

STATE OF NEW YORK

OFFICE OF THE STATE COMPTROLLER

In the Matter of the Bid Protest filed by
CMA Consulting with respect to the
procurement of Upstate Legacy Equipment
Maintenance and Support conducted by
the New York State Office of Temporary and
Disability Assistance

**Determination
of Bid Protest**

SF-20110023

Contract Number – C021114

April 15, 2011

This Office has completed its review of the above-referenced procurement conducted by the New York State Office of Temporary and Disability Assistance (hereinafter "OTDA") and the bid protest filed by CMA Consulting Services (hereinafter "CMA") with respect thereto. As outlined in further detail below, we have determined that the grounds advanced by the protestor are without sufficient merit to overturn the contract award by OTDA to E.nfrastructure Technologies, Inc. (hereinafter "E.nfrastructure"). We, therefore, hereby deny the protest and are today approving the contract between OTDA and E.nfrastructure.

BACKGROUND

Facts

On May 17, 2010, OTDA issued a revised Request for Proposals (hereinafter "RFP") for maintenance and support for its Welfare Management System (hereinafter "WMS") legacy equipment. The purpose of the RFP was to award a contract to a bidder who could provide on-site and remote maintenance, software support, and recordkeeping services for New York's WMS which accommodates over 30,000 state and county end users. Since the WMS is comprised of specialized and dated digital equipment, it requires unique support and maintenance.

CMA and E.nfrastructure were the only companies to submit a proposal in response to the RFP. OTDA separately evaluated the technical and cost components of both proposals, with each such component weighted as 50% of the total score (50 points were allocated to the technical score and 50 points were allocated to the cost score). As part of the technical component, proposers were required to offer a sufficient mix of qualified staff, including five Key Personnel positions that OTDA identified as critical to successful performance of the contract. The RFP specified minimum qualifications for each of the five key positions and required proposers to identify specific individuals who would fill such positions should a contract award be received. The overall technical evaluation consisted of five criteria, each with its own relative weight: (1) the proposal's executive summary and detailed narrative – 15 points, (2) the qualifications and references of the Offeror or its proposed subcontractor – 10 points, (3) the qualifications of the proposed Key Personnel – 7.5 points, (4) the references of the Key Personnel - 5 points and (5) the interviews with the proposed Key Personnel – 12.5 points. Notably, CMA and E.nfrastructure proposed the same five individuals to fill the Key Personnel positions. E.nfrastructure received a higher score than CMA on both the technical (50 points versus 46.63 points) and cost components (50 points versus 43.6 points) and, thus, OTDA made an award to E.nfrastructure in October 2010. By letter dated October 26, 2010, CMA was notified of the contract award to E.nfrastructure.

On November 1, 2010, CMA filed a protest of the award with OTDA and, following a debriefing with the agency, supplemented its protest via two addendums dated November 10, 2010 and November 30, 2010. On December 27, 2010, OTDA issued its determination denying CMA's protest. On January 10, 2011, CMA filed an appeal of OTDA's denial of its protest with this Office (hereinafter "Appeal"). The Appeal included additional protest grounds that were not presented to OTDA and that were not apparent to CMA until CMA received OTDA's denial letter on December 27, 2010. By letter dated February 1, 2011, E.nfrastructure responded to the allegations in the Appeal (hereinafter "E.nfrastructure Answer"). By letter dated February 8, 2011, OTDA responded to the allegations in the Appeal (hereinafter "OTDA Answer").

Procedures and Comptroller's Authority

Under Section 112(2) of the State Finance Law (hereinafter "SFL"), before any contract made for or by any state agency, which exceeds fifty thousand dollars (\$50,000) in amount, becomes effective it must be approved by the Comptroller. In carrying out the aforementioned responsibilities prescribed by

SFL § 112, this Office has issued Contract Award Protest Procedures that govern the process to be used when an interested party challenges a contract award by a State Agency.¹ These procedures govern initial protests to this Office of agency contract awards, contract awards made by this Office and appeals of agency protest determinations. Because this is an appeal of an agency Protest decision, the Appeal is governed by this Office's procedures for protest appeals.

