



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Science Applications International Corporation

File: B-406921; B-406921.2

Date: October 1, 2012

James J. McCullough, Esq., Michael J. Anstett, Esq., and Brian M. Stanford, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
Michael F. Mason, Esq., Michael D. McGill, Esq., C. Peter Dugan, Esq., and Erin L. Alexander, Esq., Hogan Lovells US LLP, for Lockheed Martin Corporation Information Systems & Global Solutions, the intervenor.
JoAnn Melesky, Esq., Department of Defense, Defense Information Systems Agency, for the agency.
Nora K. Adkins, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's evaluation of awardee's technical risk is denied where the record shows that the agency performed a reasonable evaluation of risk in accordance with the solicitation's evaluation criteria.
 2. Protest challenging agency's evaluation of awardee's cost/price is dismissed to the extent that the protester untimely challenged the solicitation's price evaluation scheme after the time for receipt of proposals; the evaluation of price was otherwise reasonable and consistent with the evaluation scheme.
 3. Agency's investigation of the awardee's alleged unequal access to information organizational conflict of interest related to the awardee's hiring of a government employee was reasonable, where the agency determined that the employee did not have access to non-public, source selection information, and where the record shows the employee did not assist the awardee in writing its proposal.
-

DECISION

Science Applications International Corporation (SAIC), of McLean, Virginia, protests the award of a contract to Lockheed Martin Corporation Information Systems & Global Solutions (Lockheed), of Manassas, Virginia, issued by the Department of Defense's Defense Information Systems Agency (DISA) under request for

proposals (RFP) No. HC1028-10-R-2000 for the provision of services in support of the global information grid (GIG) services management-operations (GSM-O) effort. SAIC argues that the agency unreasonably evaluated Lockheed's technical risk and cost/price, and asserts that the agency failed to meaningfully investigate circumstances showing that Lockheed may have an unequal access to information organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

The RFP was issued on January 14, 2011, and sought proposals to provide the GSM-O effort with the support necessary to carry out the day-to-day operations and sustainment of the GIG networks and related services. The RFP anticipated the award of a single indefinite-delivery/indefinite-quantity (ID/IQ) contract with a 3-year base period and two 2-year option periods, under which the agency would issue three separate task orders. RFP at 13. DISA planned to award each task order to address a separate requirement of the GSM-O effort. Task order 01 would include the operation and sustainment of the Defense Information Systems Network (DISN) infrastructure, task order 02 would cover the maintenance and repair of the DISN infrastructure, and task order 03 would include net assurance support. Agency Report (AR) at 15. Task orders 01 and 02 were to be issued on a fixed-price basis, while task order 03 was to be issued on a cost-plus-fixed-fee basis. RFP at 205.

The RFP advised that award would be made to the offeror whose proposal offered the best value based upon the evaluation of three factors: (1) technical/management, (2) past performance, and (3) cost and price. RFP at 212-213. The technical/management factor had four subfactors: (1) technical solution, (2) task orders, (3) management plan, and (4) transition plan. Id. The RFP provided that the evaluation factors and subfactors were listed in descending order of importance. RFP at 212. All evaluation factors other than cost/price, when combined, were significantly more important than cost or price; however, the RFP stated that cost/price would contribute substantially to the selection decision. RFP at 213.

As relevant here, an offeror's technical proposal was to address its proposed technical approach to meeting or exceeding the minimum performance or capability requirements of each subfactor, as well as the risks in its proposed approach in terms of technical performance, costs, and/or schedule. Offerors were also to address technical risk by identifying those aspects of its proposal that had the potential for disruption of schedule, increased cost, poor performance, the need for increased oversight, and/or the likelihood of unsuccessful contract performance; classify each risk; and include quantitative estimates of the impact on cost, schedule, and performance. Offerors were required to propose a realistic work-around or risk mitigation for identified risks that would eliminate or reduce risk to an acceptable level. RFP at 199-200.

