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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: IBM Global Business Services

File: B-404498; B-404498.2

Date: February 23, 2011

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Robert J. Symon, Esq., and Lewis P. Rhodes, Esq., Bradley Arant Boult Cummings, LLP, for Jacobs Technology, Inc., an intervenor.
Maj. C. Peter Dugan, Maj. John C. Dohn II, Department of the Army; and Craig S. McCaa, Esq., and Gregg Sharp, Esq., U.S. Special Operations Commnand, for the agency.
Scott H. Riback, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency evaluated proposals using an unstated evaluation consideration is sustained where record shows that agency gave awardee (but not protester) evaluation credit for proposing to achieve full operating capability (FOC) on an accelerated basis, but the solicitation neither defined FOC nor included a schedule for achieving it.

2. Protest that agency used service desk quantity estimates for price evaluation purposes that differed significantly from the maximum quantities outlined in the solicitation is sustained; a procuring agency must provide sufficient information in a solicitation so that offerors can compete intelligently and on a relatively equal basis.

DECISION

IBM Global Business Services, of Bethesda, Maryland, protests the award of a contract to Jacobs Technology, Inc., of Tampa, Florida, under request for proposals (RFP) No. H92222-10-R-0014, issued by the U.S. Special Operations Command (USSOCOM), for information technology service management (ITSM) services. IBM asserts that the agency misevaluated proposals and that Jacobs has impermissible organizational conflicts of interest (OCIs).

We sustain the protest.

The RFP contemplates the award, on a "best value" basis, of an indefinite-delivery, indefinite-quantity contract, that includes both fixed-price and cost reimbursement elements, with a 6-month transition-in period, a 2-year base period and four 1-year incentive terms. This contract is one of several the agency intends to award in connection with a broader program referred to as the Special Operations Forces information technology enterprise contracts (SITEC) program, which will provide the agency comprehensive substantive information technology (IT) services in various areas, as well as an IT management and coordination capability. The SITEC program contracts are intended to replace an earlier contract known as the enterprise information technology contract (EITC), under which the agency had been obtaining IT-related services. Agency Report (AR), exh. 2, at 2.

Under the contemplated contract, the successful offeror will, among other things, assist the agency in the establishment of an information technology management office (ITMO) through the development, implementation and oversight of an information technology infrastructure library (ITIL), as well as various IT service management policies, practices and procedures throughout USSOCOM. The ITMO contractor will ensure coordination, integration and synchronization of the capabilities of the other, substantive, IT service area providers that are awarded contracts pursuant to the agency's broader SITEC acquisition program. In addition to assisting the agency in the establishment and operation of an ITMO, the contractor also will provide substantive IT services to the agency in the areas of IT service desk functions and enterprise information assurance management. AR, exh. 2, at 2-3.

Firms were advised that the agency would evaluate proposals based on cost/price and several non-cost/price considerations. Proposals initially were to be evaluated on a pass/fail basis under several qualifying criteria. Those proposals found to have passed the qualifying criteria were then to be evaluated under three factors: technical/management (most important)[1], past performance (second in importance), and cost/price. RFP at 94. Technical/management and past performance, collectively, were significantly more important that cost/price. Id.

For evaluation purposes, the proposals were assigned an adjectival rating under the overall technical/management factor and each subfactor of either outstanding, good, acceptable or unacceptable. Under the past performance factor, proposals were assigned an adjectival rating of high confidence, satisfactory confidence, limited confidence, no confidence or unknown confidence. AR, exh. 20 at 10-12. Finally, for cost/price, the RFP advised offerors that the agency would evaluate proposals for

[1] The technical/management factor included nine equally weighted subfactors.

cost/price reasonableness and realism. RFP at 98. The RFP further advised that the agency would establish a probable cost estimate for each proposal using the evaluated costs for performance of the cost reimbursement line items; the prices calculated by the agency for the fixed price elements using the offerors' proposed unit prices multiplied by the agency's estimate of the quantities to be ordered; and a fixed amount for travel costs. Id.

