REDACTED VERSION



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November 13, 2013

Via Email

Office of General Counsel Procurement Law Control Group U.S. Government Accountability Office 441 G Street, N.W. Washington, DC 20548



Re: Protest of Ernst & Young LLP

Request for Proposals No. H98230-13-R-0029

Dear Madam or Sir:

Pursuant to 4 C.F.R. § 21.0 et seq., Ernst & Young LLP ("EY"), by its undersigned counsel, protests the National Security Agency's ("NSA") award of a contract to KPMG LLP ("KPMG") under Request for Proposals No. H98230-13-R-0029 (the "Solicitation" or "RFP") to provide assistance to the NSA's Office of Inspector General in auditing NSA's annual financial statements. EY respectfully requests that the Government Accountability Office ("GAO") notify NSA regarding the Competition in Contracting Act's ("CICA") stay of performance today, which is the fifth day since EY's requested and required debriefing.

NSA prejudicially violated statute, regulation, and the terms of the Solicitation in this procurement for the following reasons:

- First, NSA failed to conduct an adequate investigation of potential or actual organizational conflicts of interest as required by the Federal Acquisition Regulation ("FAR"). NSA accepted the statements of offerors without any further investigation and never looked beyond NSA contracts to determine whether any other intelligence community contracts could create a conflict under the Solicitation.
- Second, KPMG has potential or actual "unequal access to information" and "impaired objectivity" organizational conflicts of interest based on



contractual work KPMG performed for other federal agencies in the intelligence community. At least one other offeror – Kearney & Company ("Kearney") – also suffers from an "unequal access to information" organizational conflict of interest.

- Third, KPMG and potentially other offerors could not meet the Independence Requirement subfactor under the Management factor. Because this subfactor was pass/fail and KPMG and possibly other offerors should have been given a "fail," it rendered KPMG and other offerors non-compliant and ineligible for award.
- Fifth, the weaknesses assessed by NSA lacked a rational basis.

For each of these independent reasons, EY respectfully requests that GAO sustain this protest.

I. PRELIMINARY MATTERS

A. Parties & Interested Party

EY is a professional services firm that provides program management, information technology ("IT"), and audit services to federal agencies to help manage processes, optimize operations, and conduct audits. EY has significant experience assisting federal agencies regarding financial statement audits and audit services. EY submitted an offer in response to the Solicitation. Thus, EY is an actual offeror whose direct interest is affected by NSA's improper decision to make award to KPMG. See 4 C.F.R. § 21.0(a)(1).

EY's corporate contact is Mr. Robert H. Shope, Partner, Federal Government Assurance Leader, Ernst & Young LLP, One Commerce Square, 2005 Market Street, Suite 700, Philadelphia, PA 19103; telephone: 215.448.5592; email: Robert.Shope@ey.com. For purposes of this protest, however, please direct all communications to undersigned counsel.

NSA's contracting officer is Ms. Sarah M. Edwards, NSA, Maryland Procurement Office, 9800 Savage Rd., Fort George G. Meade, MD 20755-6626. Ms. Edwards' phone number is 301.688.2134 and e-mail address is



<u>smedwa3@radium.ncsc.mil</u>. A copy of this protest will be provided to Ms. Edwards within one day of filing this protest with GAO.

B. Timeliness And CICA Stay Of Performance

EY's protest is timely filed and compels the implementation of the CICA automatic stay provision. NSA provided notice of the contract award to EY on September 27, 2013. On September 28, 2013, EY requested a required debriefing. NSA provided an oral debriefing to EY on November 8, 2013. This protest is filed within 10 days of EY's requested and required debriefing. See 4 C.F.R. § 21.2(a)(2).

Moreover, this protest invokes CICA's stay provisions. See 31 U.S.C. § 3553(d)(3). EY has timely filed this protest within five days of its November 8, 2013 requested and required debriefing, and EY respectfully requests that GAO provide notice to NSA today to trigger the CICA stay. See id. § 3553(d)(4); 4 C.F.R. § 21.6. The Contracting Officer must refrain from authorizing performance and direct the awardee to cease performance upon NSA's receipt of the GAO's notice of this protest. See 31 U.S.C. § 3553(d)(3); 4 C.F.R. § 21.6; 48 C.F.R. § 33.104(c)(1).

C. Request For Protective Order And Hearing

Because this protest requires the disclosure of competition-sensitive information that is not appropriate for public release, including proprietary details of EY's and other offerors' proposals, EY requests that GAO enter a protective order in this protest pursuant to 31 U.S.C. § 3553(f) and 4 C.F.R. § 21.4.

EY reserves its right to request a hearing after it receives and reviews the Agency Report.

II. FACTUAL BACKGROUND

A. The Solicitation

On December 20, 2012, NSA issued the Solicitation seeking a contractor to provide assistance to NSA's Office of Inspector General in performing audits of NSA's annual financial statements and issuing reports and other documentation as required by the Office of Management and Budget. See RFP, Statement of Work § 1.0. The Solicitation contemplated the award of an indefinite delivery/indefinite quantity ("IDIQ") type contract using firm fixed price/level of effort delivery orders for five one-year ordering periods through June 13, 2018. See RFP § B.3, B.4; RFP, Proposal Evaluation Criteria § 1.0.



The Solicitation stated that NSA intended to make award of a contract based on the best value to the Government. See RFP, Proposal Evaluation Criteria § 1.0. The Solicitation directed offerors to submit a proposal with four volumes that matched the four evaluation criteria: (1) Technical; (2) Management; (3) Past Performance; and (4) Cost. See RFP, Proposal Preparation Instructions § 2.1; Proposal Evaluation Criteria § 1.0. Technical was the most important factor, Management and Past Performance were of equal importance, and the non-cost factors when combined were significantly more important than the Cost factor (which nonetheless "remains a substantial factor"). See RFP, Proposal Evaluation Criteria § 2.2.

The Technical factor had five subfactors in descending order of importance: (1) Technical Approach; (2) Audit Planning Technical Task Order; (3) Evaluation of Significant Deficiencies and Material Weaknesses; (4) Financial Statement Audit Technical Task Order; and (5) Internal Quality Control. See RFP, Proposal Evaluation Criteria §§ 2.2.1 & 3.0. The Technical factor and subfactors would each be assessed an adjectival rating (Outstanding/Good/Acceptable/Marginal/Unacceptable). See RFP, Proposal Evaluation Criteria § 2.1. The Solicitation also stated that risk would be assessed for the Technical factor. See id.

The Management factor had four subfactors in descending order of importance: (1) Independence Requirement; (2) Program Management; (3) Communication; and (4) Staffing and Retention. See RFP, Proposal Evaluation Criteria §§ 2.1 & 2.2.2. Like the Technical factor, the Management factor and subfactors would be evaluated using the same adjectival ratings, except for the Independence Requirement subfactor, which was evaluated on a pass/fail basis. See id. §§ 2.1, 4.0. Under the Independence Requirement, NSA directed offerors to provide an "Organizational Conflict of Interest (OCI) Mitigation Plan which clearly demonstrates how the company, its personnel, and any subcontractors, consultants, or affiliates proposed for the audit are free from personal, external, and organizational impairments to independence in accordance with the Government Auditing Standards." See RFP, Proposal Preparation Instructions § 4.1.1. Also, like the Technical factor, the Solicitation stated that risk would be assessed for the Management factor. See id. § 2.1.

The Past Performance factor evaluated three "technically similar government or Industry contracts of comparable complexity, size, and scope completed or performed within the last" five years as a prime contractor. *See* RFP, Proposal Evaluation Criteria § 5.0. The Solicitation stated the NSA would use a two-step process: First, NSA would evaluate relevance (Very Relevant/Relevant/Somewhat Relevant/Not Relevant) and, if relevant, then would perform a performance confidence assessment resulting in a rating (Substantial Confidence/Satisfactory



Confidence/Limited Confidence/No Confidence/Unknown Confidence). See RFP, Proposal Evaluation Criteria § 2.1.