In the determination of this Appeal, this Office considered:

1. The documentation contained in the procurement record forwarded to this Office by OTDA with the WMS Upstate Legacy Equipment and Maintenance Services contract; and
2. The following correspondence/submissions from the parties (including the attachments thereto):
 - a. CMA's November 1, 2010 agency protest to OTDA;
 - b. CMA's November 10, 2010 addendum to its agency-level protest;
 - c. CMA's November 30, 2010 bid protest follow-up to its agency-level protest;
 - d. OTDA's December 27, 2010 protest determination;
 - e. CMA's January 10, 2011 Appeal to this Office;
 - f. E.nfrastructure's February 1, 2011 Answer to the Appeal; and
 - g. OTDA's February 8, 2011 answer to the Appeal.

Applicable Statutes

The requirements applicable to this procurement are set forth in SFL Article 11 which provides that contracts for services shall be awarded on the basis of "best value" to a responsive and responsible offerer.² Best value is defined as "the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.³ A "responsive" offerer is an "offerer meeting the minimum specifications or requirements described in a solicitation for commodities or services by a state agency."⁴

¹ Comptroller's G-Bulletin G-232.

² SFL § 163(10).

³ SFL § 163(1)(j).

⁴ SFL § 163(1)(d).

ANALYSIS OF BID PROTEST

Appeal to this Office

CMA challenges the procurement conducted by OTDA on the following grounds:

1. The E.nfrastructure proposal was nonresponsive because one of the proposed Key Personnel (the On-Site Manager) failed to meet the RFP's minimum qualifications. Appeal at 2-3.
2. The result and integrity of OTDA's scoring methodology was compromised as evidenced by E.nfrastructure's receipt of a higher technical score despite E.nfrastructure's failure to provide a suitable On-Site Manager and overall lack of relevant experience and qualifications. Appeal at 3-5.
3. The procurement was tainted and the award would be improper as E.nfrastructure utilized the services of James Alheim who should have been barred from the process. Appeal at 5-6.
4. The employment of Mr. Alheim provided E.nfrastructure with an unfair competitive advantage since CMA was instructed that Mr. Alheim was not permitted to participate in any aspect of future OTDA contracts, including procurement related activities. Appeal at 7-8.⁵

OTDA Response to the Appeal

OTDA contends that the Appeal should be rejected and the award upheld on the following grounds:

1. E.nfrastructure's proposed On-Site Manager met the RFP's minimum qualifications and, therefore, E.nfrastructure's proposal was responsive. OTDA Answer at 1-2.
2. CMA's assertion that the technical scoring methodology was tainted rests upon two incorrect assumptions: a) that E.nfrastructure proposed an unqualified On-Site Manager and b) that E.nfrastructure does not possess the necessary experience and qualifications to service the contract. OTDA Answer at 2-3.
3. CMA incorrectly interpreted a report from the Office of the Inspector General dated December 30, 2009, as well as OTDA's response to the report, to mean that Mr. Alheim was prohibited from participating in the procurement process. OTDA Answer at 4-6.

⁵ While CMA's Appeal also challenges OTDA's finding that CMA's agency-level protest was untimely, that issue is rendered moot by virtue of this Office's finding that the substantive points of CMA's Appeal are without merit.

4. CMA incorrectly assumed that Mr. Alheim could have no involvement in procurement activities related to State contracts, and incorrectly assumed that E.nfrastructure was given a competitive advantage from the services of Mr. Alheim. OTDA Answer at 6-7.

E.nfrastructure's Response to the Appeal

E.nfrastructure contends that the Appeal should be rejected and the award upheld on the following grounds:

1. E.nfrastructure's employee team, as well as its proposed subcontractor, Essintial Enterprise Solutions, are "eminently qualified and experienced to service the Project."
2. Mr. Alheim did not "spearhead" the company's proposal to OTDA and his employment with E.nfrastructure is limited in compliance with the Office of the Inspector General's recommendation.

DISCUSSION

I. Responsiveness of E.nfrastructure's Proposal

In conjunction with its protest determination letter to CMA, OTDA attached a copy of the award letter sent to E.nfrastructure on October 26, 2010. The award letter provided that "[t]his selection is contingent upon ... Replacement of the proposed On-Site Manager." Apparently, when CMA read this letter, CMA assumed that the replacement was necessary because E.nfrastructure initially proposed an On-Site Manager who did not meet the minimum qualifications as specified in the RFP. Thus, CMA contends that E.nfrastructure's failure to provide a suitable On-Site Manager was an omission that should have rendered its proposal non-responsive and that E.nfrastructure should not have been permitted to modify its proposal.

