

Plaintiff Perspecta Enterprise Solutions LLC (“Perspecta”), through undersigned counsel, files this post-award Bid Protest against Defendant the United States of America. In support of this action, Perspecta states and alleges as follows:

1. Perspecta protests the award of an Indefinite Delivery Indefinite Quantity (“IDIQ”) contract by the Department of Navy, Naval Information Warfare Systems Command (“NAVWAR,” “Navy” or “Agency”) to Leidos, Inc. (“Leidos”) under Request for Proposals No. N00039-18-R-0005 (“RFP” or “Solicitation”) for the Navy’s Next Generation Enterprise Network Re-Compete (“NGEN-R”) Service Management, Integration, and Transport (“SMIT”) contract.

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Marine Corps Enterprise Network (“MCEN”), and another 30,000 devices and over 45,000 users via the Navy Enterprise Network (“ONE-Net”). AR Ex. 1, SMIT Attach. J-1 Performance Work Statement (“PWS”) § 1.¹

3. The Navy awarded the NGEN-R SMIT contract to Leidos at a potential contract value of \$7,729,639,286.25. AR Ex. 75, Perspecta Letter 20-024 Notification to Unsuccessful Offeror.

4. The Navy’s award of the NGEN-R SMIT contract to Leidos was riddled with material and prejudicial errors that should not occur in any procurement, let alone one of this magnitude and importance. The Navy failed to consider conflicts of interest; conducted mechanical and critically-flawed cost and price realism (and reasonableness) evaluations affecting billions of dollars of each offerors’ total evaluated prices; and engaged in inadequate and misleading discussions that it disingenuously represented were comprehensive. Errors of this type cannot be permitted in any procurement, and undermine the very foundation of the NGEN-R competition and award.

5. In addition, the Navy failed to follow the stated evaluation criteria and unreasonably evaluated both Perspecta and Leidos with respect to the Technical and Management Approaches. The result of these errors is that the Navy’s best value decision is

¹ All “AR Ex.” and “AR Add. Prod.” references are to the Agency Report produced in the GAO bid protest (B-418533.2, B-418533.3), which will be produced as part of the Government’s Administrative Record.

premised on illusions. For these reasons, the Navy's award decision is arbitrary and capricious and ultimately cannot stand. The Navy's evaluation errors are summarized below.²

The Navy Failed to Consider Improper Conflicts of Interest That Gave Leidos an Unfair Competitive Advantage

6. The Navy's evaluation of Leidos' proposal was undermined at the outset by the Contracting Officer's failure to identify and resolve two different conflict of interest concerns that each afforded Leidos unfair competitive advantages in its NGEN-R capture effort: (1) the Contracting Officer conducted an incomplete and arbitrary investigation of the impermissible Unfair Competitive Advantage ("UCA") posed by Leidos' NGEN-R Program Manager, [REDACTED] [REDACTED]—a key member of its capture team—who is the former SPAWAR³ [REDACTED]; and (2) the Contracting Officer failed to address a clear appearance of a conflict of interest created by [REDACTED] conflicting roles.

7. Each of these conflicts, having been allowed to take root without necessary protective protocols, counsels in favor of Leidos' disqualification from the NGEN-R procurement.

The Navy's Cost/Price Evaluation Was Unreasonable

8. Perspecta's goal in pricing its proposal was to utilize [REDACTED] [REDACTED]. Nonetheless,

² Perspecta originally protested the Navy's NGEN-R SMIT award to Leidos at the Government Accountability Office ("GAO") on March 9, 2020. *See Perspecta Enterprise Solutions LLC*, B-418533.2, B-418533.3. As explained in more detail below, GAO improperly denied that protest. Perspecta's Complaint here references materials obtained via the GAO protest and subject to the protective order issued therein.

³ SPAWAR refers to the Space and Naval Warfare Systems Command. In June 2019, SPAWAR changed its name to Naval Information Warfare Systems Command ("NAVWAR").

Leidos undercut Perspecta's proposed price by more than half a billion dollars, with no attendant technical risks identified by the Navy (Leidos received the highest-possible evaluation ratings in all but one of the non-price evaluation factors). This demonstrates that the Navy did not credibly scrutinize the realism of Leidos' price, as required by the RFP.

9. Indeed, as the record demonstrates, and as GAO agreed, the Navy's price-realism analysis of Leidos' direct labor rates was mathematically flawed. The Navy's reliance upon a "flawed statistical methodology" resulted in the absurd conclusion that rate ranges with a floor of less than \$0/hour were somehow reasonable. This analysis was plainly improper. The Navy also performed a flawed realism analysis of Perspecta's cost-reimbursable contract line item numbers ("CLIN"), which concluded that a set of rates that Perspecta had proposed originally were unrealistic, despite the fact Leidos' proposed rates that were even lower, but which the Navy did not disturb.

The Navy's Discussions with Perspecta Were Inadequate and Misleading

10. The Navy conducted inadequate and misleading discussions with Perspecta that touched the Navy's evaluation of Perspecta's proposed price, as well as its proposal under the Technical and Management evaluation factors. Indeed, the Navy identified twenty significant weaknesses or weaknesses under Technical and Management factors in its final evaluation of Perspecta's proposal. But of those twenty, no less than twelve—four significant weaknesses and eight weaknesses—were the direct result of the Navy's flawed and inadequate discussions. The Navy never raised them with Perspecta.

11. The Navy's failure to do so rendered its discussions with Perspecta inadequate and misleading.

The Navy's Evaluations of the Perspecta and Leidos Proposals Under the Technical and Management Factors Were Unreasonable and Inconsistent with the Solicitation's Terms

12. The Navy's evaluation of Perspecta's proposal under the technical and management factors was also substantively unreasonable and inconsistent with the RFP.

13. The Navy assigned numerous weaknesses and significant weaknesses that were contradicted by the clear language of Perspecta's proposal, based on unstated evaluation criteria, and in some instances belied by the Navy's own findings.

14. The Agency also assigned Leidos the highest possible rating under evaluation subfactors where Leidos, by its own admission, could not plausibly have merited such a rating. The Agency failed to properly consider the risk of Leidos' unsuccessful performance, despite being explicitly required to do so pursuant to the RFP. *See* AR Ex. 1, RFP at ¶ M-2.2 (p. 535).

15. The sum effect of these myriad errors was to create the illusion of a significant disparity between the two offerors under the Technical Approach and Management Approach factors where none existed.

The Navy Conducted a Flawed Best Value Determination

16. The net effect of the myriad errors detailed above is that there is no possibility that the Navy could arrive at a rational award decision in this case.

17. As the Navy's best value decision was impacted by each of the underlying evaluation errors, the Navy's contract award to Leidos cannot stand.

18. But for these evaluation errors, Perspecta would have received the NGEN-R SMIT contract award. As such, Perspecta is entitled to declaratory and injunctive relief to remedy the Navy's violations of the law.

19. Counsel for Perspecta has been in communication with the Department of Justice (“DOJ”) about a potential stay of performance of the awarded contract and an expedited schedule for this protest in order to obviate the need for a temporary restraining order or preliminary injunction. Undersigned counsel intends to continue those discussions with DOJ following the filing of this complaint, and hopes to reach agreement prior to the Court’s initial status conference. In light of those ongoing discussions, Perspecta does not seek a temporary restraining order or preliminary injunction at this time, but reserves the right to do so in the event it does not reach agreement with DOJ.

II. JURISDICTION

20. The Court has jurisdiction over this bid protest action pursuant to 28 U.S.C. § 1491(b).

21. Perspecta is an interested party to pursue this protest. *See* 28 U.S.C. § 1491(b)(1). To qualify as an interested party, a protestor must demonstrate that it is an “actual or perspective bidder or offeror whose direct economic interest would be affected by the award of the contrary or by failure to award the contract.” *Nat’l Air Cargo Grp., Inc. v. United States*, 126 Fed. Cl. 281, 295 (2016) (quoting *Am. Fed’n of Gov’t Emps. v. United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001)). Perspecta is the incumbent NGEN contractor and Perspecta was an actual bidder for the NGEN-R SMIT award. Perspecta, therefore, has standing to pursue this action.

III. THE PARTIES

22. Perspecta is a leading government services provider, with offerings in digital transformation services and enterprise operations. Perspecta is the incumbent NGEN

contractor, providing innovative and comprehensive IT services to the NMCI, the world's largest intranet, and staffing support to the Marine Corps.

23. Defendant is the United States of America, acting through the Department of Navy, Naval Information Warfare Systems Command, an executive agency of the federal government.

IV. FACTUAL BACKGROUND

A. The NGEN-R SMIT Procurement

24. The Navy "operates one of the largest combined networks in the world." AR Ex. 1, PWS § 1. In an effort to transform and modernize its network platforms, the Navy issued the family of NGEN-R contracts. *See* Naval Enterprise Networks Public Affairs, "Navy Awards New NMCI Services Management Contract" (Feb. 5, 2020), https://www.navy.mil/submit/display.asp?story_id=112022 (last visited June 30, 2020).

25. NGEN-R consists of two contracts—the End-User Hardware ("EUHW") contract⁴ and the SMIT contract at issue here. The base network services to be provided for the NGEN-R procurement include supplies and services to operate the Navy's enterprise-wide IT networks. AR Ex. 1, PWS § 1.

26. Together with the EUHW contract, the NGEN-R SMIT contract continues the predecessor Next Generation Enterprise Network ("NGEN") contract and NGEN bridge ("NGEN-X") contract, which is currently being performed by Perspecta through September 2020, with three one-month options through December 2020. *Id.*

⁴ The EUHW contract was awarded in October 2019 to a different contractor and will supply the computing and peripheral hardware for NGEN-R. *Id.*

B. The Solicitation

27. The Navy issued the Solicitation on October 18, 2018, amending it 15 times. The RFP provided for full and open competition under FAR Part 15. AR Ex. 1, RFP at ¶ L-1 (p. 512). The RFP directed that award be made to the proposal providing the best value to the Navy, which “may not necessarily be the proposal offering the lowest Cost/ Price or receiving the highest technical rating.” *Id.* at 533.

28. The Solicitation contemplated the award of a single IDIQ contract with firm fixed price (“FFP”), cost plus fixed fee (“CPFF”), and fixed price incentive fee (“FPIF”) contract line items (“CLINs”) during a five-year base period with three one-year options. *Id.* at 418, 430, 540.

C. Evaluation Criteria

29. The RFP directed that proposals would be evaluated on a best-value basis, based upon six factors: (1) Technical Approach; (2) Management Approach; (3) Past Performance; (4) Transition Approach; (5) Cost/Price; and (6) Gate Criteria. *Id.* at 536-39. The RFP informed offerors that the first three factors would be weighted in descending order of importance, and when combined, would be “significantly more important than Factor 5.” *Id.* at 533-34.

30. Notwithstanding this factor weighting, the RFP noted that the importance of the Cost/Price factor would “increase with the degree of equality of the proposals in relation to the remaining factors.” *Id.* at 533.

31. The RFP required the Navy to first evaluate proposals under the Gate Criteria and only those rated “Acceptable” would be evaluated under the other factors. *Id.* at 533. A

proposal receiving an adjectival rating of “Unacceptable” in any Factor or subfactor was considered ineligible for award. *Id.*

1. The RFP’s Technical Factor

32. Under the Technical factor, the RFP required the Navy to assign adjectival ratings to two equally weighted subfactors— Subfactor 1.1 – Systems Engineering; and Subfactor 1.2 – Network Transformation/Modernization Sample Exercise—based upon the strengths, weaknesses, and deficiencies identified in each proposal, as well as the Navy’s assessment of associated risk in each proposal, and to assign evaluation ratings as follows:

Outstanding: Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is low.

Good: Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.

Acceptable: Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.

Marginal: Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

Unacceptable: Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

Id. at 535-37.

33. Under Subfactor 1.1, the Navy was required to evaluate the degree to which the offeror demonstrated:

- a. Its understanding of the Government's Systems Engineering Plan (SEP) and how its proposed subsections of the Systems Engineering Management Plan (SEMP) will benefit the Government.
- b. Its understanding of the Government's Network Transformation/Modernization requirements and how its proposed approach will benefit the Government.

Id. at 536.

34. Under Subfactor 1.2, the Navy was required to evaluate the degree to which the Offeror demonstrated:

- a. Its clarity in describing any assumptions in developing the network architectural baseline it uses as a basis for its Network Transformation/Modernization Plan (NT/MP) and how their baseline relates to the existing architecture and infrastructure as provided by the Government.
- b. Compliance with its own overarching approach to the NT/MP process.
- c. Alignment with the NOSS Framework.
- d. Its five-year strategy for delivering Government objectives, including prioritization of those objectives, and a description of how that strategy will benefit the Government.
- e. How its list of projects and their descriptions incorporate near-term improvements, describing how those projects conform to the proposed strategic approach and the projects' benefits to the Government.
- f. A reasonable schedule that addresses each phase and includes Government interdependencies and activities.
- g. Risks and opportunities for each project, and for each phase, including sustainment.
- h. Completeness of all proposed efforts and expected actions for the Government.