Finally, the Solicitation stated it would evaluate cost by adding together the dollar amount of the IDIQ portion of the proposal with the technical task orders. See RFP, Proposal Evaluation Criteria § 6.0. The Solicitation stated that the technical task orders would be evaluated from a "resource realism perspective to ensure that the technical approach, labor categories and labor distribution are consistent with the unpriced Basis of Estimates provided in the offeror's technical proposal." Id. § 6.2. The Government stated it would adjust the probable cost of the technical task orders if the resources were inconsistent with the proposed technical and management approach. Id.

B. The Award

On or about February 4, 2013, EY timely submitted its proposal.

On June 19, 2013, NSA issued written discussion questions identifying "significant weaknesses and deficiencies" in EY's proposal. The letter exclusively identified concerns with

On June 24, 2013,

NSA held oral discussions with EY in a session that lasted only 10 minutes or less. NSA and EY discussed the questions raised in the June 19 letter but NSA would not go beyond the written questions even when EY inquired whether NSA had identified any other concerns regarding EY's proposal. On June 27, 2013, EY timely responded to the discussion questions and ultimately received a strength Debriefing Slides at 17

On September 27, 2013, NSA notified EY that it had not received the award. On September 28, 2013, EY timely requested a required debriefing. On November 8, 2013, NSP provided EY with an oral debriefing including a slide presentation. The debriefing provided the following ratings and evaluated cost for EY and KPMG:

Evaluation Factor	EY	KPMG
Technical Factor		GOOD
Technical Approach		Good
Audit Planning Technical Task Order		Good
Evaluation of Significant Deficiencies		Acceptable
and Material Weaknesses		
Financial Statement Audit Technical		Good



Task Order	
Internal Quality Control	Acceptable
Management Factor	GOOD
Independence Requirement	Pass
Program Management Approach	Good
Communication	Good
Staffing and Retention	Good
Past Performance	Substantial
	Confidence
Cost/Price	
Level of Effort	\$15,574,243.20
Probable Cost – Evaluated Price	\$6,021,572.40
Total Evaluated Cost	\$21,595,815.60

Debriefing Slides at 12-13. The debriefing also revealed weaknesses that NSA never raised with EY during the written and oral discussions. Based on this evaluation, NSA concluded that, KPMG offered the best value See Debriefing Slide at 30.

III. PROTEST GROUNDS

A. NSA Failed To Conduct Any Investigation Regarding Potential Organizational Conflicts Of Interest For Any Offerors

An agency has an obligation to identify and investigate any potential or actual organizational conflicts of interest ("OCI"). See 48 C.F.R. § 9.504. Here, NSA improperly failed to reasonably identify, investigate, and mitigate any potential or actual OCIs of any offeror. See PCCP Constructors, JV, B-405036 et al., Aug. 4, 2011, 2011 CPD ¶ 156 at 17-18 (sustaining protest where agency failed to conduct reasonable investigation of potential or actual OCI).

NSA failed to properly conduct a reasonable investigation of potential or actual OCIs. The Solicitation had directed an offeror to provide an OCI mitigation plan as part of its proposal. *See* RFP, Proposal Preparation Instructions § 4.1.1. During the debriefing, NSA explained that it performed a review of NSA contracts for an OCI but then simply relied on information in the proposal for any other OCI. NSA did no additional analysis of contracts outside NSA that created a potential or actual OCI. Such contracts (as exemplified by KPMG below) created an OCI based on access to NSA non-public information that would benefit an offeror in this procurement or impaired an offeror's objectivity.



EY was prejudiced by NSA's failure to conduct a reasonable OCI investigation and analysis of proposals. Had NSA properly considered other offerors' potential or actual OCIs, then there is a substantial likelihood that EY would have been found to be free of OCIs while other offerors had unmitigated actual or potential OCIs.

B. KPMG Has Unmitigated Actual Or Potential Organizational Conflicts Of Interest

KPMG should not have been eligible for award because it had an unmitigated actual or potential OCI. In particular, KPMG suffered from (1) an "unequal access to information" OCI based on performing prior contracts for the Office of the Director of National Intelligence ("ODNI") and the Defense Intelligence Agency ("DIA") and (2) an "impaired objectivity" OCI that will prevent KPMG from providing unbiased and objective audits of the financial statements of NSA entities.

KPMG has provided accounting and audit advisory services to ODNI since at least 2010. See ODNI Statement of Objectives (Attachment 1). The ODNI contract requires KPMG to assist ODNI in "achieving sustainable, 'clean' audit opinions for each [intelligence community] element as soon, and as cost effectively, as possible." Id. § 2.2. NSA is one of the intelligence community elements subject to KPMG's ODNI contract. See id. § 2.1 (listing NSA and other intelligence community elements such as the Central Intelligence Agency, National Reconnaissance Agency, National Geospatial Intelligence Agency, Defense Intelligence Agency, and ODNI).

Additionally, between 2003 and 2013, KPMG provided audit readiness services as part of the Defense Intelligence Agency's ("DIA") Program Management Office's oversight function.

As discussed below in more detail, KPMG's ODNI and DIA contracts create actual or potential "unequal access to information" and "impaired objectivity" OCIs. NSA failed to identify and evaluate these OCIs. Based on these OCIs, NSA should have excluded KPMG from the competition.

1. KPMG Has An Unequal Access To Information OCI

An "unequal access to information" OCI occurs 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." *Aetna Gov't Health Plans, Inc.*, B-254397.15 *et al.*, July 27, 1995, 95-2 CPD ¶ 129 at 11; *see also* 48 C.F.R. § 9.505-4. Here, KPMG's contract work with ODNI and DIA created an unequal access to information OCI



because KPMG gained access to nonpublic information that directly assisted KPMG in gaining an advantage in this procurement.

Based on KPMG's contract with ODNI, KPMG gained access to all intelligence community components' (including NSA's) audit and audit-readiness documentation, including multiple years of NSA's Agency Financial Reports, which contains comprehensive nonpublic information pertaining to NSA's material weaknesses and significant deficiencies, as well as nonpublic information regarding the number of General Ledger accounts and their balances. Notably, KPMG's knowledge of the material weaknesses and significant deficiencies assisted KPMG in preparing a better proposal under Technical Subfactor 3 entitled: "Evaluation of Significant Deficiencies and Material Weaknesses." *See* RFP, Proposal Evaluation Criteria § 3.3.

Also under the ODNI contract, KPMG gained access to NSA's policies and procedures, corrective action plans and related timelines, auditability plans and progress, milestones reached, challenges, and any planned or proposed financial and accounting initiatives. Knowledge of this nonpublic information, for example, directly assisted KPMG in tailoring its Technical Approach (Technical Subfactor 1) in devising a "time-phased plan for completing the work and providing all deliverables on time" and its description of an "acceptable financial statement audit process as governed by the Government Auditing Standards" See RFP, Proposal Evaluation Criteria § 3.1.2 & 3.1.3. KPMG's access to the nonpublic information under the ODNI contract provided it with a significant advantage and constituted an impermissible, unmitigated OCI.

