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May 1, 2007

**VIA TELECOPY AND EMAIL**

**REDACTED VERSION  
FOR PUBLIC RELEASE**

**IMMEDIATE SUSPENSION REQUIRED**

Office of the General Counsel  
U.S. Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

~~CONTAINS XTec PROPRIETARY  
INFORMATION NOT TO BE DISCLOSED  
OUTSIDE THE GOVERNMENT~~

ATTN: Procurement Law Control Group

**Re: Protest of XTec, Incorporated  
Solicitation No. TQ-PLB-07-0002  
HSPD-12 Shared Services II Procurement  
General Services Administration  
(related to Comp. Gen. B-298711, assigned to Edward Goldstein)**

Dear Sir or Madam:

XTec, Incorporated ("XTec"), 11400 Commerce Park Drive, Suite 210, Reston, Virginia 20191, telephone no. (703) 547-3525, telecopy no. (703) 547-3533, by counsel, protests the award of a contract by the United States General Services Administration ("GSA") to Electronic Data Systems Corporation ("EDS"). All correspondence regarding this protest should be directed to the undersigned XTec counsel.

XTec is a leader in secure, interoperable authentication and verification systems. XTec develops, produces and licenses enterprise level security solutions for credentialing, access control, information systems and electronic commerce for wide range of government and commercial uses.

In this procurement, GSA violated material terms of the Request for Quotations ("RFQ"), the Federal Acquisition Regulation ("FAR") and the Competition in Contracting Act ("CICA"). Specifically, the GSA (a) failed to conduct meaningful discussions; (b) failed to disqualify EDS for proposing one solution for the required demonstration and then pricing a different system; (c) improperly evaluated proposals under the Technical and Program Management factors; (d) improperly evaluated price proposals and failed to conduct a proper price analysis; (e) improperly evaluated proposals under the Past

Performance factor; and (f) conducted an arbitrary best value determination contrary to the solicitation terms.

This is GSA's second Homeland Security Presidential Directive 12 ("HSPD-12") Shared Services procurement. The first award was protested by XTEC and other companies. See Comp. Gen. B-298711. GSA took corrective action, the protesters withdrew their protests and this RFQ was issued by GSA as the second HSPD-12 Shared Services procurement.

### **STAY OF CONTRACT AWARD**

Suspension of contract performance is required as this protest is filed within ten (10) days of the April 23, 2007 award. 4 C.F.R. § 21.6; FAR 33.104; 31 U.S.C. § 3553(c) and (d).

### **TIMELINESS**

This protest is timely filed under 4 C.F.R. § 21.2(a)(2) because it is filed within ten (10) days of XTEC's receipt of information regarding the award on April 23, 2007 and XTEC's April 27, 2007 requested and required debriefing.

### **STANDING**

XTEC is an interested party to protest the award. XTEC is an actual bidder whose direct economic interest is affected by the award to EDS. But for GSA's improper actions, XTEC would have been awarded the contract.

### **PROCUREMENT BACKGROUND**

#### **A. Homeland Security Presidential Directive 12 Program**

HSPD-12, issued by President George W. Bush on August 27, 2004, mandates the establishment of a standard for identification of Federal Government employees and contractors. HSPD-12 requires the use of a common identification credential for both logical and physical access to Federally-controlled facilities and information systems. This policy is intended to enhance security, increase efficiency, reduce identity fraud, and protect personal privacy. RFQ, Amendment 4, at 6-7.

The Department of Commerce and National Institute of Standards and Technology ("NIST") were tasked with producing a standard for a secure and reliable form of

identification. In response, NIST published Federal Information Processing Standard Publication 201 ("FIPS 201"), Personal Identity Verification ("PIV") of Federal Employees and contractors, on February 25, 2005. This standard is embodied in a PIV card that adheres to the FIPS 201 standard and is to be used for both physical and logical access control, and other applications as determined by the individual agencies. FIPS 201 consists of two parts: PIV I and PIV II. The standards in PIV I support the control objectives and security requirements described in HSPD-12. The standards in PIV II support the technical interoperability requirements described in HSPD-12. PIV II also specifies standards for implementing identity credentials on smart cards for use in the Federal PIV system. RFQ, Amendment 4, at 6-7.

NIST issued associated technical specifications for FIPS 201 as special publications, including SP 800-85B PIV data model conformance test guidelines. To implement SP 800-85B, NIST also developed the 800-85B test tool. GSA used the test tool to evaluate products for inclusion on GSA's HSPD-12 Approved Products List ("APL").

