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# Decision

**Matter of:** Accenture Federal Services, LLC

**File:** B-414268.3; B-414268.4; B-414268.5

**Date:** May 30, 2017

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Amy Laderberg O’Sullivan, Esq., Peter Eyre, Esq., Olivia L. Lynch, Esq., Elizabeth Buehler, Esq., and Stephanie L. Crawford, Esq., Crowell & Moring LLP, and Nicole O. Saunders, Esq., Accenture Federal Services, LLC, for the protester.  
Michael D. McGill, Esq., David W. Burgett, Esq., Nicole D. Picard, Esq., and Thomas A. Pettit, Esq., Hogan Lovells US LLP, for IBM Corporation, the intervenor.  
Wade L. Brown, Esq., Pamela J. Kennerly-Ignatius, Esq., and Brian A. Tuftee, Esq., Department of the Army, for the agency.  
K. Nicole Willems, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that agency failed to give adequate consideration to awardee’s alleged organizational conflict of interest is denied where record shows the agency investigated whether the awardee had an organizational conflict of interest and reasonably concluded that none existed.

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## DECISION

Accenture Federal Services, LLC (AFS), of Arlington, Virginia, protests the issuance of a task order to IBM Corporation, of Bethesda, Maryland, under request for task order proposals (RFTOP) No. W52P1J-15-R-0003, issued by the Department of the Army, U.S. Army Contracting Command, Rock Island, for a full range of services and solutions necessary to support, sustain, and maintain the Army’s General Fund Enterprise Business System. AFS challenges the scope of corrective action undertaken by the agency in response to an earlier protest of the order. The protester also argues that IBM has an impermissible organizational conflict of interest that should render it ineligible for award.

We dismiss in part and deny in part the protests.

## BACKGROUND

The Army's General Fund Enterprise Business System (GFEBS) is "an integrated Army-wide business management system that enables General Fund financial and real property management capabilities, including funds distribution, execution, reporting, and accounting, as well as, real property accountability, maintenance, and asset accounting." RFTOP, Amendment 12, Attachment 1, Performance Work Statement (PWS) at §1.1. The agency issued the RFTOP on March 27, 2015, to National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC) Chief Information Officer-Solutions and Partners 3 (CIO-SP3) unrestricted government-wide acquisition contract (GWAC) holders, seeking proposals for services and solutions necessary to support, sustain, and maintain GFEBS.<sup>1</sup> Agency Report (AR) at 1. The RFTOP contemplated the issuance of a task order for a 1-year base period and four 12-month option periods, and included both fixed-price and cost-plus-fixed-fee line items. RFTOP at A.2 and B.

The RFTOP established that award would be made on a best-value basis, considering technical, price, and past performance factors. Id. at § M.1. The technical factor had two technical subfactors: (1) technical approach; and (2) management approach. Id. at § M.3.1. The RFTOP established that technical was more important than price, and that price was more important than past performance, but that, collectively, technical and past performance were more important than price. Id. at § M.3.2.

The agency received five proposals in response to the solicitation. AR at 2. The technical evaluation team (TET) evaluated proposals and identified problems, which were addressed in amendment No. 0007, issued on September 29, 2015. Amendment 0007 refined and better described the evaluation factors.<sup>2</sup> Id. Offerors submitted new proposals in response to the amendment, and the agency engaged in discussions with the offerors. Id. Discussions concluded on October 7, 2016, and offerors subsequently submitted final proposal revisions. The agency made award to IBM on December 22, 2016, and provided a debriefing to AFS on January 4, 2017. AFS protested the award with our Office on January 9, 2017, and filed supplemental arguments on February 6.<sup>3</sup>

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<sup>1</sup> CIO-SP3 is an indefinite-delivery, indefinite-quantity contract that authorizes federal agencies to award task orders to acquire information technology services. See CIO-SP3 GWAC Contract (Conformed) (March 2016), Articles B.1, B.2, B.3, available at <http://nitaac.nih.gov/services/cio-sp3> (last visited May 30, 2017).

<sup>2</sup> The RFTOP was amended twelve times. AR at 1.

<sup>3</sup> The supplemental arguments were based on information provided in a joint request for summary dismissal, which was submitted by the agency and the intervenor on January 27.

