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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Government Business Services Group

File: B-287052; B-287052.2; B-287052.3

Date: March 27, 2001

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Drew A. Harker, Esq., and Mark E. DeWitt, Esq., Arnold & Porter, for US Investigations Service, Inc., an intervenor.

Kathie Ann Whipple, Esq., and Sandra K. Scholar, Esq., Office of Personnel Management, for the agency.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office (GAO) will not review contention that contracting agency is required under the Freedom of Information Act (FOIA) to provide protester copies of certain operation manuals and processing instructions the agency developed and placed in reading rooms for offerors to review in connection with solicitation to acquire background investigations services, because GAO has no authority under FOIA regarding the release of documents in the possession of an agency. Protester must pursue the remedy it seeks under the disclosure remedies of FOIA.
2. Allegation that solicitation's restriction on photocopying documents the agency developed and placed in reading rooms for offerors to review is unduly restrictive of competition is denied, where offerors were permitted to view the documents at issue for at least 2 weeks prior to closing, and when viewed together with the information the agency provided with the solicitation, the agency provided sufficient information for offerors to compete intelligently and on an equal basis.
3. Protest that offeror under solicitation for background investigation services has an organizational conflict of interest that renders that firm ineligible for award is dismissed as premature where contracting agency has made no final determination regarding the status or eligibility of the offeror.

DECISION

Government Business Services Group (GBSG) protests as unduly restrictive the terms of request for proposals (RFP) No. OPM-00RFP-01025RDH, issued by the Office of Personnel Management (OPM) to acquire background investigations and related support services. Specifically, the protester challenges the provision in the RFP that does not allow offerors to photocopy or remove any materials located at two reading rooms OPM established in connection with the RFP. The protester argues that by preventing it from photocopying or removing any of the materials from the reading rooms, OPM has placed GBSG at a competitive disadvantage, and has improperly skewed the procurement in favor of the incumbent, US Investigations Service, Inc. (USIS). In a supplemental protest, GBSG also alleges that the relationship between OPM and USIS has created an organizational conflict of interest which renders USIS ineligible for award.

We deny the protests.

BACKGROUND

OPM's Investigation Service (IS) is responsible for conducting background investigations to provide executive branch agencies and departments with information upon which to make decisions involving the employability of individuals in the federal civil service, including whether to grant security clearances. Prior to 1994, OPM employees conducted these investigations. In 1994, as part of an initiative to reinvent the federal government, IS was identified as one of several federal programs to be privatized. In 1995, OPM created USIS pursuant to an employee stock ownership plan, made up primarily of former OPM employees who had previously performed or supported IS's background investigations as OPM employees. OPM then awarded USIS a sole-source contract to take over IS's background investigation functions.¹ That contract is scheduled to expire in July 2001. The procurement at issue here is to competitively acquire the required background investigations and related support functions.

The RFP, issued October 15, 2000, contemplates the award of one or more indefinite-delivery/indefinite-quantity contracts with fixed prices for each of several types of background investigations and services required for a 2-year base period, with up to three 1-year option periods. Offerors are required to submit separate technical and price proposals. The RFP divides the work into two categories-- investigations support and field investigations. Investigations support is to be provided at the Federal Investigations Processing Center (FIPC) in Boyers, PA, while field investigations are to be conducted in all 50 states, Washington, D.C., Puerto

¹ The sole source award to USIS was unsuccessfully challenged in district court. Varicom Int'l v. Office of Personnel Management, 934 F.Supp. 440 (D.D.C. 1996).

Rico, Guam, the U.S. Virgin Islands, and other U.S. Trust Territories. The RFP separately lists the specific investigations support services and field work tasks. In addition, the RFP lists 62 different deliverables as separate contract line item numbers (CLIN) and includes a brief description and estimated quantities for each. Another attachment to the solicitation, consisting of over 220 pages, summarizes the work involved for each CLIN. The RFP states that the agency intends to award either separate contracts for the field investigations or the investigations support work, or one contract for all of the work combined. The RFP lists technical and cost/price as evaluation factors; award is to be made on the basis of the proposal deemed to offer the “best value” to the government.