HSPD-12 requires that the Federal credential (the PIV) card must be secure and reliable, defined more specifically as a credential that:

1. Is issued based on sound criteria for verifying an individual's identity;
2. Is strongly resistant to identity fraud, tampering, counterfeiting, and terrorist exploitation;
3. Can be rapidly authenticated electronically; and
4. Is issued only by providers whose reliability has been established by an official accreditation process.

RFQ, Amendment 4, at 6-7.

To implement FIPS 201, the agency must primarily revise the identity proofing and identity card issuance processes of the agency to meet FIPS 201 requirements. FIPS 201 requirements include the issuance of an identity credential that utilizes smart card technology, both contact and contactless, and incorporates a standardized Card Holder Unique Identifier ("CHUID"), digital credentials, and biometric templates.

According to GSA, the GSA Federal Acquisition Service created the HSPD-12 Managed Service Office ("HSPD-12 MSO"), to provide turn-key services to produce

compliant PIV II credentials; in turn, this will assist Federal agencies in satisfying Office of Management and Budget ("OMB") Guidance M-05-24. The GSA HSPD-12 MSO will be responsible for all project, acquisition and financial management necessary to provide this end-to-end service to contributing agencies. In this role, GSA currently is supporting approximately forty Federal Agencies, Commissions and Boards. The MSO is not a mandatory source of supply.

Through the HSPD-12 Shared Services procurement process, GSA sought contractors capable of providing an end-to-end HSPD-12 system as identified in the requirements specified in the solicitation. RFQ, Amendment 4, at 6-7.

#### **B. GSA Approves Providers for HSPD-12**

HSPD-12 required most federal agencies to begin credentialing civilian federal workers and contractors by October 27, 2006 and to complete the process by October 27, 2008. Only equipment certified via GSA and included on the GSA approved product lists can be used to build a FIPS 201 compliant solution. GSA maintains a public website showing products on the APL.

Under HSPD-12, GSA established an approval process for HSPD-12 compliant products and services. In addition, each federal agency was required to establish a Credential Management System compliant with HSPD-12 and FIPS 201 PIV. On September 14, 2005, the State Department awarded XTec a contract to assist the State Department in meeting HSPD-12 mandates. The State Department was one of the first federal agencies to use a smart card for right scale, physical and logical access.

XTec was one of the first HSPD-12 system integrators. The State Department had unique requirements in meeting the HSPD-12 directive. Not only did the State Department have to issue cards on deadline, but the Department had to also ensure the cards work within the current smart card access control infrastructure deployed throughout the United States.

XTec provided a card and reader to GSA in early 2006 for testing to be included on the GSA APL, and to ensure the State Department met the HSPD-12 deadline. During this process XTec discovered that the test data on the NIST FIPS 201 website was incorrect. The State Department subsequently received clarification on the data encoded for the testing. The NIST FIPS 201 program manager confirmed the test data was incorrect and XTec's interpretation of how the data should be encoded on the card was correct. Based on this information, XTec proceeded to finalize its encoding method. However, the problem arose once the card was again provided to GSA for testing in November 2006. [REDACTED]

[REDACTED] The government test tool required the data encoding

method to follow a different method from the guidance provided by NIST. The NIST and GSA responded that other vendors were encoding in compliance with the 800-85B test tool, so it must be right. However, in the previous guidance given by NIST, NIST explicitly stated that, in all circumstances, if there is a discrepancy between test data or the reference implementation and the FIPS 201 documentation, the FIPS 201 documents should be followed. To date, no complete resolution has been accomplished.

**C. GSA Issues First HSPD-12 Shared Services Solicitation**

In 2006, GSA issued an RFQ seeking an offeror "capable of providing an end-to-end HSPD-12 system." This was the first GSA HSPD-12 Shared Services procurement.

XTec timely submitted a proposal and participated in the procurement. Following submission of proposals and evaluation, on August 17, 2006, GSA awarded the HSPD-12 contract to BearingPoint, Inc. ("BearingPoint"). XTec and EDS timely protested the award at GAO. See Comp. Gen. B- 298711. Lockheed Martin protested the award with the GSA contracting officer. GSA overrode the CICA stay and directed BearingPoint to start performance.

**D. GSA Takes Corrective Action, Cancels Solicitation, Issues New RFQ**

Following the filing of an agency report, supplemental protest and supplemental agency report, in late October 2006, GSA announced that it was taking corrective action. GSA notified the protesters that it would not exercise any options on the protested BearingPoint contract and that contract would expire on or about January 7, 2007. GSA agreed to conduct new purchases through full and fair competition from GSA schedule holders, including XTec. Based on GSA's assurances that XTec and other competitors would be treated on a fair and equitable basis, XTec and the other protesters withdrew their protests regarding the BearingPoint award.