Section 5.3.1 of the RFP specifies the following minimum qualifications for the Offeror's proposed On-Site Manager: a minimum of 3 years experience in (i) managing staff in a supervisory role, (ii) customer support in an iTIL help desk type environment, (iii) phone support of field installation and repair technicians, (iv) phone support of iTIL customers/users, and (v) familiarity with the hardware components used in a terminal network environment (servers, VT terminals, Character printers, Device multiplexors, and Port concentrators). In its Answer, OTDA explained that the On-Site Manager proposed by E.nfrastructure did in fact meet the RFP's minimum qualifications but that

OTDA was disappointed in his interview responses and, therefore, "sought a replacement who exceeded, instead of met the position's minimum requirements." Further, OTDA noted that CMA actually proposed the same individual for the role of On-Site Manager. Indeed, a review of the agency's technical evaluation instrument shows that CMA and E.nfrastructure received identical scores in the evaluation of their respective proposed On-Site Manager.

Based on the response from OTDA, as well as a review of the procurement record, this Office is satisfied that the On-Site Manager initially proposed by E.nfrastructure did meet the minimum requirements set forth in the RFP, and that the replacement of such On-Site Manager was permissible as part of contract negotiations. Therefore, the proposal submitted by E.nfrastructure was responsive to the RFP.

II. Assessment and Scoring Methodology of the Technical Component of the RFP

In the Appeal, CMA argues that it should have received a significantly higher technical score than E.nfrastructure and, therefore, the fact that E.nfrastructure scored higher in this regard indicates a flaw in the scoring methodology used by OTDA. Specifically, CMA challenges the integrity of the technical evaluation as it pertains to the provision of an On-Site Manager and as applied to the required Installation Support Services.

1. On-Site Manager

CMA argues that it should have outscored E.nfrastructure by a minimum of 20 points on the technical component since E.nfrastructure's On-Site Manager was not suitable and the Key Personnel submissions constituted a substantial portion of the technical score. However, as discussed in Part I, *supra*, the On-Site Manager submitted by E.nfrastructure was the same individual who was identified in CMA's proposal. In fact, as explained in the OTDA Answer, the two companies proposed the same five individuals to comprise their respective overall Key Personnel teams. Indeed, CMA and E.nfrastructure received almost identical scores in all areas pertaining to Key Personnel (Key Personnel Qualifications – CMA and E.nfrastructure received the same score 5.07 points; Key Personnel Interviews – CMA and E.nfrastructure received the same score 9.98 points; and Key Personnel References – CMA received a score of 4.96 points and E.nfrastructure received a score of 5.00 points).⁶ Moreover, as indicated in the final report of OTDA's

⁶ E.nfrastructure received a score .04 points higher than CMA due to the use of different references.

technical committee, E.nfrastructure's Executive Summary and Detailed Narrative contained certain substantive advantages over CMA's proposal, thus providing another legitimate basis for E.nfrastructure's higher technical score.

2. Installation Support

Next, CMA objects to OTDA's scoring methodology as it pertained to the "Installation Support Services function." As an initial matter, OTDA correctly notes that CMA has mischaracterized the RFP. While the RFP lists an "Installation Support Specialist" as one of the five Key Personnel titles, CMA's argument seems to relate not to that position but, rather, the qualifications of the Offeror or its proposed subcontractor who will provide overall installation support services. Most likely, this is the result of CMA's mistaken belief that "Installation Support Services Key Staff" was a requirement in the current RFP when, in fact, it was a requirement of a previous RFP for these services. As noted in OTDA's technical committee report "[t]he CMA Consulting proposal appeared to be an exact copy of the proposal they submitted the last time this RFP went out, over 5 years ago."

Turning to the substance of CMA's argument, CMA alleges that E.nfrastructure's expertise is in the development of new technology systems, not in the maintenance and support of existing legacy systems. CMA further contends that E.nfrastructure's lack of qualifications in these critical areas warranted a low score in the technical evaluation and that, therefore, OTDA's selection of E.nfrastructure to perform the services requested in the RFP does not have a sound basis. CMA provides no documentary evidence to support its claim that E.nfrastructure does not possess the necessary qualifications to carry out the obligations specified in the RFP.