Id. at 536-37.

2. The RFP's Management Factor

35. Under the Management factor, the RFP required the Navy to rate proposals according to four equally weighted subfactors—Subfactor 2.1 – Program Management Plan; Subfactor 2.2– Network Operations; Subfactor 2.3 – Tools Management and Data Access; and Subfactor 2.4 – Supply Chain Risk Management (“SCRM”)—using the same adjectival ratings used for the Technical Factor evaluation *Id.* at 535, 537-38.

36. Under Subfactor 2.1, Program Management Plan, the Navy was required to evaluate the degree to which the offeror's draft Program Management Plan demonstrated:

- a. An understanding of the organizational structure required to successfully deliver NMCI services.
- b. An understanding of direct lines of control, responsibilities, functional relationships, and authorities to include interfaces between the Contractor and Government and the Contractor and other contractors required to successfully deliver NMCI services.
- c. Its methods for accomplishing contractual tasks and projects.

Id. at 537.

37. Related to this organizational structure, the RFP also required offerors to propose named key personnel for the roles of Program Manager, Chief Network Architect, and Contracts Manager meeting certain minimum qualifications prescribed by the PWS. *Id.* at 409; *see also* AR Ex. 1, PWS § 3.1.1.1.

38. Under Subfactor 2.2, Network Operations, the Navy was required to evaluate the degree to which the offeror's approach demonstrated:

- a. The ability to monitor the infrastructure, identify and respond to events, and mitigate impact to network operations.
- b. The ability to provide Situational Awareness via dashboards and analytics and how its approach improves network operations.

- c. An understanding of the critical role robust and reliable contractor support plays in defending the MCEN, and the Offeror's ability to continually deliver USMC labor support services within the SLRs.

AR Ex. 1, RFP at ¶ M-3(c)(2) (p. 537).

39. Under Subfactor 2.3, Tools Management and Data Access, the Navy was to evaluate the degree to which the offeror's approach demonstrated:

- a. Innovation in its approach to providing historical and real-time Network data and data management, and how that approach will benefit the Government.
- b. Innovation in its approach to leveraging advanced data management technologies, and how that approach will benefit the Government.
- c. Its approach to full lifecycle management of Network and Service Management tools and a description of how that approach will benefit the Government.

Id.

40. Under Subfactor 2.4, Supply Chain Risk Management, the Navy was required to evaluate the degree to which the offeror's approach demonstrated the ability and processes to:

- a. Ensure that the SCRM practices are sufficient to mitigate or eliminate an adversary's ability to sabotage, maliciously introduce unwanted function, or otherwise degrade the function, use, integrity, or operation of the information technology delivered to the Government.
- b. Ensure that it and its Subcontractors, at all tiers, can source items using a process that comports with DFARS 246.870-2.
- c. Ensure that the SCRM practices are employed throughout the product life cycle to include maintenance and repair.

Id. at 537-38.

3. The RFP's Cost/Price Factor

41. The RFP required the Navy to evaluate proposals for “completeness, reasonableness, realism, and unbalanced pricing.” *Id.* at 539. In particular, the RFP required that a cost-realism analysis “be performed for all cost-reimbursement type” line items and price realism “be performed on the fixed-price” line items. *Id.* at 541-42. The RFP also required the Navy to “analyze the proposals to determine if prices on fixed-price CLINs are materially unbalanced.” *Id.* at 542.

42. The Navy was required to calculate each offeror's Total Evaluated Cost/Price by adding: the Offeror's proposed amounts (A), the Government provided Not-To-Exceed (“NTE”) amounts (B), the Other Offeror's amounts (if applicable) (C), and the Government Adjustments (if applicable) (D), as calculated in the Cost/Price Evaluation Template. *Id.*

43. The RFP also provided the Total Contract Award be used to establish the minimum contract value, which was determined by: the sum of Offeror's proposed amounts (A), the Government provided NTE amounts (B), the Other Offeror's amounts (if applicable) (C), Transition Pricing (CLIN 0001 only), and 20% of the sum of (A), (B), (C), and Transition Pricing as calculated in Cost/Price Evaluation Template. *Id.* at 542-43.

4. The RFP's Remaining Evaluation Factors

44. As to Past Performance, the RFP instructed the Navy to assess each offeror's past performance according to three aspects: recency, relevancy, and performance. *Id.* at 523. The Navy would assign a performance confidence assessment rating reflecting the Navy's confidence that the offeror would successfully perform the requirements in the solicitation, based on the offeror's record. *Id.* at 538. The evaluations of the recent and

relevant past performance were then combined to establish one performance confidence assessment rating. *Id.* at 536.

45. As to Transition, the RFP required the Navy to evaluate the offeror's Phase-In Services approach, NMCI Transition Plan, ONE-Net Transition Plan, USMC Transition Plan, and ONE-Net Convergence Approach. *Id.* at 538-39.

46. As to Gate Criteria, the RFP instructed the Navy to evaluate the offeror's "[d]emonstrated experience as a service provider for a network" and its Small Business Participation. *Id.* at 535-36.

D. Leidos' Unfair Competitive Advantage Arising from Its Employment of the Former SPAWAR [REDACTED] as Its NGEN-R Program Manager

[REDACTED] Role as SPAWAR [REDACTED]

47. [REDACTED], is Leidos' NGEN-R Program Manager and Division Manager. [REDACTED]

[REDACTED] As the NGEN-R Program Manager, [REDACTED] was at the helm of Leidos' NGEN-R capture effort, and participated directly and substantially in that effort.

48. Prior to joining the private sector, [REDACTED] served for roughly two and a half years as SPAWAR's [REDACTED] directly supporting, and acting as the top assistant, to the SPAWAR Commanding Officer, [REDACTED].⁵ *See id.* The [REDACTED] role at SPAWAR includes a number of critical responsibilities, including:

⁵ The [REDACTED] role at SPAWAR is also sometimes referred to as the "Executive Assistant." For the purposes of clarity, this protest will use the position title [REDACTED], which is a more accurate term for the senior position acting as the right-hand and top

[REDACTED]

49. In his capacity as [REDACTED], [REDACTED] had a direct supervisory role on all major SPAWAR programs, including NGEN, on behalf of the SPAWAR Commander. [REDACTED] directly interacted with Perspecta during its performance of the incumbent NGEN contract.

50. For example, when members of Perspecta's incumbent staff⁶ wanted to set up meetings with the SPAWAR Commander to discuss important NGEN program matters, [REDACTED] coordinated the establishment of those meetings and sometimes attended those meetings with the Admiral or on the Admiral's behalf.

representative of the Admiral tasked with command of SPAWAR. Furthermore, the role of SPAWAR Commander, also known as "COMSPAWAR," was filled by [REDACTED] at the relevant times during [REDACTED] employment as SPAWAR [REDACTED].

⁶ At the time, the NGEN contract was performed by HPES, a predecessor to Perspecta. After multiple corporate reorganizations, the entity now called Perspecta inherited the NGEN contract as a full successor in interest. All reference to HPES at the time represent the same entity still performing the incumbent NGEN contract, as well as the entity submitting this protest.

[REDACTED]

[REDACTED]

51. Perspecta employees also personally contacted [REDACTED] on occasion to provide information about certain NGEN contracting issues. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This is, inarguably, non-public and confidential information related to Perspecta's performance on its incumbent NGEN contract.

52. In addition to direct communications, [REDACTED] was regularly copied on e-mails pertaining to NGEN contract performance. For example, during Perspecta's transition-in work under the incumbent NGEN contract, [REDACTED] was copied on weekly status updates about Perspecta's progress. In recurring e-mails titled [REDACTED] [REDACTED] with detailed updates about Perspecta's work and various contract performance metrics.

53. Appended to those weekly status updates was a PowerPoint presentation that provided additional detailed metrics and performance information on Perspecta's ongoing NGEN performance. *Id.* at 5-6. [REDACTED] personally received at least seven of these weekly transition updates and other similar reports on Perspecta's work. *Id.* at 7-47. [REDACTED] was also regularly copied on correspondence and received updates about Perspecta's (formerly

[REDACTED]

[REDACTED]

[REDACTED]

54. [REDACTED] also had unfettered access to a wide array of internal SPAWAR information and documentation about Perspecta's incumbent NGEN performance due to the fact that as [REDACTED], [REDACTED] had delegated access to [REDACTED] email account.. Thus, [REDACTED] access to nonpublic, competitively-useful information about Perspecta literally matched that of the SPAWAR Commander.

55. For example, after a meeting between Perspecta and [REDACTED] that [REDACTED] had personally arranged, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. As a result of his access to [REDACTED] email account, [REDACTED] had access to all of this information.

57. While [REDACTED] retired from the Navy in late 2016, that was still sufficiently recent to afford [REDACTED] with access to roughly three years' worth of Perspecta incumbent contract performance information.

58. On top of having constant and all-encompassing access to nonpublic, competitively-useful Perspecta data, [REDACTED] time as SPAWAR [REDACTED] also overlapped with much of the early planning for the NGEN-R re-compete at issue in this protest. While the NGEN-R contract was awarded in early 2020, the procurement itself began to take shape back in 2015-2016 before various delays extended the timeframe. Though [REDACTED] was not at SPAWAR when proposals were submitted, he was nonetheless in the [REDACTED] role when critical acquisition planning steps were taking place and when important market research decisions were being made.

59. The Navy's "Notional Acquisition Approach" document was released on November 17, 2015. *See* Ex. 7, Naval Enterprise Networks NGEN Re-compete Industry Day, Notional Acquisition Approach (Nov. 17, 2015). An initial RFI was released in a similar timeframe. *See* Ex. 8, Request for Information. Two different Industry Days were held in the 2015-2016 timeframe, the second of which occurred on May 25, 2016 and included numerous detailed presentations from key Navy NGEN-R personnel about program goals and objectives. *See, e.g.,* Ex. 9, Naval Enterprise Networks Industry Day #2, NGEN Re-compete Acquisition Approach (May 25, 2016). Another RFI was submitted in the summer of 2016, which solicited additional detailed responses from industry by August 2016. [REDACTED] was [REDACTED] at the time of all of these events and more.

60. As [REDACTED], it would have been typical for [REDACTED] to have attended meetings where high-level program goals and strategic changes were being debated and finalized. At the very least, [REDACTED] would have been briefed on the outcomes of such meetings, and provided information about what transpired and what decisions were made. Through his access to [REDACTED] e-mails and calendar, [REDACTED] would have had access to all such

information as well. This access would have afforded [REDACTED] substantial inside information about the Navy's likes and dislikes about Perspecta's incumbent contract performance as it related to the NGEN follow-on contract, and provided key insights into how to tailor a proposal for the follow-on procurement to best satisfy SPAWAR's leadership.

SPAWAR's Post-GAO Protest [REDACTED] Investigation

61. The above facts formed the basis of Perspecta's GAO protest challenging the Agency's failure to properly investigate and resolve the unfair competitive advantage obtained by Leidos through the employment of [REDACTED] as its NGEN-R Program Manager. Prior to raising this allegation, the Navy had not performed any sort of assessment of this issue.

62. In response to the Protest, the Navy Contracting Officer undertook a hurried, limited, investigation. Beyond confirming that [REDACTED] did not serve as an NGEN-R procurement official (Perspecta never suggested he was), the Contracting Officer's investigation consisted primarily of a series of written questions submitted to Leidos to which [REDACTED] responded in writing. *See* AR Ex. 98, Attachs. M, N, O.

63. Nonetheless, the investigation elicited important information—[REDACTED] both confirmed that he had access to large swaths of non-public, competitively sensitive information, and made demonstrably inaccurate representations about other information to which he claimed he did not have access.

64. For example, [REDACTED] denied ever receiving correspondence from the NGEN program personnel about Perspecta's incumbent contract work:

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

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

[REDACTED]
[REDACTED]

[REDACTED] These representations are inaccurate, as demonstrated by the above e-mails on which [REDACTED] was copied updating him on Perspecta's ongoing transition work and NGEN performance.

65. While [REDACTED] failed to disclose his direct role interfacing with Perspecta under the incumbent NGEN contract, and falsely denied having personally received information about Perspecta's performance of the NGEN incumbent contract throughout his time as SPAWAR [REDACTED], he did admit that he had unfettered access to [REDACTED] e-mail account:

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

[REDACTED]

Id. (emphasis added).

66. However, after [REDACTED] explicitly confirmed that he had access to the entire universe of confidential information sent to the SPAWAR Commander, the Contracting Officer failed to follow up on this disclosure in any way. She neither asked [REDACTED] about the contents of [REDACTED] e-mails, nor undertook the necessary step of reviewing those

[REDACTED]
[REDACTED]

e-mails herself to assess the extent of competitively-sensitive nonpublic information available

[REDACTED] And, ultimately, without having any insight into the answers to those questions, the Contracting Officer concluded that [REDACTED]

██████████ prior role with SPAWAR did not create an unfair competitive advantage for Leidos.