On January 12, 2007, GSA issued a new solicitation for the HSPD-12 requirement, Solicitation No. TQ-PLB07-0002. Amendment 4 to the RFQ described the scope of services as follows:

This requirement is for a shared service solution for an end-to-end contractor managed service for the following core HSPD-12 system components: enrollment, system infrastructure (Identity Management System, Card Management System), Card Production and Issuance, and Card Activation. GSA is seeking contractor managed services for this capability. As

such, the contractor will supply equipment, materials and services to meet the Government's core service requirements as specified in this solicitation.

\* \* \*

As a contractor managed service in accordance with IT Schedule 70 SIN 132-62, the contractor will supply all equipment, materials, and services to meet the core service requirements for the target population. GSA has specified the components for standard configuration enrollment stations in this solicitation. As specified in this solicitation, the core service requirement is for (225) standard configuration enrollment work stations. These work stations will be deployed in Government owned and leased space, but the equipment will be supplied and owned by the contractor. Card activation equipment is also a core service requirement for (225) card activation stations. This equipment will be located in Government owned and leased space with the standard configuration enrollment stations. Other equipment and materials required by the contractor to meet the core service requirement for the shared services solution will be supplied by the contractor in the contractor's facilities.

GSA is seeking seat pricing for these contractor managed services, where a seat is defined as a single, active PIV identity account. There are two types of seat pricing requested – seat pricing for enrollment in the PIV Program and seat pricing for maintenance of established, active identity accounts. Seat pricing for enrollment represents the services required for initial enrollment in the PIV Program which shall include all services for the enrollment, card production and issuance, and card activation for the target population. The seat pricing shall represent a bundled price for the services and equipment required for the core services to enroll and issue all required PIV credentials to the target population. These core service requirements are defined in this solicitation. Offerors shall also offer a seat price for maintenance of the established accounts. The seat price for maintenance shall be a monthly, bundled price for the core services for all maintenance services and

equipment for the established accounts. Maintenance fees will initiate in the first month after the PIV identity account is established and will continue until the month in which the account is discontinued as an active PIV count.

RFQ, Amendment 4, at 7-8.

The solicitation provided for award to the responsible offeror whose proposal represents the best overall value to the government, including options, considering the factors listed in the solicitation.

The solicitation included the following evaluation criteria:

All non-price factors when combined are more important than price. As the Offerors' non-price evaluation ratings become more equal, price becomes more important. The following evaluation factors are in descending order of importance

- Factor 1: Operational Capability Demonstration (OCD)
- Factor 2: Understanding of and capability to fully and timely perform Technical Requirements
- Factor 3: Project Management
- Factor 4: Past Performance

RFQ, Amendment 4, at 128.

The solicitation included a required OCD. The RFQ provided:

As part of this evaluation process, each vendor must be able to demonstrate the identified use cases listed in Appendix A, "Use Case Evaluation Criteria Spreadsheet" of this Solicitation. In this Appendix each requirement is mapped to a specific use case. All the cases are contained in Section 12 of this solicitation. The OCD will be evaluated on the basis of two sub-factors which are of equal value: (1) the results of the use case functional requirements demonstration and (2) observations regarding expected and desired results, efficiency of data-entry and flow of the system. The two sub-factors will result in a single evaluation rating for the OCD factor.

Prior to conducting the actual live demonstration each vendor must provide a white paper containing their proposed test plan and any assumptions necessary and the following documentation:

- Detailed system architecture
- Security architecture
- User interface specification

The test plan will not be evaluated but rather used by GSA to prepare for the OCD evaluation.

RFQ, Amendment 4, at 129.

The solicitation stated further:

***Prices shall be evaluated to determine whether an offeror's proposed price is fair and reasonable and complete in relation to the solicitation, the OCD, the offeror's overall proposal.*** The non-price factors (technical, OCD, management and past performance) are collectively more important than price. As the non-price evaluation ratings become more equal, price becomes more important. A trade-off process may be employed in making the best value determination. The trade-off process permits trade-offs among price and non-price evaluation factors and allows the Government to consider award to other than the lowest priced or highest technically rated offeror.

RFQ, Amendment 4, at 127-128. (emphasis added).

