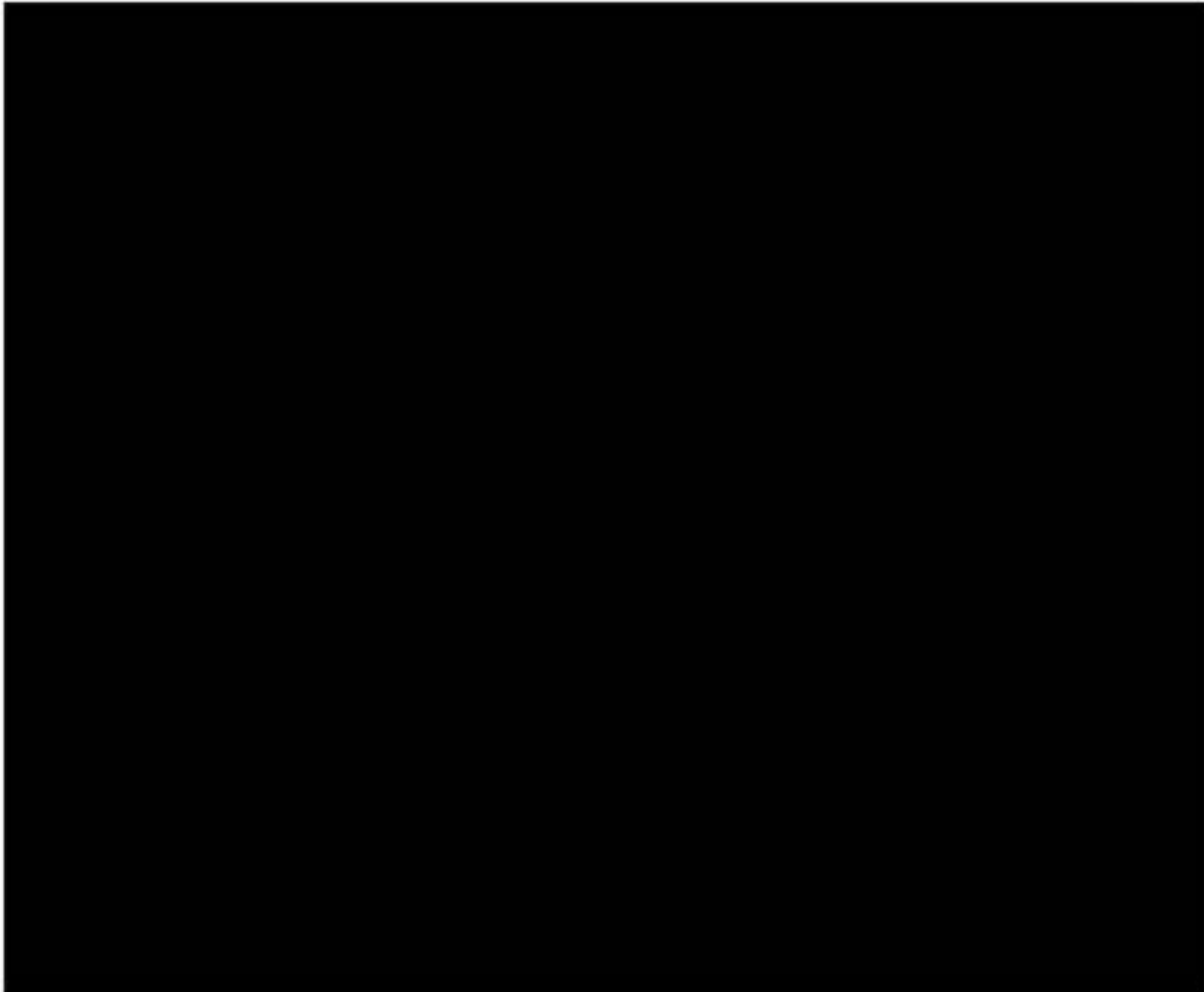
[REDACTED]

[REDACTED]” See (GovCIO Proposal – Technical) at 1-1 (emphasis added). In other words, GovCIO did exactly what the RTOR required—it described its “planned subcontractor resources.”

The significant weakness demonstrates that VA’s reevaluation ignored GovCIO’s proposal, which [REDACTED]:

[REDACTED]

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Id. Ex. 1.3.5-4. The VA fails to explain how GovCIO's proposal [REDACTED] [REDACTED].⁷ Ex. 13 (ADD) at 9. Contrary to the VA's imprecise and untethered assignment of a significant weakness under the [REDACTED], GovCIO's [REDACTED]

[REDACTED] "*Id.*"

⁷ To date, no one (not the VA, not GDIT) has challenged—nor can they—the accuracy or veracity of GovCIO's other statement in its proposal that it has [REDACTED]

[REDACTED]

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Second, the VA assigned GovCIO a significant weakness relating to Exela under the [REDACTED] element, as follows:

[REDACTED]

[REDACTED]

Ex. 13 (ADD) at 10. For many of the same reasons, the VA's assignment of this significant weakness was unreasonable and indefensible. Yet again, the VA's reevaluation team placed undue emphasis on a single unnamed subcontractor while ignoring the contents of GovCIO's proposal.

It is unreasonable, unfair, and contrary to procurement law for the VA to assign a significant weakness [REDACTED]

[REDACTED] " See (GovCIO Proposal – Technical) at 1-2, Ex. 1-1 (emphasis added). And of course, GovCIO remains [REDACTED]

[REDACTED]

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—and even more so when the VA had already assigned GovCIO's [REDACTED]. *Id.* ([REDACTED]) (emphasis added)). See *Spectrum Healthcare Resources, Inc.*, B-421325, Mar. 21, 2023, 2023 CPD ¶ 74 at [REDACTED]

The RTOR provides that the VA sought proposals that “demonstrate[] the availability and degree of commitment of personnel with the required technical expertise for the successful completion of all required tasks,” as well as “the offeror[‘]s planned organizational chart for the first 180 days of performance,” including “all planned positions with the named resources (including and directly identifying subcontractor resources) who will be working on those positions for the first 180 days.” Ex. 2 (RTOR) at 39. GovCIO directly addressed these requirements in its [REDACTED] proposal, including by [REDACTED] *see* (GovCIO Proposal – Technical) at 2-1 – 2-3, as well as GovCIO’s [REDACTED] *see id.* at 2-3 – 2-4. The VA contends that GovCIO’s proposal [REDACTED]” but this is not a requirement of the [REDACTED] element of the Solicitation. The VA unreasonably assigned GovCIO a significant weakness based on this unstated evaluation criterion.

The VA again claims that Exela’s departure creates “[REDACTED].” But had the VA actually reviewed the [REDACTED] GovCIO’s proposal, it would have recognized that GovCIO [REDACTED]

In fact, [REDACTED]. Thus, [REDACTED]. The VA’s assignment of this significant weakness to GovCIO’s [REDACTED] is simply disconnected from the facts, GovCIO’s proposal, and the VA’s own RTOR.

Notably, the VA had already assigned a significant weakness to GovCIO on the basis that [REDACTED]. To the extent that assessment was reasonable, it already encompassed any concerns about “[REDACTED]” associated with the departure of Exela. The VA ignored this fact and assigned [REDACTED] *new significant weaknesses* all on account of the departure of a single, unnamed vendor who, unlike in GDIT’s proposal, was not essential to GovCIO’s ability to perform the requirements. The VA thus arbitrarily [REDACTED] the adverse impact of GovCIO allegedly [REDACTED]

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[REDACTED]. Had GovCIO submitted its initial proposal without the sentence noted in its letter to the VA—i.e., the way the VA should have evaluated it—the VA would not have had any reason to assign either of the [REDACTED] additional significant weaknesses to GovCIO. Instead, the same weakness associated with [REDACTED] would have remained and encompassed the same alleged ambiguity.