On February 10, the agency advised that it intended to take corrective action. On February 17, notwithstanding objections raised by the protester, we dismissed the protest as academic. Accenture Federal Services LLC, B-414268.1, B-414268.2, February 17, 2017 (unpublished decision). On February 21, the protester filed a new protest challenging the scope of the agency's corrective action, which we docketed as B-414268.3. Subsequently, the agency informed the protester of the results of an investigation into an organizational conflict of interest (OCI), and AFS filed supplemental protests challenging the agency's OCI determination on March 3 and April 17, which we docketed as B-414268.4 and B-414268.5.<sup>4</sup>

## PRELIMINARY ISSUES

Before addressing the protester's allegations of an improper OCI on the part of IBM, we address AFS's objection to the scope of the agency's proposed corrective action and its allegation of an improper OCI on the part of an IBM subcontractor.

### Challenge to Corrective Action

In its initial protest, AFS challenged the evaluation of its proposal and IBM's proposal. Specifically, AFS argued that IBM had an impaired objectivity OCI, and that IBM should have received a lower rating for its past performance. Protest, Jan. 9, 2017, at 2. AFS also argued that the agency gave AFS, the incumbent, a lower rating than was warranted under the technical factor based on issues related to AFS's plan to transition "to itself from its own incumbent contract." Id. AFS argued that the issues the agency relied upon in assigning AFS's lower rating were the product of misleading discussions and/or a lack of meaningful discussions. Id.

As previously noted, we dismissed the protester's arguments as academic following notification by the agency that it intended to take corrective action. In the notice of corrective action, the Army indicated that it would seek clarification from AFS "regarding its intent with regard to the 4-month transition period and reassess the award decision in light of the clarification received, if any." Notice of Corrective Action, February 10, 2017. Additionally, the agency advised that it would make a new trade-off decision based upon the new evaluation. Id.

While the agency's Notice of Corrective Action did not contain an explanation of the issues that led the agency to take corrective action, the agency provided its rationale in the agency report responding to the protester's challenge to the corrective action. In this regard, the agency contended that a review of AFS's protest arguments indicated that the agency had not adequately conveyed the nature of its concerns during

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<sup>4</sup> The awarded value of the task order at issue is approximately \$142,045,784. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts. 41 U.S.C. § 4106(f).

discussions. AR at 5. The agency further explained that the evaluation notices (ENs) provided to AFS were intended to direct AFS to inconsistencies regarding the [DELETED] of AFS's proposed [DELETED], but instead appear to have led AFS to believe that there were issues with the [DELETED] proposed by AFS during the transition. Id. Accordingly, the agency explained, all that the agency needed to correct the problem was a clarification from AFS as to whether it intended to propose a [DELETED]. Id. at 6. Importantly, the agency noted that if the clarification failed to remedy the problem it had identified, the agency could still open discussions. Id.

AFS disagreed with the agency's approach, and argued that the issues identified by the agency will only be resolved by re-opening discussions, allowing offerors to submit revised proposals, evaluating the revised proposals, and making a new award decision. Comments at 23. According to AFS, it altered its proposal based on the misleading discussions conducted by the agency, and it should thus have an opportunity to submit a new proposal. Id. at 14-15.

Where an agency's proposed corrective action does not alter the ground rules for the competition, we will generally consider a protester's pre-award challenges to the corrective action to be premature. Nuclear Prod. Partners, LLC, B-407948.9, September 24, 2013, 2013 CPD ¶ 228 at 7. Here, because the agency has not yet made a new source selection decision, and has indicated that it has not ruled out the possibility that it might need to open discussions, we find the protester's challenge to the agency's proposed corrective action to be premature.<sup>5</sup> See Nuclear Prod. Partners, supra.

Consequently, we will not consider the protester's challenge at this time. If, in the future, the agency takes action that forms the basis for a valid bid protest, the protester may file with our Office at that time, consistent with our Bid Protest Regulations. Additionally, to the extent the corrective action does not resolve all of the issues identified by the protester in its initial protest, the protester may raise those issues again in the context of a new protest challenging the agency's new award determination.

#### Subcontractor OCI

In its April 17 supplemental protest, AFS argued that the agency's analysis of IBM's proposal was unreasonable and inadequate because it failed to acknowledge the potential unequal access and impaired objectivity conflicts of interest of one of IBM's

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<sup>5</sup> Because the agency has represented that it may conduct discussions, the present case is distinguishable from Domain Name Alliance Registry, B-310803.2, August 18, 2008, 2008 CPD ¶ 168 at 7, in which we dismissed as untimely a post-award protest challenging an agency's decision not to conduct discussions as part of corrective action where the protester waited until the second award decision to challenge the lack of opportunity for discussions, despite the fact that the agency's actions--from the time it initiated the corrective action until the second award decision--clearly indicated that the agency did not contemplate holding discussions.

subcontractors. Comments at 3. Thus, according to AFS, the agency failed to determine whether the proposed mitigation plan was sufficient. Id.