The RFP provided for two distinct but related assessments for the evaluation of the technical/management factor: (1) a technical/management approach assessment and (2) a technical risk assessment. The RFP explained that the technical/management approach assessment would evaluate the quality of the offeror's technical solution for meeting the requirements, while the technical risk assessment would focus on the weaknesses associated with an offeror's proposed approach, and include an evaluation of the potential for disruption of schedule, increased cost, or degradation of performance; the need for increased Government oversight; and the likelihood of unsuccessful contract performance. Both evaluations would occur at the subfactor level, with each subfactor receiving one of five possible ratings for technical approach: (1) outstanding, (2) good, (3) acceptable, (4) marginal, or (5) unacceptable, and one of three possible ratings for technical risk: (1) low, (2) moderate, or (3) high. Both the technical approach and the technical risk assessments would have "equal impact" for the rating of each subfactor. RFP at 213-15.

To assess cost/price, the RFP informed offerors that DISA would evaluate proposals for award purposes based on the total price proposed for task orders 01, 02, and 03 to include the base period of 12 months and all option periods for each task order.¹ An offeror's total proposed price would be evaluated for reasonableness, as well as affordability, which the RFP stated would be determined by comparing the total proposed price to the independent government cost estimate. Offerors' total proposed price would also be analyzed to determine if any offer was unrealistically low compared to the anticipated costs of performance. If an offeror failed to explain the underestimated costs, this risk would be considered under the cost/price factor. Finally, the total proposed price would be analyzed to determine whether there was unbalanced pricing with respect to separately priced items. RFP at 220-21.

On March 28, 2011, DISA received proposals from two offerors: SAIC and Lockheed. Based on the agency's initial technical/management, past performance, and cost/price evaluations, both proposals were included in the competitive range. On July 19, the contracting officer opened discussions by providing written evaluation notices to both offerors. The agency conducted multiple rounds of discussions with both offerors, which included evaluation notices regarding the offerors' technical/management and cost/price proposals. On April 6, 2012, both offerors submitted revised proposals in response to the agency's discussions.

¹ The RFP provides different performance periods for the ID/IQ contract and the task orders. The performance period for each task order was a 12-month base period and six 1-year option periods whereas the contract has a 3-year base period and two 2-year options.

After consideration of the offerors' final proposal revisions, as well as SAIC's 80 evaluation notice responses and Lockheed's 96 evaluation notice responses, the source selection evaluation team (SSET)² evaluated the proposals as follows:

	SAIC	Lockheed
Technical		
Technical Solution	Outstanding / Low Risk	Outstanding / Low Risk
Task Orders	Outstanding / Low Risk	Outstanding / Low Risk
Management Plan	Good / Low Risk	Good / Low Risk
Transition Plan	Good / Low Risk	Good / Low Risk
Past Performance	Substantial	Satisfactory
Cost/Price	\$819,875,885	\$699,344,018

AR, Tab 17, Proposal Analysis Report, at 81.

On June 1, the source selection advisory council (SSAC) and the source selection authority (SSA) were provided a briefing on the SSET's results. AR, Tab 18, Pre-Award Review Brief. After reviewing the SSET's proposal analysis report, the SSAC recommended award to Lockheed, with one member of the SSAC dissenting and recommending award to SAIC. AR, Tab 19, SSAC Recommendation, Majority at 1; Dissent at 1-3. The SSA reviewed the SSET's proposal analysis report, and the SSAC's majority and dissenting recommendations, and conducted her own integrated assessment of the strengths, weaknesses, deficiencies, and risks of the proposals. AR, Tab 20, Source Selection Decision (SSD), at 1. The SSA concluded that "notwithstanding similar assigned [] ratings for each of the Technical/Management Subfactors, [Lockheed] has the superior technical proposal with more strengths; and strengths which are of a greater benefit to the government." Id. at 27. The SSA selected Lockheed for award of the contract due to its superior technical/management proposal, satisfactory past performance, and approximately 17% price advantage. Id. at 29.