In evaluating this issue, the VA unreasonably acted as though the departure of Exela represented a new proposal element, change, or event that had to be evaluated separately, rather than evaluating GovCIO's initial proposal as is (while simply disregarding the portion referring indirectly to Exela). The VA did not just evaluate GovCIO's proposal as submitted minus Exela, *but separately evaluated the departure of Exela* as if that event was a central part of GovCIO's approach. In doing so, the VA fundamentally ignored the RTOR, GovCIO's comprehensive and well-written proposal, and even the VA's own decision to assign a weakness in the initial evaluation. This is the definition of arbitrary and unreasonable agency action.

Finally, the VA's assignment of [REDACTED] significant weaknesses to GovCIO for the departure of Exela was particularly unreasonable in light of Exela's subsequent sale of its scanning division to ibml—a named teaming partner in GovCIO's original proposal. Thus, before the SSA made his award decision, Exela was no longer in the scanning business and instead all of those resources were with GovCIO's teaming partner. The sale of Exela's scanning unit to ibml—a "[REDACTED]" vendor for GovCIO—should have prompted the VA to add strengths to GovCIO's proposal, recognize greater technical merit, or remove the multiple significant weaknesses it assigned to GovCIO concerning Exela.

2. The VA's Assignment Of A Significant Weakness Under The [REDACTED] [REDACTED] Was Unreasonable

The VA unreasonably assigned GovCIO a new significant weakness under the [REDACTED] element, contending [REDACTED] "and that [REDACTED]" Ex. 13 (ADD) at 10. The VA is wrong. The agency's justification for the weakness is factually inaccurate and references the incorrect exhibit. In fact, the assessment of this weakness demonstrates that the evaluators themselves did not understand the PWS and RTOR pricing model.

First, the VA references "[REDACTED]" of GovCIO's proposal as [REDACTED]. *Id.* The correct citation in GovCIO's proposal is [REDACTED]. See (GovCIO Proposal – Technical) at 1-8.

Second, contrary to the VA's assertions, the [REDACTED] is [REDACTED]

[REDACTED]

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In short, the VA erroneously compared apples to oranges to assign this significant weakness. The [REDACTED] presented in GovCIO's [REDACTED]. The significant weakness was plainly unfounded and contrary to the RTOR.

3. The VA's Assignment Of [REDACTED] Weaknesses And [REDACTED] Significant Weaknesses Under The Capabilities And Experience Element Was Unreasonable

The VA's assessment of weaknesses and significant weaknesses to GovCIO's Capabilities and Experience proposal was unreasonable and inconsistent with the RFP where the VA: (1) failed to consider the majority of the evaluation criteria outlined in the RTOR; and (2) ignored that the RTOR required the VA to evaluate offerors' experience with "similar records" to those under the subject task order. The VA also improperly assigned multiple, duplicative weaknesses to GovCIO's proposal and applied the evaluation criteria applicable to the Past Performance Factor to GovCIO's Capabilities and Experience evaluation.

Assigning a total of [REDACTED] weaknesses ([REDACTED] of them significant) for the same alleged "flaw"—i.e., a perceived lack of similar experience—is irrational, duplicate, and punitive. It makes no sense to assign multiple weaknesses and significant weaknesses under a factor that was required only to measure "the extent to which" GovCIO's two projects demonstrated relevant experience and capabilities. The VA then unfairly used the multiple weaknesses to justify the [REDACTED] Technical rating.

The RTOR stated that the VA would "evaluate and measure capability and experience to determine the extent to which the vendor has previously provided recent and relevant services in support of the various tasks listed in PWS or similar tasks in respect to the following" five criteria:

- Project Management Plan



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- Receipt, handling, shipping, storing, preparation, and conversion services of OMPF or similar records.
- Source Material Tracking Service (SMTS)
- Creation and Management of Upload Service to VBMS or similar systems
- Creation of a Document Management, Advanced Search and Storage service[.]

Ex. 2 (RTOR) at 39.

The VA assigned GovCIO's proposal [REDACTED] weaknesses and [REDACTED] significant weaknesses under this element. Ex. 13 (ADD) at 11-12. While the RTOR provided for an evaluation of GovCIO's capabilities and experience across all five broad, equally weighted categories, the VA ignored the majority of these factors and assigned weaknesses based on [REDACTED]. The VA also required GovCIO to demonstrate [REDACTED].

First, the agency assigned GovCIO a weakness because GovCIO's [REDACTED] and [REDACTED] contracts [REDACTED]. Specifically, [REDACTED] " *Id.* [REDACTED] " *Id.* [REDACTED] Because GovCIO's projects did not specifically [REDACTED], the VA determined that they " [REDACTED] " *Id.* [REDACTED].

This weakness was unreasonable and inconsistent with the RTOR. The RTOR did not provide that the agency would scrutinize whether the offerors proposed projects involved [REDACTED]. Ex. 2 (RTOR) at 39. [REDACTED] s." *Id.* (emphasis added). Rather than evaluate whether the [REDACTED] and [REDACTED] involved similar records [REDACTED] as the RTOR required, the VA assigned GovCIO a weakness because the projects did not specifically [REDACTED] and were therefore not identical or "equivalent" to the FCSS task order. Similar is not the same as equivalent. Had the VA evaluated GovCIO's proposal in accordance with the RTOR, it would have determined that both projects involved records that [REDACTED] the FCSS task order. *See, e.g.*, (GovCIO Proposal – Technical) at 42 ([REDACTED]).

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This weakness was also unreasonable because the VA outright ignored the other aspects of GovCIO's projects that satisfied the other evaluation factors outlined in the RTOR. This violated the RTOR, which entitled GovCIO to an evaluation under this factor across all categories evenly, not just a targeted evaluation relating only to [REDACTED]. The VA stated [REDACTED]

[REDACTED] Ex. 13 (ADD) at 11.

For example, the RTOR required the VA to consider whether the project involved "Creation and Management of Upload Service to VBMS or similar systems." Ex. 2 (RTOR) at 39. The VA itself acknowledged in the ADD that GovCIO's projects [REDACTED] Ex. 13 (ADD) at 11. GovCIO's proposal further confirms that under the contract, GovCIO "[REDACTED]

[REDACTED] See (GovCIO Proposal – Technical) at 43. Similarly, under the [REDACTED] GovCIO [REDACTED] Id. at 46. The VA wholly ignored the RTOR's evaluation criteria when assigning this weakness.

Similarly, the VA assigned GovCIO a weakness because the [REDACTED] and [REDACTED] contracts did not [REDACTED]

[REDACTED] Ex. 13 (ADD) at 11. Accordingly, since GovCIO's projects did not specifically involve [REDACTED] the VA determined that GovCIO did [REDACTED] Id. at 12. The VA again failed to consider that GovCIO identified projects [REDACTED] that demonstrated GovCIO's experience and capabilities with the RTOR's [REDACTED]. The RTOR did not require all projects to be identical or "equivalent" as the VA concluded. Accordingly, the VA's assignment of this weakness was unreasonable and contrary to the RTOR.

The VA penalized GovCIO [REDACTED] for the same reason by assigning GovCIO a significant weakness because GovCIO [REDACTED]

[REDACTED] Id. This significant weakness was unreasonable because the VA ignored that GovCIO identified [REDACTED]

Further, the VA apparently acknowledged GovCIO's [REDACTED] but discounted that experience because it did not [REDACTED]

[REDACTED]

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[REDACTED] *Id.* Thus, in addition to ignoring the RTOR's requirement [REDACTED]. *Id.* The ROTR contains no such requirement. Despite GovCIO's substantially similar experience performing scanning requirements [REDACTED], the VA ignored the RTOR's broad and equally weighted evaluation criteria to repeatedly penalize GovCIO for not proposing experience matching the precise requirements of the FCSS task order. This not only violated the RTOR, but also created a situation where only GDIT could demonstrate relevant projects as a prime offeror as GDIT is the only offeror under the VICCS IDIQ that performed the incumbent FCSS task order. *See* Section E, *infra*.

