



## Decision

**Matter of:** Department of Justice--Reconsideration and Request for Modification of Recommendation

**File:** B-406179.3

**Date:** February 26, 2013

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Rafael A. Madan, Esq., John L. Pensinger, Esq., and Rhonda M. Craig, Esq., Department of Justice, for the agency.  
Ron R. Hutchinson, Esq., Doyle & Bachman LLP, for NikSoft Systems Corporation, an intervenor.  
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

An agency's request that our Office reconsider two decisions and modify our recommendation that the protester be reimbursed its protest costs is denied, where the agency does not identify any errors warranting reversal or modification of our decisions but bases its request upon new evidence it obtained as a result of our protest recommendation.

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### DECISION

The Department of Justice (DOJ) requests that our Office reconsider our decisions in NikSoft Sys. Corp., B-406179, Feb. 29, 2012, 2012 CPD ¶ 104, and NikSoft Sys. Corp., B-406179.2, Aug. 14, 2012, 2012 CPD ¶ 233, in which we sustained NikSoft's protests of the establishment of a blanket purchase agreement and placement of an initial "call" (or task order) to LS3 Incorporated under request for quotations (RFQ) No. 2011Q\_49 for federal identity, credential and access management (FICAM) services. DOJ contends that NikSoft was not an interested party to maintain these protests because it had an organizational conflict of interest (OCI). DOJ also requests that we modify our recommendations that NikSoft should be reimbursed its costs of filing and pursuing the protests.

We deny the request.

## BACKGROUND

NikSoft filed its initial protest of the agency's evaluation and selection decision with GAO on November 23, 2011. DOJ requested that we dismiss the protest, stating that NikSoft had an OCI arising from its access to FICAM information through its work on the FICAM implementation plan. We did not agree that NikSoft's protest should be summarily dismissed, but informed the agency that it "may continue to develop its argument in its agency report that the protester has an impermissible OCI as a result of [their] prior work." Email from GAO Attorney to Agency, Dec. 13, 2011. In its agency report, DOJ subsequently renewed its request that we dismiss the protest.

In our decision sustaining NikSoft's protest, we found that the agency had failed to properly consider NikSoft's price and past performance in making its source selection decision. With respect to the agency's contention that NikSoft had an unequal access to information OCI that would prevent it from receiving award, we found that record did not show that the agency's OCI determination was based on the "hard facts" necessary to find that NikSoft had unequal access to non-public information that gave the firm an unfair competitive advantage. NikSoft Sys. Corp., B-406179, Feb. 29, 2012, supra, at 6-7. We recommended that DOJ make a new selection decision, investigate whether NikSoft had a significant OCI, and reimburse the protester its reasonable costs of filing and pursuing its protest, including attorney's fees.

In response to our recommendation, DOJ reevaluated vendors' quotations and made a new selection decision. The agency reaffirmed the establishment of the blanket purchase agreement and placement of the initial call to LS3. On May 7, 2012, NikSoft again protested the agency's evaluation and selection decision. In its agency report responding to NikSoft's protest, the agency informed our Office that it continued to believe that NikSoft had an OCI. Specifically, the agency stated that

[a]t the present time, the investigation is ongoing and for that reason the agency is unable to disclose any further information about this investigation. In addition, because of the status of the investigation, the agency has concerns about making an award to the protester. In light of the determination by the Source Evaluation Board (SEB) after reviewing the proposals following the GAO's recommendations, the agency did not need to confront this issue when it completed the evaluation.

Legal Memorandum, B 406179.2, June 6, 2012, at 2.

We again sustained NikSoft's protest, finding the evaluation of NikSoft's quotation to be unreasonable. We recommended that DOJ reevaluate the vendors' level of effort and labor mix and make a new selection decision, and that the protester be

reimbursed its reasonable costs of filing and pursuing its protest, including attorney's fees. NikSoft Sys. Corp., B-406179.2, Aug. 14, 2012, supra, at 8.

## DISCUSSION

On October 16, 2012, DOJ requested that we reconsider our decisions and modify our recommendations. Specifically, DOJ contends that from its own "limited inquiry" into the OCI, the agency has obtained new evidence supporting the agency's earlier view that NikSoft has an OCI. Agency Request, Oct. 16, 2012, at 1. DOJ argues that this supports its earlier argument that NikSoft was not an interested party to pursue its earlier protests and that the firm "should be disqualified from this competition." Id. at 5.

To prevail on a request for reconsideration, the requesting party must either show that our decision contains errors of fact or law, or present information not previously considered that warrants the decision's reversal or modification. 4 C.F.R. § 21.14(a) (2012); Department of Housing and Urban Dev.--Recon., B-279575.2, Nov. 4, 1998, 98-2 CPD ¶ 105 at 2; Department of the Army--Recon., B-271492.2, Nov. 27, 1996, 96-2 CPD ¶ 203 at 5.

DOJ does not identify an error of fact or law that warrants reversal or modification of our prior decisions. That is, DOJ does not contend that we erred in our decision in NikSoft's first protest, where we found that DOJ's determination that NikSoft had an OCI was not based on the "hard facts" showing that NikSoft had unequal access to non-public information that gave the firm an unfair competitive advantage.<sup>1</sup> See NikSoft Sys. Corp., B-406179, Feb. 29, 2012, supra, at 6-7. Nor does DOJ identify any error warranting reversal or modification of our decision in NikSoft's second protest.<sup>2</sup> Rather, DOJ's reconsideration arguments are all based upon new evidence that the agency obtained from the further investigation that we recommended in our decision that the agency undertake. This does not demonstrate that we erred in our earlier decision, which was premised upon DOJ's inadequate investigation of whether NikSoft had a serious OCI.

The request is denied.

Susan A. Poling  
General Counsel

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<sup>1</sup> To the extent DOJ is arguing that our initial decision erred by finding that the agency had not adequately supported its OCI determination, this request for reconsideration is untimely.

<sup>2</sup> DOJ did not contend in the second protest that NikSoft had an OCI, but stated that it was continuing to investigate the matter.