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**United States Government Accountability Office  
Washington, DC 20548**

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## Decision

**Matter of:** Alion Science & Technology Corporation

**File:** B-297342

**Date:** January 9, 2006

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Flayo O. Kirk, Esq., Defense Information Systems Agency, for the agency.

Glenn G. Wolcott, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest is sustained where record does not support the agency's conclusion that awardee's conflicts of interest will be minimal, with limited impact on quality of contract performance, where awardee, a manufacturer of spectrum-dependent products, will perform analysis and evaluation and exercise subjective judgment regarding formulation of policies and regulations that may affect the sale or use of spectrum-dependent products manufactured by the awardee or the awardee's competitors, and those deployed by the awardee's customers.

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### DECISION

Alion Science & Technology Corporation protests the Defense Information System Agency's (DISA) award of a contract to Advanced Engineering & Sciences, a division of ITT Industries, Inc. (ITT), under request for quotations (RFQ) No. HC1047-05-R-4018 to provide spectrum engineering support services. Alion protests that, in light of ITT's significant involvement in the manufacture and marketing of spectrum-dependent products, the agency failed to reasonably consider the extent of organizational conflicts of interest (OCI) that are likely to impair ITT's objectivity in performing the contract requirements.

We sustain the protest.

## BACKGROUND

On March 15, 2005, DISA issued RFQ No. HC1047-05-R-4018 seeking quotations from holders of federal supply schedule (FSS) contracts<sup>1</sup> to provide spectrum engineering services to support DISA's Defense Spectrum Office (DSO) and to "facilitate improved DSO mission effectiveness." RFQ at 16. The solicitation advised contractors of DSO's "vision" to be recognized as the Department of Defense's (DOD) "focal point and expert" with regard to various policy-making activities including: "the establishment of policies, strategies, regulations and procedures to support the implementation and integration of spectrum efficient technologies into military systems"; "the establishment of plans and strategies, based on regulatory activities and technology development, to foster the development of DOD spectrum management policies"; and "the development of . . . spectrum allocation and reallocation long-term strategies." Id.

The RFQ contained the following description of activities that the agency contemplated the contractor will perform:

(1) perform technical studies and mathematical modeling and simulation of current and future operational environments to develop long-term spectrum allocation and reallocation strategies that are favorable to DOD operational needs; (2) devise long-term plans and strategies based on regulatory activities and technology development to foster the development of DOD policies; (3) advocate, based on technical analytical studies, and lead all DOD national/international technical and technology outreach efforts primarily when it relates to the NTIA [National Telecommunications and Information Administration] and FCC [Federal Communication Commission] forums and committees, International Telecommunication Union (ITU) activities, including future World Radiocommunication Conferences (WRCs) and other national/international efforts, in order to promulgate DOD spectrum policy and objectives that are linked to Joint Vision 2020 and are fully integrated in the DOD spectrum architecture; (4) develop and integrate enabling, spectrum efficient technologies into military systems to maximize spectrum utilization and to enable full spectrum transformation; (5) develop recommendations, based on technical analytical studies, for policies, strategies, regulations, and procedures to support the implementation and integration of emerging technologies to enhance spectrum utilization; (6) devise DOD spectrum management architecture based on proposed spectrum management

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<sup>1</sup> DISA conducted this procurement under Part 8 of the Federal Acquisition Regulation (FAR) and relied on the "GSA E-Buy" website to publicize the RFQ.

transition strategies and a comprehensive roadmap to achieve this objective end-state.

RFQ at 16-17.

The solicitation asked FSS contractors to provide proposed solutions in the form of performance work statements (PWS) addressing the solicitation's stated objectives. As described by the contracting officer, the PWS provided by any contractor responding to this solicitation was anticipated to "identify the technical, functional and performance characteristics of agency requirements." Contracting Officer's Statement at 4.

With regard to the basis for award, the solicitation stated, "The Government intends to award one GSA task order without discussions" and advised offerors that source selection would be made on a "best value" basis. In this regard, the RFQ established the three following evaluation factors: quality of service,<sup>2</sup> past performance and price. RFQ at 40-44.

