

ORIGINAL

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## IN THE UNITED STATES COURT OF FEDERAL CLAIMS

## Bid Protest

U.S. COURT OF  
FEDERAL CLAIMS

BUSINESS INTEGRA, INC.,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Civil Action No. 14-210C

## COMPLAINT

1. Pursuant to RCFC 7(b), 15(d), 65, and Appendix C, plaintiff, Business Integra, Inc. ("Business Integra"), by its undersigned counsel, files this Complaint, seeking injunctive and declaratory relief against defendant, the United States Department of Homeland Security ("DHS" or "Agency"). Business Integra files this post-award protest challenging the Agency's failure to award a contract to Business Integra under Request for Proposals HSHQDC-11-R-10001 ("RFP"). Enterprise Acquisition Gateway for Leading Edge Solutions II ("EAGLE II") under Functional Category ("FC") 1, 8(a) Small Business Track. The RFP contemplates the issuance of Multiple Award, Indefinite-Delivery, Indefinite-Quantity ("IDIQ") contracts to provide information technology solutions through performance of a wide range of support services. The DHS improperly found Business Integra's proposal unacceptable due to the firm's failure to propose labor rates for all labor categories.

2. Business Integra originally protested to the Government Accountability office ("GAO"), which denied the protest on February 27, 2014. GAO issued a public version of its decision on March 11, 2014. ("GAO Decision".)



### JURISDICTION AND STANDING

3. The United States Court of Federal Claims has jurisdiction over this post-award protest pursuant to the Tucker Act, 28 U.S.C. § 1491(b)(1) where Business Integra objects to the Agency's failure to award it a contract. The Court may provide the requested injunctive and declaratory relief. 28 U.S.C. § 1491(b)(2) ("the court may award any relief that the court considers proper, including declaratory and injunctive relief except that any monetary relief shall be limited to bid preparation and proposal costs.").

4. Business Integra has standing under 28 U.S.C. § 1491(b) to pursue this injunctive action because the company is an "interested party" under 31 U.S.C. § 3551:

The term "interested party", with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

31 U.S.C. § 3551(2). Business Integra meets the first part of the interested party test because it is an actual offeror. To meet the second part of the interested party test, Business Integra must show that there was a "substantial chance" it would have received the contract award but for the alleged error in the procurement process. *Myers Investigative & Sec. Servs. v. United States*, 275 F.3d 1366, 1370 (Fed. Cir. 2002) ("In bid protests under the Tucker Act, 'we . . . construe the term 'interested party' in section 1491(b)(1) in accordance with the [standing requirements of the] CICA and hold that standing under § 1491(b)(1) is limited to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." *Am. Fed'n*, 258 F.3d at 1302. Thus, the substantial chance rule continues to apply.")(Internal quotes not changed.). Business Integra's "direct economic interest" has been prejudicially affected by the Agency's decision not to award a contract

to Business Integra. The DHS improperly found Business Integra's proposal unacceptable because of a lack of pricing for the Applications Systems Analyst—Secret or below (Level I) for the fifth year of the base period and for both years of the option period. Business Integra's price proposal actually indicated that its rates were \$0.00. (*See* Business Integra's proposal, Volume II, Tab D, Attachment L-1 ("Price Proposal") at line 30 of the tab entitled "Labor Rates-GS".) It was legal error for the DHS to find Business Integra's proposal unacceptable. Although the DHS did not rank offerors, it did include in the debriefing provide to Business Integra the overall technical ratings and total evaluated price for each of the awardees. (Debriefing, p. 1.) If the DHS properly considered Business Integra's Price Proposal, Business Integra would have a lower price and equal or greater technical ratings than several awardees, including eVenture Federal Solutions, LLC and OpTech, LLC. (*Id.* at pp. 2, 5-6.) But for the error by the DHS in finding Business Integra's proposal unacceptable, Business Integra would have had a "substantial chance" of obtaining the award.

#### **PARTIES**

5. The defendant is the United States Department of Homeland Security Services, Office of Procurement Operations, Information Technology Acquisition Center, 245 Murray Drive, Bldg 410, Washington, DC 20528.

6. The plaintiff, Business Integra, Inc. ("Business Integra") is an 8(a) Small Business, which is headquartered at 7229 Hanover Parkway, Suite D, Greenbelt, MD 20770.

## BACKGROUND

7. On November 1, 2010, the Agency's Office of Procurement Operations, Information Technology Acquisition Center, Washington, D.C., issued the RFP to provide information technology solutions through performance of a wide range of support services. The RFP anticipated Multiple Award, IDIQ contracts. (November 10, 2010 Letter to Prospective Offerors; RFP; GAO Decision, p. 1.)

8. The DHS issued amendments to the RFP with amendment 000005 conforming the RFP to all the amendments. All references to the RFP henceforth are to the conformed copy. (RFP Amendments 1-5; GAO Decision, fn. 1.)