In May 2000, while developing the RFP, OPM decided to compile detailed, written processing instructions for the work performed at the FIPC. OPM explains that it reached this decision to provide potential offerors with additional information regarding what would be required at the FIPC, and because a new contractor would ultimately require written, detailed, and current instructions in order to successfully perform the contract. Agency Report (AR), Feb. 5, 2001, at 6. During June and September 2000, before issuing the solicitation, OPM compiled detailed written processing instructions describing the work performed at the FIPC and covering all of the work contemplated by the solicitation. *Id.* According to OPM, the result of this effort consists of several volumes, referred to in the record as either operations manuals or processing instructions, and comprises over 2,000 pages describing the day-to-day work processes at the FIPC.

OPM placed these documents in two reading rooms—one located at the FIPC facility in Boyers, PA, and the other at OPM’s headquarters in Washington, D.C. The RFP states that “[a] reading room will be provided for interested offerors to view reference materials associated with performing background investigations.” RFP at 2. Potential offerors could view the materials in the reading room located at OPM’s headquarters by appointment each work day from 10 a.m. to 3 p.m., for approximately 2 weeks from October 23 through November 3, 2000. The Boyers reading room was available during a site visit to the FIPC facility. Visitors to the reading rooms were required to sign a “Reading Room Acknowledgement of Conditions” form which states:

I [name] of [organization/company] hereby acknowledge that I understand that I may view and take notes of all the information in the Background Investigations Reading Room. I also understand that I may not remove any pages, may not copy, may not take pictures, or otherwise reproduce any of the documents in the Background Investigations Reading Room. AR exh. A.

GBSG contends that the RFP’s restriction on photocopying the materials in the reading rooms is unduly restrictive. In this connection, the protester primarily argues that the restriction places it at a competitive disadvantage because it is unable to review and analyze the information contained in the reading room

materials at its own facility in order to develop process flow sheets, quality control procedures, and cost estimates, which would then form the basis for preparing its technical and price proposal. GBSG argues that without conducting this extensive review at its own facility, it cannot develop an adequate response to the RFP. In addition, GBSG argues that by restricting review of the documents to only those times specified in the RFP, OPM ensures that USIS will be the only firm that can meet the RFP's requirements.

The agency takes the position that, although a new contractor could find the materials useful during contract performance, offerors do not need the reading room documents to prepare proposals. In this regard, OPM explains that the documents in the reading rooms include operating procedures, internal guidelines and techniques for conducting background investigations, and OPM's suitability adjudication procedures. They also contain operational materials for OPM's Personnel Information Processing System (PIPS) computer system, information identifying responsibilities of the National Security Agency (NSA) and the Central Intelligence Agency (CIA), procedures for handling and mailing classified information, and procedures for transporting sensitive information. The agency states that it developed these materials and placed them in the reading rooms, not because they are essential or even helpful in preparing a competitive proposal, but to provide offerors with a better understanding of the complexity and magnitude of the RFP's requirements. OPM further states that the information it provided with the solicitation was sufficient for offerors to respond to the RFP's core requirements.

With respect to the challenged restriction on photocopying these documents, OPM states that the release of these materials to the general public, or even a limited disclosure without any control over subsequent dissemination, could give any applicant for a federal position, a political appointee, or current federal employee, sensitive information which could be used to circumvent the investigative process. According to OPM, therefore, unlimited and unrestricted access to the materials outside the reading rooms, including photocopying, poses an unacceptable risk to national security and could jeopardize the integrity of the federal workforce.

DISCUSSION

The parties rely on various provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994 & Supp. IV 1998), and decisions interpreting those provisions, to argue their respective positions. Specifically, OPM relies on exemption 2 of FOIA, 5 U.S.C. § 552(b)(2), which exempts from mandatory disclosure records that are "related solely to the internal personnel rules and practices of an agency," and exemption 7(E), 5 U.S.C. § 552(b)(7)(E), which affords protection to law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law," to argue that the materials are exempt from mandatory disclosure.

GBSG disagrees with the agency's position. The protester asserts that the fact that potential offerors may view and take notes on the documents in the reading rooms, means that OPM has disclosed those documents to the general public. GBSG asserts that, since the RFP imposes no restrictions on the subsequent release of any information after offerors review the materials, OPM essentially has disclosed them to the public, thus waiving any FOIA exemption. GBSG further maintains that, contrary to OPM's position, FOIA does not provide for limited disclosure. According to GBSG, "either information may be disclosed and copied, or it cannot be disclosed at all." Comments, Feb. 7, 2001, at 7. In sum, GBSG concludes that there is no reason to prohibit offerors from copying the reading room documents.