In accordance with the SSA's decision, award was made to Lockheed on June 15. SAIC filed the current protest with our Office on June 22.

² The SSET's evaluation consolidated the information from the technical evaluation team, the performance confidence assessment group, and the cost/price team into the SSET's proposal analysis report.

DISCUSSION

SAIC challenges the agency's evaluation of Lockheed's proposal and asserts that the agency failed to meaningfully investigate an alleged OCI. For the reasons discussed below, we deny the protest.³

Technical Evaluation

SAIC challenges the agency's analysis of Lockheed's technical risk asserting that the agency's evaluation was cursory in that it did not account for the risk inherent in Lockheed's proposed solution that depends on substantially reduced labor hours and introduces innovative but untried approaches. Specifically, SAIC asserts that Lockheed's proposed use of significantly fewer labor hours and full time equivalents (FTE) for task orders 01 and 02, reduced vendor maintenance agreement (VMA) pricing for task order 02, and reduced levels of spares pricing, created an inherently risky approach, which the agency failed to account for in assigning a low risk rating.

In reviewing an agency's evaluation, we will not reevaluate technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and procurement statutes and regulations. Measurements Int'l Inc., B-404981, July 15, 2011, 2011 CPD ¶ 150 at 3. In this regard, a protester's mere disagreement with the agency's judgments does not render an evaluation unreasonable. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 6. Our review of the record shows that the agency adequately analyzed Lockheed's technical risk and reasonably assessed it a low risk rating.

The agency's initial evaluation concluded that there was technical risk in Lockheed's proposal relating to its reduced labor hours, FTEs, VMA pricing, and spares. DISA issued evaluation notices as a result of these findings during discussions. With regard to Lockheed's reductions in labor hours and FTEs, the agency determined that Lockheed's proposal had a moderate degree of risk in its reduction in staffing. DISA issued an evaluation notice to Lockheed, stating that its "staff reduction looks to be significant across the theaters. This causes uncertainty for how operational consolidation will happen to meet Task Order 1 requirements." AR, Tab 7B, Lockheed Evaluation Notices, at 459. DISA's evaluation notice requested that Lockheed describe the process improvements to be implemented in order to achieve the efficiencies in personnel proposed; explain what functions will be combined, eliminated, transferred, or reduced via efficiencies; and expand on plans with respect to government space constraints versus seats available and hours of

³ Although our decision does not address every argument made by the protester, we have fully considered each of them and find that none of the arguments provide a basis to sustain the protest.

operation required to achieve the FTE staffing levels in Lockheed's proposal. Id. at 460. Lockheed's 20-page response to the agency explained the analytic approach Lockheed used to examine staffing requirements to ensure adequate staffing for all three task orders, and gave details regarding its operational consolidation for task order 01 requirements; its process improvements to achieve efficiencies in proposed personnel; the functions that it will combine, eliminate, transfer or reduce; and its success in achieving personnel efficiencies on past contracts. Id. at 461-480. After a review of Lockheed's response, the agency determined that Lockheed's proposal was low risk and "has little potential to cause disruption of schedule, increased cost or degradation of performance." AR, Tab 17, Proposal Analysis Report, at 37.

With regard to Lockheed's VMA pricing, the agency's evaluation notice requested an explanation of the decreasing VMA costs for certain vendors and confirmation that the VMA cost included software renewal pricing. AR, Tab 7A, Lockheed Evaluation Notices, at 239-262. The agency also questioned the ability of Lockheed to transition from existing VMAs. AR, Tab 7B, Lockheed Evaluation Notices, at 487-491. The agency analyzed Lockheed's responses and again found them to be low risk. AR, Tab 17, Proposal Analysis Report, at 24, 37. With regard to Lockheed's VMA spares approach, the agency's evaluation notice advised, "The total VMA pricing for each year of the contract appears low based on historical information. . . . Please confirm the VMA pricing accurately reflects the proposed methodology to satisfy the requirements of the PWS [performance work statement] and does not jeopardize successful performance." AR, Tab 7A, Lockheed Evaluation Notices, at 263. Here too, the agency reviewed Lockheed's detailed response and found it resolved the agency's concerns.