The agency's decision to assign GovCIO [REDACTED] weaknesses and [REDACTED] significant weaknesses for the same perceived defect in GovCIO's Capabilities and Experience proposal, namely the [REDACTED], was also unreasonable and violated procurement law. *See Arctic Slope Mission Servs., LLC*, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 4 (explaining that "[a]n agency may not double- or triple-count aspects of an offeror's proposal"). The VA penalized GovCIO's proposal to the point of making it [REDACTED] by repeating the same perceived issue. This was unfair and unreasonable, leading the VA to conclude that GDIT's proposal was more advantageous under this element than it really was.

Further, the VA improperly assigned GovCIO a significant weakness based on evaluation criteria applicable to the Past Performance factor. The VA assigned GovCIO a significant weakness because [REDACTED]

[REDACTED] Ex. 13 (ADD) at 12. Specifically, the ADD states that the [REDACTED] and [REDACTED] *Id.* It also states that "[REDACTED] and [REDACTED] *Id.*

This weakness was unreasonable because the VA applied the evaluation criteria applicable to the Past Performance evaluation to GovCIO's Capabilities and Experience volume while ignoring the Capabilities and Experience evaluation criteria outlined in the RTOR. The RTOR provided that the VA would evaluate whether offerors' proposed projects are "similar in size and scope of the requirements in the solicitation" under the Past Performance factor only. *Id.* at 40. Since [REDACTED] was an evaluation criterion under the Past Performance factor, the RTOR further defined [REDACTED] *Id.*

[REDACTED]

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In contrast, the RTOR did not provide that size, scope, and complexity were evaluation criteria under the Capabilities and Experience element. Instead, the RTOR generally noted in a sub-requirement that offerors should “address 2 or more examples of projects of similar size, scope, and complexity,” but did not include similarity in size, scope, or complexity as defined terms for evaluation. *Id.* at 39. Under the Capabilities and Experience factor, the RTOR required the agency to evaluate offerors’ proposed projects against the five broad categories listed. *Id.* The agency violated the RTOR by assigning GovCIO’s Capabilities and Experience volume a significant weakness based on evaluation criteria applicable to the Past Performance evaluation. *See Apptis, Inc., B-299457, et al., May 23, 2007, 2008 CPD ¶ 49 at 12* (sustaining protest where agency improperly considered protester’s past performance as part of its technical evaluation).

Finally, the VA’s evaluation of GovCIO’s proposal under the Capabilities and Experience was unreasonable because it reflects an irrationally exacting and disproportionate assessment that was punitive rather than a fair and reasonable assessment of the merit of GovCIO’s proposal. The VA only solicited proposals from four VICCS IDIQ vendors. Besides GDIT, the incumbent, GovCIO is the most capable and experienced VICCS vendor able to compete. As demonstrated by GovCIO’s two projects, GovCIO has [REDACTED] and has done so successfully. In fact, given GovCIO’s exceptional performance under the [REDACTED] and [REDACTED] contracts, [REDACTED]

The RTOR’s stated evaluation criteria indicated that the VA would evaluate the degree of relevant experience. *See Ex. 2 (RTOR) at 39* (VA will “determine the extent to which the vendor has previously provided recent and relevant services in support of the various tasks listed in PWS or similar tasks” concerning the five listed categories). It should be irrational on its face that the VA’s evaluation, which was supposed to assess the extent to which GovCIO demonstrated relevant experience, resulted in a total of [REDACTED] weaknesses under this single element, [REDACTED] of them “significant,” as if GovCIO is so inexperienced and incapable of doing the file scanning work that its proposal is unawardable. This extreme and irrational result is the type of evaluation that one would expect for an offeror with absolutely zero relevant experience or capabilities, not the second most experienced and capable offerors besides the incumbent. Even if GDIT demonstrated more experience through its projects, GovCIO was not completely inexperienced and incapable of doing the work—that conclusion is unreasonable on its face.

Under this standard, there is no room for a worse rating and thus the sliding scale required by the RTOR does not exist. The VA adopted an evaluation standard that essentially set GDIT’s incumbent contract as not just a baseline, but the only type of “relevant” experience that could earn an acceptable rating. If an offeror like GovCIO with significant relevant experience and demonstrated capabilities performing [REDACTED] cannot earn even a minimally [REDACTED]

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satisfactory or acceptable rating—even with some weaknesses—then the VA’s evaluation is contrary to the RTOR, since there is ultimately no real sliding scale. An offeror either receives a passing rating because they are the incumbent (GDIT), or they receive multiple [REDACTED] weaknesses and significant weaknesses.

In this way, the VA has improperly converted the Capabilities and Experience element into a pass/fail factor instead of conducting a meaningful, qualitative assessment. The RTOR required an assessment of the “extent to which” offerors demonstrated relevant experience and capabilities, but instead of comparing the relative differences between GDIT and GovCIO under this element (which was equally weighted with Technical Approach and Staffing Approach), the VA outright eliminated GovCIO from consideration because it did not meet an undisclosed baseline requirement. *See AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 (protest sustained where the agency effectively evaluated proposals on an acceptable/unacceptable basis and thus “failed to perform the kind of qualitative analysis contemplated by the solicitation”); *Olympus Bldg. Servs., Inc.*, B-285351, B-285351.2, Aug. 17, 2000, 2000 CPD ¶ 178 at 8 (agencies may not impose “undisclosed” and “predetermined” evaluation criteria to “downgrade proposals”). Under the RTOR, the VA may be able to rate GDIT higher than GovCIO under this element to show the relative differences in demonstrated capabilities and experience, but not penalize GovCIO to the point of [REDACTED] because its two projects are not identical to the incumbent effort in terms of size.

4. The VA’s failure to assign strengths to GovCIO’s proposal was unreasonable

The VA conducted an unreasonable evaluation by ignoring advantages in GovCIO’s proposal and unreasonably eliminating previously awarded strengths without justification. While the agency assigned GovCIO’s proposal [REDACTED] new weaknesses and [REDACTED] new significant weaknesses under the [REDACTED] during its reevaluation, it assigned GovCIO no significant strengths, no new strengths, and eliminated [REDACTED] of GovCIO’s [REDACTED] original strengths. *See Ex. 13 (ADD)* at 7. The VA failed to meaningfully review GovCIO’s proposal for strengths and ignored advantages in GovCIO’s approach under the stated criteria that were readily apparent from GovCIO’s proposal.

Agencies may not ignore advantageous features in offerors’ proposals that constitute strengths in the agency’s evaluation.⁸ For example, in *Humana Military Healthcare Services*, the

⁸ Indeed, while offerors generally carry the burden of submitting well-written proposals, agencies may not ignore relevant information presented to them. *See Exelis Sys. Corp.*, B-407111.2 *et al.*, Nov. 13, 2012, 2012 CPD ¶ 340 at 6 (sustaining protest where agency “unreasonably ignored several relevant facts” in the offerors’ proposals, which “rendered the evaluation of [the] subfactor unreasonable.”); *J.R. Conkey & Assocs., Inc. dba Solar Power Integrators*, B-406024.4, Aug. 22, 2012, 2012 CPD ¶ 241 at 5 (“While the agency is correct, it does not bear the responsibility of an inadequately written proposal, the agency does not have license to ignore information in a proposal that is readily

[REDACTED]

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agency was seeking “TRICARE managed health care support services” and “defined a strength as ‘an aspect of an offeror’s proposal that exceeds specified requirements and is a clear benefit to the Government.’” B-401652.2 *et al.*, 2009 CPD ¶ 219 at 1, 3. The protester argued that the agency’s “technical evaluation unreasonably failed to account for the advantages offered by its established TRICARE network of providers, particularly given its record of obtaining significant network provider discounts from members of its network.” *Id.* at 8. The GAO sustained this ground of protest. Even though the agency “awarded a strength based in part on the fact that” the protester’s proposal “would result in healthcare savings from available network provider discounts, it did not meaningfully take into account in the technical evaluation the likely magnitude of those savings.” *Id.* at 9. In particular, the protester’s “proposal of an existing network offering significant ... network provider discounts exceeded the solicitation requirements.” *Id.* at 11.

