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# Decision

**Matter of:** Dell Services Federal Government, Inc.

**File:** B-414461.3; B-414461.4; B-414461.5

**Date:** June 19, 2018

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## DIGEST

Protest alleging that awardee has an impermissible “unequal access” type of organizational conflict of interest is sustained where record shows that an individual participating in the preparation of awardee’s proposal had access to competitively useful, non-public information about the protester under another contract.

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## DECISION

Dell Services Federal Government, Inc. (DSFG), of Herndon, Virginia, protests the issuance of a task order to SRA International, of Chantilly, Virginia, under request for quotations (RFQ) No. ED-CIO-17-Q-0002, issued by the Department of Education for information technology (IT) products and services. DSFG argues that SRA has an impermissible organizational conflict of interest (OCI) that should have precluded award to the firm; the agency engaged in unequal and inadequate discussions; and the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

The agency currently obtains its information technology requirements under a contract called the Education Department’s utility for communications, applications and technology environment (EDUCATE) contract. This is a comprehensive contract to

provide the agency with all of its IT services requirements; the agency describes the EDUCATE contract as a 'tip-to-tail' contract. DSFG is the current incumbent contractor for the EDUCATE contract, which was awarded in 2007 for a ten-year period of performance.<sup>1</sup>

During performance of the EDUCATE contract, the agency decided to change the method it uses to acquire its IT services requirements. Rather than awarding a single, overarching contract for its requirements, the agency now intends to acquire segments of its IT requirements using multiple task or delivery orders. The current solicitation is one of a suite of six solicitations the agency intends to use to meet its IT requirements for the foreseeable future. The agency's name for these successor acquisitions is the portfolio of integrated value oriented technologies (PIVOT) program. The current RFQ was issued to acquire IT integrator and end user experience services and is referred to as the PIVOT I solicitation.<sup>2</sup> The RFQ at issue in this protest was issued pursuant to a multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) government-wide acquisition contract administered by the National Institutes of Health Information Technology Acquisition and Assessment Center.<sup>3</sup>

Earlier, DSFG filed a pre-award protest arguing that there was a Procurement Integrity Act violation in connection with the release to SRA of proposals that had been submitted by DSFG to the agency in 2007 and 2011 in connection with the EDUCATE contract, and also that SRA had an impermissible OCI. We sustained DSFG's earlier protest, finding that the agency inadequately considered the potential impact of the improper disclosure of the DSFG proposals to SRA, and also failed to consider whether the individual responsible for the disclosure of DSFG's proposals (identified in our prior decision as Mr. X) also may have provided SRA with competitively useful information by

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<sup>1</sup> The contract was awarded originally to Perot Systems Government Services, Inc. That concern was purchased by Dell, Inc. and renamed DSFG. The protester is the successor-in-interest to the contract originally awarded to Perot. In addition, on May 11, 2017, the agency issued a modification to the EDUCATE contract recognizing that DSFG changed its name to NTT Data Services Federal Government, Inc. For ease of discussion, we refer to the protester as DSFG throughout the decision.

<sup>2</sup> The other solicitations contemplated by the agency are the PIVOT H solicitation to acquire hosting of applications, data, and IT systems services; the PIVOT M solicitation to acquire mobile services; the PIVOT N solicitation to acquire IT network services; the PIVOT O solicitation to acquire IT oversight function services; and the PIVOT P solicitation to acquire printing services.

<sup>3</sup> The record here shows that the value of the currently-awarded task order is approximately \$260 million. Agency Report (AR) exh. 41, Award Summary Memorandum, at 15. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of task or delivery orders under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f)(2).

some other means. Dell Services Federal Government, Inc., B-414461, B-414461.2, June 27, 2017, 2017 CPD ¶ 192.

We also found that SRA could have an “unequal access” type OCI (based on its receipt of potentially competitively useful, non-public information such as the DSFG proposals), as well as a possible “biased ground rules” type OCI because of the previous activities of Mr. X (the record showed that he may have participated in defining the agency’s PIVOT requirements).<sup>4</sup> We recommended that the agency reconsider whether the release of the DSFG proposals could have an adverse impact on the PIVOT program acquisitions. We also recommended that the agency evaluate whether SRA has an OCI in light of the concerns identified in our prior decision, and further recommended that the agency take appropriate action to avoid, neutralize or mitigate any potential OCI.