E. Perspecta's Initial Proposal Submission, Discussions, and Final Proposal Revisions

67. Perspecta submitted its initial proposal on January 24, 2019.

68. On July 15, 2019, the Navy opened discussions, issuing evaluation notices (“EN”) and allowing offerors to revise all aspects of their proposals. AR Ex. 85, Response to Debriefing Questions at 12.

69. The Navy issued [REDACTED] ENs to Perspecta, raising not only perceived deficiencies and significant weaknesses, but also non-significant weaknesses. AR Ex. 85, Government Response to Perspecta Debrief at 16 (“The Government provided the Offerors all weaknesses, significant weaknesses, deficiencies, cost/price findings, past performance findings, and areas of unacceptability identified during the initial evaluation.”); *see generally* AR Ex. 58, Perspecta Encl-1 Technical ENs Government Response Final. Accordingly, Perspecta reasonably understood that the Agency’s ENs addressed any adverse finding relating to its proposal.

70. On September 12, 2019, Perspecta submitted its Final Proposal Revisions (“FPR”).

F. The Navy's Evaluation of Perspecta's Proposal and Award to Leidos

71. On February 5, 2020, the Navy notified Perspecta of the decision to award the NGEN-R SMIT contract to Leidos. AR Ex. 75, Perspecta Letter 20-024 Notification to

Unsuccessful Offeror. Perspecta requested a debriefing in writing on February 7, 2020. AR Ex. 76, Perspecta Letter 20-027 Debrief Request. Prior to the debriefing, the Navy provided Perspecta with various redacted evaluation documents, which included the redacted Perspecta Source Selection Evaluation Board (“SSEB”) report, the redacted Cost/Price Evaluation Board (“CPEB”) report and enclosures, the redacted Source Selection Advisory Council (“SSAC”) report, and the redacted Source Selection Decision Document (“SSDD”).

72. The SSDD indicated that Leidos’ proposal was more highly rated under Technical Subfactors, and that its evaluated cost/price was lower than Perspecta’s. AR Ex. 77, Perspecta Source Selection Decision Document (SSDD) Redacted at 3.

73. The Navy assigned 19 strengths, and 20 weaknesses and significant weaknesses to Perspecta’s proposal. AR Ex. 79, Perspecta Source Selection Evaluation Board (“SSEB”) Report-Redacted at 12.

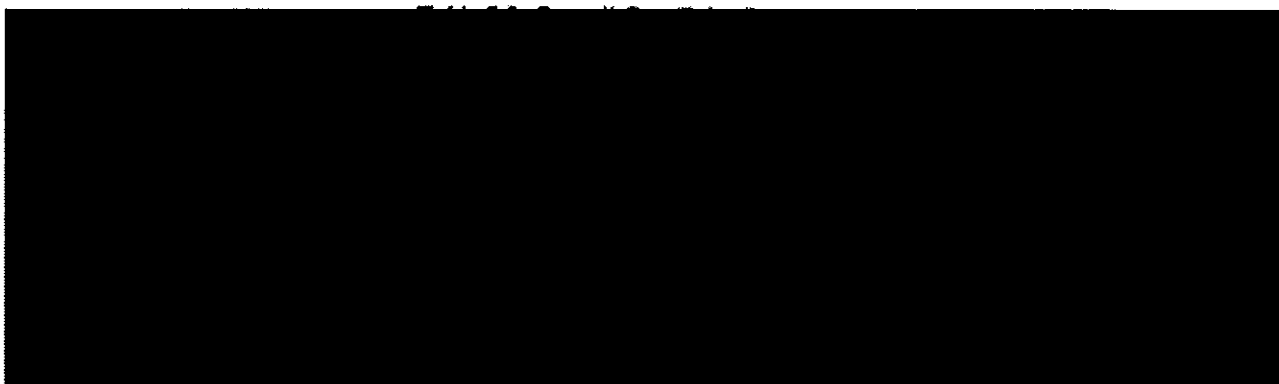
74. The Navy assigned ratings to the Perspecta and Leidos proposals as follows:

	Factor/Subfactor	Leidos	Perspecta
Factor 1: Technical Approach	Subfactor 1.1: Systems Engineering	OUTSTANDING	MARGINAL
	Subfactor 1.2: Network Transformation/Modernization	OUTSTANDING	ACCEPTABLE
Factor 2: Management Approach	Subfactor 2.1: Program Management Plan	OUTSTANDING	GOOD
	Subfactor 2.2: Network Operations	OUTSTANDING	MARGINAL
	Subfactor 2.3 Tools Management and Data Access	OUTSTANDING	MARGINAL
	Subfactor 2.4: Supply Chain Risk Management	ACCEPTABLE	ACCEPTABLE
Factor 3: Past Performance	Confidence	[REDACTED]	SATISFACTORY CONFIDENCE
Factor 4: Transition Approach	Subfactor 4.1: Phase-In Services	ACCEPTABLE	ACCEPTABLE
	Subfactor 4.2: NMCI Transition Plan	ACCEPTABLE	ACCEPTABLE
	Subfactor 4.3: ONE-Net	ACCEPTABLE	ACCEPTABLE

	Transition Plan		
	Subfactor 4.4: USMC Transition Plan	ACCEPTABLE	ACCEPTABLE
	Subfactor 4.5: ONE-Net Convergence Approach	ACCEPTABLE	ACCEPTABLE
Factor 5: Cost/Price	Total Evaluated Cost/Price	\$6,322,574,086.55	\$6,849,265,795.92

Id. at 2.

75. The Navy also provided the following information concerning its Cost/Price evaluation:



Id. at 10.

G. Perspecta's Protest at the Government Accountability Office

76. On March 9, 2020, Perspecta filed a protest at GAO challenging the Navy's award to Leidos; GAO issued a protective order on March 10, 2020.

77. Perspecta's protest challenged, *inter alia*, Leidos' unfair competitive advantage stemming from [REDACTED] former role at SPAWAR; the Navy's unreasonable evaluation of both Perspecta and Leidos under each of the Cost/Price, Technical, and Management evaluation factors; and the Navy's inadequate and unequal discussions with respect to each of these factors.

78. Perspecta also challenged the Navy's evaluation of Leidos under the Technical and Management factors on the [REDACTED]



[REDACTED]

79. Despite the concrete bases for its allegations, GAO dismissed Perspecta's challenges to the Navy's evaluation of Leidos under the Technical and Management factors on April 13, 2020.

80. Although GAO's notice of partial dismissal did not address Perspecta's allegations of unequal treatment, the Navy did not produce any documents at GAO relating to Leidos' Technical or Management proposal or the Navy's evaluation thereof.

81. Perspecta also challenged the Navy's evaluation of Leidos under the Cost/Price factor on the basis of obvious and clear-cut methodological errors in the evaluation.

82. Although Perspecta's challenges to the Navy's Cost/Price evaluation were never dismissed and adjudicated on the merits, the Navy refused to produce documents relating to Leidos' Cost/Price proposal or the Navy's evaluation thereof.

83. GAO refused to require the Agency to produce such documents in a minute entry dated April 24, 2020.

84. On June 17, 2020, GAO issued a protected decision adjudicating Perspecta's protest.

85. GAO's decision denied Perspecta's allegations relating to Leidos' unfair competitive advantage, despite the myriad factual inaccuracies underlying the Contracting Officer's investigation or the confirmation that [REDACTED] had access to competitively useful information.

86. With respect to Perspecta's challenges under the Technical and Management factors, although Perspecta challenged nineteen of the Navy's negative evaluation findings as

the product of inadequate discussions, an unreasonable evaluation, or both, GAO addressed just one of these findings before summarily denying Perspecta's allegations.

87. GAO's decision did confirm that the Navy's Cost/Price evaluation was unreasonable, but GAO concluded that Perspecta was not prejudiced by the Navy's errors.

88. Based on the foregoing, GAO denied Perspecta's protest in its entirety.

COUNT I

THE NAVY FAILED TO UNDERTAKE A SUFFICIENT INVESTIGATION OF LEIDOS' UNFAIR COMPETITIVE ADVANTAGE RESULTING FROM LEIDOS' USE OF A FORMER SPAWAR OFFICIAL ON ITS CAPTURE TEAM

89. Perspecta hereby incorporates the foregoing paragraphs 1-88 as if fully set forth herein.

90. FAR 1.102-2(c)(1) and FAR 3.101-1 require Contracting Officers to protect the integrity of the procurement process by identifying and evaluating potential unfair competitive advantages and related conflicts of interest, and then to "avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships." FAR 3.101-1. This duty extends to addressing potential unfair competitive advantages arising from a contractor's hiring of a former agency official who possesses nonpublic information that would be beneficial in a procurement. *See, e.g., Health Net Fed. Servs., LLC*, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 ("Protest that awardee's use of a former high-level government employee in preparing its proposal created an appearance of impropriety based on the unfair competitive advantage stemming from the individual's access to non-public proprietary and source selection sensitive information is sustained where the contracting officer never considered the matter").

91. Where a firm may have gained such an unfair competitive advantage, it can be disqualified from a competition based upon the appearance of impropriety which is created by this situation, even if no actual impropriety can be shown, so long as the determination of an appearance of unfair competitive advantage is based on facts and not on mere innuendo or suspicion. *NFK Eng'g, Inc. v. United States*, 805 F.2d 372, 377 (Fed. Cir. 1986) (recognizing that the appearance of impropriety alone can be a sufficient basis to disqualify an offeror and finding that the agency reasonably decided to disqualify the offeror on that basis).

92. FAR 9.505-4 directs, in the context of Organizational Conflicts of Interest, that the Contracting Officer must first identify and evaluate potential conflicts and, if the potential conflict is significant, or the appearance of impropriety is sufficiently concerning, “the [Contracting Officer] must avoid, neutralize, or mitigate it before the contract award.” *Turner Const. Co. v. United States*, 645 F.3d 1377, 1386 (Fed. Cir. 2011). The same holds true when a Contracting Officer is confronted with an unfair competitive advantage relating to a former Government official. Avoiding the appearance of impropriety resulting therefrom begins with a reasonable and probing investigation into the apparent unfair advantage. *Dell Servs. Fed. Gov't, Inc.*, B-414461.3 *et al.*, June 19, 2018, 2018 CPD ¶ 213; *Health Net Fed. Servs., LLC*, *supra*.

93. The Navy's Contracting Officer failed to conduct a reasonable investigation into the apparent unfair competitive advantage resulting from [REDACTED] role as the SPAWAR [REDACTED] directly supporting the SPAWAR commander prior to serving as Leidos' NGEN-R Program Manager. [REDACTED]
[REDACTED]

94. When an individual is alleged to have had access to nonpublic, competitively-useful information, there are two fundamental issues the Contracting Officer must consider.

First, did the individual have access to sensitive information relevant to pursuing the challenged contract? *Second*, did the individual have the opportunity to use that inside knowledge in the furtherance of his or her employer's proposal capture effort? *Health Net Fed. Servs., LLC, supra*. Here, the Contracting Officer failed to meaningfully answer either question.

95. The Contracting Officer did not consider whether [REDACTED] prior government experience created a competitive advantage for Leidos until after Perspecta filed its GAO protest. And despite [REDACTED] having direct access to communications and information related to Perspecta's performance on the incumbent NGEN contract as a result of his role as the SPAWAR [REDACTED], when she finally initiated her investigation, the Contracting Officer never spoke to Perspecta regarding [REDACTED] interactions with Perspecta's incumbent performance. Instead, the Contracting Officer relied upon blunt and self-serving denials from [REDACTED] stating that he [REDACTED] any Perspecta NGEN contract performance information such as [REDACTED]. [REDACTED] These representations were not accurate.

96. In his prior role, [REDACTED] had extensive access to Perspecta's NGEN-performance information, and to Perspecta itself. [REDACTED] coordinated with Perspecta to schedule meetings regarding NGEN performance matters, and directly interacted with Perspecta regarding NGEN contract amendments, [REDACTED]. [REDACTED] and weekly reports regarding Perspecta's NGEN contract transition efforts and other performance matters, [REDACTED].

[REDACTED]

[REDACTED]

97. The evidence to which Perspecta can point in this regard is instructive but limited, because these e-mails are merely those on which both [REDACTED] and Perspecta employees were copied. The vast majority of the communications [REDACTED] would have had regarding NGEN would be internal communications, which Perspecta cannot obtain. These materials should have been reviewed during the Contracting Officer's recent investigation. They were not. [REDACTED]

[REDACTED]

98. The Contracting Officer also failed to consider what communications [REDACTED] received regarding the ongoing NGEN-R procurement planning that was underway for nearly a year before he left SPAWAR. *See, e.g.*, Ex. 7, Naval Enterprise Networks NGEN Re-compete Industry Day, Notional Acquisition Approach (Nov. 17, 2015); Ex. 8, Request for Information; Ex. 9, Naval Enterprise Networks Industry Day #2, NGEN Re-compete Acquisition Approach (May 25, 2016). The Contracting Officer ceased her investigation upon concluding that [REDACTED] [REDACTED] was not a member of any NGEN-R procurement teams. But [REDACTED] particular role does not change the fact that he had *access* to such information.