9. The RFP required offerors to complete a pricing spreadsheet entitled "**Volume II –Tab D –Attachment L-1-PriceProposal-OfferorName.xls**":

### **Tab D – Cost/Price Proposal**

The filename shall be "**Volume II –Tab D –Attachment L-1-PriceProposal-Offeror Name.xls**"

Each Offeror shall provide a completed Attachment L-1, *Pricing Templates*, including all of the information described below. The Offeror shall propose fully burdened ceiling labor rates for ALL labor categories inclusive of all contract periods, utilizing the labor category descriptions within Attachment L-3, *Labor Category Table*. The fully-burdened labor rates include all direct labor and indirect costs applicable to that direct labor (such as fringe benefits, overhead, and G&A), and profit. In addition, the Offeror's completed worksheets shall be submitted to DHS in Microsoft Excel 2003 format. Any other format may be unreadable by DHS and will result in the Offeror's pricing not being considered; thus resulting in a material non-conformity and ineligibility for award. Read-only files will not be accepted. The attachment is comprised of multiple worksheets, described as follows:

- (1) Attachment L-1, *Offeror Information Worksheet*. Each Offeror shall complete the form identifying their corporate and teaming information as well as the subsequent checklist. Offerors shall confirm that their pricing templates conform to the specifications contained within the RFP and the checklist.
- (2) Attachment L-1, *Labor Rates – GS Worksheet*. Each Offeror shall submit hourly labor rates for work performed on Government sites (GS). Offerors

proposing as a Core Team (including the Prime contractor) shall submit blended hourly labor rates for Government sites in accordance with FAR 52.216-29 (modified). The contract level blended rates are applicable to the core team only and shall not include any subcontractors. Labor rates must be entered into the pricing table with a maximum of two decimal places. Labor rates submitted with more than two decimal places will result in material non-conformity. Offerors should assume a start date of December 1, 2011 for Year 1.

(3) Attachment L-1, *Labor Rates – CS Worksheet*. Each Offeror shall submit hourly labor rates for work performed on Contractor sites (CS). Offerors proposing as a Core Team (including the Prime contractor) shall submit blended hourly labor rates for Contractor sites in accordance with FAR 52.216-29 (modified). The contract level blended rates are applicable to the core team only and shall not include any subcontractors. Labor rates must be entered into the pricing table with a maximum of two decimal places. Labor rates submitted with more than two decimal places will result in material non-conformity. Offerors should assume a start date of December 1, 2011 for Year 1.

(4) Attachment L-1, *Materials and Summary Worksheet* – Each Offeror shall submit rates in the materials table for materials, subcontracts, and ODCs/Travel. Offerors shall propose indirect rates applicable to direct materials, subcontracts (for supplies), and other direct costs. The indirect rates are ceiling rates and apply to the Prime contractor only. There are no indirect rate ceilings for core team members. The Prime contractor may at its discretion elect to propose lower indirect rates on a task-by-task basis. Rates for Materials, Subcontracts, and ODCs/Travel must be entered into the pricing table as a percentage with a maximum of two decimal places. Rates submitted with more than two decimal places will result in material non-conformity. Offerors should assume a start date of December 1, 2011 for Year 1.

Offerors must complete all seven (7) years in the Attachment, L-1 *Pricing Templates*.

(RFP, pp. 103-04 (emphasis in original).)

10. The pricing spreadsheet entitled “**Volume II –Tab D –Attachment L-1-PriceProposal-OfferorName.xls**” required offerors to insert labor rates (Pricing) for each of the five years of the base period and for each of the two years of the option period. The spreadsheet also required offerors to provide a Total Value for each labor rate (Pricing).

The Total Value was arrived at by multiplying the labor rate (Pricing) by the number of hours estimated by the offeror for the labor category. (RFP, Attachment L-1.)

11. Paragraph M.1 stated that “[i]n accordance with FAR 52.215(f) the Government intends to award multiple contracts with awards made to the responsible Offerors whose proposals represent the best value.” (RFP, p. 108; GAO Decision, p. 2.)

12. Paragraph M.2 stated that the basis of award would be as follows: “The Government intends to award multiple contracts to the responsible Offerors whose proposals are the most advantageous to the Government, price and other factors considered.” (RFP, p. 108; GAO Decision, p. 2.)

13. Paragraph M.3 listed the evaluation factors and stated that the non-price factors were “listed in descending order of importance. The non-price factors, when combined, are significantly more important than price.” (RFP, pp. 109-10.)

14. The RFP provided for the evaluation of price as follows:

#### **M.3.6 Price**

Each price proposal will be evaluated, but will not be assigned a rating. The evaluation of the price proposal will include accuracy, completeness, and reasonableness. The Government will also evaluate the proposed rates, and prices, to determine if they are realistic using proposal analysis techniques consistent with FAR 15.404-1, *Proposal Analysis Techniques*.

