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## Decision

**Matter of:** Organizational Strategies, Inc.

**File:** B-406155

**Date:** February 17, 2012

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David S. Cohen, Esq., and John J. O'Brien, Esq., Cohen Mohr LLP, for the protester.

John R. Tolle, Esq., and Bryan T. King, Esq., Barton, Baker, Thomas & Tolle, LLP, for Imagine One Technology & Management, Ltd, an intervenor.

Theresa M. Francis, Esq., Department of the Navy, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that awardee's subcontractor had an unmitigated unequal access to information organizational conflict of interest is denied where (1) protester fails to furnish evidence supporting its allegation that awardee's subcontractor had access to protester's sensitive company information via a sharepoint site, and record otherwise fails to support the allegation, and (2) protester's complaints that awardee's subcontractor had access to other competitively useful sensitive information were not raised in a timely manner, and are not supported by the record.

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### DECISION

Organizational Strategies, Inc. (OSI), of Arlington, Virginia, protests the issuance of a task order to Imagine One Technology & Management, Ltd., of Colonial Beach, Virginia, under task order request for proposals (TORP) No. N00024-11-R-3289, issued by the Naval Air Warfare Center, Aircraft Division for training support services for the Program Manager Aviation (PMA)--275 Joint Program Office's Training Integrated Product Team (IPT).<sup>1</sup> The protester challenges the agency's evaluation of Imagine One's proposal and argues that the awardee has an impermissible conflict of interest.

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<sup>1</sup> The agency explains that the PMA--275 Joint Program Office is responsible for management of the V-22 Osprey tiltrotor aircraft program.

We deny the protest.

The TOPR, which was issued on May 24, 2011, sought proposals from firms holding Seaport-E contracts for Zone 2 (National Capital Zone). The solicitation contemplated the issuance of a cost-plus-fixed-fee order for a base period of one year and four 1-year options. The order was to be issued to the contractor whose proposal represented the best value to the government considering three technical factors (workforce, understanding of the work, and management plan), past performance, and cost/price.

OSI and Imagine One submitted timely proposals. The agency evaluated the proposals and assigned the followings ratings:

	<b>Imagine One</b>	<b>OSI</b>
Workforce	Outstanding	Outstanding
Understanding of work	Outstanding	Outstanding
Management Plan	Outstanding	Outstanding
<b>Overall Technical</b>	<b>Outstanding</b>	<b>Outstanding</b>
<b>Past Performance</b>	<b>Substantial Confidence</b>	<b>Substantial Confidence</b>
<b>Proposed Price/Cost</b>	<b>\$39,546,284</b>	<b>\$41,533,296</b>

Protest at 15. The source selection authority concluded that since the two proposals had received equivalent ratings under the technical and past performance factors and Imagine One's price was lower, Imagine One's proposal represented the best value to the government. The agency issued a task order to Imagine One on November 8. OSI protested to our Office on November 17.

#### Technical Evaluation

In its initial protest, OSI, which is the incumbent provider of Training Continuum Integration (TCI) product development services in support of the V-22 IPT, alleged that subsequent to issuance of the order, Imagine One had contacted many of its employees. According to the protester, this indicated that the "vast majority" of the personnel proposed by Imagine One must be "prospective hires." Protest at 22. OSI maintained that the agency should have assigned Imagine One's proposal a significant weakness under the workforce technical evaluation factor for the prospective hires given that the solicitation included the following admonition:

The offeror is forewarned that it may receive a weakness if it proposes the predominance of a labor category or Statement of Work (SOW) section tasking using prospective or contingent hire employees and the evaluation team deems this a risk to successful performance.

TORP at 42. OSI also argued that the evaluators should have assigned Imagine One's proposal a significant weakness under the management plan evaluation factor for proposing a large number of employees not associated with the incumbent contract. The protester noted in this connection that the TORP required offerors to propose a transition plan "that ensure[d] a smooth workplace changeover from an incumbent with no loss of service and minimal loss of corporate knowledge." *Id.* at 45. OSI maintained that a failure to retain the incumbent employees would necessarily result in a more-than-minimal loss of corporate knowledge.