As part of its initial award of the task order in November 2022, GovCIO received a strength under the Technical Approach element for its [REDACTED]:

[REDACTED]

Ex. 7 (2022 Debriefing) at [REDACTED]. This strength referenced GovCIO’s [REDACTED] [REDACTED]” See (GovCIO Proposal – Technical) at 1-5. Nothing about this aspect of GovCIO’s proposal either expressly or impliedly depended upon Exela’s agreement to partner with GovCIO. The only aspect of GovCIO’s proposal that [REDACTED]

Critically, the requirements of the RTOR have not changed since the GAO announced its decision and corrective action recommendation in March 2023. The RTOR still seeks vendor technical approaches that “demonstrate[] a clear understanding of all features involved in solving the problems and meeting and/or exceeding the requirements presented in the tasks” Ex. 2

apparent.”); *Gen. Revenue Corp. et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 (sustaining protest where agency failed to review relevant information in protester’s proposal resulting in an unreasonable evaluation).

[REDACTED]

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(RTOR) at 38. And GovCIO still presents the same “[REDACTED]” and therefore it should only “increase[] [the VA’s] confidence in the [GovCIO’s] ability to perform.” The VA’s removal of this strength from GovCIO in the reevaluation without justification was unreasonable and directly contrary to the terms of the RTOR.

The VA also failed to award any new strengths or significant strengths to GovCIO. The agency defined a strength as “[s]lightly exceeds standards/expectations in a way that will be advantageous and increase the likelihood of successful performance,” and significant strength as “[s]ignificantly exceeds standards/expectations in a way that will be advantageous and greatly increases the likelihood of successful performance.” Ex. 14 (ADD) at 4. Accordingly, the VA should have assigned GovCIO a strength or significant strength every time its proposal exceeded standards, benefitted the VA, and increased its likelihood of successful performance. Yet as described in more detail below, as well as in the attached declaration, *see generally* Ex. 18 (Declaration of [REDACTED]), the VA overlooked multiple proposal features that constituted strengths under the agency’s plain definition of that term.

The RTOR stated that the VA would evaluate and assign ratings that “most accurately define[d] the Contractor’s technical merit considering all elements identified in this section.” Ex. 2 (RTOR) at 43. The RTOR identified multiple criteria under the [REDACTED] elements that GovCIO addressed in its proposal and provided clear merit to the government, but there is no evidence that the VA followed the terms of the RTOR and evaluated these criteria. GovCIO submitted its proposal on the basis that the VA would follow the RTOR and recognize merit and advantageous attributes, but the VA entirely disregarded the RTOR’s stated criteria.

First, the VA turned a blind eye to no less than [REDACTED] instances in which GovCIO’s quote either “slightly exceed[ed]” or “significantly exceed[ed]” the standards and expectations of [REDACTED] of the RTOR Technical Factor, *see generally* Ex. 18 (Declaration of [REDACTED]), including but not limited to:

- [REDACTED]

[REDACTED]

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█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

[REDACTED]

- [REDACTED]

Each of these proposal attributes and the others identified in the enclosed declaration provided merit to the VA, should have received strengths, and distinguished GovCIO's proposal. By not giving any credit across multiple evaluation criteria, there is no documented evidence that the VA evaluated GovCIO's proposal under the stated evaluation criteria. The GAO will sustain a protest when the "extent any qualitative assessment or critical analysis of the different" technical approaches is either "not documented, or not provided to our Office and is not supported or corroborated by the information in the contemporaneous record." *CEdge Software Consultants, LLC*, B-418128.2, March 19, 2020, 2020 CPD ¶ 127 at 8. As in *CEdge*, there is no evidence in the debriefing document that the above distinguishing features in GovCIO's proposal were "known to, considered, or relied upon, by either the SSET or the SSA at the time the agency made its source selection decision."

Second, GovCIO's proposal warranted a strength or significant strength under the [REDACTED] for [REDACTED] greatly exceeded the PWS requirements in a way that would benefit the VA and increase GovCIO's likelihood of successful contract performance. [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Id. at 86-87.

[REDACTED]

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GovCIO exceeded the [REDACTED] by [REDACTED].
See (GovCIO Proposal – Technical – Resumes). Across the board, GovCIO's

[REDACTED]

See *id.* at 4-6.

GovCIO's [REDACTED]

[REDACTED];

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

See *id.* at 8-17. Additionally, [REDACTED].
[REDACTED]. It is undeniable that GovCIO's [REDACTED] significantly exceeded the
RTOR's [REDACTED].

Further, GovCIO's [REDACTED].
See *id.* at 19-21.

[REDACTED]

See *id.* at 23-24.

Finally, GovCIO's [REDACTED].
See *id.* at 26-28. As such, [REDACTED].

[REDACTED]

⁹ [REDACTED]
¹⁰ [REDACTED]

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Overall, GovCIO's [REDACTED] either exceeded or significantly exceeded the PWS requirements. GovCIO's [REDACTED]

[REDACTED]

These features will also increase or greatly increase GovCIO's likelihood of successful performance. Yet despite meeting the RTOR's definition of a strength and significant strength, the VA unreasonably ignored these features entirely.

Relatedly, under [REDACTED]

[REDACTED] Ex. 2 (RTOR) at 39. GovCIO's proposal irrefutably presents this. See (GovCIO Proposal – Technical) at 2-4. And yet, GovCIO did not receive a strength, and there is no evidence that the VA evaluated its proposal according to these RTOR terms as required.

In short, the VA's evaluation and reevaluation unreasonably failed to follow the RTOR's stated evaluation criteria and failed to acknowledge multiple strengths and significant strengths in GovCIO's proposal, even though clearly required by the RTOR, while finding a [REDACTED] new significant weaknesses alone.

E. The RTOR Contained a Latent Ambiguity That Prevented GovCIO and GDIT From Competing On An Equal Basis

The GAO has found that “[a]n ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible.” *RELI Group, Inc.*, B-412380, Jan. 28, 2016, 2016 CPD ¶ 51 at 6. “When dealing with latent ambiguities, we will sustain a protest where a latent ambiguity prevented the offerors from competing intelligently on a relatively equal basis.” *Id.* at 8 (citing *Coastal Int’l Security, Inc.*, B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 8). “Where there is a latent ambiguity, the appropriate course of action for an agency is to clarify the requirement and afford offerors an opportunity to submit proposals based on the clarified requirement.” *Id.* at 7 (citing *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8).

Here, the RTOR contained a latent ambiguity regarding the applicable evaluation standard and criteria under the Capabilities and Experience element. The GAO recommended that the VA better document its assessment of GovCIO's experience, not that the VA change its position that GovCIO's experience was at least acceptable for award. The fact that the VA interpreted the evaluation standard drastically differently during its initial evaluation (where it gave GovCIO a

[REDACTED]

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strength) and reevaluation (where it gave GovCIO [REDACTED] weaknesses and [REDACTED] significant weaknesses) demonstrates that the RTOR is susceptible to more than one reasonable interpretation. The VA must clarify the requirements and allow GovCIO the opportunity to address the applicable criteria in its proposal.