While the arguments advanced by OPM and GBSG based on FOIA principles provide insight into the parties' opposing positions in this protest, our Office has no authority under FOIA regarding the release of documents in the possession of an agency. All Am. Moving and Storage, B-243630, B-243804, July 8, 1991, 91-2 CPD ¶ 32 at 2 n.1; Colbar, Inc., B-227555.4, Feb. 19, 1988, 88-1 CPD ¶ 168 at 5-6; Government Sys. Integration Corp., B-227065, Aug. 7, 1987, 87-2 CPD ¶ 137 at 4-5. Thus, to the extent that GBSG relies on FOIA to argue that OPM is required to allow the firm to copy the reading room documents, the protester must pursue the remedy it seeks under the disclosure remedies of the Act. See Facilities Management, Inc., B-247698.2, Apr. 24, 1992, 92-1 CPD ¶ 394 at 3; Employment Perspectives, B-218338, June 24, 1985, 85-1 CPD ¶ 715 at 7.

Although we will not resolve the parties' dispute concerning whether the agency has a legal obligation to release the reading documents under FOIA, we review the agency's actions here pursuant to the authority established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-56 (Supp. IV 1998). Pursuant to that authority, our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.—Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299 at 4.

General Nature of the Reading Room Documents

Our Office conducted a hearing in this matter to obtain testimony from knowledgeable individuals from OPM and GBSG, to clarify the record with respect to the nature and contents of the reading room documents. In particular, the witnesses addressed whether and to what extent the reading room documents are necessary to prepare competitive proposals. OPM witnesses also addressed whether and to what extent USIS may have had access to the information contained in the reading room documents, while other offerors did not have similar access to that information.

As a preliminary matter, the record shows that the materials OPM developed for this solicitation and placed in the reading rooms are relevant to preparing proposals. In

this connection, we note that in addition to listing the specific work requirements as described below, the solicitation states that:

All services provided must be in accordance with processing instructions contained in the form of operations manuals, the OPM-IS Investigator's Handbook, OPM-IS Security Manual, and the OPM-IS Adjudicator's Handbook. These are available for reference and review [in the reading rooms]. Additional guidance is contained in Work Requirements (Attach. 2).

Id. § C.1 (emphasis added).

In addition, in response to our Office's request, OPM provided a random sampling of the documents at issue, along with an index of the documents in the reading rooms and a brief description of each, for our in camera review. That index and the random sampling of the documents OPM provided show that the materials in the reading rooms include the items referenced in § C.1 of the RFP, including OPM's "Investigator's Handbook," the "[PIPS] User's Manual," OPM's "Security Manual," and a "National Industrial Security Program Operating Manual," to name a few. The index also lists additional documents such as an operational manual for computer support and processing incoming/outgoing mail (including classified materials) and for handling miscellaneous investigative products; operational manuals for processing, filing, and controlling various investigative products; and manuals for reviewing and processing investigative products, including FOIA requests.

At the hearing, the Assistant Director for Operations for OPM's IS in Boyers generally described the information contained in the reading rooms as including the "how to' and 'what if' guidelines for dealing with specific requests for investigation." Hearing Transcript (Tr.) at 25-26, 34. During her testimony, the Assistant Director summarized each of the numerous reading room documents in greater detail, ranging from describing specific mail room processes, handling classified correspondence, converting requests for investigations into data for OPM's automated processing system, filing and controlling investigative products, instructions for dealing with pending investigations, to providing guidance for field investigators and setting forth OPM's policies and procedures related to computer security. See, e.g., Tr. at 25-33. In our opinion, the record is clear that the operations manuals and processing instructions describe procedures and closely track virtually every material aspect of contract performance.²

² The RFP specifically references the "OPM-IS Adjudicator's Handbook." The Assistant Director testified, however, that this document was a supplement to the Federal Personnel Manual, and is no longer in effect, but that relevant portions still applicable were extracted and included either in the work requirements or in another volume in the reading rooms. Tr. at 40.

The RFP states as follows with respect to the evaluation of proposals:

The Government reserves the right to consider as acceptable only those proposals submitted in accordance with all technical requirements set forth or referenced in this solicitation and which demonstrate an understanding of the problems involved and the scope of the project; and to reject as unacceptable proposals deleting or altering technical requirements which are considered by the Government not to be beyond the state of the art or impossible of attainment.

RFP § M.3, amend. No. 003.