On or before the April 14, 2005 closing date, the agency received quotations from Alion and ITT. The submissions were evaluated and compared by a source selection evaluation board, source selection advisory council, and source selection authority.<sup>3</sup>

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<sup>2</sup> With regard to quality of service, the solicitation established three subfactors: technical excellence, personnel qualifications, and management capability. RFQ at 42-43.

<sup>3</sup> The agency used a color rating/narrative assessment scheme to evaluate the quotations with regard to quality of service and past performance. With regard to quality of service, the following color ratings and associated narrative assessments were applied: "Blue" ("excellent understanding of objectives and approach significantly exceeds performance or capability"); "Green" ("demonstrates good understanding of objectives and approach exceeds objectives"); "Yellow" ("demonstrates an acceptable understanding of objectives and approach meets performance or capability"); "Orange" ("demonstrates a shallow understanding of the objectives and approach that only marginally meets performance or capability"); and "Red" ("fails to meet performance or capability. Objectives can only be met with major changes to the proposal"). RFQ at 40-41. With regard to past performance, the following color ratings and associated narrative assessments were applied: "Blue" ("Highly relevant/very recent past performance in all proposed task order areas; predominantly excellent performance ratings"); "Green" ("Relevant/somewhat recent past performance in all proposed task order areas; acceptable performance ratings"); "Yellow" ("Somewhat relevant/not very recent past performance; mostly acceptable performance ratings"); "Orange" ("Little relevant/old past performance; mostly unacceptable performance ratings"); "Red" ("Little relevant past

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Contracting Officer's Statement at 9. With regard to the quality of service evaluation factor, Alion's quotation was rated [deleted]; ITT's quotation was rated [deleted]. Contracting Officer's Statement at 10. With regard to the past performance factor, Alion's quotation was rated [deleted]; ITT's quotation was rated [deleted]. Id. Alion's evaluated price was [deleted]; ITT's evaluated price was \$33,801,702. Id.<sup>4</sup>

On August 31, the contracting officer requested that Alion and ITT submit OCI mitigation plans.<sup>5</sup> With regard to potential conflicts, publicly available information, including information contained on ITT's own Internet website, leaves no doubt that ITT has multiple financial interests with regard to manufacturing and marketing of spectrum-dependent products to the U.S. government, to foreign governments, and to commercial customers worldwide.<sup>6</sup> Further, ITT's own statements make clear that its financial interests and the success of its company are affected by a variety of factors, including both domestic and foreign government regulations.<sup>7</sup>

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performance; almost all unacceptable performance ratings"); and "White ("No past performance history"). Id.

<sup>4</sup> The agency also performed a risk assessment with regard to quality of service and price. Alion's quotation was rated [deleted]; ITT's quotation was rated [deleted]. Contracting Officer's Statement at 10.

<sup>5</sup> This request was made following Alion's submission of another protest, raising OCI issues, that challenged DISA's award of another spectrum management contract to ITT under a different solicitation.

<sup>6</sup> By way of example, ITT states that it provides single channel ground and airborne radios (SINCGAR), spectrum management systems, and several types of radar systems to DOD. Agency Report, Tab 20, ITT OCI Mitigation Plan, at 10-11. Additionally, ITT states that: "ITT Industries is a global engineering and industrial manufacturing company with leading positions in the markets that it serves. The company is a major supplier of sophisticated military defense systems, and provides advanced technical and operational services to a broad range of government agencies." [www.itt.com/downloads/defense12pg.pdf](http://www.itt.com/downloads/defense12pg.pdf). ITT elaborates that it has provided, or is providing, "Night vision equipment for Australian Defence Forces," "Imagers for Japanese weather satellites," "Airborne Self-Protection Jammers (ASPJ) for Republic of Korea," "Tactical communications systems for U.K. armed forces," and "Air traffic control radar systems for Brazilian Air Force." Id. ITT also states that it markets a variety of spectrum-dependent products to commercial customers. Id.