Subsequently, the agency indicated that it intended to take corrective action with regard to those allegations. Specifically, the agency indicated that it would analyze the OCI issue and mitigation plan identified in IBM's proposal, and that the contracting officer would fully document his judgment in writing. Notice of Corrective Action, April 25, 2017. The corrective action renders the protester's supplemental arguments regarding IBM's subcontractor academic, and they are dismissed. We do not consider academic protests. Ferris Optical, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 1-2.

## DISCUSSION

AFS argues that the agency erred in concluding that IBM does not have OCIs that render it ineligible for award, and contends that the agency's investigation into AFS's OCI allegations was insufficient.<sup>6</sup> In this regard, AFS argues that IBM has OCIs with respect to the GFEBs sustainment contract because IBM is also under contract to provide financial statement publication services (FSPS) for the Army General Fund, Working Capital Fund, and Civil Works Fund. March 3 Protest at 8-9.

As previously noted, GFEBs is "an integrated Army-wide business management system that enables General Fund financial and real property management capabilities, including funds distribution, execution, reporting, and accounting, as well as, real property accountability, maintenance, and asset accounting." RFTOP, Amendment 12, Attachment 1, Performance Work Statement. In its role under the FSPS contract, IBM is required to collect and process routine financial data, including raw financial data pulled from GFEBs and other sources. AR at 9. It is the interplay between the FSPS contract and the GFEBs task order that form the basis for AFS's allegations.

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<sup>6</sup> These arguments, which were raised in AFS's March 3 protest, are based on the report provided by the agency to AFS on February 23, informing AFS that the agency had investigated IBM's alleged OCIs and concluded that IBM did not have OCIs that rendered it ineligible for award. We note that, although filed while corrective action is pending, these arguments are timely. In this regard, the fact that corrective action is pending does not excuse the protester from filing its protest within 10 days after the date on which it learned the basis for protest, i.e., that the agency determined that IBM does not suffer from an OCI and remains eligible for award. Additionally, the protester's decision to protest the OCI before the agency makes a new award decision as part of its corrective action is consistent with Honeywell Tech. Solutions, Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 5-6 (post-award protest that awardee has an impermissible OCI was untimely, where the protester was aware of the facts giving rise to the potential OCI, and had been advised by the agency that it considered the potential offeror eligible for award, prior to the closing time for receipt of proposals).

The Federal Acquisition Regulation (FAR) provides that an OCI exists when, because of other activities or relationships with other persons or organizations, a person or organization is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or the person has an unfair competitive advantage. See FAR § 2.101. FAR subpart 9.5, and decisions of our Office, broadly identify three categories of OCIs: biased ground rules, unequal access to information, and impaired objectivity. McConnell Jones Lanier & Murphy, LLP, B-409681.3, B-409681.4, October 21, 2015, 2015 CPD ¶ 341 at 13. The protester alleges OCIs falling into each of the three categories.

Contracting officers are required to identify and evaluate potential OCIs as early in the acquisition process as possible, and avoid, neutralize, or mitigate significant potential conflicts of interest before contract award. 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 officer. Innovative Test Asset Solutions, LLC, B-411687, B-411687.2, October 2, 2015, 2016 CPD ¶ 68 at 17. We review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Id. at 18. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. Id. A protester must identify "hard facts" that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Id. Here, the agency reasonably assessed the potential for OCI's, and the protester's arguments largely fail due to a lack of hard facts.

### Biased Ground Rules

A biased ground rules OCI exists where a firm, as part of its performance of a government contract, has in some sense set the ground rules for another government contract by, for example, writing the statement of work or the specifications: the primary concern is that the firm could skew the competition, whether intentionally or not, in favor of itself. Systems Made Simple, Inc., B-412948.2, July 20, 2016, 2016 CPD ¶ 207 at 6. The protester's allegations pertaining to a biased ground rules OCI focus on a requirement in IBM's FSPS contract for the contractor to identify changes that may be needed to bring source systems, including GFEBs, into compliance with guidance provided by the Treasury and Office of the Secretary of Defense.