99. The most egregious failure of the investigation was the Contracting Officer's failure to follow up on [REDACTED] admission that he had access to [REDACTED] email inbox.

[REDACTED]

100. That admission should have redefined the scope of the Contracting Officer's investigation. Yet the Contracting Officer never followed up on this revelation, and never asked a single question of [REDACTED] or anyone else about what [REDACTED] would have learned from [REDACTED] e-mails which, as already noted, included detailed information about

Perspecta's performance on the incumbent NGEN contract. [REDACTED]

[REDACTED]

101. The Contracting Officer also failed to consider the extent to which [REDACTED] had the opportunity to use his knowledge obtained during his time at SPAWAR in support of Leidos's proposal capture effort. The Contracting Officer asked no questions and made no attempt to ascertain [REDACTED] role in proposal capture. *Id.* [REDACTED] importance to Leidos' capture effort is self-evident—his title is “NGEN-R Program Manager.” Given that, the Contracting Officer's failure to consider this question further demonstrates the incomplete and arbitrary nature of her UCA investigation. [REDACTED]

[REDACTED]

COUNT II

THE CONTRACTING OFFICER FAILED TO ADDRESS A CLEAR APPEARANCE OF A CONFLICT OF INTEREST CREATED BY [REDACTED] PRIOR ROLE AT SPAWAR

102. Perspecta hereby incorporates the foregoing paragraphs 1-101 as if fully set forth herein.

103. As discussed above, the Contracting Officer is charged with the duty to “avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships.” FAR 3.101-1.

104. Here, even following her deficient investigation, the Contracting Officer still possessed enough “hard facts” to find a clear appearance of an impropriety that needed to be resolved through substantive corrective measures. *See PAI Corp. v. United States*, 614 F.3d 1347, 1352 (Fed. Cir. 2010); FAR 3.101.

105. It is a hard fact that [REDACTED] was SPAWAR [REDACTED] for more than two years, during which time Perspecta was performing the incumbent NGEN contract, one of SPAWAR's single largest and most important IT contracts. [REDACTED]
[REDACTED]

106. It is a hard fact that NGEN-R procurement planning was underway during [REDACTED] time as [REDACTED]. See Ex. 7, Naval Enterprise Networks NGEN Re-compete Industry Day, Notional Acquisition Approach (Nov. 17, 2015); Ex. 8, Request for Information; Ex. 9, Naval Enterprise Networks Industry Day #2, NGEN Re-compete Acquisition Approach (May 25, 2016).

107. It is a hard fact that [REDACTED] was hired by Leidos to serve as its NGEN-R Program Manager because of his SPAWAR experience, and it is a hard fact that [REDACTED] has served as the NGEN-R Program Manager at all relevant stages of the procurement. [REDACTED]
[REDACTED]

108. It is a hard fact that [REDACTED] in his capacity as [REDACTED] had numerous direct, personal interactions with Perspecta employees on various matters relating to the incumbent NGEN contract. [REDACTED]
[REDACTED]

109. It is a hard fact that, as [REDACTED] had unlimited daily access to the entirety of [REDACTED] e-mails and calendar, and regularly attended meetings with and on behalf of [REDACTED] AR Ex. 98, Attach. M at 1.

110. It is a hard fact that the Commander of SPAWAR would be regularly briefed on progress about the incumbent NGEN contract performance and would also have direct

communications with Perspecta about ongoing contract performance issues. [REDACTED]

[REDACTED]

111. It is a hard fact that the e-mails sent to [REDACTED] that Perspecta has access to represent only a tiny fraction of the overall e-mails with confidential information that [REDACTED] received in his capacity as SPAWAR Commander. [REDACTED] had access to all such e-mails.

112. Finally, it is a hard fact that [REDACTED] provided inaccurate responses to multiple inquiries from the Contracting Officer during the investigation process, each of which served to wrongly downplay the extent of [REDACTED] interactions with Perspecta. AR Ex. 98, Attach. M at 1. Contrary to his claims, he *did* interact with Perspecta, he *did* receive updates on Perspecta's NGEN contract performance, and he *did* interact with various contracting personnel regarding Perspecta's incumbent NGEN performance. *See*, [REDACTED]

[REDACTED]

[REDACTED]

113. Between the extensive access to nonpublic, competitively-sensitive information as a high-ranking Navy employee with direct and unlimited access to the SPAWAR Commander, the central leadership role on Leidos' NGEN-R pursuit team, and the fact that [REDACTED] provided less than fully accurate responses to direct questions on these issues, there is an overwhelming appearance of impropriety based on extensive hard facts that required resolution pursuant to FAR 3.101-1. The Contracting Officer's failure to address this impropriety was arbitrary, capricious, and contrary to law.

COUNT III

**THE NAVY'S PRICE REALISM ANALYSIS WAS IRRATIONAL BECAUSE IT
FAILED TO IDENTIFY THE CLEAR RISK ASSOCIATED WITH LEIDOS' LOW-
PROPOSED LABOR RATES**

114. Perspecta hereby incorporates the foregoing paragraphs 1-113 as if fully set forth herein.

115. A price realism evaluation considers whether prices are too low by assessing an offeror's understanding of the requirements and the risk of poor performance at the price offered. *See Afghan Am. Army Servs. Corp. v. United States*, 90 Fed. Cl. 341, 356 (2009). An agency's price-realism analysis lacks a rational basis if the contracting agency made "irrational assumptions or critical miscalculations." *Id.* at 358 (citing *OMV Med., Inc. v. United States*, 219 F.3d 1337, 1344 (Fed. Cir. 2000)).

116. Under the Cost/Price Factor, offerors were required to complete RFP Attachment J-13, the "Labor Rate Card and Material Discounts." AR Ex. 1, RFP at ¶ M 3(f)(ii) (p. 540). The completed Labor Rate Card contained the offeror's fixed-price labor rates for 134 individual labor categories. *Id.* at ¶ L 4(f)(4) (p. 528); AR Ex. 1, SMIT Attach.J-13 Labor Rate Card Material Discounts Final Rev2. When multiplied by government-provided labor hours, the proposed labor rates accounted for a significant part of an offeror's total evaluated price ([REDACTED] [REDACTED]). *See* AR Ex. 80, CPEB Report at 11.

117. The RFP required the Navy to evaluate the price realism of these labor rates. AR Ex. 1, RFP at ¶¶ M-3(f)(i) (Table M-1) (p. 540), M-3(f)(iii)(b) (p. 542). The Navy utilized a two-step statistical analysis to assess realism, as follows.

118. *First*, the Navy created an Independent Government Cost Estimate (“IGCE”) for each category on the labor rate card “utilizing [an average of] FY 18 GSA Alliant 2 Pricing benchmarked labor rates.” AR Ex. 80, CPEB Report at 8. For the fixed-price labor rates, the Navy’s IGCE was an average of the Alliant 2 rates, as described.

119. *Second*, the Navy calculated “the [s]tandard [d]eviation (SD) of the population (proposed rates per category),” and “determined that if an Offeror’s proposed rate was within two (2) [standard deviations] of a given labor category’s average, it was realistic.” *Id.* A selection of the resulting “two-standard-deviation” ranges (taken directly from the Navy’s CPEB Report Enclosure 4), appear below:



120. Per the Navy’s methodology, any proposed labor rate within the two standard deviation range was considered both “realistic” and “reasonable.” Proceeding with this analysis, the Navy concluded that all of Perspecta’s and Leidos’ base-year labor rates were realistic because they “fell within two standard deviations.” AR Ex. 80, CPEB Report at 8.



121. The Navy's analysis was critically flawed. The Agency's methodology resulted in acceptable ranges of low to high labor rates—representing what was “realistic” (not too low) and “reasonable” (not too high) for each labor category—that were entirely meaningless and plainly unsupportable. For example, in a majority of the examples cited above, the “realistic” and “reasonable” range is over \$100 wide. Worse, many of the Navy's “realistic” low rates are in fact obviously unrealistic without the need for any analysis. Five of the above labor categories have a rate that is less than \$10/hour. And for one of those categories, the “realistic” low rate is less than \$0/hour. This is patently unreasonable—the positions in question are for a highly skilled information technology workforce for which there is high demand.

122. The record contains no evidence that the Agency engaged in any independent analysis of these labor rate ranges to check for such obvious errors. Instead, the Navy mechanically relied on the formulas embedded in its labor analysis spreadsheet, which inevitably determined that every proposed labor rate was “realistic” (and reasonable). AR Ex. 80, Perspecta CPEB Enclosure 4.

123. The material flaws in the Agency's analysis stem from the fact that, rather than utilizing all Alliant 2 rates for each labor category to calculate the standard deviations, the Navy used an average of the Alliant 2 rates. Thus, the Navy relied on only three inputs in coming up with the statistical ranges used for its price realism analysis—the Perspecta rate, the Leidos rate, and the Navy's fixed-price IGCE rate.

124. As implemented, the Navy's methodology was arbitrary and capricious. By utilizing a two-standard-deviation formula with only three data points—two of which reflected the proposed rates of the two offerors—the Navy was left with a range of rates that was so wide as to be meaningless (as confirmed by the fact that the Navy's ranges include low rates that were

negative numbers). Moreover, a realistic range calculated from just three labor rates *is mathematically certain to include both rates within two standard deviations*. As a result, by utilizing the agency's formula, an offeror's proposed labor rate *could never be determined unrealistic*.

125. Indeed, 15 percent of the Navy's minimum calculated rates for the 134 labor categories at issue were less than \$20/hour (including eight which were less than \$10/hour). AR Ex. 80, Perspecta CPEB Enclosure 4. And one of them was, in fact, a negative number: for the labor category "Systems Administrator Senior," the Navy's two-standard-deviation analysis resulted in a minimum realistic rate of negative \$1.34. *See id.* For that category, the Alliant average rate was [REDACTED], and Leidos' proposed rate was [REDACTED]. But because of the Navy's flawed mechanical method for calculating minimum realistic labor rates, the Navy did not subject Leidos' rates to any further scrutiny.

126. At GAO, the Navy argued that regardless of the propriety of its price-realism analysis, Perspecta cannot demonstrate prejudice because Perspecta's and Leidos' average rates were comparable in many categories, and overall by comparing their total price. This argument fails because for each labor category on the Labor Rate Card, the Navy assigned an estimate of hours to be worked in Contract Year 1. *See* AR Ex. 1, SMIT Attach. J-13 Labor Rate Card Material Discounts Final Rev2 at Tab "CONUS Labor Rates." Thus, the average hourly rate for all 134 labor categories is irrelevant—those hourly rates must be weighed against the labor hours assigned to them. The Navy clearly did not undertake this analysis, and therefore has no basis to claim that its flawed analysis did not prejudice Perspecta.

127. Perspecta was prejudiced because Leidos proposed clearly unrealistic rates significantly lower than Perspecta's for many of the most important labor categories. But the Navy never independently assessed these rates for realism. For example, based upon the information included in CPEB Report Enclosure 4, for [REDACTED], Leidos proposed a rate of [REDACTED]. But the Navy never actually considered the realism of that rate because the Navy's methodology—as a matter of math—ensured all labor rates would be found realistic.

128. There is another reference point for these labor rates—the Salary.com 25th percentile rates, provided to the offerors in RFP Amendment 0011, Attachment L-6—which shows that Leidos' proposed rates are clear outliers and unrealistic. AR Ex. 1, SMIT Attach. L-6 USMC OSS IGCE Summary Final. That is, for some critical labor categories, the Leidos rate

[REDACTED]

129. Specifically, for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Similarly, for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

130. Had the Navy properly evaluated Leidos' unrealistic labor rates, the Navy could only have concluded that these low rates represented a risk of poor performance or that Leidos lacked understanding of the requirements.

131. These unrealistic "minimum" proposed rates also undoubtedly cause a risk to Leidos' successful contract performance, where Leidos has publicly stated that it is relying on an incumbent capture strategy. *See* Federal News Network, "What comes next for the biggest non-weapons contract ever?" (Feb. 21, 2020), <https://federalnewsnetwork.com/navy/2020/02/what-comes-next-for-the-biggest-non-weapons-contract-ever/>. Leidos has articulated no reasonable basis to assume that the incumbent workforce would agree to the significant pay cuts Leidos has proposed. Had the Navy conducted a reasonable price realism analysis, it would have identified this significant risk in Leidos' proposed approach.

132. At bottom, the Navy's price realism evaluation was based on an irrational, mechanical, and incomplete methodology that rendered the entirety of its price evaluation deficient. Indeed, GAO concluded that the Navy's price realism methodology was materially flawed. And Perspecta was prejudiced by the application of this irrational methodology because the Navy never accounted for the risk associated with Leidos' unrealistically low rates. Accordingly, Perspecta's protest should be sustained.