The agency received five proposals in response to the solicitation and, after an initial evaluation, included all of them in the competitive range. AR, exh. 21 at 87. After discussions with the offerors, the agency requested final proposal revisions (FPR). The agency evaluated FPRs as follows:

	Offeror A	Jacobs	Offeror B	Offeror C	IBM
Qualifying Criteria	Pass	Pass	Fail	Pass	Pass
Technical/Management	Acceptable	Good	Unacceptable	Good	Acceptable
Past Performance	High Confidence	High Confidence	Satisfactory Confidence	Satisfactory Confidence	Satisfactory Confidence
Evaluated Cost/Price	$157,794,465	$141,718,797`	$209,863,538	$170,172,261	$136,570,836

AR, exh. 26, at 41. On the basis of these evaluation results, the agency made award to Jacobs, finding that its proposal represented the best value to the government. AR, exh. 30. After being advised of the agency's selection decision and receiving a debriefing, IBM filed this protest with our Office.

IBM has raised numerous protest grounds. We have carefully considered all of IBM's contentions and sustain its protest for the reasons discussed below. Additionally, we briefly discuss IBM's OCI allegations.

FULL OPERATING CAPABILITY (FOC)

IBM asserts that the agency improperly credited Jacobs's proposal, but not IBM's proposal, for offering to achieve FOC sooner than required. There are two elements to this aspect of IBM's protest. First, according to the protester, the RFP makes no mention of FOC, either in terms of what the phrase means, or in terms of when it was supposed to have been achieved. IBM therefore asserts that the agency improperly used an unstated evaluation factor. Second, IBM asserts that the agency erred in concluding that Jacobs, but not IBM, offered to achieve FOC on an accelerated basis. In this regard, IBM asserts that while the agency evaluators found that Jacobs had proposed to achieve FOC [deleted] months "ahead of schedule," they improperly failed to credit IBM with its proposal to achieve FOC within [deleted] months of being awarded the contract.

In response, the agency maintains that it properly gave Jacobs credit for proposing to achieve FOC in an accelerated fashion. According to the agency, achieving FOC was an implicit requirement of the solicitation that was properly considered under the technical/management evaluation factor.[2] Furthermore, asserts the agency, Jacobs in fact proposed to achieve FOC earlier than did IBM.

As a general rule, agencies are required to advise offerors of the evaluation criteria against which proposals will be evaluated. Although agencies are not required to identify each and every element encompassed within the solicitation's evaluation scheme, unstated evaluation considerations must reasonably be subsumed within the stated considerations. Mnemonics, Inc., B-290961, Oct. 28, 2002, 2003 CPD ¶ 39 at 6. Here, the RFP neither defined FOC nor established a schedule for achieving it. Further, the stated evaluation approach in the RFP did not provide for consideration of FOC, nor was such consideration reasonably subsumed within the stated criteria.

As an initial matter, the term FOC is not defined in the solicitation. The only specific references to FOC appear in certain materials disseminated at an industry day meeting prior to issuance of the RFP, and in the agency's evaluation and source selection materials. Specifically, the agency's industry day briefing materials included a slide entitled "ITMO [information technology management office] Approach," which provided as follows:

> Provide the ITIL [information technology infrastructure library] expertise
>
> --Initial Operating Capability (IOC) –1 April 2011
>
> --Full Operating Capability (FOC) –1 April 2013.

AR, exh. 6, at 49. Among the industry day questions and answers was the following specific question and answer:

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[2] The record shows that the agency gave Jacobs evaluation credit under subfactor 1 of the technical/management factor, which provided as follows:

> M.1.4.1 Subfactor 1--Operational Integration and Integration Approach: The Government will evaluate the Offeror's approach to supporting USSOCOM IT operations and its strategy for assisting USSOCOM in establishing and operating an USSOCOM IT Management Office (ITMO). The evaluation will include an analysis of how the Offeror intends to ensure integration of USSOCOM Headquarters (in particular SORDAC and J-6), Component and TSOC organizations. Evaluation will also incorporate Offeror's operational efficiency and effectiveness improvement plans, as well as plans for interacting with USSOCOM mission stakeholders in gathering, clarifying, and refining USSOCOM mission requirements.