In response to our earlier recommendation, the agency engaged in an investigation and prepared a detailed analysis concerning the possible impact of the disclosure of the DSFG proposals on the PIVOT program. AR, exh. 39, Supplemental Procurement Impact Determination and OCI Analysis, Feb. 15, 2018.<sup>5</sup> In effect, the agency concluded that the disclosure of the DSFG proposals did not have an adverse impact on the PIVOT program in general, and the PIVOT I acquisition in particular, principally because the agency concluded that the information in the DSFG proposals was dated and no longer reflected current-state technological solutions, and because the requirements for the PIVOT program differ fundamentally from those acquired through the EDUCATE contract.

The agency also concluded that SRA did not have a “biased ground rules” type of OCI because the recommendations made under the EDUCATE Analysis contract were too general in nature, and too remote in time, to have resulted in any competitive advantage arising from the establishment of the actual PIVOT requirements. AR, exh. 39, Supplemental Procurement Impact Determination and OCI Analysis, Feb. 15, 2018.

Finally, the agency concluded that SRA did not enjoy an “unequal access” type OCI because the information in the DSFG proposals was not competitively useful; because

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<sup>4</sup> The contract that Mr. X worked on previously is known as the EDUCATE Analysis contract, which was a contract requiring the EDUCATE Analysis contractor to evaluate critically the EDUCATE solution, and also required the EDUCATE Analysis contractor to make recommendations regarding the agency’s next-generation IT acquisition strategy, which eventually became the PIVOT program.

<sup>5</sup> This document states that it was confined to consideration of whether the proposal disclosure incident had an adverse impact on the PIVOT acquisitions, and whether there were OCIs created as a consequence of that disclosure incident. AR, Exh. 39, Supplemental Procurement Impact Determination and OCI Analysis, Feb. 15, 2018, at 3 n. 6. A second document, discussed below, addressed other considerations.

SRA acted promptly to destroy the information that had been provided to the firm; and because the individuals that received the DSFG proposals either immediately deleted the documents without opening them, or had been firewalled from the SRA proposal preparation team. AR, exh. 39, Supplemental Procurement Impact Determination and OCI Analysis, Feb. 15, 2018.

In the course of its investigation activities, the agency obtained a large amount of correspondence from SRA relating to its quotation preparation activities. Some of that correspondence reflected the participation of Mr. X and his employer, ClearAvenue (one of SRA's teaming partners for the requirement), in those quotation preparation activities.<sup>6</sup> Other communications disclosed by SRA to the agency during its investigation reflected the participation of another individual, Mr. Y, and his employer, Fulcrum IT Services, LLC, in the SRA quotation preparation activities. This individual was not addressed in the earlier decision. The agency expressed interest in Mr. Y because of his former activities in connection with yet another contract named the EDUCATE Independent Verification and Validation (EDUCATE IV&V) contract. The EDUCATE IV&V contract called for a concern named SD Technologies, Inc. (SD Tech) to perform activities relating to determining whether DSFG was performing its contractual obligations under the EDUCATE contract, and whether the deliverables under that contract were acceptable. AR, exh. 53, EDUCATE IV&V Contract Excerpts. Mr. Y was the program manager for SD Tech during its performance of the EDUCATE IV&V contract.

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<sup>6</sup> As set out in our prior decision, Mr. X worked for a concern named Bowhead Systems Management, Inc., that had been awarded the EDUCATE Analysis contract. The record in DSFG's prior protest showed that Mr. X had been provided the DSFG EDUCATE proposals by the agency while working for Bowhead. Subsequently, Mr. X became the Chief Technology Officer of a firm named ClearAvenue. The record showed that ClearAvenue and SRA entered into a teaming agreement in connection with SRA's efforts to submit a proposal for the PIVOT I acquisition. It was during preparation of the SRA proposal for the PIVOT I acquisition that Mr. X provided the DSFG proposals to SRA. Dell Services Federal Government, Inc., *supra.* at 2-4.

Our prior decision also noted that there was no evidence in the record at that time to show that SRA had terminated its teaming agreement with ClearAvenue. At that time, there was no way for our Office or the agency to know whether there was a continuing relationship between SRA and ClearAvenue (and, by extension, Mr. X). The record in the current case now shows that SRA and ClearAvenue terminated their teaming agreement effective February 9, 2017. AR, exh. 32, Contracting Officer's E-Mail to SRA, PIVOT Response Attachment No. 19. Quotations for the PIVOT I acquisition were due on February 27, 2017. RFP Amendment No. 0009. Accordingly, the record shows that the SRA/ClearAvenue teaming agreement was in existence during the majority of the quotation preparation period.