As discussed above, the RTOR provided that the VA would “evaluate and measure capability and experience to determine the extent to which the vendor has previously provided recent and relevant services in support of the various tasks listed in PWS or similar tasks in respect to the following”:

- Project Management Plan
- Receipt, handling, shipping, storing, preparation, and conversion services of OMPF or similar records.
- Source Material Tracking Service (SMTS)
- Creation and Management of Upload Service to VBMS or similar systems
- Creation of a Document Management, Advanced Search and Storage service[.]

Ex. 2 (RTOR) at 39. Initially, the VA applied this standard and assigned a strength to GovCIO under the Capabilities and Experience element:

[REDACTED]

Ex. 7 (2022 Debriefing) at 3. The VA thus determined that GovCIO will be able to successfully perform the task order requirements when it evaluated GovCIO’s capabilities and experience against the five broad categories outlined in the RTOR. Indeed, each of the conclusions reached in the above strength was accurate and reflected in GovCIO’s proposal. When considered holistically, the VA found that GovCIO and its team, which consisted of [REDACTED], had *at least* acceptable performance to perform the task order and save taxpayers \$158 million. As demonstrated by this initial evaluation (and throughout the VA’s defense in response to GDIT’s protest), the VA also interpreted its own RTOR as permitting non-incumbent offerors such as GovCIO to submit acceptable or satisfactory proposals under this element.

The VA’s reevaluation of GovCIO’s Capabilities and Experience volume was not just different from its initial assessment, but reflects a new interpretation of the RTOR that the VA did

[REDACTED]

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not previously disclose. On reevaluation, the VA abandoned its original interpretation regarding the meaning of “similar size, scope, and complexity.” While the RTOR mentioned that offerors’ Capabilities and Experience proposals should “address 2 or more examples of projects of similar size, scope, and complexity,” these elements were not defined. *Id.* at 39. Since the factor was intended to evaluate the “extent to which” offerors demonstrate relevant experience, the only reasonable interpretation of the RTOR was that relevancy was flexible and would permit multiple offerors with varying degrees of experience to demonstrate at least minimally acceptable experience.

Under this new interpretation of the evaluation standard, only GDIT among the prime VICCS IDIQ contract holders could demonstrate sufficient capabilities and experience to earn an acceptable or satisfactory rating. The VA initially viewed its own RTOR as permitting multiple offerors to compete based on an evaluation of multiple broad factors, but on reevaluation, changed its interpretation such that the RTOR was really a de facto sole-source procurement in which a successful offeror had to propose projects of a “similar size, scope, and complexity” as GDIT’s incumbent task order.

Even though GovCIO and its team is more than capable of performing scanning services for the VA, the VA proceeded to assign [REDACTED] weaknesses and [REDACTED] significant weaknesses to GovCIO all on account of its experience [REDACTED]

[REDACTED]. For example, the VA assigned GovCIO a new significant weakness because [REDACTED]

[REDACTED] Ex. 13 (ADD) at 12. However, the VA reached this conclusion primarily based on [REDACTED]

For GovCIO’s [REDACTED] project, the VA stated that [REDACTED] and the [REDACTED]

[REDACTED] *Id.* Similarly, the VA determined that GovCIO’s [REDACTED] contract [REDACTED]

[REDACTED] *Id.* In a stark departure from its initial evaluation, the agency strictly applied the [REDACTED] criterion applicable only to the Past Performance evaluation and required a successful offeror to propose projects that were identical or nearly identical to the current CS effort with respect to [REDACTED]. Logically, if the evaluation criteria were intended to require identical or nearly identical projects, there would be little opportunity for non-incumbent offerors. Thus, any such interpretation is not reasonable.

As evidenced by the VA’s own prior interpretation, which viewed the requirements of the Capabilities and Experience element far more broadly than during the exclusive GovCIO reevaluation, the VA’s current interpretation reveals a latent ambiguity in the RTOR regarding the [REDACTED]

[REDACTED]

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applicable evaluation standards and criteria for this element. Because the RTOR provided offerors no notice that the VA would apply its current evaluation standard (and abandon its original interpretation, shared by GovCIO), GovCIO was unable to intelligently compete for the award. As such, the VA must clarify the applicable evaluation criteria and give GovCIO an opportunity to address the criteria in its proposal.

The VA's failure to do so prejudiced GovCIO. Had the VA clarified that it would apply a stringent [REDACTED] criterion to require an identical or nearly identical [REDACTED] as the incumbent FCSS effort, GovCIO would have submitted different projects. Ex. 18 (Declaration of [REDACTED]) ¶ 9. This includes [REDACTED]

Id. ¶ 9. GovCIO also would have [REDACTED]

[REDACTED] *Id.* GovCIO was thus prejudiced by the latent ambiguity in the RTOR. *See Harper Construction Co.*, B-415042, B-415042.2, Nov. 7, 2017, 2017 CPD ¶ 47 at 6 (sustaining protest and finding protester was prejudiced because “[h]ad Harper known the agency’s interpretation of the solicitation, it could have submitted a different proposal to conform to the agency’s understanding of the disputed language”).

F. The VA’s Assignment Of A [REDACTED] Past Performance Rating To GovCIO Was Unreasonable and Contrary to the FAR, RTOR, GAO’s Decision, and Even GDIT’s Eventual Protest Argument; the VA Should have Assigned Low Risk Rating

The errors permeating the VA’s targeted reevaluation of GovCIO’s proposal are illustrated well by the VA’s inexcusable reevaluation of GovCIO’s Past Performance rating. During the initial evaluation, the VA assigned GovCIO a Low Risk rating for its Past Performance. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 3. Even though GovCIO’s proposal remained identical, the VA assigned a [REDACTED] rating to GovCIO during the reevaluation on the basis that [REDACTED]

GDIT [REDACTED] initial protest, arguing that “GovCIO’s past performance should have been rated no higher than Very high risk under this factor.” Ex. 19 (Redacted GovCIO Comments) at 16.

As the GAO itself already discussed, the RTOR provided for a Neutral rating if a vendor has “no Past Performance.” Ex. 2 (RTOR) at 43. *See Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 9 (“We also acknowledge that the solicitation provided that an offeror “with no Past Performance shall be evaluated as ‘Neutral’.” (quoting RTOR at 43)). The RTOR aligns with the FAR, which similarly states, “[i]n the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.” FAR 15.305(a)(2).

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Notably, even GDIT backed off its initial argument, conceding that GovCIO warranted a rating of Neutral. *See* Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 10 (“Arguing the VA “would have at most assigned GovCIO a ‘Neutral’ rating under this factor”); Ex. 20 (Redacted GDIT Supp. Comments) at 10 (arguing that “it was prejudiced because these evaluation errors would have resulted in GovCIO being assigned a Neutral rating under the Past Performance factor”).

The VA inexplicably ignored the RTOR, the FAR, GDIT’s own concession, and the GAO’s earlier decision in reversing its previous [REDACTED] assignment and assigning a [REDACTED] rating to GovCIO. GovCIO’s past performance references showed an exemplary performance record and nothing in the debriefing indicates that GovCIO has a history of performing poorly on either contract. GDIT’s protest also did not identify a single negative aspect of GovCIO’s performance on previous contracts that was inadequate and which might suggest that GovCIO is unlikely to perform the current contract successfully. The debriefing states [REDACTED]

Ignoring four separate sources—including GDIT, the GAO, and its own solicitation—indicating that an offeror without relevant past performance may only receive a Neutral rating, and instead adopting the argument initially raised in GDIT’s opening protest, demonstrates that the new TEB and the SSA were guided by GDIT’s initial protest (or instruction influenced by GDIT’s protest) rather than conducting an independent evaluation of GovCIO’s proposal. It also shows the degree to which the entire reevaluation was flawed and the evaluators ill-equipped to perform a fair evaluation with sound judgment, as this was not even a discretionary act—nothing authorized the VA to assign a [REDACTED] rating to GovCIO, yet the VA did so anyway.