AR, exh. 17, at 96.

> Q: Will the requirements for IOC/FOC be defined/allocated to IOC/FOC?
>
> A: USSOCOM expects to define/achieve Initial Operating Capability (IOC) by 1 April 2011. USSOCOM expects to achieve Full Operating Capability (FOC) no later than 1 April 2013.

AR, exh. 14, at 24.

However, these specific pre-solicitation references to FOC were not reflected in the subsequently issued RFP. Specifically, there was no RFP definition of what constitutes FOC and no RFP schedule requirement for achieving FOC at a particular time. Further, there was no provision in the RFP for evaluation of FOC, nor were any of these considerations raised during discussions.

Notwithstanding the absence in the RFP of either a definition of, or schedule for, achieving FOC, the record shows that this was a prominent consideration in the agency's evaluation of the Jacobs proposal as well as in its source selection decision. In the agency's final technical evaluation report, the evaluators specifically note, with respect to the Jacobs proposal:

> The commitment to achieve the Final Operating Capability for process maturity [deleted] months ahead of schedule will enable the Government to focus on performance and process improvements that much quicker. The offeror's commitment and corporate investment of [deleted] on these tools will significantly enhance the ITMO's ability to implement the ITIL management processes and increases the confidence of the offeror's claim to reach FOC [deleted] months ahead of schedule.

AR, exh. 27, at 29. Similarly, the briefing materials presented to the agency's source selection authority (SSA) also favorably referred to Jacobs' evaluated ability to achieve FOC in [deleted] versus [deleted] months. AR, exh. 26, at 18. Those same briefing materials include a comparison of the Jacobs and IBM proposals, noting as a strength in favor of award to Jacobs, the agency's conclusion that Jacobs would achieve FOC [deleted] months earlier than IBM. Id. at 41. The agency's source selection advisory council also made specific favorable reference to Jacob's alleged proposal to achieve FOC in an accelerated manner. AR, exh. 29, at 1.

Finally, the SSA, in his tradeoff analysis, after discussing the strengths in the Jacobs proposal (including its evaluated ability to achieve FOC [deleted] months ahead of IBM), specifically stated as follows:

> The increased cost resulting from choosing Jacobs over IBM is less than [deleted] per year Average ($[deleted] Total) and represents less than [delete] percent increase in the MPC [most probable cost]. The benefit of achieving FOC ahead of schedule provided by the Jacobs proposal will have a significant impact on the management and oversight of all SITEC efforts that more than justify this increase in MPC. Based on this, I have determined that the proposal provided by Jacobs provides significantly more value and benefits to the Government than IBM.

AR, exh. 30, at 6.

The record thus shows that the evaluators and SSA acted on the assumption that there was a schedule for implementing FOC included in the RFP, and that Jacob's evaluated advantage with respect to achieving FOC represented the principal technical discriminator between the IBM and Jacobs proposals. However, as noted, the RFP did not define or specifically refer to FOC; did not establish a schedule for achieving FOC; and did not provide for evaluation of offerors' schedules for FOC.

For the reasons discussed above, we sustain IBM's protest that the agency improperly applied an unstated evaluation factor. As a final matter, as noted, the agency and IBM disagree concerning what constitutes FOC and whether or not IBM proposed to achieve it by a certain point in time.[3] We need not resolve this dispute, since our recommendation below renders these considerations immaterial. We point out, however, that this disagreement between the agency and IBM serves to underscore the absence of an established, objective definition of, and schedule for achieving, FOC in the solicitation.