After performing its investigation, the agency prepared a second document that focused on activities and events in addition to the disclosure of the DSFG proposals. AR, exh. 40, PIVOT Procurements–Federal Acquisition Regulation (FAR) 3.101 & FAR 9.5 Determination. In that document, the contracting officer concluded that there was no violation of the Procurement Integrity Act, and SRA did not suffer from any type of OCI based on the agency’s investigation.

Subsequent to these activities, the agency evaluated quotations and made award to SRA, concluding that its quotation represented the best value to the government, considering price and a number of non-price considerations. After being advised of the agency’s selection decision and requesting and receiving a debriefing, DSFG filed the instant protest.

## PROTEST

DSFG challenges the results of the agency’s evaluation of its and SRA’s quotations. The company also argues that the agency should have concluded that SRA has an “unequal access” type OCI, and should have eliminated SRA from the competition. According to the protester, the record shows that SRA had access to a wide array of nonpublic, competitively useful information about DSFG that provided it with an unfair competitive advantage in preparing its quotation. DSFG’s arguments in general relate to all of the events described above, and in particular, to the activities of Mr. Y and his participation in preparing the SRA quotation. For the reasons discussed below, we sustain DSFG’s contention that the agency has not properly considered whether SRA has an unfair competitive advantage here.<sup>7</sup>

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<sup>7</sup> As a preliminary matter, both the agency and intervenor argue at length that this aspect of DSFG’s protest is untimely because DSFG obtained a copy of the SRA quotation on May 5, 2017, in connection with its prior protest. According to the agency and intervenor, the SRA quotation showed that Mr. Y had been proposed by SRA as a key employee for the PIVOT I procurement, and also that Mr. Y previously had performed work in connection with the EDUCATE IV&V contract. They therefore argue that DSFG had all of the information necessary to advance this argument at that time.

In response, DSFG argues that it was unaware until the agency filed its current agency report that Mr. Y not only had been proposed as a key employee for SRA, but also had engaged in quotation preparation activities, a fact not previously known to DSFG. DSFG therefore maintains that it timely filed this argument within 10 days of learning of that fact, in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2).

We find this aspect of DSFG’s protest timely because, although the record shows that DSFG’s counsel had a copy of the SRA quotation, it was not until the current agency report was filed that DSFG learned of Mr. Y’s participation in preparing the SRA quotation. The contemporaneous statements of the contracting officer during his OCI investigation demonstrate that knowing about Mr. Y’s participation in quotation

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As discussed in detail below, the information principally at issue in the current protest is not, strictly speaking, information that could necessarily be characterized as source selection sensitive (for example, proposal evaluation materials) or proprietary to DSFG (for example, the firm's prior or current proposals or quotations). Nonetheless, the information was specifically identified by the agency's contracting officer as information of a nonpublic nature that was known to Mr. Y but never intended to be used by a competitor of DSFG. Accordingly, the focus of our discussion below relates to this information, rather than to the agency's findings relating to the disclosure of DSFG's proposals, findings that we conclude are largely unobjectionable.

The FAR requires that contracting officers identify and evaluate potential organizational conflicts of interest, and directs contracting officers to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage. FAR §§ 9.504(a), 9.505. In considering whether there is an actual or potential OCI, the FAR advises contracting officers to examine the particular facts of the contracting situation and the nature of the proposed contract, and to exercise common sense, good judgment, and sound discretion in deciding whether a significant OCI exists, and in determining the appropriate means for resolving any significant OCI that has been identified. FAR § 9.505. As relevant here, 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 an unfair competitive advantage in a later competition for a government contract. FAR § 9.505(b); Cyberdata Techs., Inc., B-411070 et al., May 1, 2015, 2015 CPD ¶ 150 at 6.