The total evaluated price of the Offeror’s proposal will be calculated in the *Materials and Summary* sheet in Attachment L-1, *Pricing Templates*, and evaluated by the Government and is comprised of the following elements:

- (1) The total price of all years in Attachment L-1, *Labor Rates – GS* (calculated by multiplying each labor rate by the applicable evaluation hours and summing the total price for all seven years);
- (2) The total price of all years in Attachment L-1, *Labor Rates – CS* (calculated by multiplying each labor rate by the applicable evaluation hours and summing the total price for all seven years); and
- (3) The total value of all years in Attachment L-1, *Materials and Summary – materials table* (calculated by multiplying each rate by the applicable

evaluation value for materials, subcontracts, and ODCs / Travel for all seven years and summing the totals).

Prices for additional labor categories will only be evaluated on a case by case basis after contract award, in accordance with Section G.4.5, *Task Order Unique Labor Categories*.

*Note: Failure to offer ceiling rates for all labor categories and all contract periods will result in offer ineligibility. This means that the omission of a rate for just a single category will result in a material non-conformity in the proposed functional category.*

#### **M.3.6.1 Price Evaluation of Options**

The Government will evaluate offers for award purposes by evaluating prices for the base period, as well as all options. Evaluation of options will not obligate the Government to exercise the options. Offers containing any charges for failure to exercise any option will be rejected.

(RFP, pp. 111-12 (emphasis in original); GAO Decision, pp. 2-3.)

15. Business Integra timely filed a proposal in response to the RFP. (GAO Decision, p. 3; Declaration of Prathiba Ramadoss attached hereto as **Exhibit 1** and incorporated in full.)

16. On September 27, 2013, Business Integra received a letter from the DHS indicating that the Agency had not awarded it one of the IDIQ contracts. Because the procurement involved an RFP under FAR Part 15, the procurement was conducted using competitive proposals. Therefore, the law required the DHS to provide Business Integra a debriefing if requested by Business Integra within three (3) days. Business Integra timely requested a debriefing. On November 22, 2013, the DHS sent Business Integra a written debriefing via email ("Debriefing"). The Debriefing stated that "[f]ifteen (15) contract awards were made for FC 1-8(a) Track. Enclosure (1) contains the list of companies receiving award under the FC 1-8(a) Track, as well as their overall technical ratings and total evaluated price. Offerors were not ranked." (Debriefing, p. 1; Exhibit 1 ¶ 8.)



17. With regard to the evaluation of proposals and contract awards, the Debriefing stated the following:

The overall evaluated cost or price was derived according to the application of proposal data as submitted by each offeror via Attachment L-1 of the subject solicitation. Section M.3 of the solicitation listed the evaluation criteria in order of importance. A comparative analysis of the factor ratings, including consideration of evaluated prices, enabled the Government to identify those proposals which were most advantageous and which represented the overall best value to the Government, considering all factors. All proposals were evaluated by qualified personnel in accordance with the solicitation and the evaluation plan. The Government then awarded contracts to the responsible offerors whose proposals were the most advantageous to the Government, price and other factors considered.

(Debriefing, pp. 1-2.)

18. The Debriefing provided the following overall technical ratings and total evaluated price for Business Integra:

Non-Price Factors	Ratings
Corporate Experience	Superior
Past Performance	Excellent
Program Management	Satisfactory
Staffing	Superior
Price Factor	
Total Evaluated Price	\$407,280,776.37

(Debriefing, p. 2.)

19. With regard to the evaluation of price, the Debriefing stated:

The total evaluated prices were analyzed by comparing the total evaluated price proposed for each Offeror to the calculated mean of the total evaluated prices proposed by the FC 1 8(a) Offerors and to the Independent Government Cost Estimate.

(Debriefing, p. 3.)

20. With regard to the evaluation of Business Integra's price, the Debriefing stated:

Your company's total evaluated price was determined to be reasonable and realistic; however, it was inaccurate and complete (sic).

- Your price proposal left three labor rates blank under the Level I Applications Systems Analyst –Secret or below in the Government Site. This is in conflict with the Attachment L-4, *Proposal Preparation Checklist* and the *Offeror Information* Tab located within Attachment L-1, *Pricing Templates*. You indicated “YES” meaning that you complied with this requirement on the checklists. In addition, this omission results in material non-conformity with the requirements of the RFP. According to the RFP instructions in Section M.3.6, “*Failure to offer ceiling rates for all labor categories and all contract periods will result in offer ineligibility. This means that the omission of a rate for just a single category will result in a material non-conformity in the proposed functional category.*”

(Debriefing, p. 4 (emphasis in original); GAO Decision, p. 3; Exhibit 1 ¶ 9.)

21. The omissions referenced in the Debriefing referred to the rates (Pricing) and Total Price for Level I Applications Systems Analyst – Secret or below in the Government Site for the fifth year of the base period and for both years of the option period where the headings for those entries are “Base Period YR 5 Pricing,” “Base Period YR 5 Total Value,” “Option Period YR 1 Pricing,” “Option Period YR 1 Total Value,” “Option Period YR 2 Pricing,” and “Option Period YR 2 Total Value.” (Debriefing, p. 4; Business Integra’s proposal, Volume II, Tab D, Attachment L-1 (“Price Proposal”) at line 30 of the tab entitled “Labor Rates-GS”; GAO Decision, p. 3; Exhibit 1 ¶ 10.)