In contrast, the E.nfrastructure Answer includes the affidavit of Anthony Riccio, the employee who spearheaded E.nfrastructure's proposal, in which Mr. Riccio describes the qualifications of Essintial Enterprise Solutions, a subcontractor that E.nfrastructure has partnered with to perform a portion of the project services, including installation support services. It appears that this subcontractor specializes in the type of legacy equipment maintenance and support outlined in the RFP and OTDA accepted use of this subcontractor following its review of the E.nfrastructure proposal. We also note that, in its proposal, CMA also partnered with a subcontractor to perform these services. Based on the foregoing, this Office is satisfied that OTDA's technical evaluation

and scoring of the On-Site Manager and Installation Support Services was appropriate.

III. The Active Participation of Mr. Alheim

In preparing its bid proposal, E.nfrastructure employed the services of Mr. James Alheim, a former employee of CMA. Previously, Mr. Alheim worked on-site at OTDA as CMA's Maintenance Coordinator while CMA serviced OTDA under the prior WMS maintenance and support contract. However, in December 2009, a report from the Office of the Inspector General (hereinafter "IG's Report") determined that Mr. Alheim and an employee of OTDA "conspired to, and did, submit a false voucher for \$9,107.48 purporting to request payment for the movement of computer equipment when, in fact, it was for the requisition of five laptop computers." The IG's Report recommended "the removal of James Alheim from OTDA and from conducting any further business with any New York State agency." As a result of this recommendation, OTDA responded that it would "direct CMA to remove Mr. Alheim from any involvement with [OTDA's] contract." Subsequently, Mr. Alheim was removed from the project and terminated by CMA. Mr. Alheim was later hired by E.nfrastructure and, as part of his employment, assisted in the preparation of E.nfrastructure's proposal to OTDA. Following the award to E.nfrastructure, CMA submitted a protest to OTDA, claiming that Mr. Alheim was prohibited from participating in the preparation of the proposal by virtue of the IG's Report and the agency's own response. Thus, CMA argued the award should be set aside.

In response to CMA's agency-level protest, OTDA formally approached the Office of the Inspector General (hereinafter "IG"), requesting a clarification on the IG's Report. In a letter dated December 1, 2010, the IG's Chief Counsel, Nelson Sheingold, told OTDA, "[t]he Inspector General lacks the authority to dictate whom a private company such as nfrastructure [sic] may employ. It is OTDA's responsibility to determine the extent of Mr. Alheim's role in the project and, in light of his previous conduct, determine what, if any, effect his involvement has on the assessment of the submitted bid proposals." In light of this statement, OTDA conducted an investigation in order to determine Mr. Alheim's role in the procurement process. This investigation included interviews with CMA employees, Mr. Alheim and senior management at E.nfrastructure. According to OTDA's findings, Mr. Alheim was hired by E.nfrastructure to perform duties concerning the company's private sector activities and, while he apparently did review E.nfrastructure's pricing

information prior to the bid opening, he did not make any significant contributions to the development of E.nfrastructure's cost proposal.⁷ Mr. Alheim was also involved in recruiting current CMA employees on behalf of E.nfrastructure in connection with the instant RFP, but these activities were limited as, according to OTDA, "nfrastructure [sic] had longstanding working and/or personal relationships with four of the six CMA staff members in question." Based on these findings, OTDA concluded that Mr. Alheim's involvement in the procurement process did not contradict the recommendation in the IG's Report, and was so minimal that it did not warrant overturning the contract award.

In its Appeal, CMA disputes OTDA's determination and contends that Mr. Alheim's involvement is clearly at odds with the IG's recommendation and OTDA's response thereto. Specifically, CMA argues that, since the responsive bid is such an important element of the final contract, Mr. Alheim's active participation in the development of E.nfrastructure's proposal must constitute "involvement in the contract' and conducting business with the State." CMA further asserts that "OTDA's ratification of Mr. Alheim's involvement in this process was wholly improper and resulted in a tainted procurement effort." Conversely, OTDA's position is that in preparing its proposal, neither E.nfrastructure nor Mr. Alheim were conducting business with a state agency and, therefore, such actions were not proscribed by the IG's recommendation. OTDA also argues that, in any event, the IG's Report can not reasonably be interpreted to prevent a bidder from employing Mr. Alheim for such purposes. More specifically, OTDA states,

"the OIG Report dealt with services provided under an existing contract and did not expressly recommend that Mr. Alheim not be involved in the development of bids. The OIG Report could not reasonably be interpreted to so restrict Mr. Alheim's future employment since there are no clear legal means to