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(...continued)

preparation activities on behalf of SRA was a critical fact necessary to advance this argument. The agency's investigation report relating to the activities of Mr. Y states:

The CO [contracting officer] first learned the facts at issue here in the course of implementing the corrective action recommended by the U.S. Government Accountability Office (GAO) in its decision of 07 June 2017 on Bid Protests No. B-414461 and B-414461.2. In those protests, GAO had reviewed the Department's earlier investigation of an incident also involving SRA's PIVOT-I solution preparation effort. Specifically, on 08 February 2017, SRA received two documents believed to have been proposals submitted by DSFG or its predecessor on the EDUCATE contract. GAO sustained the protests and recommended the Department conduct additional investigation and analyses. It was in the course of that additional investigation that the CO first learned about SRA's communications and activities discussed here.

AR, exh. 40, PIVOT Procurements--FAR 3.101 & FAR 9.5 Determination, at 2 n. 1 (emphasis supplied). The record therefore shows that, not even the agency's contracting officer was aware of the facts giving rise to this aspect of DSFG's protest until well after the prior protest had been resolved by our Office.

A protester must identify “hard facts” that show the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. Telecommunication Systems, Inc., B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3-4 (citing PAI Corp. v. United States, 614 F.3d 1377, 1387 (Fed. Cir. 2010)). Nonetheless, once it has been determined that an actual or potential OCI exists, the protester is not required to demonstrate prejudice; rather, harm from the conflict is presumed to occur. See McCarthy/Hunt JV, B-402229.2, Feb. 16, 2010, 2010 CPD ¶ 68 at 10.<sup>8</sup>

The agency’s investigation here initially identified a wide array of nonpublic, competitively useful information that was available to Mr. Y in connection with performance of the EDUCATE IV&V contract. AR, exh. 35, Letter from the Contracting Officer to SRA, Sept. 29, 2017, Attach. A, at 5. Despite this fact, the agency inexplicably confined its OCI analysis and conclusion to considering whether Mr. Y shared DSFG’s proprietary information with SRA, without considering whether the other information to which he had access could have created an unequal access type OCI. We note at the outset that there is no dispute in the record regarding the types of information to which Mr. Y had access. The record includes a letter written by the contracting officer to SRA inquiring about Mr. Y’s proposal preparation activities. That letter provides:

From 22 February 2011 to 26 May 2016, Mr. [Y] was the IV&V Project Manager, one of the named Key Personnel, on the EDUCATE IV&V contract. That contract was awarded by the Department to SD Tech. That contract expired on 26 May 2016. In that capacity, Mr. [Y] had unfettered access to DSFG proposals, performance reports, and other contractual artifacts, such as root cause analysis reports, and internal discussions, and he interacted with a wide-array of Government officials, to include the Chief Information Officer, the Deputy Chief Information Officer, and various other directors. Mr. [Y’s] insights are highly qualified and based on facts that were not public and were not intended for use by a competitor of DSFG. [The original document included a footnote at the end of the preceding sentence that provided as follows: Mr. [Y] had access to detailed information on DSFG’s EDUCATE solution, related technologies and approaches, and contract performance data as recently as May 26, 2016. The PIVOT-I solicitation was released approximately six

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<sup>8</sup> The presumption of prejudice is rebuttable where “hard facts” demonstrating the existence or potential existence of an OCI are absent. For example, “hard facts” showing the possibility of an OCI may not exist where the record shows that individuals that may have had access to nonpublic competitively useful information have been firewalled from the personnel engaged in proposal preparation activities, see Netstar-1 Government Consulting, Inc., B-404025.2, May 4, 2011, 2011 CPD ¶ 262, or where the individuals do not work for the firm preparing the proposal, see Archimedes Global, Inc., B-415886.2, June 1, 2018, 2018 CPD ¶ \_\_\_\_ at 6-7.

months after Mr. [Y]'s role ended as the EDUCATE IV&V Key Personnel, and PIVOT-H was released approximately eleven (11) months after his role ended.] Reports and types of information that Mr. [Y] had access to included reports from DSFG that are marked as "Confidential," "Sensitive and Proprietary" and "For Official Use Only." Furthermore, the depth and breadth of the reviews that the IV&V contractor conducted can be witnessed in documents whereby DSFG's services and deliverables were inspected extensively by the IV&V contractor, to include Mr. [Y]. Mr. [Y], by virtue of his role in the EDUCATE IV&V contract, had privileged access to, and learned, information that is proprietary to DSFG and which is confidential information related to DSFG's current EDUCATE solution and performance, information which other Department contractor[s], let alone outsiders, would not know.