The RFQ included the following special notice regarding the requirement that offerors have the products and services on their SIN 132-62 schedule:

Immediately upon receipt of the RFQ, offerors should formulate their pricing strategy to respond to these CLINs. If the offerors determine their current schedule offering does not include these CLINs, then the offeror must take immediate steps to ensure the new CLIN pricing is added to their schedule

contract. This must be accomplished prior to the time Price Proposals are submitted. All products and services must be available on SIN 132 -62 and/or Schedule 70. If a product, service or labor category is not required to be on SIN 132-62, then it must be on Schedule 70. No other Schedules may be offered and open market items may not be proposed. All products and services must be on Schedules by the time Price Proposals are submitted. It is the responsibility of each contractor or team to ensure that all required HSPD-12 contract line items that constitute an end-to-end solution are priced on their Schedule 70 SIN 132-62. There will be no open market items permitted under this task order.

RFQ, Amendment 4, at 130-31.

The solicitation included eighty-two Contract Line Item Numbers ("CLINs"). Two of the CLINs were reserved. See RFQ, Amendment 4, at 143 (CLIN 78 and 82). For all other CLINs, the offeror was required to provide its total price for each CLIN. RFQ, Amendment 4, at 132-43.

**E. GSA Provides Inconsistent Guidance Regarding APL and FIPS-201 Requirements**

Before award, XTec raised numerous concerns regarding the handling of APL and FIPS 201 issues. [REDACTED]

[REDACTED] Further, products to be added to the APL had to undergo testing by a GSA testing evaluation lab. However, the GSA test tool did not always function properly and in accordance with the FIPS 201 requirements.

[REDACTED] XTec, one of the first companies to provide HSPD-12 products and services, had already completed significant development work [REDACTED]

XTec raised many of these issues with GSA during the proposal and APL process. GSA repeatedly provided assurances that it would ensure the APL process was conducted in accordance with the FIPS 201 requirements and that GSA would evaluate the Shared Services procurement in accordance with the RFQ criteria.

During the testing process leading up to proposal submission, GSA informed XTEC that certain XTEC products did not meet GSA requirements. In response, XTEC showed that the GSA test tool (SP 800-85B) was not in compliance with FIPS 201 (a mandatory requirement of the RFQ). For example, GSA's Testing Office informed XTEC that XTEC's [REDACTED] failed numerous tests as part of the FIPS 201 evaluation process. However, subsequent review by XTEC and communications with NIST indicated a problem with the test tool, not a problem with the XTEC card. NIST confirmed the problem identified by XTEC and stated that a fix would be implemented and verified in the test process. An example of this is seen with the card XTEC submitted to GSA for Department of Labor ("DOL"). The DOL card was submitted to GSA for testing on March 1, 2007. GSA sent back a report that XTEC failed the test on March 3, 2007. With no changes to the card (GSA maintained its position the entire time) DOL was notified on March 20, 2007 that it had now passed the test. Ultimately, GSA agreed that there was a problem with the tool. GSA re-tested the XTEC products using a revised version of the tool. XTEC then passed all required testing.

**F. GSA Reminds Offerors of APL Requirements**

XTEC worked intensively with GSA's IT 70 contracting officer to satisfy all requirements. A schedule modification was created to add HSPD-12 related items to XTEC's existing contract. However, GSA continued to change the ground rules at the same time it required offerors to confirm their APL status.

By email dated March 7, 2007, GSA reminded six offerors that the solicitation requires that "all products and services proposed be either on SIN 132-62 or other SINs Schedule 70." GSA required that all offerors submit a list of products that support their proposed CLIN structure for this RFQ, including a copy of the GSA approval letter associated with each product/service.

Specifically, the email stated:

Dear HSPD-12 SSP II Offeror:

The Homeland Security Presidential Directive 12 Shared Services Provider II (HSPD-12 SSP II) procurement (Solicitation No. TQ-PLB-05-0007, RFQ#186901) requires that all products and services proposed be either on SIN 132-62 or other SINs on Schedule 70 (see RFQ Section 19.3 Special Notice and various Modifications posted on E-Buy).

GSA requires that all offerors participating in the HSPD-12 SSP II procurement submit a list of products that support the offeror's proposed CLIN structure on this RFQ. The contents of the product list should identify:

- (1) the CLIN number;
- (2) the products/services to support that CLIN;
- (3) the model/part numbers for that product; and
- (4) the manufacturer of the product.

You are required to submit a copy of the GSA Approval Letter associated with each product/service. The product list and Letters must be submitted to me and your assigned Schedule 70 Contracting Officer (CO). This information will assist GSA in ensuring that all of the products and services being offered to support the CLIN are actually approved as appropriate under the 22 categories for SIN 132-62. Items that do not fall into the 22 categories must also be on Schedule 70.