COUNT IV

THE NAVY'S PRICE REALISM "FINDINGS" WITH REGARD TO PERSPECTA'S PROPOSAL WERE IRRATIONAL AND FURTHER DEMONSTRATE THAT LEIDOS PROPOSED UNREALISTIC PRICES

133. Perspecta hereby incorporates the foregoing paragraphs 1-132 as if fully set forth herein.

134. The CPEB also included [REDACTED] price realism "findings" representing the Agency's purported concerns about Perspecta's cost/price proposal. AR Ex. 80, Perspecta CPEB ENCL 2 Analysis Findings. These findings are variously irrational, unsupported, and irrelevant to a price-realism analysis. For example, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

135. Additionally, a number of the Navy's findings criticize Perspecta for not

[REDACTED] For example,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

136. All of the Navy's findings in this respect were similarly unreasonable, further demonstrating that the Navy's price evaluation was based on "irrational assumptions and critical

miscalculations” rendering the price evaluation, and award predicated on such an evaluation, arbitrary and capricious.⁷

COUNT V

THE NAVY’S COST REALISM EVALUATION WAS ALSO IRRATIONAL AND TREATED OFFERORS UNEQUALLY

137. Perspecta hereby incorporates the foregoing paragraphs 1-136 as if fully set forth herein.

138. When an agency evaluates proposals for the award of a cost-reimbursement contract or CLIN, the government is bound to pay the contractor its actual and allowable costs, regardless of the offeror’s proposed costs. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror’s proposed costs are realistic for the work to be performed. FAR 15.404-1(d)(1); *see United Payors & United Providers Health Servs., Inc. v. United States*, 55 Fed. Cl. 323, 329-30 (2003). The Court reviews an agency’s cost realism analysis to determine whether it is reasonably based and not arbitrary. *Id.*

139. It is also a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally. *CW Gov’t Travel, Inc. v. United States*, 110 Fed. Cl. 462, 490 (2013) (citing *Banknote Corp. of Am. v. United States*, 56 Fed. Cl. 377, 383 (2003), *aff’d*, 365 F.3d 1345 (Fed. Cir. 2004)). “Uneven treatment goes against the standard of equality and fair-play that is a necessary underpinning of the federal government’s procurement process and

⁷ The Navy has claimed that these findings were not included in the agency’s overall risk assessment of Perspecta’s proposal, nor were they considered by the Navy’s Source Selection Authority because the Navy did not conduct a tradeoff analysis. Be that as it may, the fundamentally flawed nature of those findings confirms the arbitrary and capricious nature of the Navy’s pricing evaluation.

amounts to an abuse of the agency's discretion." *Id.* (quoting *PGBA, LLC v. United States*, 60 Fed. Cl. 196, 207 (2004), *aff'd*, 389 F.3d 1219 (Fed. Cir. 2004)).

140. The Navy's cost realism evaluation of Perspecta runs afoul of these fundamental principles because the Navy both misled Perspecta into raising its rates to the Navy's apparent realism floor and, at the same time, allowed Leidos to propose rates for those same positions that were admittedly below the floor set for Perspecta. This is textbook disparate treatment.

141. The RFP contains a number of cost-reimbursable CLINs for "USMC Base and Support Services." For these services, offerors were required to complete a spreadsheet attached to the RFP entitled "USMC Cost Summary Format," in which they were to propose cost-reimbursable labor rates for various USMC service locations. *See* AR Ex. 1, SMIT Atch L-6 USMC OSS IGCE Summary Final. When multiplied by government-provided labor hours, these labor rates accounted for another significant part of the total evaluated price. (For Perspecta, they made up over [REDACTED] —of its total price.)

142. At the time of initial proposal submission, the RFP required the offeror's cost/price proposals to provide "priced and unpriced Basis of Estimates (BOEs), including a narrative and supporting workbooks, used to establish its proposed cost/prices." AR Ex. 1, RFP at ¶ L-4(a)(3)(i) (p. 525). The RFP further instructed that the Navy might find an offeror's cost/price proposal to be "unrealistically low" if it "demonstrate[d] that the Offeror does not understand the level of work necessary to successfully meet the requirements. *Id.*

143. Perspecta's initial proposal explained [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

144. Nonetheless, in its initial evaluation, the Navy concluded that [REDACTED] of Perspecta's [REDACTED] proposed rates were unrealistically low. AR Ex. 59, Encl-2 CostPrice ENs Government Response Final, Cost/Price EN #173.

145. In response to that EN, Perspecta asked multiple questions about the Navy's realism conclusion, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. AR Ex. 59, Encl-2 CostPrice ENs Government Response Final.

146. The Navy largely side-stepped Perspecta's specific questions and instead responded, in relevant part, that the Navy had compared Perspecta's proposed rates to those listed on Salary.com, and that if Perspecta's rates fell below the 25th percentile Salary.com rate, they were adjusted up to that rate. *Id.*

147. The Navy subsequently issued Amendment 0011 to the RFP, which included a new labor rate document, Attachment L-6, entitled "USMC OSS IGCE Summary Final." Attachment L-6 provided the Salary.com data underlying the Navy's cost realism adjustments, including the 25th percentile rates for every labor category and service location required for the cost reimbursable USMC Base and Support Services under CLIN x004. AR Ex. 1, SMIT Atch L-6 USMC OSS IGCE Summary Final.

148. Perspecta relied on the Navy's discussion response and the new attachment in preparing its FPR.

149. Because the Navy had already rejected the incumbent data Perspecta had provided to substantiate its initially proposed rates, Perspecta's proposed rates in its [REDACTED], consistent with the Navy's response during discussions and Attachment L-6.

150. Given that it had followed the Navy's express instructions in revising its rates, Perspecta was surprised to learn that Leidos had been allowed to undercut them significantly. Leidos' proposal was more than half a billion dollars lower than Perspecta's; more than [REDACTED] of that difference was due to Leidos proposing lower rates for the USMC Base and Support Services CLINs. Indeed, the CPEB Report reflects a difference on those cost-reimbursable CLINs that "is attributed to Perspecta applying the IGCE rate provided by the Government as the Labor Rate in support of USMC." AR Ex. 80, CPEB Report at 11. But Perspecta proposed the IGCE rate *because the Navy instructed it to do so*.

151. The Navy's realism evaluation, then, was unreasonable and unequal. The Navy rejected Perspecta's initially proposed rates—it adjusted those rates upwards to the Salary.com 25th percentile rates despite the fact that the rates were substantiated with [REDACTED].

152. But the Navy never looked at the data substantiating Perspecta's initially proposed rates before raising them. The Navy's initial CPEB report makes clear that *any* rate that fell outside of the Salary.com 25th percentile was automatically considered to be unrealistic, regardless of substantiation. *See* AR Add. Prod., Initial CPEB Report at 8 (pdf p. 9) ("The CPEB

selected the 25th percentile as any rate which fell below this amount was considered unrealistically low.”).

153. Accordingly, the Navy effectively instructed Perspecta that its direct labor rates in its final proposal had to match the Salary.com rates, because there was no data the Navy would accept to support lower rates. But while the Navy told Perspecta that it would not accept rates below its self-identified realism floor (*i.e.*, the IGCE rates), the Navy permitted Leidos to submit rates that averaged [REDACTED] than Perspecta’s. Thus, the Navy did not evaluate the proposals evenhandedly against the solicitation’s requirements and evaluation criteria.

COUNT VI

THE NAVY’S COST AND PRICE DISCUSSIONS WITH PERSPECTA WERE MISLEADING

154. Perspecta hereby incorporates the foregoing paragraphs 1-154 as if fully set forth herein.

155. When an agency conducts discussions, they must be meaningful and not misleading. *See Caddell Constr. Co. v. United States*, 125 Fed. Cl. 30, 45-46 (2016). An agency may not mislead an offeror “through the framing of a discussion question, into responding in a manner that does not address the agency’s concerns; or that misinforms the offeror concerning its proposal weaknesses or deficiencies; or the government’s requirements.” *Id.* (quoting *Analytical & Research Tech., Inc. v. United States*, 39 Fed. Cl. 34, 48 (1997)) (internal quotation marks and citation omitted). Further, discussions must be conducted in a way that is equal to all offerors—discussions cannot favor one offeror over another. *See Gentex Corp. v. United States*, 58 Fed. Cl. 634, 652-53 (2003).

156. The Navy also conducted misleading cost realism discussions. Specifically, the Navy's discussions led Perspecta to believe that any proposed cost-reimbursable labor rates below the Salary.com 25th percentile rates would be deemed unrealistic. But Leidos proposed rates below that floor that the Navy did not increase. Ex. 80, CPEB Report at 11 ("the difference shown . . . is attributable to Perspecta applying the IGCE rates"). As a result, Leidos was able to significantly undercut Perspecta's proposed price. Perspecta was misled.

157. The Navy never advised Perspecta that there was any flaw or concern with the substantiating data for its proposed rates—only that its rates were lower than the Navy's 25th percentile benchmark. Perspecta even asked whether the Navy would accept [REDACTED]
[REDACTED]
[REDACTED]—the Navy did not answer that question. Further, where Perspecta had provided [REDACTED] along with its initial proposal, this substantiation had been rejected by the Navy.

158. Thus, the only reasonable conclusion for Perspecta to draw from these exchanges was that there was no substantiating data it could provide to convince the Navy that labor rates below the 25th percentile rates were realistic. These exchanges led directly to Perspecta's decision to propose [REDACTED] rates in its final revised proposal, which resulted in Perspecta to be higher priced due to following the Navy's guidance in discussions.

159. Even more, apparently Leidos was held to a different standard that allowed it to propose rates that were [REDACTED] lower than Perspecta's for the same work. This is demonstrably irrational because it suggests that the same workforce would realistically accept lower pay from Leidos than it would from Perspecta, who had already proposed rates at the Navy's self-identified realism floor.

160. And this conclusion is all the more egregious where Leidos has made public statements that confirm it intended to retain a large portion of the incumbent workforce (apparently for lower pay). *See* Federal News Network, “What comes next for the biggest non-weapons contract ever?” (Feb. 21, 2020), <https://federalnewsnetwork.com/navy/2020/02/what-comes-next-for-the-biggest-non-weapons-contract-ever/> (discussing Leidos statement re incumbent retention). This further underscores the unequal and misleading nature of the Navy’s evaluation and conduct of discussions, which calls into question the very foundation of the Navy’s entire cost/price evaluation.

COUNT VII

THE NAVY’S DISCUSSIONS UNDER THE TECHNICAL AND MANAGEMENT APPROACH FACTORS WERE FLAWED

161. Perspecta hereby incorporates the foregoing paragraphs 1-160 as if fully set forth herein.

162. When an agency conducts discussions, such discussions must be meaningful and not misleading. *See* FAR 15.306(d)(3); *Caddell Constr. Co.*, 125 Fed. Cl. at 45 (“when discussions occur, the contracting officer must accurately identify weaknesses.”). An error in communicating a weakness that causes an offeror to revise its proposal is quintessentially a misleading discussion.” *Id.*

163. FAR 15.306(d) requires, “at a minimum, the contracting officer must ... indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.”

164. Where, as here, an agency chooses to exceed the discussions requirements in the FAR and raise ordinary weakness (as opposed to significant weaknesses or deficiencies) it must show that discussions were reasonable and evenhanded. *See Caddell Constr. Co.*, 125 Fed. Cl. at 45; *see also AMEC Earth & Environmental, Inc.*, B-401961, B-401961.2, Dec. 22, 2009, 2010 CPD ¶ 151. Haphazardly raising concerns is the essence of arbitrary and capricious agency action. It is also misleading and prevents offerors from meaningfully revising their proposals and hinders the Government's ability to obtain best value. *AshBritt, Inc. v. United States*, 87 Fed. Cl. 344, 377, *opinion clarified*, 87 Fed. Cl. 654 (2009).

165. The Agency does not dispute that it raised during discussions not just significant weaknesses, but also ordinary weaknesses. It maintains that it raised all weaknesses (significant or otherwise) during discussions. AR Ex. 85, Agency Resp. to Debriefing Questions at 16. As a result, the Agency was required to raise with Perspecta *all* perceived weaknesses and significant weaknesses.

166. However, the Agency's conduct of discussions with Perspecta was arbitrary and capricious because it failed to inform Perspecta of certain weakness and significant weaknesses that were based on information contained in Perspecta's initial proposal. Indeed for the Agency's Factor 1 findings, the language the Agency cites from Perspecta's FPR to illustrate two significant weaknesses and five weaknesses is identical to language in Perspecta's initial proposal.

167. With respect to the three significant weaknesses and four weaknesses assigned under Factor 2, one significant weakness and one weakness were also assigned on the basis of language in Perspecta's FPR that was either entirely or substantially identical to language from

Perspecta's initial submission. The Agency additionally assigned one significant weakness on the basis of language that was changed in Perspecta's FPR at the Agency's direction.