22. For the entries in options years 1 and 2, Business Integra included \$0.00 in both Pricing and Total Value. (Price Proposal at line 30 of the tab entitled “Labor Rates-GS”.) For base year 5, Business Integra inserted \$0.00 for Total Value, but left the rate (Pricing) blank. (*Id.*) Because Business Integra inserted \$0.00 for “Base Period YR 5 Total Value,” it was obvious that the rate for the Base Period YR 5 Pricing had to be \$0.00. (*Id.*, Exhibit 1 ¶11.)

23. With regard to the award rationale, the Debriefing stated:

The Government used the factors and the stated order of importance as listed in Section M.3 of the solicitation to determine which offerors represented the best value to the Government. Each of the offerors selected for award had a better overall combination of non-price factor ratings and price than your proposal. Your pricing proposal was deemed non-compliant with the instructions in the solicitation and therefore ineligible for award. Based upon the Government's analysis, your proposal did not represent a best value to the Government and was ineligible for award.

(Debriefing, p. 4.)

24. The Agency found that Business Integra's Total Evaluated Price was \$407,280,776.37. (Debriefing, p. 2.) That is the same amount for Total Evaluated Price that is in the tab entitled "Materials and Summary" in Volume II Tab D Attachment L-1 Price Proposal-Business Integra. (Price Proposal.)

25. Business Integra inserted \$0.00 for "Base Period YR 5 Total Value" for the subject labor category and, therefore, the rate for the "Base Period YR 5 Pricing" could only be \$0.00. (Price Proposal at "Labor Rates-GS" tab.) The \$0.00 amount represents 0% of the of Business Integra's Total Evaluated Price of \$407,280,776.37.

26. The Debriefing included the overall technical ratings and total evaluated price for eVenture Federal Solutions, LLC ("eVenture"):

Non-Price Factors	Ratings
Corporate Experience	Superior
Past Performance	Excellent
Program Management	Satisfactory
Staffing	Good
Price Factor	
Total Evaluated Price	\$424,010,036.82

(Debriefing, p. 5.)

27. The Debriefing included the overall technical ratings and total evaluated price for OpTech, LLC ("OpTech"):

Non-Price Factors	Ratings
Corporate Experience	Superior
Past Performance	Excellent
Program Management	Satisfactory
Staffing	Good
Price Factor	
Total Evaluated Price	\$412,426,049.83

(Debriefing, p. 6.)

28. The difference between Business Integra's price and eVenture's price is over \$16M and the difference between Business Integra's price and OpTech's price is over \$5M where Business Integra had equal or better ratings on all non-price factors.

29. On November 26, 2013, Business Integra filed a protest with GAO. (Protest.)

30. On February 27, 2014, GAO issued a protected decision, denying the protest. On March 11, 2014, GAO re-issued the decision as a public document. (GAO Decision.)

31. To be technically qualified to compete for an EAGLE II contract, Business Integra spent over \$550,000 in earning certifications relating to Capability Maturity Model Integration ("CMMI") Level 3, International Organization for Standardization ("ISO") 9001/27000, and Earned Value Management System ("EVMS"). In addition, Business Integra spent approximately \$130,000 in preparing its proposal. (Exhibit 1 ¶ 3.)

32. Business Integra timely filed a proposal. The DHS took approximately three years to make its award determinations. At no time did the DHS apprise Business Integra that it had any concerns with Business Integra's proposal. At no time did the DHS request that offerors update their pricing. (Exhibit 1 ¶ 4.)

33. Business Integra will be substantially and irreparably harmed by the lack of an Eagle II contract. Business Integra will lose its ability to compete and earn its potential revenue work share for the seven-year, \$22-billion EAGLE II program. Eagle II is the primary acquisition vehicle the DHS uses for procuring the bulk of its IT services acquisitions. (Exhibit 1 ¶ 5.)

34. Small businesses that were awarded contracts under the original Eagle program saw significant revenue gains. Many of the small business awardees have grown to the point where they no longer qualify as a small business. The DHS spent more than \$11 billion under the first EAGLE contract since 2006, averaging approximately \$1 billion per year. (Exhibit 1 ¶ 6.)

35. Business Integra's proposal in response to the RFP would have allowed Business Integra to make a profit on the contract work. The loss of those contract revenues will cause significant damage to Business Integra. The loss of revenues will cause Business Integra's overhead and general & administrative rates to increase and make Business Integra less competitive. (Exhibit 1 ¶ 7.)