Similarly, based on KPMG's contract with DIA's Program Management Office, KPMG gained access to significant nonpublic information regarding DIA's accounting system, the Financial Accounting and Corporate Tracking System ("FACTS"), which is owned, operated, and maintained by NSA. For example, KPMG had system access, oversight responsibility for the accuracy and completeness of process and test documentation, including all data, processes, and transactions occurring and stored in FACTS. KPMG's access to this nonpublic information in the FACTS database and through its work in assisting DIA's Program Management Office with oversight activities constitutes an unequal access to information OCI. See Johnson Controls World Servs., Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20 at 3-4 (sustaining protest where awardee had access to a database that provided an unfair competitive advantage in preparing its proposal); see also L-3 Servs., Inc., B-



400134.11, Sept. 3, 2009, 2009 CPD ¶ 171 at 10 (sustaining protest where awardee's employee worked in the Program Management Office and had access to the agency's intranet that provided competitively useful information).¹

Furthermore, based on both of these contracts, KPMG also had access to nonpublic information regarding NSA's internal control environment. This access, combined with the other nonpublic knowledge obtained by KPMG in its performance of the DIA and ODNI contracts, provided KPMG with information that enabled it to better calculate the level of effort and distribution of its resources when participating in the bidding process. For example, this permitted KPMG an advantage in preparing its proposal under Technical Subfactors 2 and 3, where an offeror had to, among other things, "justify the labor category levels and the hours proposed to fulfill the requirements" and provide resumes satisfying the skills and experience for the Audit Planning Technical Task Order and the Financial Statement Audit Technical Task Order. See, e.g., RFP, Proposal Evaluation Criteria §§ 3.2.2, 3.2.3, 3.4.2, 3.4.3.

KPMG had an unmitigated potential or actual unequal access to information OCI. NSA failed to reasonably investigate this OCI, which permitted KPMG an advantage in preparing its proposal. KPMG should not have been permitted to compete. Had NSA properly investigated this OCI, KPMG would not have been permitted to compete and EY would have had a substantial chance of receiving award.

2. KPMG Has An Impaired Objectivity OCI

An "impaired objectivity" OCI occurs "where a firm's work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of proposals." *Aetna Gov't Health Plans*, 95-2 CPD ¶ 129 at 12; *see also* 48 C.F.R. § 2.101 (defining an OCI where "a person is unable or potentially unable to render impartial advice to the Government, or the persons objectivity in performing the contract work is or might be otherwise impaired"); *id.* § 9.505-3. Here, KPMG's work on this contract would require it to audit the work it did under its ODNI contract. That constitutes an impermissible "impaired objectivity" OCI, which should have led to NSA's exclusion of KPMG from the competition. *See KPMG Peat Marwick*, B-255224, Feb. 15, 1994,

¹ KPMG is not the only offeror that had an unequal access to information OCI based on the DIA contract. At least one other offeror – Kearney – also has this same OCI because it serves as a subcontractor to KPMG on the DIA contract.



94-1 CPD ¶ 111 at 3-4 (agreeing that the agency properly excluded KPMG where it would be evaluating the audits it performed under a different contract); see also PURVIS Sys., Inc., B-293807.3 et al., Aug. 16, 2004, 2004 CPD ¶ 177 at 11 (sustaining protest "where . . . a company is responsible for assessing the performance of systems it has manufactured" because it constitutes "a classic example of an 'impaired objectivity' OCI").

Consistent with the OCI regulations, the Solicitation states under Management Subfactor 1, "Independence Requirement," that an offeror "is precluded from . . . auditing their own work. . . . " See RFP, Proposal Evaluation Criteria § 4.1. It also states that offerors "demonstrate independence when their personnel have the authority to exercise objectivity and judgment free from external influence." Id. The Solicitation deemed this requirement to be "Pass/Fail." Id. If the contractor "is deemed to lack independence . . . the firm will not be eligible for this effort."

If the award to KPMG stands, KPMG will audit its own work performed under the ODNI contract and, more broadly, will fail to provide impartial and objective financial statement audits of NSA under this contract. Many of the tasks set forth in the ODNI Statement of Objectives (Attachment 1) required KPMG to evaluate and improve policies, processes, controls, and accounting methodologies, many of which relate to financial reporting that will be subject to assessment by KPMG under this contract. *See* ODNI Statement of Objectives §§ 4.3-4.7. Below are several specific examples:

- Under the ODNI Statement of Objectives § 3.0.b, KPMG was required to "[i]mplement compliant, standard business processes across the" intelligence community, including for NSA. Similarly, under § 3.0.d, KPMG was required to "[e]nsure compliance with Government regulations, accounting and auditing practices," and Office of Management and Budget Circulars A-123 and A-136. The Solicitation requires a contractor to evaluate compliance with laws, regulations, and policies as part of the audit of financial statements. See RFP, Statement of Work § 4.3.2 (stating that, among other things, the contractor "shall address . . . [c]ompliance with governing laws, regulations, directives, and policies"). KPMG cannot be independent or objective to evaluate whether the processes it implemented under the ODNI contract are "compliant" as part of this contract.
- Under the ODNI Statement of Objectives § 4.4.a, KPMG had to "develop a process to assess and monitor the progress of each component against the plan" regarding internal controls. The Solicitation states that the



contractor will be required to evaluate the "[e]ffectiveness of internal control " RFP, Statement of Work § 4.3.2. The Solicitation refers to GAO's Government Auditing Standards (2011) – known as the "Yellow Book" – as one source of determining accounting standards. See RFP, Statement of Work § 3.0; see also RFP, Proposal Evaluation Criteria § 4.1 ("In accordance with Government Auditing Standards, the Offeror is precluded from . . . providing non-audit services involving the performance of management functions or management decision-making"). The Yellow Book § 3.54 states that the management of internal controls (as KPMG performs under the ODNI contract) directly conflicts with and impairs the independence of an auditor and effectively cannot be mitigated. See Yellow Book § 3.54 ("[T]he management participation threat created if an auditor performs or supervises ongoing monitoring procedures is so significant that no safeguards could reduce the threat to an acceptable level."). Thus, KPMG cannot meet this independence requirement and it cannot be waived.

- Under the ODNI Statement of Objectives §§ 4.6.b and 4.7, KPMG was required to develop and implement improved policies. See ODNI Statement of Objectives § 4.6.b ("The Contractor shall assist with implementation of the improvements, including redesigning key financial statement preparation processes, developing policies and procedures, identifying roles and responsibilities and identifying compliant accounting methodologies"); id. § 4.7 ("The Contractor shall develop and document the new processes, policies, and procedures and estimating methodologies (where required) needed to implement new accounting models "). The Solicitation stated that an offeror would be precluded under the Government Auditing Standards from "auditing their own work or providing non-audit services that are significant or material to the financial statement audit or FISMA evaluation." RFP, Proposal Evaluation Criteria § 4.1. Thus, because KPMG has provided audit services that prepared NSA for the inspector general's audit, KPMG is not independent or objective to audit the processes and accounting methodologies that it redesigned, implemented, and identified.
- The ODNI Statement of Objectives § 4.6 states, "The contractor shall develop an implementation plan for the [intelligence community] components to prepare financial statements on a quarterly basis that meet federal financial reporting deadlines and provide sufficient information to the [intelligence community] component's Inspector Generals so that it can perform line item audits and testing." ODNI Statement of Objectives



§ 4.6 (emphasis added). The ODNI contract required KPMG to assist NSA in preparing a plan to provide its financial statements to the Inspector General. The instant contract is for the NSA's Office of Inspector General to evaluate and potentially audit the financial statements that KPMG's planning assisted NSA in preparing under the ODNI contract. The Solicitation states that the "contractor shall plan and perform initial audit of NSA Financial Statements with subsequent audits to be performed every year thereafter." RFP, Statement of Work § 4.1. Thus, there is a strong possibility that KPMG will be auditing statements that NSA prepared based on KPMG's planning.

Thus, KPMG has an "impaired objectivity" OCI because it will be auditing the NSA processes, internal controls, and financial reports it assisted NSA in preparing and implementing under the ODNI contract. *See Nortel Gov't Solutions, Inc.*, B-299522.5 *et al.*, Dec. 30, 2008, 2009 CPD ¶ 10 at 5 (sustaining protest where a "potential impaired objectivity" existed because the awardee would be required to review and offer advice to the agency regarding solutions proposed by awardee on another contract and this provided an "opportunity for biased advice").