⁷ E.nfrastructure attached to its Answer an affidavit from Anthony Riccio, Senior Managing Director for Sales and Operations in which Mr Riccio states that, at the time it hired Mr. Alheim, E.nfrastructure was "generally aware of the Inspector General's recommendation" and that, therefore, "in the interest of best practices and honoring the Inspector General's recommendations . . . E.nfrastructure has limited Mr. Alheim's activities so that he will not be conducting any business with the State of New York. Mr. Alheim has not and will not have any role or participation in any of E.nfrastructure's activities pursuant to the OTDA project that will result in a violation of the Inspector General's recommendation" (Affidavit of Anthony Riccio, at p.3-4). Since E.nfrastructure engaged the services of Mr. Alheim (at least minimally) on its OTDA proposal, it would appear that E.nfrastructure, like OTDA, did not interpret the IG's recommendation as precluding Mr. Alheim's activities with respect to the preparation of the RFP proposal.

prevent a bidder from retaining Mr. Alheim to assist in the bid preparation process. Accordingly, OTDA has interpreted the OIG Report as allowing Mr. Alheim to participate in the development of infrastructure's [sic] bid."

While the parties are clearly at odds with their respective interpretations of the IG's Report, ultimately, that issue need not be resolved. Indeed, as explained by the clarification in Mr. Sheingold's letter, the IG's Office lacks the authority to determine what effect, if any, Mr. Alheim's participation has on the procurement. The recommendations contained in the IG's Report were, as their title indicates, "recommendations," to OTDA (which has the ultimate responsibility to determine what actions, in light of the IG's Report, were necessary and appropriate with respect to Mr. Alheim). The IG's Report did not operate as a matter of law to permanently debar or otherwise preclude Mr. Alheim from working on a State contract, or participating in the procurement activities of a company doing business with New York State. While OTDA did "direct CMA to remove Mr. Alheim from any involvement with [the existing] contract," OTDA's bid specifications for the new contract did not state that Mr. Alheim could not be involved in the new contract or in the preparation of a bid for such contract.⁸ Moreover, as Mr. Sheingold's letter indicated was appropriate, OTDA independently examined the matter and reasonably determined that Mr. Alheim's contributions did not rise to the level of necessitating rescission of the award.⁹ Therefore, there is no basis to find that

⁸ Indeed, it is not clear whether OTDA could have included a bid specification to this effect absent specific statutory authority in the first instance (see Callanan v White, 118 A.D.2d 167 [1986] and Matter of Liquid Asphalt Distributors Association, Inc. v. White, 137 A.D.2d 913 [1988]). More specifically, in Callanan, the Appellate Division held that the Department of Transportation's authority to reject bids made by irresponsible bidders did not necessarily implicate a corresponding authority to debar or suspend bidders from future bids on the same grounds. *Id.* at 170-171. The court went on to state that "the department has not been authorized to punish irresponsible bidders but only to deny the awarding of contracts to irresponsible bidders." *Id.* at 171. In Liquid Asphalt Distributors Association, the Supreme Court appears to have extended this reasoning by prohibiting a bid specification that debarred both prospective bidders and an individual officer of a prospective bidder.

⁹ Of course, Mr. Alheim's role, and the extent of such role, is a factor that OTDA, and this Office, could consider in determining whether E.nfrastructure is a responsible bidder. In this regard, we again note that Mr. Alheim's participation in preparation of the proposal was minimal and it bore no relationship to his prior transgression (which grew out of his authority as an onsite manager to submit vouchers to the State for payment). Furthermore, and importantly, E.nfrastructure has averred in its Answer that Mr. Alheim will not have any participation in the performance of its contract with OTDA. Therefore, we are satisfied that Mr. Alheim's employment by E.nfrastructure in connection with their private sector clients, and his

the E.nfrastructure proposal was per se improper because of any involvement by Mr. Alheim.