In addition, the VA should have assigned a Low Risk rating to GovCIO based on [REDACTED] “[A]n agency should consider the information it knows concerning an offeror, even where the information was made known to the agency because of the passage of time during corrective action.” *DRS ICAS, LLC, B-401852.4, B-401852.5*, Sept. 8, 2010, 2010 CPD ¶ 261 at 13. In *DRS*, the GAO sustained a protest where the agency reevaluated past performance during corrective action, but did not take into account the protester’s performance record during the corrective action period. The GAO explained:

To the extent that additional time had passed as a result of the second protest and the agency’s second corrective action—from October 2009 and March 2010—we do not think that the agency could reasonably ignore the possibility that the additional time performing the JMANPADS contract could have affected its evaluation under the two subfactors when it chose to reevaluate these matters as part of its corrective action.

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Id. at 14. Here, GovCIO's [REDACTED] contract was too close at hand for the VA to ignore. The [REDACTED] was fully aware that GovCIO is more than capable of performing the subject FCSS services successfully when it reevaluated GovCIO's proposal in April 2023 and made the award decision in August 2023. There was no reasonable basis for the VA to assign GovCIO any rating other than Low Risk.

The VA's evaluation of GovCIO under the Past Performance factor was unreasonable, contrary to the RTOR, and violated the FAR.

G. The VA Failed To Reevaluate GDIT's Proposal, Hold GDIT To The Same Exacting Standard Applied To GovCIO On Reevaluation, And Engaged In Unequal Treatment

In a FAR Subpart 16.5 task order procurement, the GAO reviews an agency's evaluation and source selection decision to "determine whether the evaluation and source selection decision are reasonable and consistent with the Solicitation's evaluation criteria, and applicable procurement laws and regulations." *See NCI Info. Sys., Inc.*, B-412870.2, Oct. 14, 2016, 2016 CPD ¶ 310 at 11 (citing *Velos, Inc.*, B-400500.8, B-400500.9, Dec. 14, 2009, 2010 CPD ¶ 13 at 11; *Keeton Corrections, Inc.*, B-293348, Mar. 4, 2004, 2005 CPD ¶ 44 at 6). Where an agency "conducts a task order competition as a negotiated procurement, [the GAO's] analysis regarding fairness will, in large part, reflect the standards applicable to negotiated procurements." *Abacus Tech. Corp., SMS Data Prods. Grp., Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 7 (citing *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 4).

"It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria." *Arctic Slope Mission Servs., LLC*, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7 (citing *Cubic Applications, Inc.*, B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218; *Rockwell Elec. Commerce Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5). "Further, where an agency treats offerors unequally by, for example, reading some offerors' proposals in an expansive manner and resolving doubt in favor of the offeror, while reading other offerors' proposals narrowly and applying a more exacting standard that requires affirmative representations within the four corners of the proposal, we have found such evaluations to involve disparate treatment." *Id.* *See also Conley & Assocs., Inc.*, B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 8 (stating that an agency may not "read[] some offerors' proposals in an expansive manner and resolv[e] doubt in favor of one offeror, while reading other offerors' proposals narrowly and applying a more exacting standard to those proposals.").

The VA's reevaluation of GovCIO's proposal and implementation of the GAO's recommended corrective action was unreasonable, unequal, and unfair to GovCIO. The GAO

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sustained GDIT's protest based on several narrow issues with the VA's initial evaluation of GovCIO's proposal, including that "the agency [did] not reasonably explain why the awardee's past performance and experience references were relevant," "improperly assigned a strength to the awardee's proposal regarding experience," and relied on these evaluations in reaching its award decision. See *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 1. Accordingly, the GAO "recommend[ed] that the agency reevaluate GovCIO's proposal consistent with the discussion above" and "make a new award decision that ensures that the comparison of the offerors' proposals is consistent with the solicitation's award criteria, adequately supported, and adequately documented." *Id.* at 22.

Rather than reasonably tailoring its reevaluation to address the narrow issues the GAO identified in its decision, the VA seemingly engaged a new evaluation team¹¹ that evaluated GovCIO's proposal under a new and more exacting evaluation standard—not just to document its evaluation but to subject all aspects of GovCIO's proposal to renewed scrutiny. The VA eliminated [REDACTED] of GovCIO's [REDACTED] strengths, for example, even though the GAO did not recommend any reevaluation of that aspect of GovCIO's proposal, showing that the VA did more than what the GAO recommended. At the same time, however, and irrespective of the composition of the evaluation team, the VA did not subject GDIT's proposal to this new and heightened reevaluation standard. In addition, as discussed above, the more exacting evaluation also focused only on GovCIO's weaknesses, with evaluators disregarding multiple aspects of GovCIO's proposal that would benefit the VA.

The redacted ADD states that "GDIT's offer will not be reevaluated as the GAO found the evaluation provided by the Government for GDIT adhered to the directions as outlined in the solicitation." Ex. 13 (ADD) at 3. Although the GAO did not recommend that the VA reevaluate GDIT's proposal and the agency had discretion to implement the details of its corrective action, the agency was nevertheless required to conduct a corrective action that was fair and evenhanded. *Kupono Gov't Servs., LLC; Akima Sys. Eng'g, LLC*, B-421392.9 *et al.*, June 5, 2023, 2023 CPD ¶ 136 at 5 (holding that an agency's corrective action must be reasonable and "appropriate to remedy the concern that prompted the agency to take the corrective action proposed"). Once the VA decided to engage a new evaluation team and/or apply a far more detailed and exacting standard to GovCIO's proposal during the reevaluation, it had to apply the same standard to both offerors equally.

Assigning apparently different evaluation teams to evaluate proposals at different times using different standards and inputs resulted in an apples-to-oranges comparison of the offerors' non-price proposals. It is not credible to suggest that a new evaluation team evaluating GovCIO's

¹¹ To the extent that the VA engaged an outside firm to evaluate GovCIO's proposal, the VA did not seek permission from GovCIO to provide its proposal to a private contractor.

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entire proposal five months later would result in the same standard and treatment that an earlier team afforded GDIT. If the original evaluation of GovCIO's proposal was flawed, it reasonably follows that the same team committed similar errors in their evaluation of GDIT's proposal, yet the VA made no attempt to ensure a fair and equal reevaluation.

To illustrate, the original TEB assigned GovCIO's technical proposal [REDACTED]. See *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 3; Ex. 13 (ADD) at 7. In contrast, the new TEB reviewed GovCIO's same technical proposal, but assigned GovCIO [REDACTED] weaknesses and [REDACTED] significant weaknesses. See Ex. 13 (ADD) at 7. The TEB also only awarded GovCIO's proposal [REDACTED] strengths, eliminating [REDACTED] strengths from its initial evaluation. *Id.* The fact that the initial and new evaluation boards reviewed the same technical proposal and reached such drastically different evaluation conclusions confirms that a different TEB can evaluate the same proposal differently and more stringently. And even if the TEB comprised the same evaluators, the record shows that they can evaluate the same proposal in dramatically different ways. Despite this, the VA only subjected GovCIO's proposal to an evaluation by the new TEB or the same TEB with a different standard, while GDIT enjoyed the benefit of retaining its original evaluation under the less exacting review standard.

Another example of the disparate treatment and prejudice associated with subjecting the two offerors to two different evaluation standards is the VA's approach to weaknesses. The GAO revealed in its public decision that GDIT's technical proposal received three weaknesses. *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 17. One of these weaknesses related to GDIT's erroneous assumption that it did not have to comply with the PWS requirement to comply with certain National Archives and Records Administration regulations. *Id.* GDIT's proposal stated that it did not need to meet the requirement, even though it was clearly required under the PWS. *Id.* at 18 (noting that GDIT's proposal stated: "Because records will be held temporarily, [document control sheet record management number (DCS-RMN)] processing and imaging facilities are not required to meet 36 CFR Subpart 1234 facility standards or to be approved by NARA in accordance with NARA guidance.>").