In our view, on its face, the RFP contradicts OPM's assertion that the reading room materials are not necessary to preparing competitive proposals. By its terms, the RFP specifically requires that all of the contemplated services be provided in accordance with the operations manuals and processing instructions specifically referenced in the RFP. The RFP states, and the index shows, that these are the very same manuals that OPM developed in connection with this acquisition and made available to all offerors in the reading rooms.

The testimony at the hearing provides further support for our conclusion that the reading room documents contain the type of information relevant to preparing proposals. In this regard, OPM's witness's description of the manuals and instructions supports a conclusion that they describe and closely track each of the work requirements listed in the RFP. In fact, the witness testified that one of the primary purposes of compiling the reading room materials was that OPM believed it was important to provide sufficient information to ensure that the successful offeror could "hit the ground running" in performing the required work. Tr. at 34, 68. Further, section M of the RFP makes clear that OPM intends to consider as technically acceptable only those proposals "submitted in accordance with all technical requirements set forth or referenced" in the RFP, and which demonstrate an understanding of the problems involved and the scope of the project.

While an offeror experienced in conducting background investigations may be familiar with standard methods and generally accepted procedures used in conducting background investigations, it is clear that an offeror would risk having its proposal rejected as technically unacceptable if it did not explain how its proposed approach follows the specific procedures set forth in the reading room materials. In view of the magnitude and relative complexity of the RFP's requirements, which OPM does not dispute, and given the criteria by which OPM intends to evaluate responses and determine a proposal's technical acceptability, we conclude that OPM's position that the reading room documents are not necessary or even helpful in preparing competitive proposals, is not supported by the record.

We next turn to GBSG's central arguments that the RFP's restrictions on photocopying the documents placed it at a competitive disadvantage, and that USIS has had access to the materials at issue outside the reading rooms.

Competitive Disadvantage

Generally, an agency must ensure that it provides enough information through the solicitation or otherwise to allow offerors to compete intelligently and on relatively equal terms. See Holmes & Narver Servs., Inc., B-242240, Apr. 15, 1991, 91-1 CPD ¶ 373 at 4. It is not unusual for contracting agencies to establish reading rooms for offerors where there is voluminous information that may be relevant to the agency's requirements and is not practicable to include with a solicitation. See, e.g., Sprint Communications Corp., L.P., B-271035, B-271035.2, June 10, 1996, 96-2 CPD ¶ 40; Textron Marine Sys., B-255580.3, Aug. 2, 1994, 94-2 CPD ¶ 63; Hadson Defense Sys., Inc.; Research Dev. Labs., B-244522, B-244522.2, Oct. 24, 1991, 91-2 CPD ¶ 368; Technology Concepts and Design, Inc., B-241727, Feb. 6, 1991, 91-1 CPD ¶ 132.

Here, the record shows that the documents were available in the reading rooms for 5 hours a day, 5 days a week, for about 2 weeks prior to closing. Offerors also could request to have additional access to the reading rooms. RFP amend. No. 001, Q1. Although they were not allowed to photocopy or remove the documents from the reading rooms, it is undisputed that offerors could view the materials and take any notes deemed necessary to gaining an understanding of the work requirements, including the specific procedures and processes OPM requires for conducting the various types of investigations covered by the RFP.

In addition to the reading room materials, and in an effort to provide offerors with additional information, OPM created a document that identified the work involved for each of the RFP's 62 CLINs. OPM issued this document as an RFP amendment. See RFP amend. No. 002, Nov. 11, 2000, Work Requirements. In addition, the agency conducted a pre-proposal conference to provide potential offerors with an opportunity to raise questions concerning the solicitation. Before the pre-proposal conference, OPM received and responded to numerous written questions, and issued amendments to the RFP to communicate the questions and answers to all potential offerors. See RFP amend. No. 003, Dec. 1, 2000. Some of the items in that amendment include revised RFP sections L and M, a revised exhibit which had been previously provided as part of amendment No. 002, a copy of the transcript of the pre-proposal conference, and an updated wage determination. In addition, OPM amended the RFP to include a copy of USIS's current contract, including several modifications. See RFP amend. No. 005, Dec. 18, 2000. OPM also conducted escorted site visits of the FIPC facility in Boyers. During that site visit, OPM officials responded to approximately 122 questions, which were recorded and provided as an exhibit to the RFP. RFP amend. No. 002, exh. 10.