AR, exh. 35, Letter from the Contracting Officer to SRA, Sept. 29, 2017, Attach. A, at 5 (emphasis supplied). That same document goes on to identify e-mail correspondence showing that individuals working on the SRA proposal team sought information from Mr. Y during their proposal preparation activities, and that he participated actively in preparing the SRA proposal.

The record contains only two pieces of evidence generated in connection with SRA's response to the contracting officer's letter. First, the record contains a letter from SRA's attorney to the agency responding to the agency's letter quoted above. In that letter, SRA's attorney offers legal arguments and characterizations--unsupported by any evidence--of the types of information possessed by Mr. Y and sought by SRA. AR, exh. 36, Letter from SRA's Counsel to the Contracting Officer, October 10, 2017. He characterizes the information possessed by Mr. Y as general information and best-guess assessments that would be no different than the type of information available to an incumbent contractor. For example, he states as follows:

Perhaps most importantly, Mr. [Y] *did not provide* proprietary information to SRA for use in SRA's PIVOT proposal. Mr. [Y] did provide his general insights and "best guesses" about things that were not proprietary based on his personal experience and observations. This information was requested and given not because SRA was seeking to discover the "non-public" or proprietary information of DSFG, but instead was sought out to better understand the Department's operating environment so that SRA and its team could be responsive to a potential customer's needs.

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This general information, based on the opinions or observations of Mr. [Y], is no different than the types of information about the current operating environment that an incumbent, a subcontractor, present or former Department personnel, or members of the public visiting a tenant building could have observed or asked about. Accordingly, because the information was (1) not proprietary, (2) not unavailable to other



competitors who could have made similar inquiries, and (3) created no unfair competitive advantage, SRA's receipt of it did not create an OCI.

Id. at 8-9 (emphasis in original).

Second, the record includes an affidavit prepared by Mr. Y and transmitted to the agency by SRA's attorney in which he describes the types of information he provided to SRA. His declaration is confined to representations that he did not provide any information that was identified as proprietary to DSFG, and that it was his understanding that providing the information that he did convey to SRA was not information that he was prohibited from providing. For example, he states as follows:

It was at that time and now remains my understanding and belief that the information sought by SRA's PIVOT Procurement proposal team was the type of non-proprietary, market information that any knowledgeable contractor would seek in order to better understand an agency's solicitation. Further, it was at the time and now remains my understanding and belief that the specific information that I provided to SRA in response to their requests was not the proprietary information of Dell Services Federal Government, Inc. ("DSFG") or some other ED contractor, but instead was information available from public sources.

AR, exh. 38a, Mr. Y Declaration, at 1.

Based on this evidence, the contracting officer determined that the activities of Mr. Y did not give rise to an unequal access type of OCI. In particular, the contracting officer concluded that the information provided by Mr. Y to SRA was general in nature, observable by any individual that may have had an opportunity to view the DSFG operations, and provided no more of a competitive advantage than would be enjoyed by any incumbent. AR, exh. 40, PIVOT Procurements—FAR 3.101 & FAR 9.5 Determination. For example, the contracting officer concluded as follows:

To assume that Mr. [Y] or any other individuals identified in the emails surrendered any non-public, competitively useful information would be speculative. SRA has provided a certification in which it represents to the Government that SRA's PIVOT solution team did not receive any proprietary information from Mr. [Y] that he obtained through his role under the EDUCATE IV&V contract. Mr. [Y] attested to the same, further declaring that he kept no copies of any proprietary information after his work under the EDUCATE IV&V contract ended. Nor did any of the information he provided to SRA in conjunction with the preparation of the PIVOT I proposal come from any proprietary or similarly marked document that may have come into his possession in connection with his EDUCATE IV&V work years earlier.

Id. at 16.