<sup>7</sup> In a publication dated March 5, 2005, under the heading "Forward-Looking Statements," an ITT representative stated that ITT's future performance will be affected by various factors, including "government regulations and compliance therewith," "local regulations in the countries in which the Company conducts its

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Upon receipt and review of ITT's OCI mitigation plan, the contracting officer determined that ITT intends to segregate the contract requirements which create impaired-objectivity OCIs and have those requirements performed by "firewalled" subcontractors. Thereafter, the agency performed an assessment of ITT's proposed PWS with the stated objective of determining the extent of ITT's conflicts. Agency Report, Tab 10, Offeror B OCI Evaluation. Based on this assessment, the contracting officer concluded that "an impaired objectivity OCI [is] likely to occur [for ITT] approximately 7.3 percent of the time over the entire contract effort." Contracting Officer's Statement at 16. Based on the agency's assessment regarding the limited extent of OCIs, and ITT's stated intent to rely on "firewalled" subcontractors to perform conflicted portions of the contract, the contracting officer concluded that ITT's OCI mitigation plan was acceptable.

On September 27, the contracting officer awarded a task order valued at more than \$33 million to ITT. Alion was subsequently notified of the award; this protest followed.

#### DISCUSSION

Alion protests that the agency failed to reasonably recognize the extent of conflicts that will impair ITT's objectivity in performing the contract requirements, and failed to reasonably consider the effect that relying on "firewalled" subcontractors to perform conflicted portions of the contract will have on the quality of service that ITT provides. We agree.

Contracting officers are required to identify and evaluate potential conflicts of interest as early in the acquisition process as possible. Federal Acquisition Regulation (FAR) § 9.504. The FAR provides that an OCI exists when, because of activities or relationships with other persons or organizations, a person or organization is unable or potentially unable to render impartial assistance or advice to the government. See FAR § 2.101. Situations that create potential OCIs are further discussed in FAR subpart 9.5 and the decisions of our Office; specifically, what is frequently referred to as an "impaired objectivity" OCI is created when a contractor's judgment and objectivity in performing the contract requirements may

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businesses," "changes in technology," and "changes in . . . the identity of significant customers." Presentation of Hank Driesse, President, ITT Defense (Mar. 3, 2005), [www.itt.com/ir/downloads/fbr\\_conference\\_05.pdf](http://www.itt.com/ir/downloads/fbr_conference_05.pdf). More specifically, ITT stated: "Our Defense Electronics & Services business will be affected by factors including the level of defense funding by domestic and foreign governments; our ability to receive contract awards; and our ability to develop and market products and services for customers outside of traditional markets." *Id.*

be impaired due to the fact that the substance of the contractor's performance has the potential to affect other interests of the contractor. Id.; PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177; Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96; Aetna Govt. Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 13.

In reviewing this protest, we considered the contract requirements, as reflected in the solicitation and ITT's proposed PWS tasks, and the basis for the agency's assessment that ITT was likely to experience impaired-objectivity OCIs only "7.3 percent of the time over the entire contract effort."<sup>8</sup> As discussed below, the agency's assessment regarding the extent and impact of OCIs with regard to ITT's contract performance is not reasonably supported by the record.

The technical portion of ITT's submission responding to the solicitation was divided into [deleted] PWS tasks: [deleted]. Agency Report, Tab 14, at 1-19, 1-33, 1-52, 1-89, 1-119, 1-133. Each proposed PWS task contained a narrative description of the activities that are anticipated.<sup>9</sup>

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<sup>8</sup> As part of our review in this matter, we conducted a hearing at GAO during which testimony was provided by, among others, the contracting officer and agency engineer responsible for calculating the extent of OCIs that ITT will likely experience.

<sup>9</sup> The contracting officer testified that a single task order has been awarded to ITT, [deleted]. Finally, the contracting officer testified that subcontractor payments are made by ITT, with no agency involvement, and that ITT is not required to provide the terms of its subcontracts to the agency. Tr. at 872-75.

ITT's PWS Task [deleted]

With regard to ITT's proposed PWS task [deleted], ITT's submission responding to the solicitation states that ITT will perform the following activities:

Develop recommendations based on technical analytical studies, for policies, strategies, regulations, and procedures to support the implementation and integration of emerging technologies . . .

Devise DOD Spectrum management architecture . . .

Develop integrated planning and support the development of long-term strategies . . .

Enhance the ability to assess current and evolving spectrum policies, regulations, processes, and strategies that incorporate emerging spectrum technology. . . .

Perform technical studies and mathematical modeling and simulation of current and future operational environments to develop long-term spectrum allocation and reallocation strategies . . . .