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[3] IBM essentially takes the position that implementation of ITIL v 3 (information technology infrastructure library) through its proposed process reference model for IT (PRM-IT) implementation approach, will result in the agency achieving FOC by month [deleted] of contract performance. The agency, on the other hand, is of the view that, although IBM may have in place the processes to implement FOC, as well as an implementation approach, by month [deleted], actually achieving FOC also will require personnel within the agency to accept and act in accordance with those processes. Affidavit of the Source Selection Evaluation Board Chairman, Jan, 25, 2011, at 1. Without resolving this dispute, we note that the agency has not explained how this limitation with respect to the acceptance of IBM's proposed processes by agency personnel is unique to IBM; to follow the agency's logic, any proposed processes and implementation approach by any contractor (including Jacobs) would have to be accepted and acted upon by agency personnel.

IT SERVICE DESK REQUIREMENTS

As noted, the RFP required the contractor to provide certain substantive IT services, including as relevant here, a requirement to perform service desk operations for the agency. Specifically, the successful contractor will be required to provide service desk operations at three different levels relating to the speed at which a response is provided: bronze (the baseline service), silver (an intermediate level of service), and gold (a premium level of service). The RFP's pricing schedule provided offerors information relating to the maximum number users per year at the various levels of service. Specifically, section B of the solicitation specified 960,000 maximum users per year at the bronze service level, 600,000 users at the silver level, and 180,000 users at the gold level. Although section B included yearly maximum quantity estimates for each service level, and not maximum users per month, the solicitation nevertheless requested "Each Per Month Unit Prices" for each service level. RFP § B. If apportioned equally over 12 months, the stated annual maximum number of users in solicitation section B translates to 80,000 bronze, 50,000 silver, and 15,000 gold users per month. Stated differently, the RFP included information indicating that approximately 55 percent of the users were bronze users, approximately 35.5 percent were silver users and approximately 10.5 percent were gold users.

Elsewhere, in the solicitation's performance work statement, there was a reference to "multi-tier, end user support of 74,000+ SITEC users," but this reference did not indicate whether this was a per-month or annual figure, nor did it indicate the proportion of users at each service level. AR, exh. 13, at 4. In a subsequent amendment, in offeror questions and answers, the agency responded to a request for clarification as to the discrepancy between the above estimate of "74,000+ SITEC users," and an industry day estimate of a "user base" of "56,000 Government and Contractor Users," as follows: "There are approximately 74,000 SIE users; however only approximately 56,000 of them are supported by the service desk function operated by the ITSMC." AR, exh. 16, amend. 2, at 48; AR, exh. 6, at 59. [4] Again, there was no indication as to the proportion of users at each service level. Finally, in the same amendment to the RFP, the agency responded to a similar request for clarification by stating simply that all available information had been provided, and that the offerors were expected to use the information presented,

[4] There were references in the industry day briefing materials relating to a user base of over 75,000 users, and a second reference to a user base of 56,000 users; neither of these references included any mention regarding the proportion of users at each service level. AR, exh. 6, at 20, 59.

along with their experience, to develop an estimate of the effort required to perform the service desk function. AR, exh. 16, amend. 2, at 48. [5]

The record shows that, after receiving the proposals, the agency calculated the offerors' extended prices for the service desk requirement on the basis of 56,000 bronze, 3,000 silver and 300 gold users per month. AR, exh. 38, at 1. As noted above, these figures were not consistent with either the stated yearly maximum user numbers (960,000 bronze, 600,000 silver, and 180,000 gold users) in RFP section B, nor with maximum monthly user numbers (80,000 bronze, 50,000 silver, and 15,000 gold users). (As for the references elsewhere in the solicitation documents to 56,000 users, there was no indication in such references as to the proportion of users at each service level.)