While these are but examples of the 96 evaluation notices that were sent to Lockheed in the course of the agency's evaluation, our review reveals that the agency fully evaluated Lockheed's technical risk and reasonably assigned a low risk rating.

Moreover, the SSA provided a detailed analysis supporting her findings regarding technical risk in her source selection decision. For example, after reviewing the SSET's and SSAC's analysis and recommendations, the SSA independently assessed Lockheed's proposal under the technical solution subfactor and rated the proposal outstanding/low risk, with "seven strengths, no deficiencies, no uncertainties, and no weaknesses for this subfactor." AR, Tab 20, SSD, at 5. The SSA also independently assessed Lockheed's proposal under the task orders subfactor as outstanding/low risk with "five strengths, no deficiencies, no uncertainties, and no weaknesses." Id. at 13. Specifically, the SSA's decision addressed her concerns regarding technical risk, under the technical solution factor, recognizing the "huge potential" in Lockheed's approach to improving on a PWS requirement through a proposed innovation, which would provide efficiencies in the form of reduced FTEs, while also expressing concern about "how realistic it was to

expect this could be implemented in the government.” Id. at 6. The SSA asked the past performance team to review Lockheed’s information to determine if it presented information showing that it had implemented the innovation in the past. Id. The past performance team reported that Lockheed had provided data showing previous implementation on four efforts, two of which were for government organizations. Id. at 7. This information “satisfied” the SSA that the innovation “was achievable.” Id.

The SSA’s analysis also questioned how “realistic it was to expect [Lockheed] to be able to hire such a large percentage of the incumbent workforce.” Id. at 20. The SSA had the SSET verify that Lockheed had been able to successfully retain large portions of incumbent workforce on similar efforts and given that information, the SSA “assessed this as a substantial strength,” and resolved her concerns regarding the risk of Lockheed’s technical approach. Id. The SSA summarized her assessment of Lockheed’s technical approach and technical risk in her response to the SSAC dissenting opinion as follows:

Like [Lockheed], SAIC is also reducing manpower significantly . . . consolidating RF [request fulfillment] functions. In fact, the [DELETED]% FTE reduction SAIC is taking under TO1 occurs primarily in the first two years of the contract; while [Lockheed’s] [DELETED]% cost reduction spreads FTE reductions over the entire seven-year life of the contract. From that perspective, SAIC’s FTE reduction approach could cause the same level of disruption during transition as [Lockheed’s] approach. . . . I see any risk from FTE reduction to be no more for [Lockheed] than it would be for SAIC.

* * * * *

[T]he T/MET [technical/management evaluation team] team considered the potential risks against [Lockheed’s] experience in implementing several innovations in previous efforts, including efforts supporting government organizations. The T/MET team were satisfied that they did not rise to the level of other than low risk. I agree with that assessment and the probable disruption that will occur with transition is not, in my mind, sufficient reason not to award to [Lockheed].

AR, Tab 20, SSD, at 28-29.

Here, the SSA determined that Lockheed’s proposal presented a low risk approach to meeting and in some cases exceeding the agency’s requirements. Based upon our review of the record, we find that the agency’s evaluation of Lockheed’s technical risk was reasonable. While the offerors used different technical approaches to propose unique innovations for reductions in labor hours, FTEs, VMA

pricing, and spares, we find the agency's analyses of these features was reasonable. Accordingly, we deny this portion of the protest.