Specifically, the FSPS contractor is required to review, at least annually, the most current guidance from Treasury and the Office of the Secretary of Defense (Comptroller) regarding the United States Standard General Ledger and Department of Defense Standard Chart of Accounts (DOD SCOA), respectively. AR, Tab 4, FSPS OCI, at 18. In this connection, the contractor is to compare the DOD SCOA and GFEBs' Reporting Chart of Accounts, and identify additions or removals which should

be made to ensure the source systems' compliance with the DOD SCOA. Id. The FSPS contractor is then required to provide the listing of proposed changes to the Assistant Secretary of the Army (Financial Management and Comptroller) staff. Id.

The protester argues that "IBM has the ability to choose which recommendations to make or not make" and speculates that "such recommendations may have impacted the GFEBs RFTOP/SOW in a manner that favored IBM." March 3 Protest at 9. The protester has not, however, alleged any hard facts regarding recommendations made by IBM that impacted the GFEBs requirements, nor has it even provided a description of the type of recommendation IBM could have made in its FSPS role that would have skewed the competition in its favor.

Nonetheless, the agency considered the protest allegation and found that no OCI existed. In investigating the allegations raised by AFS, the contracting officer (CO) evaluated the scope and tasks of the FSPS contract, and spoke with the current contracting officer for the effort in order to discuss the scope and tasks to be performed under the FSPS contract. AR, Tab 4, OCI Determination at 1-2. With regard to the protester's allegation that IBM may have made recommendations impacting the GFEBs RFTOP/SOW, the agency first explained that the GFEBs task order and the DSPS contract are managed by different contracting offices with different program managers. Id. at 2. More importantly, however, the CO found that while AFS might identify changes to source systems that were necessary for compliance purposes:

in order for IBM or any other contractor to make recommendations for the potential changes to the source systems, the [g]overnment must vet the recommendations to ensure that the guidance is being properly implemented. Any policy change, compliance measure, or updated guidelines that are needed to be implemented in order to be compliant with the Treasury or [Office of the Secretary of Defense (Comptroller)] will be thoroughly vetted by the government to ensure compliance. In the end, the changes made because of compliance issues are a government requirement and a government decision.

Id.

As noted above, we review the reasonableness of a contracting officer's OCI investigation and, where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. Here, the agency considered the protester's vague allegation, and determined that no OCI existed due to a number of factors, including the limitations on the types of changes IBM could identify as part of a compliance review, and the fact that it would ultimately be up to the government to decide what changes should be made to GFEBs such that IBM would not be in a position to determine the GFEBs requirements. In sum, we have no basis to find the agency's conclusion unreasonable.

## Unequal Access to Information

AFS next alleges that IBM has an unequal access to information OCI because “[t]he information to which IBM has access--financial information from all [Enterprise Resource Planning] systems--may provide IBM with a competitive advantage in the GFEBS procurement.” March 3 Protest at 8. An unequal access to information OCI exists 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 for a government contract. Systems Made Simple, Inc., supra, at 6. Here, again, the protester’s allegation is largely speculative and does not allege specific facts regarding how the kind of information available to IBM in the FSPS role could possibly provide it with a competitive advantage with regard to GFEBS.

The protester bases its allegation on the following FSPS PWS requirement:

[The FSPS contractor will] [r]egularly run reports from the source system [Enterprise Resource Planning Systems and Defense Departmental Reporting System] to monitor general ledger account codes (GLACs) which are in an abnormal position. Research any abnormal balances identified to determine the root causes. Make recommendations to [the Assistant Secretary of the Army (Financial Management and Comptroller)] staff on the actions and time necessary to correct the abnormal balances, correcting as many as possible before the next reporting period. Track efforts to identify issues that reoccur, and report trend data.

AR, Tab 70, FSPS PWS at 18.

In considering whether IBM might have an unequal access OCI, the CO’s inquiry focused on the type of information available to IBM in the course of its FSPS performance. In this regard, the CO concluded that “[t]he information that IBM receives is financial information from all [Enterprise Resource Planning] systems, which includes the GFEBS system but does not contain it singularly and would not permit IBM to have unequal access to information.” The CO further noted that “[t]he information received by IBM is raw financial data that IBM must consolidate into general financial ledgers for the Army.” AR, Tab 4, OCI Determination, at 2. Here, based on the CO’s consideration of the allegation, coupled with the protester’s failure to explain how the type of data available to IBM could give it a competitive advantage, we have no basis to conclude that the CO’s conclusion that IBM did not have an unequal access to information OCI was unreasonable.