KPMG had an unmitigated potential or actual impaired objectivity OCI. NSA failed to reasonably investigate this OCI, which investigation would have disclosed that KPMG would be auditing its prior work performed under the ODNI contract. KPMG should have been excluded from the competition based on this OCI. Had NSA properly investigated this OCI, KPMG would not have been permitted to compete and EY would have had a substantial chance of receiving award.

C. NSA Should Have Found KPMG Non-Compliant Based On Its Inability To Provide Independent Audits

A firm that fails to comply with a mandatory minimum requirement of a solicitation is not eligible for award. See For Your Info., Inc., B-278352, Dec. 15, 1997, 97-2 CPD ¶ 164 at 3 ("In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation should be considered unacceptable and may not form the basis for an award."). Here, KPMG (and possibly some other offerors) could not meet the independence requirement under the Management factor – the only pass/fail requirement in the Solicitation.

The Solicitation stated that an offeror would be deemed ineligible for award if it could not meet the independence requirement under the Management factor's Independence Requirement subfactor:



In accordance with Government Auditing Standards, the Offeror is precluded from: (1) providing non-audit services involving the performance of management functions or management decision-making, and (2) auditing their own work or providing non-audit services that are significant or material to the financial statement audit or FISMA evaluation. Furthermore, Offerors demonstrate independence when their proposed personnel have the authority to exercise objectivity and judgment free from external influence. If the contractor is deemed to lack independence as described above, and as described by United States Government Accountability Office standards, the firm will not be eligible for this effort.

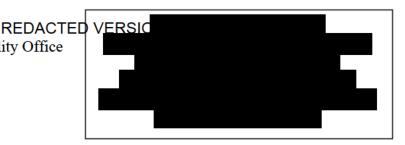
RFP, Proposal Evaluation Criteria § 4.1 (emphasis added). The Independence Requirement subfactor was the only pass/fail requirement of the Solicitation. *See id.*

For all the reasons discussed above regarding KPMG's OCI, it should not have received a "pass" under the Independence Requirement subfactor. NSA improperly gave KPMG a pass under this subfactor, despite the obvious conflicts and inability of KPMG to exercise objectivity and judgment free from external influence due to their prior work. Also, because of NSA's inadequate investigation regarding OCIs, other offerors also potentially cannot "pass" under the Independence Requirement subfactor. KPMG and other firms that could not meet this requirement were non-compliant and should not have been eligible for award under law and the terms of the Solicitation.

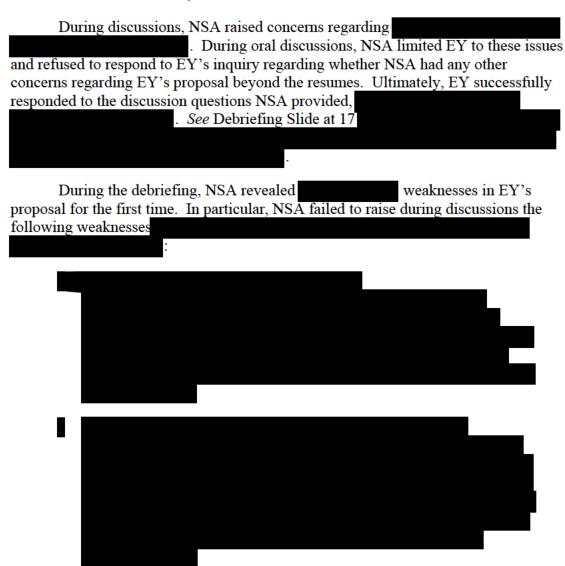
EY was prejudiced by NSA's improper evaluation of KPMG and other offerors under this subfactor. Had NSA properly evaluated all offerors under this evaluation factor, EY may have been the only one receiving a pass. EY would have had a substantial chance of receiving award.

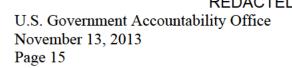
D. NSA Improperly Failed To Conduct Meaningful Discussions With EY

An agency must raise significant weaknesses and deficiencies with an offeror during discussions. See 48 C.F.R. § 15.306(d)(3) ("At a minimum, the contracting officer must... indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance to which the offeror has not yet had an opportunity to respond."). Discussions cannot be meaningful unless an agency informs an offeror of weaknesses that will enable the offeror a reasonable chance of receiving award. CIGNA Gov't Servs., LLC, B-401062.2, May 6, 2009, 2010 CPD ¶ 283 at 6 ("Discussions cannot be meaningful unless they lead an offeror into those weaknesses, excesses or deficiencies in its



proposal that must be addressed in order for the proposal to have a reasonable chance of being selected for contract award."). "In determining whether a concern identified by an agency was a weakness, significant weakness, or deficiency, our Office does not rely solely on the label or term used by the agency, but instead looks also to the context of the evaluation." *Raytheon Co.*, B-404998, July 25, 2011, 2011 CPD ¶ 232 at 6; *see also AT&T Corp.*, B-299542.3 *et al.*, Nov. 16, 2007, 2008 CPD ¶ 65 at 11 n.16 ("[A]n agency's assigned evaluation rating is also not controlling of whether the offeror's proposal contains significant weaknesses that must be identified if discussions are conducted.").









Debriefing Slides at 16-19, 23.

The weaknesses identified for the first time in the debriefing were "significant weaknesses" that NSA was required to raise during discussions. For example,

In fact,

each of the weaknesses should have been raised because they were significant and kept EY from having a reasonable chance of receiving award. *See Raytheon*, 2011 CPD ¶ 232 at 7 ("Thus, the agency's failure to use the term 'significant



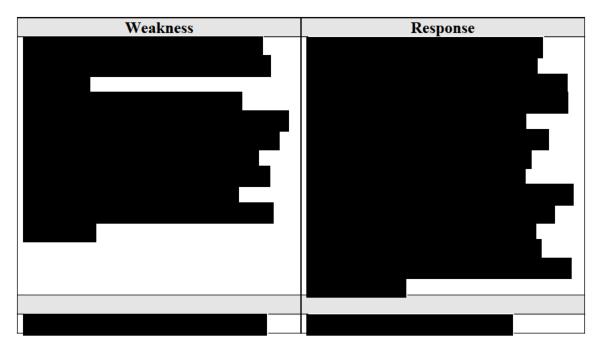
weakness' in the evaluation documentation is not controlling for purposes of determining whether the concerns were, in fact, significant weaknesses.").

EY was prejudiced by NSA's failure to raise these significant weaknesses during discussions. Had NSA raised these weaknesses with EY, there is a substantial chance EY's ratings would have

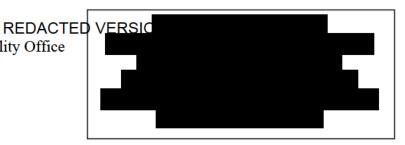
r. Given its lower price together with an improved proposal based on meaningful discussions, there is a substantial chance that EY would have presented a better value than KPMG and received award.