During the reevaluation of GovCIO's proposal, the VA assigned GovCIO a significant weakness merely because GovCIO [REDACTED]. Ex. 13 (ADD) at 12. The new evaluators found that this single issue meant that GovCIO's [REDACTED] "resulting in a significant weakness. *Id.* Yet a different set of evaluators found that GDIT's blatant disregard of a PWS requirement was merely a weakness in GDIT's proposal, rather than a significant weakness. *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 17. This disparity can only be explained by the application of different evaluation standards in its evaluation of GovCIO's proposal than in its evaluation of GDIT's proposal.

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Another example is the weakness assigned to GDIT's proposal for its assumption in its price volume regarding the processing of hazardous material. See Ex. 1 (Redacted GDIT Comments and Supp. Protest) at 27. GDIT's assumption stated that "[p]otentially hazardous material will be immediately returned to the NRC" and "NRC is responsible for Processing and Conversion," which contradicted the PWS requirements. Ex. 20 (Redacted GDIT Supp. Comments) at 27. Again, the original evaluators viewed GDIT's failure to understand requirements as a mere weakness, yet applied multiple significant weaknesses to GovCIO for far more benign or non-existent issues, such as

[REDACTED] Ex. 13 (ADD) at 10.

In addition to evaluating proposals under different standards, the record demonstrates other instances of unequal treatment. The VA disparately evaluated proposals by failing to assign GDIT the equivalent significant weaknesses that the VA assigned to GovCIO for Exela's non-participation in the offerors' proposals. For example, the agency assigned GovCIO a significant weakness for its [REDACTED] because it determined that [REDACTED]

[REDACTED] " *Id.* However, the VA did not assign GDIT an equivalent significant weakness for GDIT's non-use of Exela and the confusion as to how GDIT will perform PWS requirements. As discussed above, GDIT's proposal materially misrepresented that Exela will perform a large percentage of the high-volume scanning since Exela sold its high-volume scanner and North America hardware maintenance businesses and therefore cannot perform the work as proposed. See Section A, *supra*. Thus, neither offeror will rely on Exela to perform high-volume scanning services, but only GovCIO received significant weaknesses for this aspect of its approach. In fact, the VA assigned GDIT a strength for its "currently approved, active capacity to meet the processing requirements of the task immediately upon award," See *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 12, which cannot be justified in light of Exela's sale of its high-volume scanner and North America hardware maintenance businesses unit.

And to be clear, GovCIO did not even rely on Exela. GDIT's proposal warranted at least as many significant weaknesses, but likely many more, since Exela was a key part of its proposal, while only serving as a potential value-add to GovCIO's proposal.

This unequal treatment prejudiced GovCIO where the VA treated Exela's non-participation in GovCIO's proposal as a significant discriminator between GovCIO's and GDIT's proposals during the best value tradeoff. The redacted ADD stated that "[REDACTED]

[REDACTED] Ex 13 (ADD) at 28 (emphasis added).

[REDACTED]

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In short, the new evaluation results do not reflect a fair or equal evaluation. It is readily apparent that the new TEB—whether comprised of new individuals or the same evaluators—approached the reevaluation of only GovCIO’s proposal with a different perspective than they did with the original evaluation. It was unfair and unreasonable for the VA to hold GovCIO to this heightened standard while not subjecting GDIT’s proposal to the same scrutiny, and the VA’s actions constitute classic unequal treatment. *Lockheed Martin Info. Sys., B-292836 et al.*, Dec. 18, 2003, 2003 CPD ¶ 230 at 12 (stating it is “improper” for an agency to apply “a more exacting standard in reviewing one proposal” than it does in reviewing another).

H. The VA Conducted a Flawed Best Value Tradeoff Decision

1. The VA Failed to Reasonably Justify Paying GDIT a \$158 Million Price Premium over GovCIO

“In a best-value procurement,” including a task order competition under an IDIQ contract such as here, “it is the function of the source selection authority to perform a tradeoff between price and non-price factors to determine whether one proposal’s superiority under the non-price factors is worth a higher price.” *Arcadis U.S., Inc.*, B-412828, June 16, 2016, 2016 CPD ¶ 198 at 10. “Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision. Specifically, before an agency can select a higher-priced proposal that has been rated technically superior to a lower-priced but acceptable proposal, the award decision must be adequately documented and supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and explain why its technical superiority warrants paying a price premium.” *Id.* (sustaining protest and finding that the tradeoff decision was inadequately documented, premised on an unreasonable evaluation, and failed to consider protester’s lowest-priced proposal in procurement where non-price factors were more important than price).

The RTOR provided that “Technical is more important than Past Performance and when combined, the non-price factors are significantly more important than price.” Ex. 2 (RTOR) at 44. However, the RTOR also specified that the VA must give “appropriate consideration” to all three factors, and could only make award “to a high-rated, higher-priced Contractor where the Contracting Officer determines that the Technical Capability of the higher-priced Contractor outweighs the cost difference.” *Id.* at 37, 44.

Here, the VA determined that GovCIO’s price was “fair and reasonable” and identified no weaknesses, significant weaknesses, or deficiencies in GovCIO’s price proposal. Ex. 13 (ADD) at 28. Yet the VA selected GDIT for contract award at a significant price premium of \$158,047,489.43, which is approximately 65% higher than GovCIO’s proposed price. Ex. 4 (Debriefing) at 4. Given the VA’s initial determination that GDIT did not propose any particular



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benefits to justify its massive price premium, as well as its determination that GovCIO's identical non-price and price proposals presented the best value to the government, there simply was not a sufficient margin of qualitative service superiority between GovCIO's and GDIT's technical capability to perform the required services that would reasonably result in additional incremental benefits to the VA that would be proportionate to a \$158 million price premium.

Indeed, the VA initially determined that "there are no significant advantages or disadvantages between the offers to justify the payment of the price difference associated with GDIT's offer, given the level of technical competence available at GCIO's lower price." *Gen. Dynamics Info. Tech.*, 2023 CPD ¶ 60 at 21. The VA further found that "it is not in the best interest of the Government to award to a contractor with a higher-rated, higher-priced (by \$158M) offer." *Id.*

Since the proposals have not changed, the only possible explanation for the SSA's complete reversal is that GovCIO's ratings changed. But adjectival ratings are merely guides for intelligent decision-making and the SSA was required to look behind the ratings. *See Chardonmay Dialysis, LLC*, B-420910, Oct. 27, 2022, 2022 CPD ¶ 273 at 7 ("[E]valuation ratings are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. [] Rather the essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings."). Even if GDIT is reasonably viewed as relatively more experienced, the SSA has not identified any significant advantages in GDIT's proposal and relative experience compared to all of the meritorious aspects of GovCIO's proposal that could possibly justify a 65% price premium for a file scanning contract.

The debriefing and redacted ADD demonstrate that the VA failed to reasonably determine "that the Technical Capability of the higher-priced Contractor outweighs the cost difference" during its new best value tradeoff, as required under the Solicitation. Ex. 2 (RTOR) at 37. The ADD merely states, without elaboration, that "[w]hile GDIT's price of \$399,641,439.16 is \$158,047,489.43 higher than GovCIO's offer of \$241,593,949.73, the premium is well justified." Ex. 13 (ADD) at 28. The fact that the RTOR provided that non-price factors were more important than price does not relieve the VA of its obligation under the RTOR and well-established procurement law to meaningfully consider whether an offeror's proposed benefits outweigh the price premium. *See Arcadis U.S., Inc.*, 2016 CPD ¶ 198 at 10 ("Even where, as here, price is stated to be of less importance than the non-price factors, an agency must meaningfully consider cost or price to the government in making its selection decision.").