## Impaired Objectivity

AFS also argues that the PWS requirements described above create impaired objectivity OCIs because IBM would be required to “evaluate its own work.” March 3 Protest at 8-9. An impaired objectivity OCI exists where a firm’s ability to render impartial advice to the government will be undermined by the firm’s competing interests,



such as a relationship to the product or service being evaluated. Innovative Test Asset Solutions, LLC, supra. Regarding the requirement for IBM to conduct an annual compliance review of source systems to determine whether they comply with Treasury and Office of the Secretary of Defense guidance, AFS contends that IBM could tailor its recommendations regarding GFEBs in such a way as to generate more work under the GFEBs task order, or to prevent a reduction of work. Id. at 8.

As discussed above, however, the agency considered this possibility and essentially concluded that IBM would not have the level of discretion implicit in the protester's argument, or the requisite decisionmaking authority to direct that changes be made. In addressing the protester's allegation, the CO considered the nature of the recommendations that could be reasonably made in the course of the compliance review contemplated by the PWS, as well as the process that would be needed for one of IBM's recommendations to become a requirement for a change in GFEBs. AR, Tab 4, OCI Determination, at 2. Ultimately, the CO concluded that this FSPS requirement did not create an OCI because the FSPS contract and the GFEBs task order are managed by different contracting officers and program managers; IBM's recommendations would be vetted by the government to determine whether they would result in proper implementation of guidance developed by Treasury and Office of the Secretary of Defense; and the ultimate decision to require a change to GFEBs in order to ensure compliance would be made by the government. Id. Once again, we find that the CO gave meaningful consideration to the protester's allegation here, and we have no basis to conclude that the CO's determination was unreasonable.

AFS's other impaired objectivity OCI allegation flows from the requirement, set out above, for the FSPS contractor to generate reports from the source system, research abnormal balances found in the reports, perform a root cause determination, and make recommendations regarding the actions and time necessary to correct the abnormal balances. See AR, Tab 70, PWS at 18. According to the protester, this would have the effect of requiring IBM to "evaluate its own work" in GFEBs, and would allow IBM to make recommendations that would "generate more work for itself under the GFEBs [task order]." <sup>7</sup> March 3 Protest at 8.

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<sup>7</sup> AFS also made allegations based on what it described as a requirement for IBM to "review the logic in the source systems, including GFEBs, to ensure compliance with Standard Financial Information Structure [(SFIS)] guidelines," and to make "recommendations to the government on the actions necessary to facilitate compliance." March 3 Protest at 9. In the agency report, however, the agency notes that there is no requirement in the FSPS PWS for the contractor to review the logic in the source systems and make recommendations to the government on appropriate actions. AR at 11. In response, the protester cites to the language in its own protest, quoted above, rather than the FSPS PWS, and then makes a general reference to a section of the PWS that requires a review of Army Trial Balances to ensure compliance with the SFIS guidelines. We agree with the agency and do not find that the protester's allegation is

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Once again, the agency considered the protester's allegation, and found that, as a practical matter, the protester's allegation misses the mark. Based on its investigation into this allegation, the agency considered the nature of the recommendations IBM might make under this FSPS PWS requirement, as well as the information that would form the basis for the recommendations. AR, Tab 4, OCI Determination at 2. In this regard, the CO noted as follows:

[t]he recommendations that IBM would make regarding any abnormal balances found within the financial information are based on high-level data that pertain to multiple interfacing systems. These recommendations are not able to drive work towards the GFEBS contractor, the recommendations are only aimed at improving the services that the Army receives under the [FSPS] contract. IBM could not reasonably expect to use the [FSPS] contract to increase its workload under the GFEBS sustainment contract, as the [FSPS] workload is the maintenance of the established system, and is not a development contract.

Id.

In sum, the agency gave meaningful consideration to AFS's allegations, and we have no basis to conclude that the CO's determination is unreasonable. AR, Tab 4, OCI Determination, at 2.

The protests are dismissed in part and denied in part.

Susan A. Poling  
General Counsel

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based on an actual requirement in the FSPS PWS. As such, the argument lacks a valid legal basis, and we will not give it further consideration.