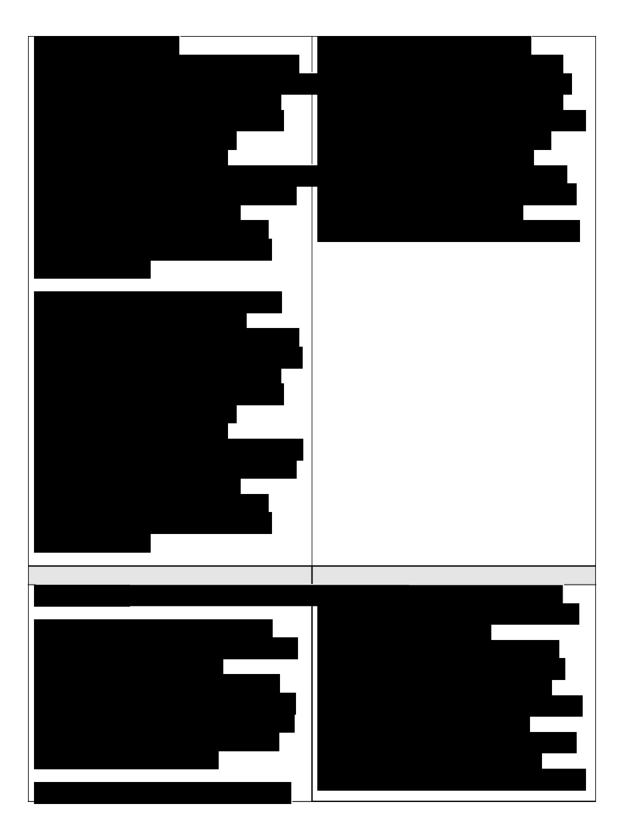
E. NSA Improperly Assigned Weaknesses To EY That Lacked A Rational Basis

GAO will sustain a protest where the agency bases its evaluation and source selection decision on unreasonable and unsupported weaknesses that lowered the protester's scores. See *Intercon Assocs., Inc.*, B-298282, Aug. 10, 2006, 2006 CPD ¶ 121 at 10 (sustaining protest where "the record shows that the agency's source selection decision was based upon numerous criticisms of the protester's proposal which were unreasonable or unsupported, and that [protester's] numeric score was lower because of these findings"); *see also Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 7-10 (same). Here, the weaknesses assessed by NSA lacked a rational basis.

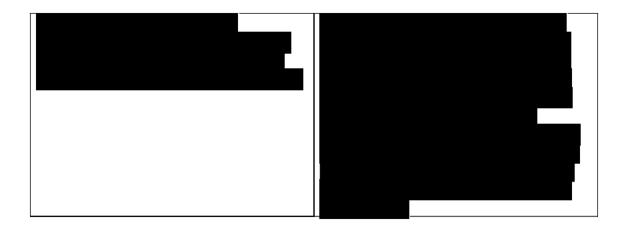


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EY was prejudiced by NSA's irrational assessment of weaknesses,

. Had NSA
conducted a rational assessment, there is a substantial chance that EY would have
have improved its evaluation vis-à-vis KPMG's (or
even surpassed it) under these factors.

IV. CONCLUSION & REQUEST FOR RELIEF

For the foregoing reasons, EY respectfully requests that GAO recommend NSA to terminate the award to KPMG and make award to EY; or, alternatively, conduct meaningful discussions, reevaluate offers, and make a new source selection decision. Additionally, EY respectfully requests that GAO recommend that EY receive its protest costs and bid preparation and proposal costs, including attorneys' fees, and any other relief that GAO deems appropriate.

V. REQUESTS FOR DOCUMENTS

Pursuant to 4 C.F.R. § 21.1, EY requests production of the following documents:²

(1) The Solicitation, any amendments, questions and answers provided to prospective offerors, and any public notices regarding the contract award.

² The term "documents" shall include but not be limited to any notes, correspondence, memoranda, e-mails, reports, and communications using any electronic, paper, or other media format.



- (2) The complete proposals of the offerors, including revisions, clarifications, any supplemental and final submissions of the proposals, and the source selection plan.
- (3) All documents concerning the decision of NSA not to make award to EY or make award to KPMG.
- (4) NSA's negotiation memoranda, source selection memoranda, and best value determinations, if any.
- (5) All documents prepared by any technical evaluation team or any other individuals that evaluated offerors under the Technical, Management, and Past Performance factors.
- (6) All documents NSA used to conduct the technical evaluation including, but not limited to, any documents explaining how it evaluated offerors under each of the technical evaluation factors (Technical, Management, and Past Performance).
- (7) All documents NSA used to conduct the evaluation under the Past Performance factor.
 - (8) All scoring sheets, if any, used in the evaluation of offers.
- (9) All documents referring or relating to any discussions, clarifications, or other communications held between NSA and EY, NSA and KPMG, and NSA and any other offeror.
- (10) All documents relating to the evaluation of price proposals, including, but not limited to, any independent government cost estimate ("IGCE"), and any evaluation of price reasonableness and realism.
- (11) All documents relating to NSA's analysis of each offeror's potential or actual OCIs.
- (12) All debriefings provided to any offerors at any stage in this procurement and all documents related to and used in preparing the debriefings.
- (13) The contract as awarded to KPMG that is the subject of this protest, including any modifications thereto.
 - (14) Any other documents required by 4 C.F.R. § 21.3(d).



Respectfully submitted,

John E. Jensen

Daniel S. Herzfeld

Counsel for Ernst & Young LLP

cc: Ms. Sarah M. Edwards, smedwa3@radium.ncsc.mil

STATEMENT OF OBJECTIVES

Accounting and Audit Advisory Service

To The Office of The Director of National Intelligence
For The Associate Director of National Intelligence and Chief Financial Officer
(ODNI/ADNI/CFO)

05 August 2010

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CHANGES

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1.0 INTRODUCTION

This Statement of Objectives identifies the Government's objectives and requirements for Financial Management and Audit Support for the Intelligence Community to the Associate Director of National Intelligence and Chief Financial Officer (ADNI/CFO).

2.0 BACKGROUND INFORMATION

- 2.1 DNI/CFO Financial Management Structure. The Director of National Intelligence (DNI) is committed to the improvement of financial management practices across the Intelligence Community, to include financial management systems, people, and processes across the Intelligence Community (IC). The DNI established the Director of the Financial Improvement Group (D/FIG), who is responsible for guiding this effort and developing the long-term financial management plan for the intelligence community and reports directly to the ADNI/CFO. The ADNI/CFO and D/FIG developed the Intelligence Community Financial Management Governance structure and established the IC CFO Council to oversee financial management activities of the IC Components responsible for producing auditable financial statements - the Central Intelligence Agency (CIA), National Reconnaissance Agency (NRO), National Geospatial Intelligence Agency (NGA), National Security Agency (NSA) and Defense Intelligence Agency (DIA), and the Office of the Director of National Intelligence (ODNI).
- 2.2 Overview of Financial Management Auditability Plan. The Director of National Intelligence (DNI) established the corporate goal of achieving sustainable, "clean" audit opinions for each IC element as soon, and as cost-effectively, as possible. The IC agency heads are charged with the overall responsibility for executing the DNI's financial management plan for auditability. The success of this effort hinges upon their sustained high level of commitment to deliver planned results.

The ADNI CFO, charged with orchestrating the IC-wide effort, established a governance board of IC CFOs to oversee implementation of the plan. The ODNI will regularly monitor and verify agency progress, relying in part on tailored performance audits and internal control programs that the agencies will undertake to validate their own progress. The ODNI will also facilitate outreach to the Office of Management and Budget (OMB), the Department of Defense (DoD), private and government organizations, and other stakeholders; promote best practices and adoption of IC standards; and oversee implementation of compliance financial management systems. Through the ODNI's oversight the IC will achieve the ODNI's vision to move from today's improving, but uneven, financial management environment to one characterized by uniformly effective internal controls, common business processes, integrated business systems, and a top quality workforce marked by human capital best practices.

The DNI requires a plan for financial management auditability for the IC that is based on proven business and accounting industry practices adapted to the IC business environment. The plan must not only be realistic and executable but provide authoritative strategic direction that ensures IC components adopt procedures and business practices necessary to accelerate audit timelines and provides the ODNI with a functional methodology and model for reporting and monitoring

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program progress toward this objective. The plan will need to incorporate the IC components' use of a phased approach to achieving auditability similar to the DoD's Financial Improvement and Audit Readiness (FIAR) Plan and consistent with other Defense instruction as applicable, while focusing on developing an IC-wide strategy and implementing the requisite corporate process improvements for the IC's most challenging financial management deficiencies. The plan will need to incorporate metrics to ensure that IC components adopt federal financial accounting standards and reporting requirements in compliance with the Administration's guidance to GFO Act reporting agencies. The plan should be also be coordinated with the DNI/CFO and other ODNI representatives, to include the DNI's Inspector General and the Chief Information Officer (CIO).