168. GAO concluded that Agency's findings were reasonably related to the issues that the Agency did raise during discussions. *See Perspecta Enterprise Solutions, LLC, supra*. Relying on a single example under Subfactor 1.1, GAO stated that "the agency reasonably advised Perspecta of its concerns related to Perspecta's systems engineering approach." This statement is incorrect in light of the evaluation record and Perspecta's proposal submissions.

169. During discussions the Agency raised discrete concerns with Perspecta, quoting the exact proposal language at issue and providing precise citation to specific subsections and page numbers in Perspecta's proposal. Indeed, with respect to Factor 1, the Agency specifically stated that "the Offeror's proposal is evaluated as a deficiency *at the following proposal references*":

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

170. Accordingly, far from providing generalized references to Perspecta's proposal, the Agency quoted the exact language at issue and cited the page numbers and figures that resulted in the evaluation findings. Once the Agency chose to provide this level of specificity, it did not have the discretion to cherry pick certain issues to raise with Perspecta; it was required to provide the same type of notice as to all concerns. By raising highly specific concerns, the Agency misled Perspecta to believe that the identified issues represented all of the Agency's concerns with Perspecta's proposal, despite the presence of language in Perspecta's initial proposal that later formed the basis for additional negative findings.

171. In each instance, the Agency's failure to accurately convey its concerns during discussions prejudiced Perspecta, which could have revised its proposal to address or eliminate those concerns.

SUBFACTOR 1.1 – SYSTEMS ENGINEERING

Significant Weakness 1

172. The Agency assigned Perspecta a significant weakness under Subfactor 1.1 due to Perspecta's alleged "lack of understanding of [Systems Engineering Plan] ('SEP') 4.7.1." AR Ex. 79, SSEB Report at 111. Specifically, the Agency found that Perspecta's proposal "to use [REDACTED], instead of the [XML Metadata Interchange] ('XMI') standard, demonstrates a lack of understanding of the SEP 4.7.1 requirement to use [Model Based Systems Engineering] ('MBSE') in accordance with SPAWARINST 5401.6 to ensure interoperability and reusability across the SPAWAR enterprise." *Id.* at 111-12.

173. To support the assignment of the significant weakness, the Agency quoted multiple paragraphs from Perspecta's FPR, the vast majority of which contain language that appeared in Perspecta's initial proposal submission:



174. Perspecta proposed the exact same [REDACTED] in its initial proposal, and the Agency failed to advise Perspecta its concerns during discussions. [REDACTED]
[REDACTED]. Indeed, language quoted by the Agency in its final evaluation finding, which was pulled directly from Perspecta's FPR, demonstrates that Perspecta was relying on the same [REDACTED]
[REDACTED]
[REDACTED] The stated basis for the weakness existed in Perspecta's initial proposal.

175. Accordingly, the Agency acted arbitrarily and capriciously by failing to engage in meaningful discussions, contrary to FAR 15.306.

176. If the Navy had advised Perspecta of this concern, Perspecta would have substantially revised its proposal to [REDACTED] [REDACTED]

[REDACTED] accounting for the Agency's guidance.

Significant Weakness 2

177. The Navy assigned Perspecta a second Subfactor 1.1 significant weakness under Section M-3(b)(1)(i)(a) for two purported flaws with Perspecta's [REDACTED]. AR Ex. 79, SSEB Report at 111-12.

178. First, the Agency took issue with the fact that Perspecta's "proposed MBSE solution is [REDACTED]," which is purportedly [REDACTED] [REDACTED]" *Id.* at 112.

179. Second, the Agency states that Perspecta's use of the "[REDACTED]

[REDACTED]" is "[REDACTED]

[REDACTED] *Id.*

180. The Agency did not advise Perspecta of these concerns during discussions despite the fact that the same approach that the Agency now claims represents a significant flaw was present in Perspecta's initial submission.

181. While Perspecta's initial proposal made clear that its [REDACTED], the Agency did not alert Perspecta of its concern during discussions. *See* AR Ex. 48, Original

[REDACTED]

[REDACTED]

182. With respect to the second portion of the significant weakness, the Agency quotes language from Perspecta's FPR referencing [REDACTED] that Perspecta proposed, including

[REDACTED]

[REDACTED] However, Perspecta proposed this very same [REDACTED] in its initial proposal. [REDACTED]

[REDACTED]

[REDACTED]

183. Given that the sources of the significant weakness appeared in Perspecta's initial proposal, the Agency was required to raise its concerns with Perspecta during discussions. The Agency failed to do so. The Agency's conduct of discussions, therefore was not meaningful, rendering it arbitrary and capricious and in violation of FAR 15.306.

Weakness 1

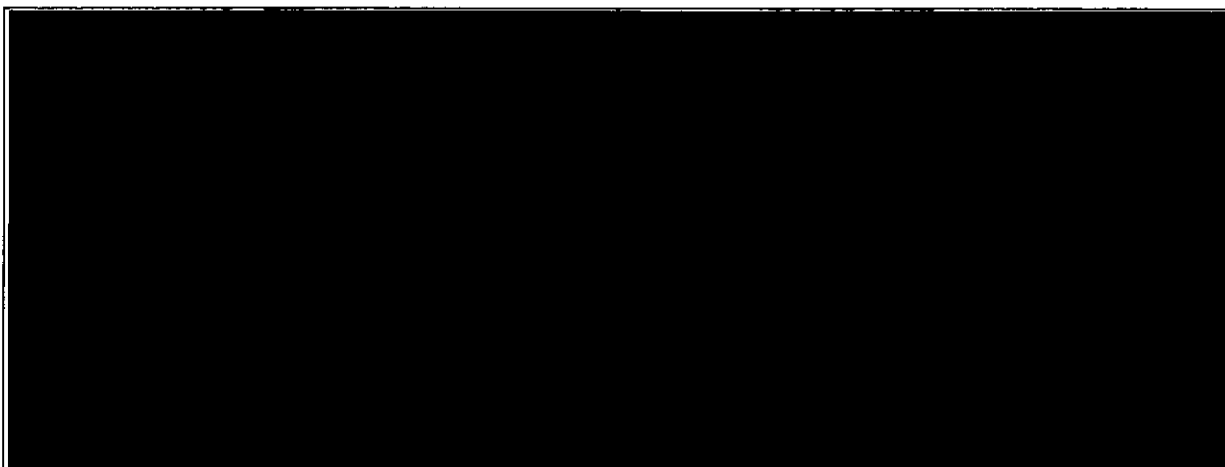
184. The Agency assigned Perspecta seven weaknesses under RFP Section M-3(b)(1)(i)(a), the first of which related to Perspecta's alleged failure to [REDACTED]

[REDACTED]

[REDACTED]

185. In seeking to justify this weakness, the Agency cites to language in Perspecta's FPR that appeared in Perspecta's original proposal submission:

[REDACTED]



186. Because the source of the Agency's concern appeared in Perspecta's initial proposal, the Agency was required to raise this issue with Perspecta during discussions. It failed to do so, and therefore the Agency's discussions were not meaningful in violation of FAR 15.306 and settled case law.

187. Had the Agency raised the purported concern about [REDACTED]

[REDACTED] Perspecta could have [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Weakness 2

188. The Agency assigned Perspecta a second weakness under RFP Section M-3(b)(1)(i)(a) on the purported (and unsupported) ground that Perspecta's [REDACTED]

[REDACTED]
[REDACTED]

189. As with the first weakness, the FPR language the Agency used to justify its finding also appeared in Perspecta's original proposal submission:

[REDACTED]
[REDACTED]

[REDACTED]

190. While the language is verbatim [REDACTED] the Agency made no mention of this weakness during discussions. AR Ex. 58, Perspecta Encl-1 Technical ENs Government Response Final, Tab SF1.1. The Agency's conduct of discussions, therefore, was not meaningful, rendering it arbitrary and capricious and in violation of FAR 15.306.

191. Had Perspecta been provided an opportunity to address the Agency's concern, it would have provided [REDACTED] [REDACTED], resulting at the minimum in the removal of the weakness.

Weakness 4

192. The Agency also assigned Perspecta a fourth weakness related to RFP Section M-3(b)(1)(i)(a). Specifically, the Agency found that [REDACTED] in Perspecta's FPR is unreasonable, asserting that Perspecta's "[REDACTED]

[REDACTED]
[REDACTED]

193. Perspecta proposed this same [REDACTED] in its initial proposal. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

194. Because the source of the Agency's concern appeared in Perspecta's initial proposal, the Agency was required to raise this concern during discussions. The Agency's failure to do so was arbitrary and capricious and in violation of FAR 15.306.

195. Had the Agency raised the issue, Perspecta would have clarified that [REDACTED]

[REDACTED]

[REDACTED] It would also have [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Weakness 5

196. The Agency justified Perspecta's fifth Subfactor 1.1 weakness, assigned under Section M-3(b)(1)(i)(a), on the basis that Perspecta's FPR states that [REDACTED]

[REDACTED]

[REDACTED]. According to the

Agency, this purported flaw "demonstrates a lack of understanding of the Government's [REDACTED]

[REDACTED]

197. To illustrate the weakness, the Agency quotes three sentences from Perspecta's FPR that appear word for word in Perspecta's initial proposal:



198. Although the basis for the Navy's concerns was readily apparent from Perspecta's initial proposal, the Navy neglected to raise the issue during discussions, and instead informed Perspecta for the first time after award. [REDACTED]

[REDACTED] The Agency's failure to raise this issue during discussions was arbitrary and capricious and in violation of FAR 15.306.

199. If Perspecta had the opportunity to address this issue during discussions, it would have clarified that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Weakness 6

200. The Agency assessed Perspecta a sixth weakness under Subfactor 1.1 for Perspecta's proposal to provide [REDACTED]

[REDACTED] The Agency now (wrongly) claims that Perspecta's approach [REDACTED]

201. The language the Agency quotes from Perspecta's FPR to justify the purported weakness is nearly identical [REDACTED]

[REDACTED] to the language in Perspecta's initial proposal:

[REDACTED]

202. Because the source of the Agency's concern appeared in Perspecta's initial proposal, the Agency was required, but failed, to raise this issue during discussions. As such, the Agency's conduct of discussions was arbitrary and capricious and a violation of FAR 15.306.

203. Had the Agency raised this issue during discussions, Perspecta would have ensured that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Weakness 7

204. The Agency assigned its final weakness under Subfactor 1.1 because Perspecta allegedly "[REDACTED]

[REDACTED]

[REDACTED]

205. As with the numerous other instances discussed herein, the basis for the weakness appeared in Perspecta's initial proposal:

[REDACTED]

206. Nevertheless, the Agency did not issue any ENs advising Perspecta of any concerns regarding [REDACTED]

[REDACTED] The Agency's failure to raise this issue during discussions was arbitrary and capricious and in violation of FAR 15.306.

207. Had the Agency raised the issue, Perspecta would have [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SUBFACTOR 1.2 – NETWORK TRANSFORMATION/MODERNIZATION SAMPLE EXERCISE

Weakness 1

208. The Agency assigned Perspecta a weakness under RFP Section M-3(b)(2)(i)(a) for Perspecta's purported [REDACTED]

[REDACTED]

[REDACTED]⁸

209. To the extent Perspecta failed to [REDACTED], that failure was apparent from Perspecta's original proposal submission, which was identical to the final proposal revision cited by the Agency. [REDACTED]

[REDACTED]

210. Despite this, during discussions the Agency failed to identify any concern with Perspecta's proposal related to the criterion described in Section M-3(b)(2)(i)(a) whatsoever, let alone with respect to the specific identified putative weakness. *See* AR Ex. 58, Perspecta Encl-1 Technical ENs Government Response Final, Tab SF1.2.

211. The Agency's failure to raise this issue with Perspecta during discussions was arbitrary and capricious and in violation of FAR 15.306.

212. Had the Agency raised this issue, Perspecta would have adjusted its proposal to

[REDACTED]

[REDACTED]

8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]—the use of which actually merited a strength under this Subfactor. AR Ex. 79, SSEB Report at 11.

SUBFACTOR 2.2 – NETWORK OPERATIONS

Significant Weakness 1

213. The Agency assigned a significant weakness under RFP Section M-3(c)(2)(i)(a) for Perspecta’s purported failure in its FPR to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

214. Specifically, the Agency expressed concerned that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

215. The very same aspect of Perspecta’s approach underlying the Agency’s concern was present in Perspecta’s initial proposal. In relevant part, Perspecta proposed the same [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

216. Accordingly, the Agency’s failure to raise this issue with Perspecta during discussions was arbitrary and capricious and in violation of FAR 15.306.

217. Had the Agency notified Perspecta during the EN process, Perspecta would have clarified [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

SUBFACTOR 2.3 – TOOLS MANAGEMENT AND DATA ACCESS

Significant Weakness 1

218. The Agency assigned Perspecta a significant weakness under Section M-3(c)(3)(i)(a) based on [REDACTED]

[REDACTED]

[REDACTED]

219. The Agency expressed concern over [REDACTED]

[REDACTED]

[REDACTED]

220. The [REDACTED] associated with Perspecta's approach was apparent in its original proposal, which addressed that [REDACTED] by [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

221. During discussions, the Agency directed Perspecta to [REDACTED]

[REDACTED] and to instead rely on [REDACTED]

[REDACTED]

[REDACTED]

222. The Agency did not advise Perspecta of any concerns over the [REDACTED]

[REDACTED] with Perspecta's proposed approach when issuing this direction.