IBM asserts that the solicitation was materially misleading because it did not accurately reflect the user quantities the agency intended to use for evaluation purposes. IBM maintains that the quantities listed in the RFP for bronze, silver and gold service desk users bore no relationship either to the actual numbers that the agency used to calculate the offerors' estimated prices for the requirement, or to the relative percentages of different users at each service level. The protester further asserts that Jacobs (the incumbent contractor for the agency's service desk) either had information relating to the historical levels of service desk usage or, alternatively, had information relating to how the agency intended to evaluate the service desk requirement, that provided it an improper competitive advantage in preparing its proposal.

We sustain this aspect of IBM's protest. As a general rule, a procuring agency must provide sufficient information in a solicitation so that offerors can compete intelligently and on a relatively equal basis. Meridian Mgmt. Corp., B-285127, July 19, 2000, 2000 CPD ¶ 121 at 6. Based on the record before our Office, we find that the RFP did not reasonably provide offerors adequate information to compete on a relatively equal basis. We also find that that Jacobs apparently had information not possessed by the other offerors that enabled it to prepare its proposal on a materially different basis.

[5] The above amendment to the RFP was issued on June 30. In addition to this question and answer, the original RFP, issued on May 27, included offeror questions and answers. In two of those questions, a firm asked if the agency could provide the estimates of the user requirements for the service desk requirement. In response, the agency stated that offerors were required to include only per-user, per-month unit prices, and that the agency would use "[t]he Government estimated number of users . . . to calculate the most probable cost." AR, exh. 11, at 325.

As noted above, based on information in the RFP, the relative percentages of users in each category were approximately 55 percent bronze, 34.5 percent silver and 10.5 percent gold. In contrast, the numbers used by the agency to calculate the offerors' extended prices for the service desk requirement varied significantly from these percentages; the agency performed its calculations assuming approximately 94.4 percent of all users were at the bronze level (56,000), 5 percent silver (3,000) and .5 percent gold (300). This variance had a material impact on the competition because Jacobs' proposed prices varied significantly from the other offerors' prices for silver and gold users, such that, had the agency either used the maximum quantities specified in section B of the RFP for each service level, or applied the relative percentages of users at each service level indicated in section B, Jacobs' proposal would not have been competitive. In this respect, the offerors' unit prices for silver and gold were as follows:

Silver

Offeror	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Offeror A	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Offeror B	[deleted	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Offeror C	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
IBM	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Jacobs	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
IGCE[6]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

Gold

Offeror	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Offeror A	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Offeror B	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Offeror C	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
IBM	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Jacobs	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
IGCE	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]

AR, exh. 38, at 54.

The record thus shows that, for example, in the first year of the contract, Jacobs' price for silver users is more than six times higher than the government estimate, and its price for gold users is more than seven times higher than the government estimate. Had the agency applied the numbers at each service level included in section B of the RFP in its calculations, Jacobs' cumulative price just for silver and

[6] The agency prepared an independent government cost estimate that it used in its evaluation.

gold users would have been $[deleted]; and its total evaluated price would have been $[deleted]. In comparison, had the agency applied the numbers of users at each service level included in the RFP in its calculation of IBM's price, the protester's cumulative price for silver and gold users would have been $[deleted], and its total evaluated price would have been just $[deleted]. (Likewise, as can be readily seen from a comparison with the other offerors' unit prices for silver and gold users, Jacobs' price also would not have been competitive with their pricing had the agency applied the user numbers included in the RFP to make its calculations.)

On the record before us, we find that the offerors other than Jacobs were clearly misled by the terms of the RFP into concluding that the number of gold and silver users would be significantly different from the number actually used by the agency for evaluation purposes. It also appears that Jacobs likely was aware that the agency would not use the relative proportions of users at each service level as indicated in section B of the RFP in its evaluation of prices for this aspect of the requirement; there simply is no other logical explanation for Jacobs' significantly higher prices for gold and silver users, prices which, if used in connection with the estimated quantities in the RFP, would have rendered its proposal uncompetitive.