3.0 GENERAL TASKS

The DNI/CFO and D/FIG are seeking an external contractor to work with the ODNI to accomplish the following Financial Statements Auditability Plan objectives:

- a. Develop and maintain a financial statements auditability plan and reporting tool for the IC components that identifies the key milestones, critical pathways, and timeframes for all IC components to obtain an unqualified audit opinion on financial statements. The auditability plan should be consistent with existing OMB, DoD, and other financial improvement efforts. The plan will include a process to report minimum audit standards, a strategy to manage and analyze IC components progress, a CFO dashboard, and a reporting mechanism that consolidates IC components development, maintenance, and reporting of corrective actions,
- b. Implement compliant, standard business process across the IC that includes a baseline for detailed projects, tasks, and timelines that will demonstrate improvement in the accuracy, reliability and compliance of the IC components financial statements and communicate that progress via various FM reporting mechanisms to relevant parties—to include the President's Management Agenda for Improved Financial Management, the Financial Management Scorecard, and the Performance Accountability Report.
- c. Develop and publish financial management policies and procedures for the IC; to include evaluating IC-wide financial management efforts, standardizing accounting codes and practices, identifying best practices and business improvements, and establishing a resource reference library.
- d. Ensure compliance with Government regulations, accounting and auditing practices, OMB A-136 Form and Content of Financial Statements, and OMB A-123 Management Accountability and Control; and

In addition, the ODNI has other goals with respect to working with an external contractor:

Leverage public sector and government financial management expertise to assist in the implementation and management of an IC FM Governance structure. The contractor

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must collaborate effectively with a diverse group of government and contractor personnel from the ODNI and IC components

- Communicate financial management strategic vision to senior leaders.
- Enhance the financial management knowledge and skills of the D/FIG's team based on the experience of, and working with, external contractor personnel,

The Contractor will be expected to work within an integrated team of internal and external resources that include (i) ODNI staff employees, (ii) a limited number of ODNI independent consultants (iii) external contractors who provide FM support to the ODNI and IC components. The contractor will be expected to work with the ODNI's existing contractors to ensure that accounting and functional requirements are clearly identified, understood, and documented.

4.0 SPECIFIC TASKS

- 4.1 The Contractor shall provide the necessary resources to fulfill the requirements defined in this Statement of Objectives and support the DNI/CFO and D/FIG tasks.
- 4.2 The Contractor shall provide advice, opinions, recommendations, ideas, reports, analyses, and other work products as required. The Director of the Financial Improvement Group will be the Program Manager and COTR for this effort and will assign tasks under this contract. As outlined in the tasks below, the contractor, under this Statement of Objectives, shall develop accounting models and prepare documentation including, but not limited to, process flows, corrective action plan, milestone schedules, policies/procedures, and other plans as required. The Program Manager will be the contractor's point of contact with respect to the scheduling, prioritization and reporting of tasks and deliverables, and will oversee contractor activities. The contractor shall develop and monitor an implementation plan for each of the tasks specified in the Statement of Objectives.
- 4.3 To conduct the tasks described herein, the personnel proposed to perform the tasks shall, collectively, demonstrate capabilities and skills in the following areas:
 - Evaluating IC component financial statements to ensure compliance with DNI instruction and federal financial accounting and reporting principles and standards; statements to include Balance Sheet, Statement of Net Cost, Statement of Budgetary Resources, Statement of Financing, and Statement of Changes in Net Position.
 - Providing process redesign, new policies/procedures and training services to improve the financial reporting of IC components.
 - Improving the data integrity, internal controls, tracking and financial reporting on behalf of IC components.
 - Assessing IC component application of accounting standards and IC component's ability to resolve audit findings and recommendations.

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- Program and project management, including managing client service delivery and managing/supervising staff, co-consultants and subcontractors.
- Providing financial management consulting services to the ADNI/CFO and D/FIG
 regarding IC components financial management improvement efforts and practices while
 operating in a classified environment.
- Evaluating government financial management systems such as Momentum, Oracle Financials, People Soft or SAP; to include assessing business cases and coordinating business enterprise architectures and system migration plans with the ODNI Chief Information Officer and transformation activities with the ODNI's Business Transformation Office.
- 4.4 The Contractor shall provide program management support, including:
 - a. Working with the D/FIG to finalize an overall approach, objectives, specific implementation plans, priorities, timelines and milestones for implementation of the Financial Statement Auditability Plan; formulate a detailed plan for the IC components to achieve auditability and obtain and unqualified audit opinion; develop a process to assess and monitor the progress of each component against the plan; and make recommendations to D/FIG to remove accounting, audit, or systems impediments (whether regulatory, policy, or budget) to auditability.
 - b. Implement and maintain project management software to manage project implementation, including scheduling, milestones, deliverables, and budget tracking and analysis. The ODNI currently uses Microsoft Project, but is open to other applications.
 - c. Assist Government personnel in the preparation of regular status reports, DNI policies, best business practices, and presentations as needed.
 - d. Provide guidance, oversight, and quality control of IC component President's Management Agendas, Financial Management Scorecards, Performance Accountability Reports, Financial Improvement and Audit Readiness Corrective Action and Remediation Plans, and other reports as needed. Any statutory reports will require submission to OMB and Congress.
 - e. Research and document financial management standards and practices for the IC, to include the Federal Accounting and Standards Advisory Board (FASAB), Financial Management Lines of Business, OMB circulars, and other relevant resources.
 - f. Facilitate management of, preparation for, and documentation of meetings of various IC Councils and Task Forces under the IC Financial Management Governance Structure, which will consist of representatives and contractors from the IC components.

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- 4.5 The Contractor shall develop an internal controls strategy to assist the IC components, including the collection, processing, and recording of financial data needed to prepare the financial statements. The contractor shall assist the D/FIG to (i) evaluate the current FMFIA processes and other requirements, (ii) identify internal control issues that directly impact the preparation of quarterly financial statements, (iii) recommend improvements, priorities, timelines and milestones, and roles and responsibilities, and (iv) assist Government personnel in the development of policies and procedures for compliance and enforcement. The contractor shall work with the ODNI/IG to identify financial management areas for improvement and prepare agenda and material for the quarterly joint CFO and IG Council meetings.
- 4.6 The Contractor shall assist the D/FIG to review quarterly and annual financial statements that meet federal financial accounting and reporting requirements. Specific tasks include:
 - a. The Contractor shall conduct an assessment of the compliance of the IC Component's financial statements with federal financial accounting and reporting requirements. The assessment should identify (i) significant accounting deficiencies and deviations from generally accepted accounting principles (ii) significant deviations from OMB financial reporting requirements (iii) inadequacies in documentation and quality control and (iv) significant audit risks.
 - b. The Contractor shall develop an action plan that includes recommended improvements, priorities, objectives, timelines, and milestones. The Contractor shall assist with implementation of the improvements, including redesigning key financial statement preparation processes, developing policies and procedures, identifying roles and responsibilities and identifying compliant accounting methodologies where required.
 - c. The Contractor shall develop an implementation plan for the IC components to prepare financial statements on a quarterly and annual basis that meet federal financial reporting deadlines and provide sufficient information to the IC component's Inspector Generals so that it can perform line item audits and testing. The plan shall include policies, procedures, and methodologies to collect and/or estimate accounting data required to prepare audited financial statements by November 15 deadlines.
- 4.7 The Contractor shall develop and document the new processes, policies and procedures and estimating methodologies (where required) needed to implement new accounting models that are US Standard General Ledger (USSGL)-compliant and improve the accuracy, reliability, and compliance of the financial statements and reporting. The accounting models include, but are not limited to (i) USSGL-compliant accounting model for intra-governmental and reimbursable activity (ii) USSGL-compliant accounting models for reconciling Funds Balance with Treasury (iii) USSGL-compliant accounting models for property, plant, and equipment. The Contractor shall develop and catalog models and prepare a detailed schedule that includes key tasks, milestones, and government/contractor deliverables.