We recognize that, given the sheer volume of information contained in the operation manuals and processing instructions, and the magnitude and complexity of the work

requirements, the RFP's restriction on photocopying the reading room materials may cause some inconvenience to offerors, such as GBSG, which prefer to review the reading room documents at their own facilities at their own times. However, at no time during their testimony did the protester's witnesses testify that the reading room materials are incomplete or otherwise do not contain sufficient information for GBSG to gain a full understanding of the RFP's requirements or prepare an intelligently-written, competitive proposal. Rather, the crux of GBSG's witnesses' testimony was that the RFP's restrictions make it somewhat difficult to develop a proposal, because offerors are required to compare information from the various manuals and relate it to the RFP's requirements. To the extent that GBSG argues that this arrangement is cumbersome, all offerors were equally inconvenienced.

The fact that GBSG is faced with what it considers to be an inefficient or cumbersome task does not compel a conclusion that the agency's approach is unduly restrictive. It is undisputed that offerors could view the materials in the reading room located at OPM's headquarters for up to 5 hours per day, 5 days per week, for approximately 2 weeks prior to closing at one reading room, and during the week of the site visit at the FIPC facility. The record thus shows that offerors had access to the materials for about 75 hours, during which they could review the documents and take any notes they deemed necessary to prepare their responses to the RFP. Offerors were also given separate opportunities to ask questions, both in writing and orally, and OPM responded to those questions and amended the RFP where necessary to address issues raised by those questions.

Further, as noted above, the limitation on dissemination was prompted by OPM's concern that making the materials publicly available could compromise background investigations, and thereby jeopardize national security. Based on OPM's description of the reading room materials, together with our review of the sampling of documents OPM provided to our Office, we think that the agency's concern is not unreasonable. In our view, the agency's approach strikes a reasonable balance between preventing the unlimited dissemination of what it considers sensitive documents while providing sufficient information to maximize competition. See, e.g., National Airmotive Corp., B-280194, Sept. 4, 1998, 98-2 CPD ¶ 60 at 10 (where, in a different context, we found that when legitimate national security concerns are weighed against interests in maximizing competition, the scales must tip towards national security).

Incumbent's Alleged Improper Access to Reading Room Materials

GBSG next contends that, since one of the reading rooms is located at the FIPC facility in Boyers, at the same location where USIS has been performing its current contract, USIS has had "ready access" to the reading room materials, while other offerors have not. According to GBSG, this gives USIS an unfair competitive

advantage. GBSG also maintains that USIS has access to documents not in the reading rooms that are useful in preparing its proposal.³

The agency responds that no potential offeror was denied an appointment request, and none was permitted additional viewing time beyond those established in the RFP and reading room guidelines. GBSG incorrectly assumes that by virtue of USIS's location, OPM provided USIS access to the reading room documents not provided other offerors. There is no evidence showing that any offeror, including USIS, was provided any additional access to the reading rooms not available to all offerors.

GBSG also claims that as a result of performing the current contract, USIS has access to other documents that might be useful in preparing its proposal. OPM responds that certain USIS employees have access to OPM's investigator's handbook, the PIPS security manual, and portions of other operation manuals USIS requires to perform the current contract. AR at 15. OPM's Assistant Director for Operations testified, however, that, while USIS may have had "bits and pieces" of some of the information that was incorporated in the reading room materials, USIS did not have all of the reading room materials or in the same format, because not all of those documents were necessary for USIS to perform under its current contract. Tr. at 45-46.

A particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract or otherwise and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other improper action. Crux Computer Corp., B-234143, May 3, 1989, 89-1 CPD ¶ 422 at 5; Halifax Eng'g, Inc., B-219178.2, Sept. 30, 1985, 85-2 CPD ¶ 559 at 3. Our decisions have long held that this advantage is neither preferential treatment by the agency, nor otherwise an unfair competitive advantage. See, e.g., B.B Saxon Co., Inc., B-190505, June 1, 1978, 78-1 CPD ¶ 410 at 20 (incumbent's possession of required equipment by virtue of performing its contract was not evidence of unfair competitive advantage which the government was required to equalize); Crux Computer Corp., *supra* (development of a system under prior agency contract is not evidence of preferential treatment in subsequent competition for the system); H. J. Hansen Co., B-181543, Mar. 28, 1975, 75-1 CPD ¶ 187 at 7-8 (contract for preliminary study which in effect financed the contractor's competitive advantage was not evidence of unfair advantage for succeeding sole-source contract).