### **PREJUDICE**

36. The Agency has prejudiced Business Integra by unreasonably finding Business Integra's proposal non-compliant and ineligible for award. *Matter of ITT Sys. Corp.*, B-405865, B405865.2, 2011 U.S. Comp. Gen. LEXIS 295, \*13, 2012 Comp. Gen. Proc. Dec. P44 (Jan. 6, 2011). The DHS should have accepted Business Integra's total evaluated price of \$407,280,776.37. Further, that price is reasonable because, as indicated, *supra*, Business Integra had equal or better non-price ratings than two awardees that had higher prices than Business Integra. Specifically, the total evaluated

price of eVenture Federal Solutions, LLC was \$424,010,036.82; and the total evaluated price of OpTech, LLC was \$412,426,049.83.

37. Where the awards were based on best value, Business Integra represents the best value over at least two awardees. But for the error made by the DHS in finding Business Integra's proposal unacceptable, Business Integra had a substantial chance of obtaining the award. *Galen Med. Assocs. v. United States*, 369 F.3d 1324, 1331 (Fed. Cir. 2004) ("To establish prejudice, the claimant must show that there was a "substantial chance it would have received the contract award but for that error." *Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1582 (Fed. Cir. 1996).").

#### COUNT I

**Business Integra's Total Value of \$0.00 for base year 5 and option years 1 and 2 is proper and reflects its willingness to perform the particular service at no cost to the DHS.**

38. Paragraphs 1 through 37 are re-alleged and incorporated herein.

39. The RFP included a spreadsheet that required offerors to insert labor rates (Pricing) for each of the five years of the base period and for each of the two years of the option period. The RFP also required offerors to provide a Total Value for each labor rate (Pricing). The Total Value was arrived at by multiplying the labor rate (Pricing) by the number of hours estimated by the offeror for the labor category.

40. In the Debriefing, the Agency noted that it found Business Integra's proposal non-compliant and ineligible for award because the "price proposal left three labor category rates blank under the Level I Applications Systems Analyst - or below in the Government Site....According to the RFP instructions in Section M.3.6, '*Failure to offer ceiling rates for all labor categories and all contract periods will result in offer ineligibility. This means that the omission of a rate for a single category will result in a*

*material non-conformity in the proposed functional category.*” (Debriefing, p. 4 (emphasis in original).) The DHS is in error.

41. The omissions referenced in the Debriefing referred to the rates (Pricing) and Total Price for Level I Applications Systems Analyst – Secret or below in the Government Site for the fifth year of the base period and for both years of the option period where the headings for those entries are “Base Period YR 5 Pricing,” “Base Period YR 5 Total Value,” “Option Period YR 1 Pricing,” “Option Period YR 1 Total Value,” “Option Period YR 2 Pricing,” and “Option Period YR 2 Total Value.”

42. For the entries in option years 1 and 2, Business Integra included \$0.00 in both Pricing and Total Value. (Price Proposal at line 30 of the tab entitled “Labor Rates-GS”.) For base year 5, Business Integra inserted \$0.00 for Total Value, but left the rate (Pricing) blank. (*Id.*) Because Business Integra inserted \$0.00 for “Base Period YR 5 Total Value,” it was obvious that the rate for the Base Period YR 5 Pricing had to be \$0.00.

43. Business Integra’s stated price of \$0.00 for the “Base Period YR 5 Total Value,” the “Option Period YR 1 Pricing,” the “Option Period YR 1 Total Value,” the “Option Period YR 2 Pricing,” and the “Option Period YR 2 Total Value” does not equate to leaving the labor category blank for base year 5 or for option years 1 and 2, as found by the Agency; rather, it demonstrates Business Integra’s willingness to perform the particular service at no cost to the Agency. The Agency’s finding to the contrary is unreasonable and improper.

44. By excluding Business Integra from the competition, Business Integra failed to obtain full and open competition and violated the Competition in Contracting Act of 1984, as amended, codified at 41 U.S.C. § 3301(a)(1) (“[A]n executive agency in

conducting a procurement for property or services shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this division and the Federal Acquisition Regulation”). The DHS also violated the implementing regulations at 48 CFR 6.101; and acted arbitrarily and capriciously.

45. Further, by excluding Business Integra from the competition, the DHS treated Business Integra unfairly where Business Integra spent hundreds of thousands of dollars qualifying to compete and in preparing its proposal. (citation) Accordingly, the DHS violated 48 CFR 1.102(b)(3) (“The Federal Acquisition System will conduct business with integrity, fairness, and openness.”); 48 CFR 1.102-2(c)(3) (“The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.”); 48 CFR 1-602-2(b) (“Contracting officers shall ensure that contractors receive impartial, fair, and equitable treatment.”); and 48 CFR 3.101-1 (“Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.”); and acted arbitrarily and capriciously.

46. The Agency violated 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”) where the agency’s actions (1) lacked a rational basis; and (2) violated statutes and regulations.

## **COUNT II**

**Business Integra’s failure to include a number for  
“Base Period YR 5 Pricing” had no material impact on  
Business Integra’s price because the DHS could determine the price  
from the pattern of pricing in the Business Integra proposal.**

47. Paragraphs 1 through 46 are re-alleged and incorporated herein.



48. Business Integra did not provide a rate for the “Base Period YR 5 Pricing” for Level I Applications Systems Analyst – Secret or below in the Government Site.