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- 4.8 The Contractor shall work with the D/FIG to improve their knowledge of (i) federal accounting principles and standards and (ii) internal control issues associated with compiling the financial statements and required documentation. The contractor shall provide advice on specific accounting issues through "white papers" and briefings.
- 4.9 Apart from the documentation requirements in the preceding tasks, the Contractor shall organize all documentation associated with the Financial Management Auditability Plan and FM Governance into an electronic/online "resources library," including a central repository for financial management policies and procedures, internal controls and accounting guidelines that are required for auditable financial statements. The "resources library" will be part of the ODNI/CFO share drive and website, which is part of the ODNI's existing intranet. The resources library is not anticipated to require interface with other systems, other than containing links to other parts of the ODNI intranet where appropriate. The contractor will be expected to coordinate with ODNI IT staff to ensure that the resources library adheres to all relevant ODNI requirements.
- 4.10 The Contractor shall support FIG interaction with the DNI Inspector General, DoD Inspector General, and IC Components Inspector Generals or IPAs. The Contractor shall (i) assist the FIG to resolve IC Component audit questions, finding, and recommendations where appropriate, (ii) develop a plan to identify, research, and justify IC-unique accounting treatments and methodologies that support the financial statements, (iii) and prepare "white papers" on the most appropriate accounting and financial reporting treatments, including initiating unclassified discussions with FASAB and other authoritative bodies to potentially develop guidance on accounting for sensitive government programs. The Contractor shall assist the ADNI/CFO and D/FIG as chairs of the Accounting Standards Working Group to identify alternative methods of accounting implemented throughout the IC, evaluate proposals to deviate from accounting standards, and recommend accounting approaches for further consideration by the OMB, AICPA, and FASAB.

5.0 PERSONNEL REQUIREMENTS

The Government estimates Sixteen (16) Full Time Equalvalent (FTE) personnel for this requirement. The 16 FTEs shall be available at contract award. The anticipated labor categories and the required experience is as follow

A. Program Manager (1 FTE)

- Minimum of FIVE (5) years experience as a Project Manager. Preference is a certified project manager with knowledge of change management.
- Minimum of FIVE (5) years experience in financial management disciplines generating standards, researching practices, producing analysis and issuing policies.
- Minimum of FIVE (5) years of experience developing strategic plans and briefings to support department level or private sector executives.

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B. Audit/Accounting Specialist (8 FTE)

- Minimum of FIVE (5) years of experience working with federal financial statement auditing, internal controls compliance, and/or federal financial statement preparation and analysis.
- Bachelor's degree in business or a related field, CGFM or equivalency.
- In-depth experience with GAO, DoD/IG, PCAOB, or Yellow book standards.
- Preference is a licensed Certified Public Accountant (CPA).

C. Financial Management Systems Experts (3 FTE)

- Minimum of FIVE (5) years of information technology and systems experience.
- Minimum of FIVE (5) years of experience implementing or managing financial systems for federal agencies.
- Minimum of THREE (3) years experience with Momentum, Oracle Financials, People Soft, or SAP Financial Systems.
- Knowledge of CGAC and FSIO compliance requirements for financial systems and experience developing analysis of alternative or preparation of business cases.
- Bachelor's degree in business or a related field, CGFM or equivalency.

D. Financial Management Specialist (4 FTE)

- A currently certified defense or government financial manager or equivalent.
- Minimum of FIVE (5) years of experience with the Federal Government with at least one year of experience with one or more of the Intelligence Community members.
- Ten years In-depth experience across the financial management disciplines to include analysis, practices, policies, standards, and business processes.
- Knowledge of OMB, FASAB, AICPA, and Treasury standards and guidance

6.0 DELIVERABLES

- 6.1 In addition to the task deliverables, the Contractor will be responsible for the specific deliverables identified below. It is anticipated that once the contract is awarded, the FIG and the contractor will determine the specific content and format details for the deliverables, as well as specific timetables and milestones:
 - Specific deliverables include:
 - Task 4.2: Program Management activities
 - Task 4.3: Internal Controls and Compliance Assessment and Action Plan
 - Task 4.3: Training requirements and plans
 - Task 4.4: Financial Statements Implementation Plan, Assessment and Action Plan
 - Task 4.7: Documentation of processes, policies and procedures for new accounting models

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- Task 4.9: Preparation and organization of audit workpapers, Electronic/Online Resources Library, and website content
- Task 4.10: Audit Support activities
- 6.2 Organizational Conflict of Interest (OCI) Mitigation Plan. The contractor shall deliver an OCI Mitigation Plan within 30 days after contract award. The OCI plan should discuss any conflicts the Contractor have where Contractor's personnel are providing contract support to other IC agencies performing similar work. This restriction shall flow down to any subcontractor performing the requirements outlined under this SOO.

6.3 Monthly Status Reports

The Contractor shall deliver a monthly status report in (1) copy to the Contracting Officer's Technical Representative (COTR) and (1) copy to the Contracting Officer (CO). The status report shall contain the Contract Summary, key activities and accomplishments, the financial summary to include contractor fill rate and clearance status, and a detailed execution report that reflects actual and projected hours by labor category. This report shall identify subcontractor activity as appropriate and be reconciled with the Subcontractor prior to submission.

7.0 DOCUMENTATION

All documentation created by the contractor in support of the tasks described herein shall be delivered to the Government and become the property of the Government,

8.0 PERIOD OF PERFORMANCE

The period of performance will be for a base year plus (1) option year.

9.0 PLACE OF PERFORMANCE

The primary place of performance for this effort will be the Government's facility located in Northern Virginia.

10.0 SECURITY

General: The Contractor's work in the Government's facilities shall be performed under strict security conditions. All Contractor employees assigned to work in Government facilities must be U.S. citizens.

Contractor personnel that require access to Sponsor facilities on behalf of the ADNI/CFO and D/FIG must coordinate their visits in advance with the Task Order COTR.

Association: The Association between the Contractor and the Sponsor is UNCLASSIFIED.

Work: The highest classification for work performed shall be classified up to the TOP SECRET level.

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Reports: The highest classification of Sponsor-provided data shall be classified up to the TOP SECRET level. The highest classification of Contractor produced data shall be classified up to the TOP SECRET level.

Personnel Clearances: All personnel nominated for this contract shall have a current ODNI INDUSTRIAL SECURITY STAFF APPROVAL/TOP SECRET (ISSA/TS) clearance or be eligible for crossover to an ODNI ISSA/TS clearance at time of contract award. The Contractor shall nominate for clearances only employees who have been pre-screened by the Contractor and who are specifically intended for assignment to this contract.

Facilities: There is no requirement for the Contractor to work with or store classified information at the Contractor's facility. All classified materials used by the Contractor will be stored at the Sponsor's facilities in appropriate secured areas.

Compliance: United States Government rules, regulations, direction, and requirements issued by the Contracting Officer or other authorized personnel for good order, administration, and security shall apply to all Contractor personnel who enter the Organization's facilities. Any type of computer systems or data storage media will be brought into Organization facilities shall be in compliance with HR 10-26, Automated Information System Security. The Organization reserves the right to refuse and/or terminate any and all security clearances applied for and or processed. The Contractor shall not reassign to another Organization component any person who has been cleared specifically for this contract without the express written approval of the COTR. The Contractor shall cooperate fully in all security matters that may arise relating to this contract.