223. Despite failing to identify any concerns with [REDACTED], the Agency later assigned Perspecta a significant weakness on this basis.

224. Because the Agency directed Perspecta to use [REDACTED] without expressing any concerns over whether [REDACTED] could support Perspecta's proposed approach, the Agency's discussions were misleading, thereby rendering them arbitrary and capricious.

Weakness 1

225. The Agency assigned Perspecta a weakness under RFP Section M-3(c)(3)(i)(a) based on the [REDACTED]

226. In support of this assigned weakness, the Agency cited to an excerpt in Perspecta's FPR explaining that [REDACTED]

227. The language cited by the Agency, however, appeared in Perspecta's initial proposal *verbatim*. AR Ex. 48, Original Submission at V2.3, page 3.

228. Despite this, the Agency never raised any concern regarding [REDACTED] during discussions.

229. The Agency's discussions, therefore, were not meaningful, arbitrary and capricious, and in violation of FAR 15.306. Had the Agency notified Perspecta during the EN process, Perspecta would have [REDACTED]

COUNT VIII

THE NAVY'S EVALUATION OF PERSPECTA UNDER THE TECHNICAL AND MANAGEMENT FACTORS WAS ARBITRARY AND CAPRICIOUS

230. Perspecta hereby incorporates the foregoing paragraphs 1-229 as if fully set forth herein.

231. Agency evaluations are reviewed under the “arbitrary and capricious” standard prescribed by the Administrative Procedure Act; while this standard is deferential, the Court will set aside an evaluation where “the agency entirely fail[s] to consider an important aspect of the problem [or] offer[s] an explanation for its decision that runs counter to the evidence before the agency” *Lab. Corp. of Am. Holdings v. United States*, 116 Fed. Cl. 643, 650 (2014) (quoting *Ala. Aircraft Indus., Inc.–Birmingham v. United States*, 586 F.3d 1372, 1375 (Fed. Cir. 2009)) (alterations in original).

232. The Navy’s evaluation of Perspecta’s proposal under the Technical and Management factors was arbitrary and capricious because the Navy assessed Perspecta weaknesses and significant weaknesses that were contradicted by the clear language of Perspecta’s proposal, based on unstated evaluation criteria, and in some instances undercut by the Navy’s own findings.

233. But for the Navy’s unreasonable assignment of these weaknesses and significant weaknesses, Perspecta would have had a reasonable chance of receiving award.

234. Therefore, as explained below, Perspecta was prejudiced by these evaluation errors.

SUBFACTOR 1.1 – SYSTEMS ENGINEERING

235. The Agency's evaluation under Subfactor 1.1, the Solicitation's most important evaluation factor, was arbitrary and irrational.

236. The Agency assessed Perspecta seven weaknesses and two significant weaknesses during its final evaluation. *See* AR Ex. 58, Perspecta Encl-1 Technical ENs Government Response Final, Tab 1.1; AR Ex. 79, SSEB Report at 107-13. As discussed above (*see* Count VII, *supra*), the Navy failed to raise any of these findings during discussions.

237. Putting aside the failure to conduct adequate discussions, six of these findings (four weaknesses and two significant weaknesses) are premised on clear errors.

238. Accordingly, but for these evaluation flaws, there is a substantial chance that Perspecta would have received an "Outstanding" rating under Subfactor 1.1.

Weakness 1

239. The Agency unreasonably assigned Perspecta a weakness under Subfactor 1.1 due to Perspecta's alleged failure to "[REDACTED]

[REDACTED]

[REDACTED]"⁹ AR Ex. 79, SSEB Report at 107. The Agency concluded that Perspecta [REDACTED]

[REDACTED] *Id.*

240. Contrary to the Agency's evaluation finding, Perspecta's proposal clearly describes its [REDACTED]

⁹ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Perspecta also detailed how its approach to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

241. The assigned weakness is actually belied by the Agency's own findings regarding Perspecta's proposal. In this regard, the Agency assigned Perspecta two strengths based upon its proposal of [REDACTED]. The Agency found that this aspect of Perspecta's approach would [REDACTED]
[REDACTED]

[REDACTED]. These assigned strengths therefore directly undercut the assigned weakness.

242. Because the Agency seemingly ignored or irrationally interpreted information from the contents of Perspecta's proposal, and ignored its own contradictory findings concerning Perspecta's approach to [REDACTED], the Agency's assessment of this weakness was arbitrary and capricious.

Weakness 2

243. The Agency assigned a second weakness under Subfactor 1.1 on the basis that Perspecta's "[REDACTED]"

[REDACTED] AR Ex. 79, SSEB Report at 107.

244. In assessing this weakness, the Agency relied on the incorrect assumption that in

[REDACTED]

[REDACTED]¹⁰

245. The Navy's stated basis for this weakness is irrational because it cannot be reconciled with Perspecta's proposal. Perspecta's proposal clearly states: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

246. Thus, under Perspecta's proposed approach, [REDACTED]

[REDACTED] which is in direct accord with [REDACTED]

247. The Agency's concern that Perspecta's proposal required Perspecta to [REDACTED]

[REDACTED] is therefore unfounded, and the assessment of the weakness was arbitrary and capricious.

Weakness 4

248. The Agency also assigned Perspecta's proposal a weakness because, according to the Agency, Perspecta's [REDACTED]

10

[REDACTED]
[REDACTED]

[REDACTED]

249. This weakness is undercut by Perspecta's proposal, in which Perspecta explains that it [REDACTED]

[REDACTED]

250. Perspecta's proposal further states that [REDACTED]

251. As a result of Perspecta's [REDACTED], Perspecta has unique insight into [REDACTED]

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

252. The Agency, however, failed to meaningfully consider this information in Perspecta's proposal when assigning this weakness. The Agency's assertion that [REDACTED] [REDACTED] Perspecta is increasing risk was inconsistent with the language of the proposal and therefore arbitrary and capricious.

Weakness 5

253. The Agency also arbitrarily assigned Perspecta a weakness for Perspecta's approach to [REDACTED]. According to the SSEB Report:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

254. The Agency's finding is unsupported, as Perspecta's proposed approach does not

[REDACTED]

[REDACTED]

[REDACTED]

255. Indeed, Perspecta's proposal makes clear [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

256. When read as a whole, nothing in Perspecta's proposal states that Perspecta will [REDACTED]. The Agency's assignment of this weakness therefore was arbitrary and capricious.

Significant Weakness 1

257. The Agency assessed Perspecta a significant weakness under Subfactor 1.1, due to Perspecta's alleged "lack of understanding of SEP 4.7.1." AR Ex. 79, SSEB Report at 111.

258. Specifically, the Agency determined that Perspecta's proposal [REDACTED], demonstrates a lack of understanding of the SEP 4.7.1 requirement to [REDACTED]. *Id.* at 111-12.

259. The Agency's assignment of the significant weakness is irrational in light of the contents of Perspecta's proposal.

260. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
261. Contrary to the Agency's finding, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

262. Perspecta's proposal made this [REDACTED] clear: [REDACTED]

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

263. The proposal also makes it readily apparent that Perspecta [REDACTED]

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

264. Moreover, Perspecta's proposed [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] This is in direct accord with the
[REDACTED] guidance.

265. Additionally, the [REDACTED]

[REDACTED] does not foreclose [REDACTED]. In fact, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

266. Accordingly, in addition to failing to reasonably interpret Perspecta's proposal, the Agency also imposed unstated evaluation criteria, reading additional requirements into

[REDACTED]
[REDACTED]

[REDACTED]. Therefore, assignment of this significant weakness was arbitrary and capricious.

Significant Weakness 2

267. The Agency assigned a second significant weakness as a result of two alleged flaws in Perspecta's [REDACTED]. AR Ex. 79, SSEB Report at 112-13.

268. The Agency again takes aim at Perspecta's proposed [REDACTED]:

[REDACTED]

[REDACTED]

269. As explained in paragraphs 257 through 266 above, however, the Agency's assertion that Perspecta's [REDACTED] [REDACTED] is unfounded. As such, the assessment of this significant weakness was arbitrary and capricious.

270. Additionally, the Agency's assumption that [REDACTED] [REDACTED] is based upon a fundamental mischaracterization of Perspecta's approach to [REDACTED]

271. Perspecta's approach describes a [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

272. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

273. Second, the Navy also based the significant weakness on its finding that Perspecta's use of [REDACTED] would be [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

274. This assertion ignores clear language in Perspecta's proposal directly addressing any [REDACTED] issues.

275. As Perspecta noted in its proposal, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

276. Thus, the proposal illustrates that [REDACTED]

[REDACTED]

[REDACTED]

277. For these reasons, the Agency's assessment of this significant weakness was arbitrary and capricious.

SUBFACTOR 1.2 – SYSTEMS ENGINEERING

Weakness 1

278. The Navy assigned Perspecta a weakness under RFP Sections L-4(b)(2)(ii)(a) and M-3(b)(2)(i)(a) on the basis that Perspecta [REDACTED]

[REDACTED] noting that Perspecta "[REDACTED]

[REDACTED], but fails to state clearly [REDACTED]" which the Navy concluded was "a flaw in the proposal that increases risk to the Government." AR Ex. 79, SSEB Report at 114.

279. The Agency's assignment of this weakness reflects the improper application of an unstated evaluation criterion.

280. Section L-4(b)(2)(ii)(a) directed offerors to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

281. Section M-3(b)(2)(i)(a) stated, in turn, that the Agency would evaluate [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]” *Id.* (p. 536).

282. Nothing in Section L required offerors to [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

283. Nor did the RFP state that Agency would evaluate, or that offerors would otherwise be criticized, for [REDACTED]

[REDACTED]

284. The weakness is also not justified because Perspecta’s proposal detailed an approach that satisfied the requirements for [REDACTED]. In this regard, Perspecta’s proposal made clear that [REDACTED]

[REDACTED]
[REDACTED]

285. Perspecta’s proposal further included [REDACTED]

[REDACTED]
[REDACTED]

286. Additionally, Perspecta’s proposal noted that [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

287. Perspecta also proposed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

288. Perspecta further provided a table in its proposal listing [REDACTED]

[REDACTED]

289. Accordingly, the Navy's assigned weakness is arbitrary and capricious because it (1) reflects the application of unstated requirements; and (2) is belied by Perspecta's detailed descriptions in its proposal.

SUBFACTOR 2.2 – NETWORK OPERATIONS

Weakness 1

290. The Navy assigned a weakness under RFP Sections L-4(c)(2)(i)(a-e), M-3(c)(2)(i)(b), and M-1(g) because it claimed Perspecta's proposal was [REDACTED]

[REDACTED]

[REDACTED]

291. According to the Agency, while Perspecta proposed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

292. Perspecta's proposed [REDACTED]

[REDACTED] Specifically, Perspecta clearly
stated [REDACTED]

[REDACTED]
[REDACTED]

293. [REDACTED]

294. For example, [REDACTED]

[REDACTED]
[REDACTED]

295. [REDACTED]

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

296. [REDACTED]

[REDACTED]
[REDACTED]

297. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

298. Accordingly, the Agency's finding that Perspecta's BOE was inconsistent with
the management proposal was arbitrary and capricious.

[REDACTED]

Significant Weakness 2

299. The Navy assigned a Significant Weakness under RFP Sections L-4(c)(2)(i)(a) and M-3(c)(2)(i)(b) because, according to the Agency, Perspecta's proposal [REDACTED]

300. Section 3.3.5.1.2.g of the PWS requires offerors to "[p]rovide a near real-time, full spectrum, consolidated (single pane) display of all NMCI network infrastructure and service components, and separately for the MCEN, that is fully accessible by the NetOps and DCO personnel for SA and C2." AR Ex. 1, PWS § 3.3.5.1.2.g.

301. In support of its significant weakness evaluation finding, the Agency cites to various sections of Perspecta's proposal as purported proof that Perspecta did not clearly satisfy the [REDACTED]

302. Contrary to the Agency's finding, [REDACTED] Perspecta's proposal provides a [REDACTED]

303. Because the Navy failed to meaningfully consider the appropriate section of Perspecta's proposal, the assignment of this significant weakness was arbitrary and capricious.

SUBFACTOR 2.3 – TOOLS MANAGEMENT AND DATA ACCESS

Significant Weakness 1

304. Lastly, the Navy assigned a significant weakness under Subfactor 2.3, RFP Sections L-4(c)(3)(i) and M-3(c)(3)(i)(a), claiming that Perspecta's [REDACTED]

[REDACTED]

[REDACTED]

305. The Agency acknowledged that Perspecta clearly proposed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

306. However, the Agency takes the position that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

307. [REDACTED]

[REDACTED]

[REDACTED]

308. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

309. As the Navy admitted in response to Perspecta's debriefing questions, there was no [REDACTED] identified in the RFP. AR Ex. 85, Response to Debriefing Questions at 39.