Devise long-term plans and strategies based on regulatory activities and technology development . . .

Foster Spectrum Management initiatives by evaluating the activities and trends in national and international government and non-government spectrum management policies, procedures, and plans to determine potential opportunities and obstacles regarding DOD's global access to the Spectrum.

Agency Report, Tab 14, at 1-36 through 1-37.

More specifically, ITT states that [deleted]. Further, ITT states that there is a close relationship between performance of PWS task [deleted] and performance of other proposed PWS tasks, elaborating that "close coordination with the [deleted] task [deleted] is an essential part of our technical approach [deleted], as well as coordination with the [deleted] tasks [deleted]. Agency Report, Tab 14, at 1-37.

In assessing the potential for impaired-objectivity OCIs, the agency concluded that none of the work anticipated under PWS [deleted], created any potential OCIs for ITT. Agency Report, Tab 10, Offeror B OCI Evaluation, at 3. The record does not support the agency's conclusion in this regard.

There is no dispute that, in recent years, the use of spectrum in wireless applications has expanded dramatically and that, with the increased demand, the spectrum has become crowded, leading to sometimes contentious disputes between government and commercial users over access to spectrum.<sup>10</sup> At the GAO hearing, the contracting officer referred to this situation, testifying that DOD competes with “the entire world” for spectrum access.<sup>11</sup> Nonetheless, the agency’s procurement record is devoid of any meaningful analysis regarding the scope of spectrum-dependent products manufactured by ITT, the scope of such products manufactured by ITT’s competitors, or any consideration of the composition of ITT’s customer base, including foreign governments, and the spectrum-management interests of those customers. Rather, the entire documentation supporting the conclusion that ITT is likely to experience impaired-objectivity OCIs only “7.3 percent of the time over the entire contract effort” is a three-page document, consisting primarily of summary conclusions. Indeed, in that document, the agency expressly disclaims any specific knowledge of ITT’s activities, stating that the agency’s conclusions are based on “the SSEB [source selection evaluation board] members’ knowledge of the SOO [statement of objectives] and limited knowledge of . . . Offeror B [ITT], their subcontractors, and their industry as a whole.” Agency Report, Tab 10, Offeror B OCI Evaluation.

Here, it is clear that ITT manufactures and markets multiple spectrum-dependent products to the U.S. government, foreign governments, and commercial customers worldwide. Further, where DOD is competing for spectrum access with “the entire

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<sup>10</sup> See generally *Interdepartment Radio Advisory Committee – IRAC Representative Effectively Coordinate Federal Spectrum but Lack Seniority to Advise on Contentious Policy Issues*, GAO-04-1028, September 2004; *Spectrum Management – Better Knowledge Needed to Take Advantage of Technologies that May Improve Spectrum Efficiency*, GAO-04-666, May 2004.

<sup>11</sup> Specifically, the following exchange took place:

Q. Who are the United States forces competing with . . . for spectrum access?

A. The entire world.

Q. And that would include industry users of anything that operates via radio frequencies, is that correct?

A. As well as international, all the foreign governments.

Q. Both in terms of their commercial as well as military use of the spectrum?

A. And any other governmental use. There’s just so much bandwidth.

Tr. at 843.



world,” it is clear that DOD’s policies, strategies, regulations and procedures regarding contentious spectrum-related issues are likely to affect the sales or use of spectrum-dependent products manufactured by ITT or ITT’s competitors, as well as such products deployed by ITT customers, including foreign governments. As discussed above, under this contract, ITT will “[d]evelop recommendations . . . for policies, strategies, regulations, and procedures,” “[p]erform technical studies . . . to develop long-term spectrum allocation and reallocation strategies,” “[d]evelop long-term plans and strategies based on regulatory activities and technology development,” and “evaluate[] the activities and trends in national and international government and non-government spectrum management policies, procedures, and plans to determine potential opportunities and obstacles regarding DOD’s global access to the Spectrum.” Agency Report, Tab 14, at 1-36 through 1-37. It is clear that all of these activities involve ITT’s exercise of subjective judgment, and that the results of such judgments may have a positive or negative effect on the sale or use of spectrum-dependent products manufactured by ITT, those manufactured by ITT’s competitors, and those deployed by ITT customers, including foreign governments. On this record, we find no reasonable basis for the agency’s conclusion that performance of such activities creates no potential for impaired-objectivity OCIs for ITT. Further, because of the interrelated nature of the activities involved, they do not appear, on this record, to reasonably lend themselves to segregation for performance by “firewalled” subcontractors.