While agencies have broad discretion in conducting tradeoffs, the decision must be sound and reasonable. "The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs." FAR 1.102(d). *See also* FAR 1.102-2(c) ("each member of the Team is responsible and



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accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust"). Here, the agency's tradeoff fails that test.

Even if the VA had a reasonable basis to assign weaknesses to GovCIO's proposal, it does not reflect "sound business judgment" or the "wise use of public resources" for the VA to pay an unnecessary \$158 million price premium for file scanning services. GovCIO's proposal demonstrates an understanding of requirements and an achievable approach. The SSA ignored the significant price tag associated with GDIT based on the agency's flawed reevaluation that resulted in an [REDACTED] rating. The VA's decision is unreasonable, unsound, and a waste of taxpayer money.

2. The VA Based Its Best Value Decision on a Flawed Underlying Evaluation

The GAO has found that, in cases where an agency's best value decision was based upon a flawed evaluation, the best value decision is likewise flawed. *See, e.g., Glacier Technical Solutions, LLC*, B-412990.2, Oct. 17, 2016, 2016 CPD ¶ 311 at 11 ("Based on our review of the record, we find the SSA's best-value decision to be unreasonable because it adopted a final technical evaluation report that failed to document or consider the effect of the TET's decision to reject one of the staffing methodologies proposed by SAWTST."); *Arcadis U.S.*, 2016 CPD ¶ 198 at 10 (sustaining the protest and stating that, "based on the errors we have identified in the agency's evaluation of proposals, we are unable to conclude that the agency's best-value determination was reasonable").

Had the VA performed reasonable and equal evaluations of GovCIO's and GDIT's proposals, GDIT would have received additional weaknesses and significant weaknesses under the heightened evaluation standard, resulting in lower adjectival ratings. Further, had the VA reasonably assigned strengths and weaknesses to GovCIO's proposal in accordance with the Solicitation, GovCIO would have received higher non-price ratings than GDIT. Because the VA failed to reasonably evaluate GovCIO's and GDIT's proposals consistent with the terms of the Solicitation, its best value decision, which relied on this flawed evaluation, was likewise flawed. *See Verdi Consulting, Inc.*, B-414103.2 *et al.*, Apr. 26, 2017, 2017 CPD ¶ 136 at 14 ("More importantly however, because we find that the agency's price evaluation and the evaluation of Verdi's past performance were unreasonable and fundamentally flawed, as discussed above, the agency's reliance (if any) on those evaluation judgments as part of its best-value tradeoff, is also flawed.").

I. The VA's Unreasonable Evaluation and Best Value Tradeoff Decision Prejudiced GovCIO

Where "it is possible that a best-value tradeoff decision might differ following a revised evaluation," the GAO will "resolve any doubts regarding prejudice in favor of a protester since a

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reasonable possibility of prejudice is a sufficient basis for sustaining a protest.” *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. The errors described above readily meet the GAO’s standard for prejudice. The VA should have disqualified GDIT from award and should have opened discussions. Moreover, correcting the evaluation errors described above would place GovCIO in position for award of the task order again. Given GovCIO’s significant price savings, it stands a substantial chance of receiving award if the VA takes appropriate corrective action.

REQUEST FOR DOCUMENTS

Pursuant to 4 C.F.R. § 21.1(d)(2), GovCIO requests that the VA produce all documents relevant to GovCIO’s grounds of protest as part of the Agency Report in response to this protest, including the following documents:

1. Complete copies of GovCIO’s and GDIT’s proposals, including any and all subsequent revisions. This request is relevant because this protest challenges the agency’s evaluation of GovCIO’s and GDIT’s proposals as unreasonable and unequal, as well as the best value determination. The GAO’s Bid Protest Regulations at 4 C.F.R. § 21.3(d) also list as an example of “relevant documents,” “the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being Protested.”
2. All documents relating to or reflecting the evaluations of, or the assignment of ratings to, GovCIO and GDIT under all evaluation factors, including the VA’s initial evaluation of GovCIO’s and GDIT’s proposals and the VA’s reevaluation of GovCIO’s proposal during corrective action. This request is relevant for the same reasons as provided in Request No. 1. Additionally, the GAO Bid Protest Regulations at 4 C.F.R. § 21.3(d) list “all evaluation documents” as an example of “relevant documents.” The original evaluation record is relevant since the VA relied on it in awarding the task order to GDIT.
3. All documents referring to or reflecting an arrangement between the agency and a third party to evaluate GovCIO’s proposal during corrective action. This request is relevant for the same reason as provided in Request No. 1 and because this protest alleges that the VA engaged a new third party evaluation panel that applied an unequal evaluation standard to GovCIO’s proposal.
4. All documents identifying the members of the Technical or Non-Price Evaluation teams, Source Selection Evaluation Board, Source Selection Advisory Council, or similar body regarding the evaluation of GDIT’s and GovCIO’s proposals. This request is relevant for the same reason as provided in Request No. 1 and because this protest alleges that the VA engaged a new third party evaluation panel that applied an unequal evaluation standard to GovCIO’s proposal.



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5. All communications among the Technical or Non-Price Evaluation teams, Source Selection Evaluation Board, Source Selection Advisory Council, or similar body regarding the evaluation of GDIT's and GovCIO's proposals. This request is relevant for the same reason as provided in Request No. 1 and because the GAO Bid Protest Regulations at 4 C.F.R. § 2.13(d) list "all evaluation documents" as an example of "relevant documents."
6. All instructions and other guidance provided to the evaluation panel members and source selection teams, including guidance in relation to the GAO's recommendation to reevaluate proposals. This request is relevant for the same reason as provided in Request No. 1. It is also relevant because GovCIO challenges the unequal and unfair evaluation standard that the TEB applied during the reevaluation, which focused only on weaknesses in GovCIO's proposal.
7. All documents that relate to or reflect the best value determination performed by the Source Selection Authority. This request is relevant because this protest challenges the agency's best value tradeoff decision as unreasonable.
8. The Source Selection Decision and all attachments and related documents, including all documents the Source Selection Authority considered or relied on in his source selection decision. This request is relevant because this protest challenges the agency's evaluation of proposals and best value tradeoff.
9. All documents relating to or reflecting communications between the agency and GDIT regarding this procurement after the VA's initial award to GovCIO in November 2022, including communications through counsel and communications regarding Exela and GovCIO, through award of the task order to GDIT in August 2023. This request is relevant because this protest challenges GDIT's attempts to gain an unfair competitive advantage in this procurement and challenges GDIT's failure to notify the VA of the sale of Exela's scanning unit to ibml.



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REQUEST FOR A HEARING

In accordance with 4 C.F.R. § 21.7(a), GovCIO requests that the GAO hold a hearing in this matter in light of GDIT's interference in this procurement, including prompting Exela to send a letter to GovCIO demanding that GovCIO notify the VA that Exela would not support the GovCIO team.

REQUEST FOR RULING AND RELIEF

For the reasons stated above, GovCIO requests a ruling by the Comptroller General sustaining this protest and directing the VA to take the following actions:

1. Cancel the task order awarded to GDIT;
2. Eliminate GDIT as non-responsible, for seeking to obtain an unfair competitive advantage, for improperly influencing the procurement, and for its antitrust violations;
3. Reevaluate proposals consistent with the RTOR and the GAO's decision in this protest, including eliminating GDIT's proposal on the basis of material changes to its proposal stemming from the sale of Exela;
4. Alternatively, open discussions with offerors;
5. Make a new best value decision;



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6. Reimburse GovCIO the costs of filing and pursuing this protest, including attorneys' fees; and
7. Provide any other relief that the GAO considers appropriate.

Respectfully submitted,

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