Price Evaluation

SAIC also contends that the agency failed to consider that Lockheed's lower price for task orders 01 and 02 was, in SAIC's view, illusory. SAIC asserts that it was improper for the SSA to rely upon the fixed-priced nature of task order 01 and 02 in evaluating Lockheed's total proposed price. Specifically, SAIC contends that the SSA's conclusion that Lockheed's proposal contained a 17% price advantage was unreasonable because it failed to account for the non-binding nature of the option year prices for the two task orders. SAIC claims that this was significant because nearly all of the purported savings of Lockheed's cost/price proposal would be derived in the option years. This argument is based upon the following RFP provision:

It is the Government's intent to issue Task Order [01] in conjunction with award or shortly after contract award. Task Order [02] will be issued some time during year one of the contract . . . Accordingly, the offeror's proposed pricing for Task Order [01 and Task Order 02] shall be incorporated into Section B of the contract and shall be binding for a 12 month period.

RFP at 200. SAIC asserts that the RFP's inclusion of the "binding for a 12 month period" language changed the nature of the fixed-price task orders to non-binding prices for the option years. Id.

The agency contends, however, that this RFP provision did not change the fixed-priced requirement of the task orders. The agency explains that the 12-month period language was to ensure that the offeror's task order pricing, including options, was fixed and binding for the first 12 months of the contract, in which the task orders were to be issued. Supplemental AR at 45. This language also provided price protection to the contractor in the event that the agency issued the task orders after this period expired.⁴ Id.

We find that the agency's interpretation of this provision is reasonable and that both the agency's and protester's interpretations are apparent from the RFP itself. Where a patent ambiguity is not challenged prior to submission of proposals, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations as the only permissible interpretation. Bid Protest

⁴ In fact, the agency incorporated the task order prices, including options, into Lockheed's contract. AR, Tab 27, Contract HC1028-12-D-0021--Modification P00001, at 1-25.

Regulations, 4 C.F.R. § 21.1(a)(1) (2012); Dix Corp., B-293964, July 13, 2004, 2004 CPD ¶ 143 at 3. Thus, SAIC's argument regarding the non-binding nature of the task order option years was required to be filed prior to the deadline for receipt of proposals under the RFP in order to be considered timely by our Office. 4 C.F.R. § 21.1(a)(1). SAIC filed this protest ground on August 6, more than 4 months after the date set for receipt of proposals; accordingly, this protest ground was not timely raised and will not be considered.

Moreover, SAIC's argument--that the agency's simple comparison of the totals of the task order prices did not reasonably consider cost, in that it did not take into account that a majority of Lockheed's price advantage occurs after the first year of the contract--is essentially a challenge to the agency's price evaluation scheme. In this regard, as indicated above, the RFP stated that "offeror's cost/price proposal will be evaluated for award purposes based on the total price proposed for Task Orders GSM-O-01, GSM-O-02, and GSM-O-03 to include the base period of 12 months and all option periods." RFP at 220. However, post-award challenges to an agency's cost or price evaluation scheme are not timely, if the challenged scheme was set forth in the solicitation, because a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposal must be filed before that time. 4 C.F.R. § 21.2(a)(1); NaphCare Inc., B-406695, B-406695.2, Aug 3, 2012, 2012 CPD ¶ ___ at 8-9; General Dynamics--Ordnance & Tactical Sys., B-401658, B-401658.2, Oct. 26, 2009, 2009 CPD ¶ 217 at 6. Here, the plain language of the RFP explained how the agency would conduct its evaluation using the total proposed price for the task orders, including option year prices. Thus, SAIC's challenge to the price evaluation is untimely for this reason as well.⁵

SAIC also alleges that the agency failed to conduct any meaningful analysis of Lockheed's proposed pricing. The nature and extent of an agency's price realism analysis are matters within the agency's discretion. Vizada, Inc., *supra*, at 4. Unless stated otherwise in the RFP, there is no requirement for the agency to conduct a line-by-line analysis to include every aspect of the offerors' proposed pricing. *Id.* at 5.

⁵ We also note that while SAIC alleges that it could not have known that DISA would have evaluated task order 01 and 02 in this manner, information received in its June 15 debriefing put SAIC on notice that DISA evaluated task orders 01 and 02 to include the base year and all option periods as fixed-price, and relied upon this evaluation in reaching its conclusion that Lockheed's proposal contained a 17% price advantage. Protest, attach. B, SAIC Debriefing (June 15, 2012), at 58, 62, 64. Thus, SAIC's challenge to the agency's pricing scheme filed after receipt of the agency report is also untimely since it was filed more than 10 days after its debriefing. 4 C.F.R. § 21.2(a)(2).