11.0 Key Personnel

The following positions shall be considered key positions and shall be identified in the contract under the key Personnel clause:

- 1. Program Manager The person who will manage the overall effort on a day-to-day basis.
- 2. Audit/Accounting Specialist The key managers on the project who will supervise the workflow.
- 3. Financial Management Systems Expert(s).
- 4. Financial Management Specialist(s),

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Contract Data Classification Guide (CDCG)

COTR's Name: <u>Harold F.</u>	Date: <u>05 August</u>	2010		
ecurity Asbact of the Contract ontract Definition	Highest Glassification	Reason	Declassify	Derivation
Association 59	U	NA	N/A	N/A
Determine Sterility Code If SC-1 . Work	and an execution of the former suppression			
	TS	1.4(c)	20350805	FIN T-06
Technical Information	TS	1.4(c)	20350805	FIN T-06
Personnel Clearance Level	TS	1,4(c)	20350805	FIN T-06
Statement of Work	V	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A
Reports	TS	1.4(c)	20350805	FIN T-06
Periodic Progress	T 5	1.4(c)	20350805	FIN T-06
Produced Data	TS	1.4(c)	20350805	FIN T-06
Hardware	U	N/A	N/A	N/A
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33, June 2004

Company Name: TBD

Specific Location Vendor Code: TBD

DECL: DRV FRM:

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EVALUATION CRITERIA

With the Task Order Proposal Request (TOPR) each Offeror received a Statement of Objectives (SOO) that describes the scope and requirements unique to a specific Task Order name. The following summary outlines the Criteria by which proposals will be evaluated. The Task Order award is based upon the determination of the most advantageous offer to the Government.

First Considerations:

Proposals are due within 14 calendar days of issuance of the TOPR. The proposal (Resumes) shall be no more than [2] pages long.

Best Value

In determining the award of the Task Order, the Government intends to make a best value source selection decision using a tradeoff process. The Government will evaluate offers received under this Task Order Proposal Request (TOPR) to determine the offeror(s) whose proposal(s) represents the best value to the Government, price and other factors considered. The Government will make an award determination using the technical and management approach, resumes of personnel (if applicable), past performance, security, and cost/price as provided below. Although clarity and succinctness is not a specific evaluation criterion, the degree to which a proposal effectively presents ideas, concepts, and information is embedded within each criterion.

Evaluation Factors and Criteria

- (a) In determining the award of a contract(s), the Government will give primary consideration to the offeror(s) that can perform the contract in a manner most advantageous to the Government, cost/price and other factors considered. The Government will compare each Offeror's proposal to the requirements contained in this solicitation, including all compliance documents. An Offeror's proposal must accurately demonstrate an understanding of the objectives and scope of the project.
- (b) The Government will use the following evaluation factors: Technical/Management (includes Qualifications & Technical Approach); Past Performance; Security; and Cost. The contractor must demonstrate experience conducting the tasks specified and the ability to secure the range and depth of expertise required. Past Performance will be an un-weighted factor and will be assigned a "Confidence Rating". Security will be evaluated on a Pass/Fail basis. Proposals that fail the security evaluation will be ineligible for award.
- (c) The cost/price factor is of significantly less importance than the other factors combined. Cost or price, while being an important factor, is not in and of itself the determining factor in the selection of the successful offeror for award of the contract and will not be weighted. However, as the relative difference in non-cost criteria decreases, cost will become more of a discriminator.

Security (PASS/FAIL):

Security Factors are evaluated on a PASS/FAIL basis. Security is a critical factor in the evaluation. Offerors found to be unacceptable from a security perspective will be eliminated from further consideration for Task Order Award. PASS/FAIL will be determined on the following criteria:

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Compliance with the security clearance requirements identified in the SOO. For the PASS/FAIL determination, the COTR shall verify that the contractor's proposed personnel possess ODNI/ISSA level clearances at the time of task order award.

Use the format below to identify the security clearance and CI Polygraph status for all proposed staff.

0	;	Name:
0	ŗ	SSN;
0		Date of Birth (DOB);
Ó		Place of Birth (POB);
0	ŧ	Clearance Level:
0		Agency Granting Clearance;
0		Date of Last BI & Agency;
0		Date and Scope of Polygraph (full scope or CI only):
Ò	f	Agency conducting Polygraph:

Offerors who desire may include a screen shot of the database that supports the data provided above. These pages will not be included in the page count but should be limited to no more than 2 pages per person. In the event that we cannot corroborate clearance information we will examine this data and contact the database owners to verify. The COSR determination is final and not subject to clarification or discussion.

Technical & Management Approach (Max: 100 points):

Qualifications (50 points possible):

Factor - This factor evaluates the proposed personnel skills and labor categories.

Standard - The standard is met if individual personnel possess required skills defined in the SOO and/or Skills Matrix and if the labor mix proposed meets the Agency's requirement.

Technical Approach (50 points possible):

Factor - This factor evaluates the proposed technical approach to the requirement.

Standard - The standard is mot if the proposed technical approach meets the Agency's requirements as stated in the SOO.

Past Performance: (NOT WEIGHTED)

Past performance will be an un-weighted risk factor which will allow the Government to assign an overall confidence rating to the proposal based on relevant examples. Submitting no past performance examples will result in a neutral rating.

Factor – This factor evaluates the extent to which the Offeror has demonstrated successful past performance on other contracts for similar requirements including cost, schedule, deliverables and quality of personnel.

Standard - The standard is met if the Offeror demonstrates successful performance for three contractors within the past three years.

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The contractor will use the table below to assist in providing past performance information:

Past Performance - Provide 3 examples of relevant past performance in support of the IC or DoD in the following format. Maximum of two pages per example,

Offeror:	
Program Name/Title:	
Awarding Agency/Entity:	
Contract Number:	
Award Date:	
Contract Type (FFP, CPFF, etc.):	
Cognizant Program Manager:	,
Cognizant Contracts Representative:	
Competitively Awarded (Yes or No):	
Work Location:	(
Description of Work Performed and	
how it is relevant to this TOPR:	
Agency POC:	
Phone #;	
FAX #:	
E-Mail Address:	

Price - (NOT WEIGHTED):

The Cost/Price volume will be un-weighted and will be evaluated against all other proposals submitted.

Selection:

The Contracting Officer shall complete the Overall Task Order Proposal Evaluation Sheet to determine which Offeror's proposal is most advantageous to the Government. The completed Evaluation shall be filed in the Task Order Contract file.

Evaluation Facotrs	Score	Company #1	Company #2	Company #3	Company #4
Security	Pass/Fail		Annual Control of the		
Qualifications	0.50		4555	***************************************	
Technical Approach	0-50		P-4000 Tuberrania		
TOTAL	100			***************************************	
Past Performance	Not Weighted	······································		······································	***************************************
Price	Not Weighed				•

The Government hereby reserves the right to make an award based upon your initial submission without further discussion, and for that reason, your original submission should be in the most favorable terms possible. The Government also reserves the right to accept or reject, in part or in total, any proposals received in response to this request. Proposals submitted shall remain valid for a period of one hundred and twenty days (120) after submission.

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United States Government Accountability Office Washington, DC 20548

Decision

Matter of: Ernst & Young LLP

File: B-409258

Date: December 9, 2013

DECISION

Ernst & Young LLP, of Philadelphia, Pennsylvania, protests the award of a contract to KPMG LLP under request for proposals No. H98230-13-R-0029, issued by the National Security Agency/Central Security Service for services supporting the agency's Office of Inspector General. The protester challenges the agency's evaluation of proposals and conduct of discussions, and contends that KPMG has an organizational conflict of interest (OCI).

We dismiss the protest as academic.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006). Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Pacific Photocopy and Research Servs., B-278698, B-278698.3, Mar. 4, 1998, 98-1 CPD ¶ 69 at 4.

Here, prior to submitting its report in response to the protest, the agency informed our Office and the parties it would take corrective action. Specifically, the agency states that it will investigate any potential OCI's. The agency also states that it will continue to stay contract performance until the resolution of the agency's corrective action, and will notify the protester and KPMG of the results of its investigation.

The agency's corrective action renders the protest academic. We do not consider academic protests. <u>Dyna-Air Eng'g Corp.</u>, B-278037, Nov. 7, 1997, 97-2 CPD ¶ 132.

The protest is dismissed.

Susan A. Poling General Counsel