310. Consequently, the Agency's assessment of this significant weakness reflects its application of unstated requirement, and was therefore arbitrary and capricious.

COUNT IX

THE NAVY'S EVALUATION OF LEIDOS' PROPOSAL UNDER THE TECHNICAL AND MANAGEMENT APPROACH FACTORS WAS ARBITRARY AND IRRATIONAL

311. Perspecta hereby incorporates the foregoing paragraphs 1-310 as if fully set forth herein.

The Navy's Evaluation Of Leidos' Proposal Under The Technical Approach Factor Was Irrational

312. The Navy's decision to assign Leidos an "Outstanding" rating under the Technical Approach factor was arbitrary and capricious.

313. The RFP stated that a comprehensive understanding of the Agency's existing network was essential to receiving a high rating under the Technical Approach factor.

314. Specifically, the RFP required the Agency to evaluate under Subfactor 1.1, Systems Engineering, each offeror's "understanding of the Government's Network Transformation/Modernization requirements." AR Ex. 1, RFP at ¶ M-3(b)(1)(i)(b) (p. 536). Similarly, under Subfactor 1.2, Network Transformation/Modernization Sample Exercise, the RFP required the Agency to evaluate the degree to which each offeror demonstrates "[i]ts clarity in describing any assumptions in developing the network architectural baseline it uses as a basis for its Network Transformation/Modernization Plan (NT/MP) and *how their baseline relates to the existing architecture and infrastructure as provided by the Government.*" *Id.* (emphasis added).

315. Moreover, the RFP specifically required the Navy to consider risk when assessing the technical merit of each offeror's proposal. Per the RFP's definitions in ¶ M-2.2, the ratings for Technical Factors 1 and 2 included "consideration of risk in conjunction with the strengths, weaknesses, and deficiencies in determining technical ratings." AR Ex. 1, RFP at ¶ M-2.2(a)

(p. 535). An “Outstanding” rating meant that the “risk of unsuccessful performance is low.” *Id.* at ¶ M-2.2(b).

316. Per the RFP, by assigning Leidos an “Outstanding” rating for Factor 1, the Navy concluded that Leidos presented a low risk of unsuccessful performance. However, any such conclusion is unsupported and reflects the Agency’s failure to consider the significant risk to successful performance presented by Leidos’ unrealistically low proposed price.

317. Indeed, as discussed above (Count IV), Leidos’ proposed price, which was more than a half a billion dollars lower than the incumbent’s proposed price, is unrealistic and reflects a lack of understanding about the Navy’s requirements. This, in turn, presents a clear risk to successful performance.

318. Even Leidos acknowledged its own lack of understanding. In particular, after the Navy awarded the NGEN-R SMIT contract to Leidos, the [REDACTED] [REDACTED] admitted during an interview that Leidos does not “really understand the state of play” with respect to the existing NGEN network infrastructure. Federal News Network, “What comes next for the biggest non-weapons contract ever?” (Feb. 21, 2020), <https://federalnewsnetwork.com/navy/2020/02/what-comes-next-for-the-biggest-non-weapons-contract-ever/>. As a result, [REDACTED] added, Leidos will have to use the beginning of the transition period to “update ourselves from what we proposed and then worked through our transition plans.” *Id.*

319. [REDACTED] admissions substantiates that Leidos’ low price reflects a lack of understanding of contract requirements and presents a significant risk to successful performance.

320. Had the Navy conducted the risk assessment required by the RFP, Leidos certainly would have received a rating far below “Outstanding.” Accordingly, the Navy’s decision to assign Leidos an “Outstanding” rating for Factor 1 was arbitrary and capricious.

The Navy’s Evaluation of Leidos’ Proposal Under the Management Approach Was Irrational

321. The Navy’s decision to assign Leidos an “Outstanding” rating under Factor 2, Management Approach, was similarly irrational.

322. Under the Management factor, Subfactor 2.1 required the Navy to evaluate each offeror’s “understanding of the organizational structure required to successfully deliver NMCI services,” and Subfactor 2.2 required the Navy to assess each offeror’s “understanding of the critical role robust and reliable contractor support plays in defending the MCEN, and the Offeror’s ability to continually deliver USMC labor support services within the SLRs.” AR Ex. 1, RFP at ¶¶ M-3(c)(1)(i)(a), M-3(c)(2)(i)(c). As noted above, the RFP further required the Navy to assess the risk of unsuccessful performance. *Id.* at ¶ M-2.2(a) (p. 535).

323. As discussed in greater detail above, (*see* Count IV), Leidos’ proposed pricing is not adequate to meet the staffing challenges that exist in this procurement. While Leidos proposed an approach that was heavily reliant on retaining the incumbent staff, its low proposed price necessarily means that it was planning to implement sharp reductions to the salaries paid to that incumbent staff. Given the highly-skilled nature of the incumbent NGEN workforce, this creates a substantial risk that many of the incumbent staff will decline to accept Leidos’ offer of employment. Without adequate staffing to execute its proposed management approach, Leidos will almost certainly experience performance failures no matter how well thought-out its intended approach may be.

324. Notably, in addition to admitting that Leidos lacks understanding of the existing network, [REDACTED] publicly acknowledged that Leidos does not presently have the personnel needed to perform, and is relying on substantial recruitment of incumbent personnel to build out its staff. Federal News Network, *supra* (“It goes back to the approach to hiring in this. We come in to this knowing there are a lot of talented folks operating the network today, and it’s our plan to go off and look to engage them and retain a good portion of them.”).

325. Leidos’ own CEO also acknowledged that the company has a “huge staffing challenge ahead of us on the program.” Inside Defense, “Leidos CEO: Company expects NGEN protest but has ‘confidence that the protest will move quickly’” (Feb. 12, 2020) <https://insidedefense.com/insider/leidos-ceo-company-expects-ngen-protest-has-confidence-protest-will-move-quickly>.

326. Despite Leidos’ admitted staffing challenges, the Navy assigned Leidos an “Outstanding” rating under Subfactor 2.1, Program Management Plan, and Subfactor 2.2, Network Operations.

327. Without a clear picture of its available staff—or at the very least, which specific incumbent staff it intended to recruit—and given Leidos’ low proposed price, Leidos could not have proposed a concrete organizational structure, much less one that demonstrates its understanding of how to successfully deliver NMCI or USMC labor support services.

328. Accordingly, the Agency’s assignment of an “Outstanding” rating for Subfactors 2.1 and 2.2 under the Management approach was inconsistent with the RFP’s criteria and irrational.

The Navy's Evaluation of Leidos' Proposed Key Personnel Was Irrational

329. The Navy's decision to assign Leidos an "Outstanding" rating under Factor 2 was further belied by the fact that one of Leidos' key personnel failed to meet the mandatory minimum qualification requirements.

330. The RFP required offerors to provide a "List of Key Personnel (Subject to SMIT PWS Section 3.1.1.1)." AR Ex. 1 at C-TXT-12 (p. 410). In turn, PWS Section 3.1.1.1 prescribed the minimum qualifications each key personnel was required to possess.

331. PWS Section 3.1.1.1 required the Program Manager position to have ten years of general experience, as well as "[a]t least five years combined experience managing the planning, provisioning, and delivery of IT services to large organizations." AR Ex. 1, PWS § 3.1.1.1.

332. The RFP required the Navy to evaluate each offeror's "understanding of the organizational structure required to successfully deliver NMCI services," as well as their "understanding of direct lines of control, responsibilities, functional relationships, and authorities to include interfaces between the Contractor and Government and the Contractor and other contractors required to successfully deliver NMCI services." AR Ex. 1, RFP at ¶ M-3(c)(1)(i) (p. 537).

333. In order to determine the likelihood that an offeror would be able to "successfully deliver NMCI services," and because key personnel are an integral part of any offeror's management structure, the Navy had to assess the minimum qualifications of an offeror's key personnel.

334. The RFP also required the Navy to consider whether Leidos submitted a compliant proposal, which includes compliance with the RFP's minimum key personnel requirements.

335. Leidos' proposed Program Manager, [REDACTED], lacked both the general and specialized experience prescribed by Section 3.1.1.1 of the PWS.

336. As noted above, [REDACTED] joined the private sector in November 2016 after an extended career with SPAWAR, which he concluded in the role [REDACTED] to the commanding admiral. Prior to that role, [REDACTED] worked in program management, spending approximately [REDACTED]

[REDACTED] This is well short of the ten years of general experience required by the PWS. *See* AR Ex. 1, PWS § 3.1.1.1.

337. Even assuming that [REDACTED] role as a Vice President at Leidos also entails program management, that would only amount to nine years of experience (less at the time of proposal submission), which is still shy of the general experience required by the PWS. *Id.*

338. With respect to specialized experience, the PWS requires "[a]t least five years combined experience managing the planning, provisioning, and delivery of IT services to large organizations," which must include "direct accountability for managed activities." *Id.*

339. [REDACTED]

340. The Agency's failure to evaluate whether Leidos' [REDACTED]

[REDACTED] with the minimum qualification requirements and to assess a deficiency or a

significant weakness as a result of [REDACTED] lack of qualifications was inconsistent with the RFP, and therefore, arbitrary and capricious.

COUNT X

THE NAVY'S BEST VALUE AWARD DECISION IS PREMISED ON AN ARBITRARY AND CAPRICIOUS EVALUATION THAT PREJUDICED PERSPECTA

341. Perspecta hereby incorporates the foregoing paragraphs 1-340 as if fully set forth herein.

342. The cumulative effect of the errors described above irreparably taints the Navy's best value award decision. *See, e.g., Femme Comp Inc. v. United States*, 83 Fed. Cl. 704, 767 (2008) (holding that best value decision based upon "irrational evaluations" was improper).

343. But for the Navy's failure to meaningfully consider the unfair competitive advantage Leidos gained through [REDACTED], Leidos would have been removed from the competition. Because the only other offeror was rejected as deficient, Perspecta was next-in-line and would have been the only remaining awardable offeror.

344. Additionally, the Navy's award to Leidos was the result of numerous errors in the evaluations of Perspecta's and/or Leidos' Cost/Price, Technical, and Management proposals that, in the aggregate, prejudiced Perspecta's chances for award. Further, had the Navy conducted meaningful discussions with Perspecta, Perspecta would have clarified or revised its proposal to address the Agency's evaluation concerns.

345. But for these numerous errors, the Navy's evaluation findings would have changed, upending the Navy's award rationale and providing Perspecta a substantial chance at award. *See Lab. Corp.*, 116 Fed. Cl. at 654 (holding protester prejudiced by multiple evaluation errors which "neutralized [protester's] technical advantage, eliminated the need for

a best value trade-off analysis, conducted an ‘apples to oranges’ price comparison, and failed to recognize [the awardee’s] significant miscalculations”).

V. BASIS FOR INJUNCTIVE RELIEF

346. Perspecta hereby incorporates the foregoing paragraphs 1-344 as if fully set forth herein.

347. Given the irrationality of the Navy’s award decision and the harm resulting to Perspecta resulting therefrom, permanent injunctive relief enjoining the Navy from allowing Leidos to perform the contract is appropriate.

348. Absent an injunction, Perspecta will be irreparably harmed because it will lose the ability to fairly compete for the NGEN-R award based upon a fair and equal evaluation of offeror proposals that was rational and consistent with the Solicitation’s express evaluation terms and procurement law.

349. The Navy will not be harmed by such an injunction; [REDACTED]
[REDACTED]. That gives the Navy plenty of time to undertake reasonable, rational corrective action.

350. Similarly, Leidos will not be harmed by the imposition of an injunction because it has no right to begin performance on an invalid and irrationally awarded contract.

351. Finally, the public interest weighs in favor of injunctive relief. Government procurements should be administered in a fair and rational process, resulting in award decisions consistent with Solicitation requirements and procurement law and regulations. The Navy’s award to Leidos was consistent with none of these things, rendering it arbitrary and capricious.

VI. PRAYER FOR RELIEF

For each and all of the foregoing reasons, Perspecta requests that the Court enter judgment in its favor and provide the following relief:

1. Declare the Navy's award to Leidos to be arbitrary, capricious, or otherwise an abuse of discretion, and not in accordance with procurement law and policy;
2. Enjoin the Navy and Leidos from commencing performance on the NGEN-R contract pending receipt of revised proposals and a re-evaluation;
3. Declare Leidos ineligible due to its unfair competitive advantage and impermissible conflicts and direct award of the NGEN contract to Perspecta as the only awardable offeror, or, in the alternative, rescind the award to Leidos, re-open discussions, and hold meaningful, equal, and not misleading discussions with all offerors remaining in the competitive range, allow for submissions of revised proposals, and then, reasonably evaluate all of the information provided in offeror's revised proposals, and render a best value decision based on an evaluation conducted in accordance with the RFP; and
4. Grant any other such other relief as the Court may deem just and appropriate.

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Respectfully submitted,

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