ITT’s PWS task [deleted]

With regard to proposed PWS task [deleted], ITT’s submission responding to the solicitation states that the overall objective of this proposed task is to be an “advocate” and to “lead all DOD . . . outreach efforts” with regard to various controversial issues, and to “build strategic alliances with national and international spectrum management bodies, government agencies and Congress, industry and academia.” Agency Report, Tab 14, at 1-52, 1-54. More specifically, ITT acknowledges that the targets of its outreach efforts will include “DOD contractors developing new spectrum access technologies and other companies with similar interests in flexible, real-time access to additional spectrum.” Agency Report, Tab 14, at 1-53.

As discussed during the GAO hearing, it is clear that DOD’s interests, the interests of other government agencies, the interests of industry and various components within industry, and the interests of foreign governments—all of whom compete for spectrum access—may be widely divergent. Tr. at 847, 852, 914-15, 924-27, 932-33.<sup>12</sup>

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<sup>12</sup> In discussing spectrum access generally, ITT provides a candid assessment of current situation: “At the same time that DOD’s spectrum access requirements are increasing, demands on spectrum access by non-DOD users is also rapidly increasing.” Agency Report, Tab 14, at 1-119. The agency engineer that testified at  
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Further, the agency engineer responsible for assessing the extent of ITT's OCIs testified that it was possible ITT's activities under PWS task [deleted] will involve situations in which the ITT personnel performing this contract are responsible for advocating DOD positions to industry personnel—including to other ITT personnel who represent positions contrary to those of DOD. Tr. 934.<sup>13</sup> The agency engineer further testified that the agency expects ITT to provide “on the fly” responses—that is, immediate responses—to issues raised during meetings with various “outreach” groups. Tr. at 919-20. The record contains no data regarding the basis for the agency's conclusions that such situations will rarely occur, nor any indication of how the agency could reasonably anticipate, or segregate, “outreach” activities in which such OCIs will occur.

In addition to its “outreach” activities, ITT states that, in performing PWS task [deleted], it will “evaluate[] activities and trends in national and international government and commercial spectrum management policies, procedures, and plans to determine potential opportunities and obstacles regarding DOD's global access to the Spectrum.” Agency Report, Tab 14, at 1-55. In this regard, ITT states that it will “assess [NTIA initiatives that are [deleted]] . . . [and] develop draft positions on such initiatives.” Id. at 1-56. ITT further states “[o]ne of the other agencies that we will actively monitor and evaluate is the FCC, whose activities cover . . . granting commercial licenses,” and that ITT envisions a “proactive role in . . . [deleted].” Id. at 1-57.<sup>14</sup> Finally, ITT anticipates that, under PWS task [deleted], it will “identify potential technologies that could impact DOD systems,” stating that “[a]ny technologies that are identified as part of this subtask will be provided to the [deleted] task [deleted] for further evaluation.” Id. at 1-58.<sup>15</sup>

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the GAO hearing described ITT's proposed outreach efforts as involving a “technical adversary.” Tr. at 921.

<sup>13</sup> On the record here, it appears equally possible that ITT personnel performing “outreach” efforts may be responsible for advocating DOD positions to representatives of ITT's competitors who represent interests that conflict with both those of DOD and ITT. See id.

<sup>14</sup> By way of example, ITT states that it anticipates “engagement [of] the FCC on troublesome issues such as [deleted].” Id. at 1-57.

<sup>15</sup> With regard to the relationship of PWS task [deleted] to ITT's other proposed efforts under this contract, ITT states that “this task will be fully integrated and coordinated with the [deleted] task [deleted] and [deleted] . . . . The [deleted] task [deleted] will provide additional technical analysis expertise as required to help advocate[] DOD positions in national and international spectrum management forums.” Agency Report, Tab 14, at 1-53.