³ GBSG also asserts that OPM should extend the due date for receipt of proposals. Where a protester contends that the agency allowed insufficient time for the preparation of proposals, we require a showing that the time allowed violated statutory requirements, or was otherwise unreasonable or insufficient, or that it precluded full and open competition. See Cajar Defense Support Co., B-240477, Aug. 3, 1990, 90-2 CPD ¶ 100 at 2. GBSG has made no such showing here.

We have no basis on which to conclude that OPM has demonstrated a preference for the incumbent or acted unfairly so as to favor that firm, such that OPM was required to equalize any competitive advantage that USIS may enjoy. While USIS may have in its possession some of the information that formed the basis for OPM to develop the materials at issue, it is clear that any advantage USIS may have derives from its performance on the current contract, and its familiarity with OPM's requirements, not from any improper or unfair agency action. Such an advantage is often enjoyed by incumbents and is not unfair, since it does not result from preferential treatment or other unfair action by the agency. See LaQue Ctr. for Corrosion Tech., Inc., B-245296, Dec. 23, 1991, 91-2 CPD ¶ 577 at 6-7; Harbor Branch Oceanographic Inst., Inc., B-243417, July 17, 1991, 91-2 CPD ¶ 67 at 5.

Organizational Conflict of Interest

In a supplemental protest, GBSG argues, based on statements in the agency report in response to its initial protest, that USIS allegedly has an unavoidable organizational conflict of interest (OCI) that renders the firm ineligible for award. GBSG points out that in its report to our Office, OPM states that it decided to compile the reading room documents, in part, because "OPM had to refamiliarize itself with the relevant processes in order to review the instructions prepared by the current contractor and put them in an OPM format." AR at 6. GBSG maintains that considering that OPM has had limited resources at the FIPC facility, the record suggests that OPM met with USIS representatives to discuss where the procedures were lacking or required updating. GBSG thus contends, upon "information and belief," that USIS provided "significant input to OPM as to the development of the various materials utilized in the development of the solicitation at issue and the documents provided in the reading room." The protester maintains that OPM's relationship with USIS created an impermissible OCI, whereby USIS was in a position to favor its own capabilities in this procurement. Comments, Feb. 14, 2001, at 5.

An OCI occurs where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Federal Acquisition Regulation (FAR) § 9.501; International Management and Communications Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 3; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. Contracting officials are to avoid, neutralize, or mitigate potential significant conflicts of interest before contract award, so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505; CH2M Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 14. The regulations further provide that any general rule or procedure of FAR Subpart 9.5 may be waived where its application would not be in the government's interest. FAR § 9.503.

In response to this allegation, OPM advises that it has not determined USIS's status or eligibility for award. Furthermore, we note that even if OPM were to conclude that USIS has an OCI, the agency may find that excluding the firm from the competition is not required, or OPM could waive USIS's OCI under the authority of FAR § 9.503. Under the circumstances, we conclude that, since OPM has not made a final determination concerning the OCI issue, this allegation is premature and will not be reviewed at this time.⁴ Price Bros. Co., B-235473, June 9, 1989, 89-1 CPD ¶ 549 at 3.

The protests are denied.

Anthony H. Gamboa
General Counsel

⁴ In its post-hearing comments, GBSG argues that, since the agency is in the process of evaluating proposals, the OCI issue is not premature. The fact that OPM is evaluating proposals, however, does not by itself compel a conclusion that OPM has made a determination concerning USIS's eligibility for award. GBSG also argues that based on responses to questions raised during the hearing, OPM failed to conduct a market survey prior to issuing the solicitation. With respect to this issue, a protester has a duty to diligently pursue information that reasonably would be expected to reveal any additional grounds of protest. Sun Enters., B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384 at 4; S.A.F.E. Export Corp., B-213026, Feb. 10, 1984, 84-1 CPD ¶ 165 at 3. Moreover, the diligent pursuit of additional grounds of protest is a continuing obligation of the protester while its initial protest is pending. Textron Marine Sys., supra, at 22. In light of our interests in minimizing the disruption to the procurement process while giving protesters a reasonable opportunity to present their cases, the protest process cannot be governed by a protester's fortuitous discovery of new information during a hearing which it could have easily discovered earlier in the process. Accordingly, we do not consider GBSG's waiting until the hearing on GBSG's initial protest to inquire whether OPM conducted a market survey to constitute diligent pursuit, and will not consider this basis of protest.