As a final matter, we point out that the agency has offered no explanation for not providing the offerors information about the quantities and proportions of service desk users it intended to use for evaluation purposes. Given that, as noted, it appears that Jacobs may have had insight to the agency's actual requirements (which provided the basis for the agency's actual evaluation approach), it was fundamentally unfair for the agency not also to have provided the same information to the other offerors, so that the competition would be conducted on a relatively equal basis. We therefore find that the RFP did not reasonably advise the offerors of the agency's intended evaluation approach, such that they could prepare proposals on a relatively equal basis. Accordingly, we sustain this aspect of IBM's protest.[7]

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[7] Both the agency and intervenor have argued that IBM was not prejudiced by the agency's actions because its prices for silver and gold users were so much lower than Jacobs' prices. We disagree. There simply is no basis for our Office to conclude how IBM might have structured its proposal had it known the agency's actual requirements. In this regard, where, either through the terms of a solicitation, or through the conduct of discussions, an agency fails to provide offerors with a relatively equal basis for competing, our Office can not predict the impact of relatively equal information on the competition; correspondingly, we can not find a lack of prejudice in such circumstances. See American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49 at 16.

OCI

IBM asserts that Jacobs has both an unfair access to information type OCI (that is, an OCI arising by virtue of its having information that other offerors did not possess), as well as a biased ground rules type OCI (that is, an OCI arising by virtue of Jacobs having provided input into the solicitation, such that it affected the basis of the competition). Underlying IBM's arguments in this regard is Jacobs' performance of certain other contracts--specifically, its performance of the acquisition, logistics, management and business operations support (ALMBOS), and global battlestaff and program support (GBPS) contracts--as well as the previously mentioned EITC contract, under which Jacobs is a subcontractor performing service desk operations for the agency.

With respect to the ALMBOS and GBPS contracts, IBM notes that Jacobs' personnel had routine access to the agency's facilities where the agency conducts its acquisitions, and performed a wide array of acquisition support activities, such as training agency acquisition personnel and preparing, reviewing and maintaining documents and databases containing non-public information related to the agency's acquisition activities. According to the protester, the agency never adequately considered Jacobs' activities under these other contracts in connection with potential unfair access to information type or biased ground rules type OCIs.

IBM specifically points out that Jacobs, as a result of its performance as a subcontractor under the EITC contract, had access to accurate historical information relating to service desk usage that was not available to the other offerors. IBM also asserts that Jacobs had improper access to information relating to the number of silver and gold users that the agency intended to use for evaluation purposes. IBM maintains that this shows that Jacobs had unequal access to non-public information.

Contracting officials must avoid, neutralize or mitigate potential significant OCIs so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. Federal Acquisition Regulation (FAR) §§ 9.504(a), 9.505. The situations in which OCIs arise, as addressed in FAR subpart 9.5 and the decisions of our Office, fall under three broad categories: unequal access to information, biased ground rules, and impaired objectivity. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 11-12.

Insofar as IBM alleges that Jacobs had access to non-public information relating to either the historical number of silver and gold users, or to the number of users that the agency intended to use for purposes of evaluating proposals, we consider this aspect of its protest resolved by our recommendation in this matter. As noted, we conclude that the agency erred in not providing this information to all offerors for use in preparing their proposals. As discussed below, we recommend that the number of silver and gold users that the agency intends to use to evaluate proposals be provided to all offerors so that they can compete on a relatively equal basis. In light of our recommendation, there is no basis to find that any reopening of the acquisition will be based on Jacobs having unequal access to this information; in effect, any alleged unequal access to this information will be neutralized by implementation of our recommendation.

IBM also asserts that Jacobs' employees had extensive access to the agency's facilities and information relating to its acquisitions, and that the agency neither adequately firewalled Jacobs from these facilities and information, nor even adequately considered the potential that Jacobs might have unequal access and biased ground rules type OCIs.