In assessing ITT's potential OCIs, the agency concluded that most of the activities discussed above would create no OCIs for ITT. Agency Report, Tab 10, Offeror B OCI Evaluation, at 3. Specifically, the agency concluded that, in performing all of the outreach and evaluation activities anticipated under PWS task [deleted], ITT will experience impaired-objectivity OCIs less than 8 percent of the time. Agency Report, Tab 10, Offeror B OCI Evaluation, at 2, 3.<sup>16</sup> Further, the agency concludes that, in those limited instances where OCIs occur, they can be reasonably mitigated through contract performance by ITT's "firewalled" subcontractors.

As noted above, the record provides no indication that, in projecting a minimal potential for OCIs, the agency considered the scope of the spectrum-dependent products manufactured and marketed by ITT, or ITT's competitors, or the identity and spectrum-management interests of ITT's customers—whose ongoing satisfaction is a significant factor affecting ITT's financial success. Further, the agency record provides no meaningful explanation with regard to how the agency intends to reasonably anticipate—and more important, rationally segregate and successfully perform—the conflicted portions of the contract.<sup>17</sup> In light of the nature of activities

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<sup>16</sup> At the GAO hearing, the agency engineer responsible for this calculation acknowledged that there is no empirical data to support this or the other agency projections regarding the portion of requirements under each proposed task that will create OCIs for ITT; rather, the agency engineer testified that the calculation was the product of the agency's experience gained, in part, under prior support contracts. Tr. at 956, 958-61, 980-81, 1021-22, 1024-26. However, in this regard, the solicitation expressly described the activities contemplated under this solicitation as materially different from those performed under prior contracts. RFQ at 18. Similarly, the contracting officer specifically stated that "[t]hese objectives differ greatly from previous contract support efforts." Contracting Officer's Statement at 2. Accordingly, it is not clear that the agency's experience under prior support contracts provides a reliable basis for the agency's calculation.

<sup>17</sup> In addition to the agency's failure to consider information that appears necessarily relevant to a meaningful assessment of potential OCIs, the record appears inconsistent regarding the portion of the contract effort that the agency anticipates will have to be subcontracted. In this regard, the contracting officer specifically stated that an impaired-objectivity OCI for ITT is "likely to occur approximately 7.3 percent of the time over the entire contract effort," and that ITT could effectively mitigate such occurrences by subcontracting the conflicted portions of the contract requirements. Contracting Officer's Statement at 16-17. In contrast, the engineer appearing on behalf of the agency at the GAO hearing testified that the agency's calculation of "7.3 percent" does not reflect the portion of conflicted contract requirements that will be subcontracted, Tr. at 959-61; rather, the engineer testified that this calculation was "just a probability assessment" regarding the likelihood that an OCI will occur. Tr. at 1022.

anticipated under this task, which clearly require analysis, evaluation, and subjective judgment in areas where widely divergent interests are likely to exist, we find no reasonable basis in the record for the agency's assessment that impaired-objectivity OCIs will occur with minimal frequency. Further, in light of both the scope of activities and the expressly acknowledged relationship between this task and other tasks, on the record here, it appears unrealistic to conclude that activities which create OCIs for ITT can be reasonably identified prior to performance, rationally segregated, and successfully performed by a "firewalled" subcontractor.

ITT's PWS Task [deleted]

With regard to proposed PWS task [deleted], ITT's submission responding to the solicitation states that, in performing this task, ITT will:

Assess market and technology trends and determine the operational impact to DOD . . . .

Make recommendations for long-term plans and strategies based on emerging spectrum technologies . . . .

Develop enabling, spectrum efficient technologies for integration into military systems . . . .

Perform technical analytical studies for policies, strategies, regulations, and procedures to support the implementation and integration of emerging technologies . . . .

Agency Report, Tab 14, at 1-121.

More specifically, ITT states that, in performing these activities, it will "[deleted] the entire field of spectrum related technologies to identify potentially significant technology advances," and, among other things, that ITT will [deleted] to identify the most significant spectrum technologies to [deleted]." Agency Report, Tab 14, at 1-123, 1-124. Further, ITT states that the criteria that will be used to select particular technologies for [deleted] will incorporate determinations as to whether a developing technology is "detrimental" or "beneficial" to DOD operations. Agency Report, Tab 14, at 1-124.