Here, the RFP did not require an in-depth analysis, but stated, “[w]hen the Government evaluates an offer as unrealistically low compared to the anticipated costs of performance and [the] offeror fails to explain these underestimated costs, the Government will consider this a risk under the cost/price factor.” RFP at 220. Nevertheless, the record shows that the agency thoroughly analyzed Lockheed’s pricing and requested at least 20 responses to evaluation notices during discussions.

For example, the agency requested that Lockheed provide: an explanation of inconsistencies between labor categories and labor hours in its cost/price proposal (evaluation notice No. LM-IR-COST-0004); an explanation of inconsistencies in total labor hours between cost and technical proposals for task order 01 (evaluation notice No. LM-IR-COST-14); an explanation of Lockheed’s proposed Cyber Kill Chain Technology, including any changes in costs if the proposed solution is not accepted (evaluation notice No. LM-IR-TECH-036); an explanation regarding proposed significant reductions in staffing (evaluation notice No. LM-IR-TECH-067); and an explanation of proposed methodology to address end of life parts with respect to vendor maintenance agreements (evaluation notice No. LM-IR-COSTS-089). AR, Tabs 7A and 7B, Lockheed Evaluation Notices. Based upon Lockheed’s final proposal revisions, as well as its responses to the agency’s evaluation notices, the agency determined that Lockheed had a good understanding of the Government’s requirements and its cost/price proposal “does not contain unrealistically low pricing.” AR, Tab 12A, Cost/Price Consensus Report--Lockheed, at 5. On this record, we conclude that DISA conducted a reasonable evaluation of Lockheed’s cost/price consistent with the RFP criteria. Accordingly, we deny this ground of protest.⁶

Organizational Conflict of Interest

Finally, SAIC asserts that the agency failed to meaningfully investigate an unequal access to information OCI arising out of Lockheed’s employment of a former DISA employee.

The 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

⁶ To the extent SAIC asserts that Lockheed’s pricing was unbalanced, we find reasonable the agency’s determination that Lockheed’s proposal (and its responses to discussions) “did not disclose any unbalanced pricing in the offeror’s proposal.” AR, Tab 12A, Cost/Pricing Consensus Report, at 6, 10.

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.

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. See TeleCommunication Sys. Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4; PCCP Constructors, JV; Bechtel Infrastructure Corp., B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17. 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. TeleCommunication Sys. Inc., supra, at 3; see Turner Constr. Co., Inc. v. United States, 645 F.3d 1377, 1387 (Fed. Cir. 2011); PAI Corp. v. United States, 614 F.3d 1347, 1352 (Fed. Cir. 2010). The identification of conflicts of interest are fact-specific inquiries that require the exercise of considerable discretion. Axiom Res. Mgmt., Inc. v. United States, 564 F.3d 1374, 1382 (Fed. Cir. 2009).

Here, we have no basis to object to the adequacy of the agency's inquiry into whether Lockheed has an OCI or its conclusion that no unequal access to information OCI existed. In reviewing Lockheed's initial proposal, the contracting officer identified that Lockheed had proposed using a former DISA employee--the former chief of the customer support division at DISA CONUS [continental United States]--to fulfill the role of DISA CONUS site manager/coordinator. In order to ensure that the issue did not give rise to even the appearance of an impropriety, the contracting officer conducted an inquiry into the matter. This inquiry began with the contracting officer's review of a post-employment counseling questionnaire completed by the former DISA employee. The questionnaire disclosed that the former employee had "provided information on the Telecommunications Service Request (TSR) and Telecommunications Service Order (TSO) processes and volume of work performed for each type by service to the PM [program manager] and Contracting Officer for the GSM-O contract." AR, Tab 26, OCI Review Documents, at 3. The former employee's questionnaire also provided that he "did not participate in the development of the PWS [performance work statement] or SOW [statement of work]." Id. Prior to leaving DISA, the former DISA employee also signed a non-disclosure agreement and was under an obligation not to disclose any GSM-O information. Id. at 8.