On the record before us, we have no basis to find that Jacobs has an improper OCI because of its performance of the ALMBOS, GBPS or EITC contracts. The record shows that the cognizant agency personnel extensively considered the question of whether Jacobs, or any other contractor performing under one of these other contracts, could have an OCI by virtue of their activities. In this regard, the agency's contracting officer represents that he gave careful consideration to whether Jacobs (or any other contractors) had an OCI by virtue of a preexisting contractual relationship, and that he gave consideration to whether Jacobs participated in the development of the SITEC requirements. The contracting officer concluded that, because the SITEC requirements were new for the agency, and because only one other contractor, Gartner, Inc., had assisted the agency in developing the SITEC requirements, this did not create an OCI for Jacobs or any other contractor besides Gartner. The contracting officer further advises that:

> Access to all SITEC planning information has been limited to Government employees and Gartner Employees. The data for SITEC collaboration is stored on a separate network managed by Government personnel. All personnel are required to sign a Non Disclosure Agreement prior to obtaining access to SITEC Data.
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> * * * * *
>
> The Government took steps to ensure that incumbent contractors and other contractors having access to the SIE did not have access to the SITEC planning documents or requirements documents prior to their public release. To prevent unauthorized access to these documents all collaboration was accomplished through the use of a password protected portal site that was maintained only by Government personnel. Only select Government and Gartner, Inc. personnel with a specific 'need to know' were granted access to the portal site.

AR, exh. 2, at 17.

Notwithstanding the contracting officer's explanation of the measures taken by the agency to preclude an OCI, IBM speculates that Jacobs nonetheless could have influenced the agency's requirements (thereby creating a biased ground rules type OCI), or could have had access to non-public, competitively useful information (thereby creating a unequal access type of OCI). However, as discussed above, the record shows that the contracting officer, in conjunction with other cognizant agency personnel, including legal counsel, conducted an extensive investigation into any potential OCI. IBM has not shown how this effort was not sufficient to provide the agency with the information necessary to reach a reasonable judgment as to any potential OCI. [8] IBM's speculation that these measures were inadequate furnishes no basis for us to question the contracting officer's determination that there was no need to exclude Jacobs from competing for the requirement on OCI grounds. CIGNA Gov't. Servs., LLC, B-401068.4, B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 12-13 (where record shows that contracting officer thoroughly considered all facts and circumstances surrounding alleged OCI and sought the advice of counsel and technical experts, we will not substitute our judgment for that of the contracting officer absent clear evidence that the agency's determination was unreasonable).

RECOMMENDATION

In sum, we sustain IBM's protest on the basis that the agency evaluated proposals using an unstated evaluation factor, and because the offerors did not have adequate information to compete on a relatively equal basis. We recommend that the agency amend the RFP to provide all offerors the same information relating to the agency's requirement for FOC and the schedule therefor, as well as all information relating to the agency's intended evaluation approach with respect to the service desk requirements, consistent with the discussion above. We further recommend that the agency provide all offerors an opportunity to submit revised proposals based on the amended solicitation, perform a reevaluation of proposals, and make a new source selection decision based on that reevaluation. Should the agency determine that an offeror other than Jacobs is the successful offeror, we recommend that the contract awarded to Jacobs be terminated for the convenience of the government, and that award be made to the successful offeror, if otherwise proper. Finally, we recommend that the agency reimburse IBM the costs associated with filing and

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[8] The record does show that a single e-mail containing the agency's source selection plan was inadvertently sent to a Jacobs employee early on in the acquisition. AR, exh. 39. The Jacobs employee deleted the e-mail and executed a non-disclosure agreement. Id., AR, exh. 40. IBM has not alleged that this e-mail included competitively useful information that was shared among Jacobs employees generally, or more specifically, with the Jacobs employees preparing the firm's proposal.

pursuing its protest, including reasonable attorneys fees. Bid Protest Regulations 4 C.F.R. § 21.8(d)(1) (2010). The protester should submit its certified claim for these costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving our decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Lynn H. Gibson
General Counsel