The agency addressed these arguments in its report. The report showed that Imagine One had proposed only two prospective hires and ten contingent hires to fill 49 positions, thus disproving the protester's assertion that the vast majority of Imagine One's personnel were prospective hires. In response to the protester's argument pertaining to a loss of corporate knowledge, the agency argued that incumbent employees were not the only ones with the qualifications and knowledge to perform. In commenting on the agency report, OSI did not take issue with, or otherwise seek to rebut, either of the agency's responses. Accordingly, we consider it to have abandoned these arguments. AH Computer Consulting, Inc., B-401204, June 25, 2009, 2009 CPD ¶ 132 at 4-5.

The protester raised a new argument in its comments on the agency report, however, asserting that the agency should have assigned Imagine One's proposal a weakness under the workforce factor because two of its three proposed personnel for the position of courseware subject matter expert (CV) were either contingent or prospective hires and four of its eight proposed personnel for the task lead position were contingent hires. This allegation is without merit.

The solicitation did not require the evaluators to attribute a weakness to a proposal if a predominance of the personnel proposed for a particular labor category were prospective or contingent hires; it merely provided for that possibility in the event the evaluators considered the percentage of prospective/contingent hires to pose a risk to successful performance. The evaluators did not find that Imagine One's offering of prospective/contingent personnel posed a risk to successful performance; thus, the evaluators were not required to assign a weakness.<sup>2</sup>

#### Organizational Conflict of Interest

Next, OSI alleges that two of Imagine One's proposed subcontractors, Camber Corp. and StraCon Services Group, LLC, have serious organizational conflict of interest (OCI) issues that should have been disclosed to the Navy. In the foregoing

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<sup>2</sup> To the extent that the protester is arguing that the evaluators acted unreasonably in failing to find a risk to successful performance, the record fails to support its position.

connection, the protester explains that Camber is the awardee of a contract pursuant to which it provides services pertaining to the administration of OSI's incumbent contract for TCI product development services, and that Camber has subcontracted this work to StraCon. The protester alleges that in performing this administrative support contract, the president of StraCon and other StraCon employees have had regular access to a "firewalled sharepoint site" on which "extraordinarily sensitive information of OSI" is kept. According to the protester, this information includes OSI's current direct and indirect cost rates, the names and positions of OSI employees, details on OSI's methodologies for performing V-22 IPT support tasks, the firm's project management plan, and OSI proposal material for Navy work. Protest at 27. The protester argues that StraCon's access to this "sensitive information" gives rise to an unfair competitive advantage OCI.<sup>3</sup>

Before addressing OSI's argument, we note that this is not the first OCI allegation raised in connection with this procurement. The Navy originally solicited the services in question pursuant to TORP No. N00024-10-R-3173, and, in November 2010, selected OSI to receive the order. Imagine One protested the award to OSI, alleging that the latter firm had an impaired objectivity OCI in that pursuant to the subject order, OSI would be evaluating TCI products that it had developed under a different government contract. After the agency notified us that it had initiated an investigation of the OCI allegations, we dismissed Imagine One's protest. Imagine One Tech. & Mgmt., Ltd., B-404623, Dec. 21, 2010.

In January 2011, while the agency investigation was underway, OSI wrote to the contracting officer and alleged that Imagine One also had an OCI that should be investigated in that StraCon, a member of Imagine One's team, had access to OSI proprietary information in performing its administrative support contract. The Navy concluded its investigation in March of 2011 and recommended that to neutralize the OCIs pertaining to OSI's performance of conflicting roles under the TCI product development contract and the order here, as well as any unfair competitive advantage that StraCon might have gained as a result of its performance of administrative support of OSI's TCI contract, it would remove TCI support services from the solicitation here. To accomplish this, the agency decided to cancel the existing solicitation and issue a new amended solicitation. The Navy issued TORP No. N00024-11-R-3289, which is the subject of the instant protest, on May 24,

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<sup>3</sup> In its initial protest, OSI also argued that Imagine One had an unmitigated OCI in that a key Navy program official is married to Imagine One's director of proposals. The agency responded to this allegation in its report, explaining that the official in question had no involvement in the solicitation and award process here and that steps had been taken to ensure that he did not overhear conversations pertaining to the evaluation and award. In response to the agency report, OSI did not take issue with or seek to rebut the agency explanation; accordingly, we also consider it to have abandoned this argument.

2011, and, as explained above, received and evaluated proposals and selected Imagine One for award.