In assessing the potential for impaired-objectivity OCIs, the agency concluded that ITT was likely to experience conflicts in performing this task only 20 percent of the time. Agency Report, Tab 10. As with the PWS tasks discussed above, the record contains no data supporting this assessment, nor does the record reflect any meaningful consideration regarding the potential spectrum-management interests of ITT, ITT's competitors, or ITT's global customers, including foreign governments.

Here, it is clear that performance of PWS task [deleted] anticipates the ongoing monitoring and assessment of emerging technologies, including technologies being developed by ITT or by ITT's competitors. The ongoing monitoring, assessments and determinations as to which technologies incorporate "significant technology advances," the comparative determinations regarding which technologies are "most significant" so as to warrant [deleted], and the assessments regarding whether a developing technology is "detrimental" or "beneficial" all incorporate subjective judgments with regard to a universe of technology in which ITT and ITT's competitors have direct financial interests. Further, it is clear that the monitoring and assessments are inextricably intertwined; that is, the assessments are, of necessity, performed as part of the ongoing monitoring process. Accordingly, segregation and performance by a subcontractor do not appear reasonable or realistic. On this record, we find no reasonable support for the agency's conclusion that performance of this task will create only minimal OCIs for ITT, or that such OCIs can be reasonably addressed by use of subcontractors.

Overall, as discussed above, the agency maintains that "an impaired objectivity OCI [is] likely to occur [for ITT] approximately 7.3 percent of the time over the entire contract effort." Contracting Officer's Statement at 16. Based on our review of the record, discussed above, the agency's assessment is not reasonably supported by the record. Specifically, the aggregate level of effort proposed with regard to only the PWS tasks discussed above make up more than [deleted] percent of the total level of effort proposed. Agency Report, Tab 10.<sup>18</sup> As discussed above, a significant portion of the activities described under each of the PWS tasks addressed above involve analysis, evaluation, and subjective judgment with regard to matters in which DOD, ITT, ITT's competitors, and ITT's customers are likely to have direct, and likely divergent, interests. Further, in light of the interrelated nature of the activities both within tasks and between tasks, it does not appear from the record here that the agency, or ITT, can expect to meaningfully identify potential conflicts prior to the time the specific activities are performed, rationally segregate such conflicted portions of the contract, and successfully perform those requirements with "firewalled" subcontractors.

In short, the record shows that the agency failed to reasonably identify and evaluate the extent of OCIs associated with ITT's performance of this contract, as well as the effect of potential OCIs on contract performance.<sup>19</sup>

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<sup>18</sup> We do not view our discussion regarding PWS tasks [deleted] as a comprehensive analysis of all contract activities. In particular, our decision does not address any potential conflicts that may occur under the proposed tasks for [deleted].

<sup>19</sup> We note that the FAR anticipates situations in which application of the OCI provisions contained in FAR subpart 9.5 may not be in the government's interest, and authorizes the waiver of such provisions by an authority at a level not lower than  
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The protest is sustained.<sup>20</sup>

#### RECOMMENDATION

We recommend that the agency reconsider its assessment regarding the extent of ITT's impaired-objectivity OCIs, taking into consideration the spectrum-management interests of ITT and ITT's competitors that flow from their manufacture and marketing of various spectrum-dependent products, along with the potential spectrum-management interests of ITT's customer base, and document its conclusions in that regard. We further recommend that the agency evaluate the reasonable impact on quality of service, in the context of the activities anticipated under this solicitation, that will be caused by an OCI mitigation plan that relies on "firewalled" subcontractors for performance of conflicted contract requirements. Following such reconsideration and evaluation, we recommend that the agency make a new source selection decision. We further recommend that the agency reimburse Alion for the costs of filing and pursuing its protest, including reasonable attorneys' fees. Alion's certified claim for costs, detailing the time spent and costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1) (2005).

Anthony H. Gamboa  
General Counsel

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head of the contracting activity. FAR § 9.503. Here, no waiver was requested or approved.

<sup>20</sup> Alion has also challenged the procurement on the basis of matters other than those related to the agency's OCI assessment, discussed above. We have considered all of Alion's assertions, and find no bases for sustaining the protest other than as discussed above.