49. The missing unit price for the “Base Period YR 5 Pricing” for Level I Applications Systems Analyst – Secret or below in the Government Site can be ascertained easily from the Price Proposal by dividing the Total Value stated (\$0.00) by the number of hours stated (105), giving a unit price of \$0.00. Therefore, Business Integra committed itself to perform the exact work required at the stated fixed price of \$0.00.

50. Where a missing price can be determined from the pattern of pricing, an agency is required to fill in the missing pricing.

51. In fact, the DHS was able to evaluate Business Integra’s price, showing that the omission of the single price was not material to the requirements of the RFP. The Agency found that Business Integra’s Total Evaluated Price was \$407,280,776.37. (Debriefing, p. 2.) That is the same amount for Total Evaluated Price that is in the tab entitled “Materials and Summary” in Volume II Tab D Attachment L-1 Price Proposal-Business Integra. (Price Proposal.)

52. As stated in paragraph 44, *supra*, by excluding Business Integra from the competition, the DHS failed to obtain full and open competition and violated the Competition in Contracting Act of 1984, as amended, codified at 41 U.S.C. § 3301(a)(1) and the implementing regulations at 48 CFR 6.101; and acted arbitrarily and capriciously.

53. As stated in paragraph 45, *supra*, by excluding Business Integra from the competition, the DHS treated Business Integra unfairly and violated 48 CFR 1.102(b)(3);

48 CFR 1.102-2(c)(3); 48 CFR 1-602-2(b); and 48 CFR 3.101-1; and acted arbitrarily and capriciously.

54. The Agency violated 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”) where the agency’s actions (1) lacked a rational basis; and (2) violated statutes and regulations.

### COUNT III

**Business Integra’s failure to include a number for  
“Base Period YR 5 Pricing” had no material impact on  
Business Integra’s price because the omitted  
unit price was de minimis.**

55. Paragraphs 1 through 54 are re-alleged and incorporated herein.

56. Business Integra inserted \$0.00 for “Base Period YR 5 Total Value” for the subject labor category and, therefore, the rate for the “Base Period YR 5 Pricing” could only be \$0.00. (Price Proposal at “Labor Rates-GS” tab.) The \$0.00 amount represents 0% of the of Business Integra’s Total Evaluated Price of \$407,280,776.37.

57. The difference between Business Integra’s price and eVenture’s price is over \$16M and the difference between Business Integra’s price and OpTech’s price is over \$5M where Business Integra had equal or better ratings on all non-price factors.

58. As stated in paragraph 44, *supra*, by excluding Business Integra from the competition, the DHS failed to obtain full and open competition and violated the Competition in Contracting Act of 1984, as amended, codified at 41 U.S.C. § 3301(a)(1) and the implementing regulations at 48 CFR 6.101; and acted arbitrarily and capriciously.

59. As stated in paragraph 45, *supra*, by excluding Business Integra from the competition, the DHS treated Business Integra unfairly and violated 48 CFR 1.102(b)(3); 48 CFR 1.102-2(c)(3); 48 CFR 1-602-2(b); and 48 CFR 3.101-1; and acted arbitrarily and capriciously.

60. The Agency violated 5 U.S.C. § 706(2)(A) ("arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law") where the agency's actions (1) lacked a rational basis; and (2) violated statutes and regulations.

**COUNT IV**

**Business Integra's failure to include a number for  
"Base Period YR 5 Pricing" was a minor informality that should  
have been waived by the contracting officer because  
the error had no material impact on Business Integra's price.**

61. Paragraphs 1 through 60 are re-alleged and incorporated herein.

62. The omission of the single unit price did not prevent the DHS from evaluating Business Integra's price proposal so the omission had no material impact on Business Integra's price. Where the DHS was able to evaluate Business Integra's price proposal on a basis common to all offers, the omission constitutes a minor informality that properly may be waived by the contracting officer, without prejudicing the other bidders.

63. Business Integra's failure to include a unit price for the "Base Period YR 5 Pricing" for Level I Applications Systems Analyst – Secret or below in the Government Site should have been waived as a minor informality, as provided by 48 CFR 52.215-1(f)(3), which is incorporated into the RFP by reference (RFP, p. 88) and explains that where a proposal does not adhere to the precise terms of the solicitation, "[t]he Government may waive informalities and minor irregularities in proposals received." 48 CFR 52.215-1(f)(3).

64. By failing to waive the missing unit price as a minor informality, the DHS violated 48 CFR 52.215-1(f)(3), and acted arbitrarily and capriciously.

65. As stated in paragraph 44, *supra*, by excluding Business Integra from the competition, the DHS failed to obtain full and open competition and violated the

Competition in Contracting Act of 1984, as amended, codified at 41 U.S.C. § 3301(a)(1) and the implementing regulations at 48 CFR 6.101; and acted arbitrarily and capriciously.