Based on the record before us, while the agency gave detailed consideration to the possible disclosure of DSFG's proprietary information, it gave no consideration to the other nonpublic, competitively useful information that the contracting officer himself specifically identified as available to Mr. Y through his work as the program manager for the EDUCATE IV&V contract. As set forth earlier, the contracting officer identified the following matters regarding Mr. Y's performance on the EDUCATE IV&V contract that do not appear related to DSFG's proprietary information:

In that capacity, Mr. [Y] had unfettered access to DSFG . . . performance reports, and other contractual artifacts, such as root cause analysis reports, and internal discussions, and he interacted with a wide-array of Government officials, to include the Chief Information Officer, the Deputy Chief Information Officer, and various other directors. Mr. [Y's] insights are highly qualified and based on facts that were not public and were not intended for use by a competitor of DSFG.[footnote omitted]. Reports and types of information that Mr. [Y] had access to included reports from DSFG that are marked as "Confidential," . . . and "For Official Use Only." Furthermore, the depth and breadth of the reviews that the IV&V contractor conducted can be witnessed in documents whereby DSFG's services and deliverables were inspected extensively by the IV&V contractor, to include Mr. [Y]. Mr. [Y], by virtue of his role in the EDUCATE IV&V contract, had privileged access to, and learned, information that is . . . confidential information related to DSFG's current EDUCATE solution and performance, information which other Department contractor[s], let alone outsiders, would not know.

AR, exh. 35, Letter from the Contracting Officer to SRA, Sept. 29, 2017, Attach. A, at 5.

In sum, the agency's own materials show that: (1) Mr. Y had access to a wide array of nonpublic, competitively useful information through his activities related to performance of the EDUCATE IV&V contract; and (2) Mr. Y participated in preparation of the SRA proposal. In addition, there is no evidence in this record to rebut the legal presumption of prejudice to DSFG attending these facts. For example, there is no evidence showing that Mr. Y did not actually have access to the information in question, or that he did not participate in proposal preparation activities on behalf of SRA.

As noted, the FAR requires contracting officers to exercise common sense, good judgment, and sound discretion in deciding whether a significant OCI exists. FAR § 9.505. Here, there is no evidence to show that the agency considered (or resolved) the potential unfair competitive advantage created by Mr. Y's access to the types of information described above; rather, the agency's entire focus was confined to considering whether DSFG's proprietary information (or the agency's source selection

sensitive information) had been disseminated to SRA.<sup>9</sup> While we recognize that the FAR discusses “unfair access” types of OCIs principally in terms of access to proprietary or source selection sensitive types of information, the concerns expressed in the agency’s own record dictate that, in the present situation, the contracting officer also should have thoroughly considered the potential unfair competitive advantage that the information he identified may have provided to SRA.

Finally, as noted, there is a presumption of prejudice where the record shows that an individual has access to competitively useful, nonpublic information, and that individual engages in proposal preparation activities. McCarthy/Hunt JV, supra. On this record, there is nothing to show that the presumption has been rebutted. Accordingly, we find that the agency’s conclusion that SRA does not have an unequal access type OCI was not reasonable. We therefore sustain DSFG’s protest on this basis.<sup>10</sup>

## RECOMMENDATION

In light of the foregoing discussion we recommend that the agency reconsider the question of whether SRA has an impermissible “unequal access” type of OCI based on the concerns outlined in this decision. Should the agency conclude that SRA does have an OCI, we recommend that the agency either determine what actions would be appropriate to avoid, neutralize or mitigate the identified OCI, or determine that a waiver of the identified OCI would be appropriate. Should the agency conclude that elimination of SRA from the competition is appropriate, we further recommend that the agency consider what actions are appropriate in connection with issuing a task order to one of the remaining competitors. Alternatively, should the agency conclude that SRA does not have an OCI, it should document the basis for that conclusion in light of the agency’s own concerns expressed elsewhere in the record. Finally, we recommend that the agency reimburse DSFG the costs associated with filing and pursuing its

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<sup>9</sup> We note that an e-mail in the record from agency counsel to SRA’s attorney demonstrates that the focus of the agency’s investigation appears to have been confined to determining whether Mr. Y provided SRA with DSFG’s proprietary information. AR, exh. 37, E-mail from Agency Counsel to SRA Counsel, Jan. 8, 2018.

<sup>10</sup> As a final matter, we dismiss DSFG’s remaining allegations relating to the agency’s evaluation of proposals and the adequacy of discussions as either academic or premature. In this connection, the record shows that none of the remaining competitors were found entirely acceptable during the agency’s evaluation, and each concern had at least one deficiency associated with its quotation. It follows that, should the agency eliminate SRA from the competition (one possible outcome identified in our recommendation below), it will necessarily need to engage in further discussions and perform a reevaluation and new source selection decision.

protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). DSFG's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

Thomas H. Armstrong  
General Counsel