As a result of the initial inquiry, the contracting officer sent a letter to Lockheed requesting a full disclosure of: the former DISA employee's involvement with GSM-O, his access to proprietary information, and his compliance with applicable regulations and statutes. The contracting officer also requested that Lockheed provide an OCI mitigation plan with its response. Id. at 3.

Lockheed responded to the agency's inquiry advising that the former DISA employee, or members of his team, had provided some data to the GSM-O team such as the number of provisioning requests per year and the level of effort on taskings. Id. at 6. Lockheed also stated that the former DISA employee had no knowledge if and how that data was used and otherwise had no role in the acquisition. Id. Lockheed also explained that the former DISA employee had not been exposed to source selection sensitive information in the course of his government employment that would afford Lockheed a competitive advantage, and did not participate in or provide input to either Lockheed's or its subcontractor's proposal teams. Id. at 7-9.

Upon receipt of Lockheed's letter, the contracting officer issued an evaluation notice to Lockheed seeking more information about the former DISA employee's current employment status, and an updated OCI mitigation plan. The agency's letter requested that Lockheed's updated OCI mitigation plan include both the steps taken to ensure that the proposed former DISA employee did not prepare or have input into Lockheed's proposal, as well as the steps taken to prevent the former DISA employee from providing any response to the agency's evaluation notices and/or future discussions/negotiations. Id. at 10.

In response to the evaluation notice, Lockheed advised that the former DISA employee was a "contingent hire" for its subcontractor who had forwarded his resume to Lockheed. Id. Lockheed again stated that the former DISA official did not have any access to Lockheed's proposal, did not provide any input to either Lockheed or its subcontractor's proposal teams, and did not and will not participate in any response to the agency's evaluation notices. Id. Lockheed also offered to replace the former DISA employee with another individual. With this submission, Lockheed also submitted its revised OCI mitigation plan, and a certification from the former DISA employee, which provided that he:

did submit [his] resume to [Lockheed's subcontractor] to be considered for employment. I understand that [Lockheed's subcontractor] then submitted my resume to Lockheed Martin for consideration for the position of DISA CONUS Site Manager in the event that Lockheed Martin is awarded the GSM-O contract under DISA Request for Proposal HC1028-10-R-2000 for the [GSM-O]. I have not had access to the [Lockheed subcontractor's] or [Lockheed's] proposal or provided any input to either the Lockheed . . . or the [Lockheed subcontractor] GSM-O proposal teams in any manner. I will not participate in any manner with the Lockheed . . . or the [Lockheed subcontractor] proposal team and will not have access to or provide input on any proposal responses to any Evaluation Notices . . . and/or future discussions/negotiations of the Lockheed . . . or [Lockheed subcontractor] GSM-O proposals.

Id. at 38.

After reviewing this documentation and consulting with the SSA and agency counsel, the contracting officer concluded that Lockheed did not possess an unequal access to information OCI, which would preclude the company from receiving award. Id. at 67-68.

Thus, the record shows that the contracting officer identified a potential issue involving the former DISA employee and conducted a thorough investigation of the matter. The contracting officer, on multiple occasions, requested detailed information from Lockheed regarding the former DISA employee and requested that Lockheed revise its OCI mitigation plan to address the matter. After reviewing all of the information received as a result of the OCI investigation, the contracting officer concluded that the former DISA employee did not have access to, or provide any input to, Lockheed, or its subcontractor's, proposal teams. The contracting officer thus determined that Lockheed did not possess an unequal access to information OCI. While SAIC argues that the investigation should have been more thorough, we find nothing unreasonable about DISA's conclusions.

Accordingly the protest is denied.

Lynn H. Gibson
General Counsel