66. As stated in paragraph 45, *supra*, by excluding Business Integra from the competition, the DHS treated Business Integra unfairly and violated 48 CFR 1.102(b)(3); 48 CFR 1.102-2(c)(3); 48 CFR 1-602-2(b); and 48 CFR 3.101-1; and acted arbitrarily and capriciously.

67. The Agency violated 5 U.S.C. § 706(2)(A) (“arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”) where the agency’s actions (1) lacked a rational basis; and (2) violated statutes and regulations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Business Integra prays that this Court grant the following relief:

FIRST, a declaration that the DHS improperly found Business Integra’s proposal unacceptable for failure to provide unit pricing.

SECOND, a preliminary and permanent injunction enjoining the DHS, its officers, agents, servants, employees and representatives, and all persons acting in concert and participating with them, from issuing any task orders under the IDIQ contracts issued pursuant to the RFP under Functional Category (“FC”) 1, 8(a) Small Business Track unless the DHS first awards Business Integra an IDIQ contract under Functional Category (“FC”) 1, 8(a) Small Business Track.

THIRD, an award to Business Integra of its costs in this proceeding;

FOURTH, and award of bid and proposal costs if appropriate; and

FIFTH, such other and further relief as the Court deems just and proper.

Respectfully submitted,



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Direct Tel (410) 385-3497  
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Date: March 13, 2014

Counsel for Business Integra, Inc.

Katherine B. Hill  
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100 Light Street  
Baltimore, MD 21202  
kbhill@milesstockbridge.com

Exhibit 1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
Bid Protest

BUSINESS INTEGRA, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

DECLARATION OF PRATHIBA RAMADOSS

I, Prathiba Ramadoss, do hereby depose and state as follows:

1. My name is Prathiba Ramadoss. I am an individual over eighteen (18) years of age and fully competent to make this Declaration and testify regarding my personal knowledge of facts stated in this Declaration. To the best of my knowledge, information, and belief, all statements in the Declaration are true, accurate, and correct.
2. I am the President and Chief Executive Officer of Business Integra, Inc. ("Business Integra"), a woman-owned SBA certified 8(a) small disadvantaged company. In my capacity as President and Chief Executive Officer, I was personally involved in overseeing Business Integra's preparation of its proposal in response to the Request for Proposals HSHQDC-11-R-10001 ("RFP"), Enterprise Acquisition Gateway for Leading Edge Solutions II ("EAGLE II") under Functional Category ("FC") 1, 8(a) Small Business Track, The United States Department of Homeland Security ("DHS" or "Agency") issued the RFP.
3. To be technically qualified to compete for an EAGLE II contract, Business Integra spent over \$550,000 in earning certifications relating to Capability Maturity Model

Integration ("CMMI") Level 3, International Organization for Standardization ("ISO") 9001:2000, and Earned Value Management System ("EVMS"). In addition, Business Integra spent approximately \$130,000 in preparing its proposal.

4. Business Integra timely filed a proposal. The DHS took approximately three years to make its award determinations. At no time did the DHS apprise Business Integra that it had any concerns with Business Integra's proposal. At no time did the DHS request that offerors update their pricing.
5. Business Integra will be substantially and irreparably harmed by the lack of an Eagle II contract. Business Integra will lose its ability to compete and earn its potential revenue work share for the seven-year, \$22-billion EAGLE II program. Eagle II is the primary acquisition vehicle the DHS uses for procuring the bulk of its IT services acquisitions.
6. Small businesses that were awarded contracts under the original Eagle program saw significant revenue gains. Many of the small business awardees have grown to the point where they no longer qualify as a small business. The DHS spent more than \$11 billion under the first EAGLE contract since 2006, averaging approximately \$1 billion per year.
7. Business Integra's proposal in response to the RFP would have allowed Business Integra to earned revenue on the EAGLE II contract work. The loss of the aforesaid contract revenues will cause significant damage to Business Integra by increasing its overhead and general and administrative rates thereby making Business Integra less competitive in our ability to grow our small business women-owned 8(a) business.

8. On September 27, 2013, Business Integra received a letter from the DHS indicating that the Agency had not awarded it one of the EAGLE II contracts. Business Integra timely requested a debriefing. On November 22, 2013, the DHS sent Business Integra a written debriefing via email ("Debriefing"). The Debriefing stated that "[f]ifteen (15) contract awards were made for FC 1-8(a) Track. Enclosure (1) contains the list of companies receiving award under the FC 1-8(a) Track, as well as their overall technical ratings and total evaluated price. Offerors were not ranked." (Debriefing, p. 1.)
9. With regard to the evaluation of Business Integra's price, the Debriefing stated:
- Your company's total evaluated price was determined to be reasonable and realistic; however, it was inaccurate and complete (sic).
- Your price proposal left three labor rates blank under the Level I Applications Systems Analyst –Secret or below in the Government Site. This is in conflict with the Attachment L-4, *Proposal Preparation Checklist* and the *Offeror Information* Tab located within Attachment L-1, *Pricing Templates*. You indicated "YES" meaning that you complied with this requirement on the checklists. In addition, this omission results in material non-conformity with the requirements of the RFP. According to the RFP instructions in Section M.3.6, "*Failure to offer ceiling rates for all labor categories and all contract periods will result in offer ineligibility. This means that the omission of a rate for just a single category will result in a material non-conformity in the proposed functional category.*"
- (Debriefing, p. 4 (emphasis in original).)
10. The omissions referenced in the Debriefing referred to the rates (Pricing) and Total Price for Level I Applications Systems Analyst – Secret or below in the Government Site for the fifth year of the base period and for both years of the option period where the headings for those entries are "Base Period YR 5 Pricing," "Base Period YR 5 Total Value," "Option Period YR 1 Pricing," "Option Period YR 1 Total Value," "Option Period YR 2 Pricing," and "Option Period YR 2 Total Value." (Debriefing, p.