With regard to OSI's current allegation, the Federal Acquisition Regulation (FAR) requires that contracting officials avoid, neutralize or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be broadly categorized into three groups: biased ground rules, unequal access to information, and impaired objectivity. As noted above, OSI's argument concerns the second type of OCI.<sup>4</sup>

An unequal access to information OCI arises where a firm has access to nonpublic information as part of its performance of a government contract and where that information may provide the firm a competitive advantage in a later competition. FAR §§ 9.505(b), 9.505-4; Maden Techs., B-298543.2, Oct. 30, 2006, 2006 CPD ¶ 167 at 8. To protect against this sort of an OCI, the FAR provides as follows:

A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

FAR § 9.505-4(b). The FAR exempts information that was "furnished voluntarily without limitations on its use" from the foregoing restriction. FAR § 9.505-4(a).

As noted previously, the argument now raised by OSI is that employees of a proposed Imagine One subcontractor, StraCon, had access to sensitive OSI

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<sup>4</sup> In its initial protest, OSI also alleged that StraCon had an impaired objectivity OCI in that pursuant to its administrative support contract, it would be providing oversight of the contract to be awarded here. In its report, the agency explained that it had addressed the potential for a situation in which StraCon would be performing conflicting roles by removing the TCI work (which is the work with regard to which StraCon is providing administrative support services) from the solicitation here. The protester, again, did not address this argument.

company information, such as the protester's direct and indirect cost rates, via a sharepoint site. The protester has furnished no evidence in support of its assertion that its sensitive company information is available on the sharepoint site, however.

Moreover, the agency has furnished evidence refuting the allegation that sensitive OSI company information is available on a sharepoint site. In this connection, the agency furnished the declaration of the H-53 Training Systems IPT Lead, who stated that she had searched the TCI Virtual Work Environment (VWE) sharepoint site and did not find any information regarding OSI's current direct or indirect cost rates or proposal material for Navy work. Agency Report (AR), Tab 40C. In addition, the agency furnished the declaration of the V-22 Training Deputy Program Manager, who stated that OSI provides its monthly reports directly to him via email and that this information is not loaded or stored on the sharepoint program. AR, Tab 40G. According to the agency, the information that is available on the sharepoint site at issue consists of organizational charts that do not contain restrictive markings. The agency also points out that the protester is the administrator for the TCI VWE sharepoint site and sets the permissions for every user on the system, so was in a position to protect its own information from disclosure. In sum, the record here fails to support the protester's allegation that StraCon employees had access to sensitive OSI company information via a sharepoint site.

In commenting on the agency report, the protester raised a new argument. Specifically, OSI asserted that, aside from the information allegedly obtained through sharepoint access, StraCon employees had access to OSI's intellectual property, including presentations that it had made pertaining to risk and resource management, through their work on the above-mentioned administrative support contract, and that the relevant StraCon employees had failed to sign non-disclosure agreements.<sup>5</sup> This argument is untimely because it is based on information that was available to the protester at the time it filed its initial protest on November 17, 2011, but was not raised until the protester filed comments on the agency report on December 29. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2011).<sup>6</sup> In any

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<sup>5</sup> Regarding the non-disclosure agreements, the record reflects that the StraCon employees in question have been willing to sign standard non-disclosure agreements that would prohibit them from using OSI proprietary information for any purpose other than for which it was furnished, but that the agreements have not been signed because OSI is insisting upon the insertion of a non-standard provision, prohibiting StraCon from competing against OSI for related work, in the agreements. Since OSI is responsible for the non-disclosure agreements not having been executed, it has no basis to object to them not being in place.

<sup>6</sup> In its comments on the agency report, OSI also raised the argument that a copy of the cost proposal that it had submitted in connection with another procurement,  
(continued...)

event, based on our review of the parties' submissions pertaining to the merits of this argument, we are not persuaded that any of the OSI intellectual property to which StraCon employees allegedly had access could have been used by Imagine One to its competitive advantage in responding to the solicitation here.

The protest is denied.

Lynn H. Gibson  
General Counsel

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General Counsel

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which provided detailed information on OSI's rates, had been furnished to an employee of StraCon so that she could assist the agency in its negotiations with the protester. This allegation is untimely as well since the protester learned the basis of the allegation as a consequence of a conversation that took place in February 2011, yet the protester did not raise the argument until it filed its comments on the agency report on December 29, 2011. In addition, we note that the agency point of contact for the contract in question denies that the StraCon employee was furnished with any proprietary financial information pertaining to OSI. He also maintains that the StraCon employee was not involved in any way in the technical review of OSI's proposal for the work in question. Supplemental Agency Report, Att. 1.