IV. Unfair Competitive Advantage

CMA's final assertion is that OTDA's ratification of Mr. Alheim's contribution to the proposal provided E.nfrastructure with an unfair competitive advantage. More specifically, CMA alleges that it was advised by the agency that Mr. Alheim was barred from any involvement in the WMS contract. According to CMA, this included a directive from Leonard Belanger, OTDA's former Director of the Bureau of Contract Management, that Mr. Alheim could not participate in "any aspect of future [OTDA] contracts, which included procurement related activities, either on or off-site" (CMA letter, dated November 30, 2010).¹⁰ CMA further contends that in complying with this directive, CMA lost the services of Mr. Alheim who was then in a "unique position" to bring his knowledge and experience to E.nfrastructure. As such, CMA argues that E.nfrastructure was given a competitive advantage and that, in condoning Mr. Alheim's participation, OTDA has afforded the two bidders disparate treatment resulting in prejudice to CMA. As further detailed below, we find these arguments to be without merit.

Initially, we note (as does OTDA in its Answer) that CMA's assertion that it was unfairly disadvantaged is predicated on the alleged statements by Mr. Belanger. However, this Office finds that the proof submitted by OTDA contradicts CMA's assertion in this regard. More specifically, as part of its Answer to the Appeal, OTDA submits the affidavit of Mr. Belanger wherein he denies that he ever advised CMA that Mr. Alheim could not participate in any aspect of the contract bidding process. Mr. Belanger further avers that, while he did state that OTDA would remain consistent with the IG's recommendation, he did not interpret the IG's Report to prohibit Mr. Alheim from involvement in the preparation of a future bid proposal. Based on this statement of Mr. Belanger, this Office can not agree with CMA's assertions on this point. Regardless of CMA's understanding, we are satisfied that OTDA never advised or gave CMA reason to believe that Mr. Alheim was to be precluded from any and all participation in procurement-related activities. Furthermore, we note that CMA does not assert that OTDA suggested to CMA that it should

limited role in connection with the preparation of E.nfrastructure's proposal, do not warrant overturning the award-on-vendor responsibility grounds.

¹⁰ Notably, despite the fact that CMA's argument is based almost entirely on this alleged directive from OTDA, CMA only makes this assertion in a letter from its in-house counsel, and does not, in addition, offer an affidavit from the party to the conversation to support such assertion.

terminate Mr. Alheim as an employee. Therefore, as was done by E.nfrastructure, CMA could have retained Mr. Alheim as an employee but, in light of the non-binding recommendation of the IG, limited his responsibilities "so that he will not be conducting business with the State of New York" (Affidavit of Anthony Riccio, at p.4). As such, it seems that any disadvantage CMA now claims it faced as a result of losing Mr. Alheim's services was due to CMA's own actions, and was not due to any unfair or disparate treatment by OTDA.

Next, even assuming *arguendo* that OTDA did advise CMA that Mr. Alheim was prohibited from any procurement-related activities in future OTDA contracts, E.nfrastructure gained no discernable competitive advantage by its ability to use the services of Mr. Alheim in preparing its proposal. CMA claims that Mr. Alheim provided knowledge of CMA's pricing and other sensitive information to E.nfrastructure, as well as a capacity to recruit CMA's key project staff at OTDA with whom Mr. Alheim had established relationships. With respect to the first alleged advantage, OTDA's investigation in response to CMA's bid protest did not reveal any confidential business information that was unfairly afforded to E.nfrastructure, and CMA fails to provide any proof of this assertion in its Appeal papers. Again, OTDA's investigation revealed only minimal involvement of Mr. Alheim in the development of E.nfrastructure's proposal and there is nothing to indicate that he would have known what CMA's cost proposal was to be on the current procurement. Based on the information provided, CMA has failed to substantiate that E.nfrastructure gained an unfair advantage in this regard.

Regarding E.nfrastructure's recruitment of the key staff at OTDA, it is this Office's understanding that it is not unusual for employees of contractors in this industry to remain in their respective positions at the agency following a change in the contractor. Furthermore, E.nfrastructure has affirmed that four out of the six CMA staff members already had long-standing relationships with E.nfrastructure. Therefore, CMA has failed to establish any competitive advantage E.nfrastructure received by use of Mr. Alheim in its proposal preparation that it would not have otherwise already had. In light of the affidavit executed by Mr. Belanger and the lack of any competitive advantage gained by E.nfrastructure in using the services of Mr. Alheim on this procurement, this Office does not believe that E.nfrastructure was given an unfair competitive advantage.

CONCLUSION

We find that the issues raised in the Protest are not of sufficient merit to overturn the award by OTDA to E.nfrastructure. Therefore, we deny the Protest and on April 15, 2011 this office approved the OTDA/E.nfrastructure contract.