4: Business Integra's proposal, Volume II, Tab D, Attachment L-1 ("Price Proposal") at line 30 of the tab entitled "Labor Rates-GS".)

11. For the entries in option years 1 and 2, Business Integra included \$0.00 in both Pricing and Total Value. (Price Proposal at line 30 of the tab entitled "Labor Rates-GS".) For base year 5, Business Integra inserted \$0.00 for Total Value, but left the rate (Pricing) blank. (*Id.*) Because Business Integra inserted \$0.00 for "Base Period YR 5 Total Value," it was obvious that the rate for the Base Period YR 5 Pricing had to be \$0.00. (*Id.*)

12. The entries of \$0.00 and the blank resulted from an error in the spreadsheet used by Business Integra. Nonetheless, Business Integra intends to abide by its proposed pricing where the errors have an immaterial impact on Business Integra's pricing.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Prathiba Ramadoss

Date Executed: March 13, 2014

ORIGINAL

FORM 2  
COVER SHEET

## In The United States Court of Federal Claims

## Cover Sheet

Plaintiff(s) or Petitioner(s)

Business Integra, Inc., 7229 Hanover Parkway, Suite D, Greenbelt, MD 20770

If this is a multi plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): Joseph G. Billings

Firm Name: Miles &amp; Stockbridge P.C.

Post Office Box:

Street Address: 100 Light Street

City-State-Zip: Baltimore, MD 21202

Telephone &amp; Facsimile Numbers: Tel 410-385-3497; FAX 410-773-9087

E-mail Address: jbillings@milesstockbridge.com

Is the attorney of record admitted to the Court of Federal Claims Bar? ☒ Yes ☐ NoDoes the attorney of record have a Court of Federal Claims ECF account? ☒ Yes ☐ No

If not admitted to the court or enrolled in the court's ECF system, please call (202) 337-6402 for admission papers and/or enrollment instructions.

Nature of Suit Code:

☐ 1 ☒ 4 ☐ 5

Select only one (three digit) nature of suit code from the attached sheet.

If number 21 is used, please identify partnership or partnership group. If numbers 118, 154, 226, 342, 356, or 528 are used, please explain.

Agency Identification Code:

☐ 1 ☒ 2 ☐ 3

See attached sheet for three-digit codes.

Amount Claimed:

\$

Use estimate if specific amount is not pleaded.

Disclosure Statement:

Is a RCFC 7.1 Disclosure Statement required? ☒ Yes ☐ No

If yes, please note that two copies are necessary.

Bid Protest:

Indicate approximate dollar amount of procurement at issue: \$ 407 million

Is plaintiff a small business? ☒ Yes ☐ No

Vaccine Case:

Date of Vaccination:

Related Cases:

Is this case directly related to any pending or previous case? ☐ Yes ☒ No

If yes, you are required to file a separate notice of directly related cases. See RCFC 40.2.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
Bid Protest

BUSINESS INTEGRA, INC.

Plaintiff,

v.

THE UNITED STATES,

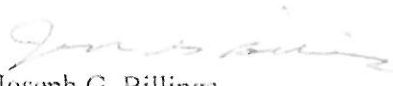
Defendant.

)  
)  
)  
)  
) Civil Action No.  
)  
)  
)  
)

**CERTIFICATE OF SERVICE**

Pursuant to RCFC Appendix C, 10, I hereby certify that, on this 13<sup>th</sup> day of March 2014, a copy each of the Complaint, Plaintiff's Motion For Preliminary Injunction, along with a supporting brief and declaration, was sent by e-mail to:

J. Bryan Warnock  
Trial Attorney  
U.S. Department of Justice  
Civil Division - Commercial Litigation Branch  
P.O. Box 480  
Ben Franklin Station  
Washington, D.C. 20044  
Tel: (202) 616-0475  
Fax : (202) 514-8624  
[John.B.Warnock@USDOL.gov](mailto:John.B.Warnock@USDOL.gov)

  
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Direct Fax (410) 773-9087

March 13, 2014

Counsel for Business Integra, Inc.