Independent pricing for the products and services is not required at this time. However, as stipulated in the original announcement under Section 19.3 – Special Notice and Modifications 2, 4, and 5 on E-Buy, you should have all products and services that support the CLINs on Schedule 70 SIN 132-62 or other appropriate Schedule 70 SINs prior to submission of your price proposal. This list must be provided by 4:00 p.m. on Friday, March 16, 2007. The list should be sent via email to your assigned Schedule 70 CO and to the HSPD-12 SSP II CO, Phil Barber, at phil.barber@gsa.gov.

There are no revisions anticipated at this time for this RFQ#186901.

On March 8, 2007, GSA notified XTec that it was changing the ground rules; all current items on the approved list, plus all the additional ones being added, had been pulled. XTec was told that the evaluation lab had changed its approval approach. Eventually, XTec and GSA were able to resolve the issues and

[REDACTED] This change in GSA's position and its

delay in adding the additional product/services to the APL prejudiced XTec. It also raises serious concerns whether other offerors were held to the same or different standards.

XTec was placed on the IT 70 Schedule Seat Pricing by GSA for XTec's solution based on past performance. At that time (June 2006) there were no [REDACTED] on the list. This was an attempt by GSA not to slow down the agencies from deploying solutions to qualified vendors. Since then, GSA has made it clear that Seat Pricing will only be awarded to companies who can demonstrate they use only approved product/services. [REDACTED]

As discussed above, during the APL process, there were numerous instances of XTec receiving incorrect guidance or requirements changing late in the process. Major issues included: (1) a lack of constant, refreshed communication from the lab to the vendor regarding any or all deficiencies impacting the approval of products on the EP website; (2) constantly changing approval procedures; and (3) an overall inability to comprehend the necessity of a speedy process that positively impacts GSA's ability to have products for sale to the agencies that have complied with HSPD-12. In at least one instance, a procedure changed under a new version – literally – within an hour of a call made by XTec to ascertain the status of a product undergoing testing submitted under a prior version of the test procedure. XTec was required to comply with the new version of the test procedure although it had fully complied with the prior version – thus delaying XTec's approval.

Another example relates to APL status of [REDACTED] XTec cards passed all tests on February 28, 2007. On March 13, 2007, XTec called the GSA EP Lab to check on the status of the products awaiting approval. XTec left messages and sent an email on Friday, March 9, requesting a list of any or all items needed to complete the pending cases. XTec was informed that in [REDACTED] XTec was missing substantial documentation. XTec explained that XTec had uploaded all the required documents in accordance with v7.0 of the approval procedures. GSA said that XTec was missing the Site Visit documentation. XTec explained that v7.0 did not have any documentation requirements for Site Visits. When [REDACTED] from XTec insisted, [REDACTED] from the Lab reviewed the v7.0 procedures and advised him that XTec was correct. [REDACTED] explained that a new version (v8.0) of the Approval Procedures had been submitted to GSA's Program Manager, [REDACTED] for review but had not been approved [REDACTED] as of the previous morning.

<sup>1</sup> It is our understanding that GSA improperly awarded to EDS since EDS's solution [REDACTED]

[REDACTED] of XTec explained that XTec had complied with all the requirements under v7.0 of the approval procedures and made the comment that GSA was changing the rules in the middle of the game. [REDACTED] explained that the Lab had the right to do so. XTec responded that it was more than willing to comply with any requirement, but that holding up XTec's approval for a new set of procedures – that XTec was not aware of until XTec made the call – was not fair.

[REDACTED] stated he would call [REDACTED] to discuss the matter. At 1:21 p.m. on March 13, he called to inform XTec that the new procedures had been approved by GSA and uploaded to the [REDACTED]. The date on the zip file containing the new procedures reads March 13, 2006 with a time-stamp of 1:13 p.m.

**G. Offerors Submit Proposals; GSA Conducts Discussions with XTec and Other Offerors**

XTec and other offerors timely submitted initial proposals and participated in OCDs. Following OCDs, GSA established a competitive range of three offerors and requested pricing proposals from BearingPoint, EDS and XTec. BearingPoint, however, did not submit a final pricing proposal.

On April 18, 2007, GSA conducted written discussions with XTec. GSA provided seventeen discussion questions to XTec. All of the questions related to XTec's [REDACTED]. GSA did not ask any questions about XTec's [REDACTED]. Responses were due by 5:00 p.m., April 19, 2007. XTec timely submitted its final proposal revision ("FPR").

**H. GSA Awards the Contract to EDS**

On April 23, 2007, GSA notified XTec that it had awarded the contract to EDS, at a total evaluated price of \$66.3 million. GSA's notice letter stated that XTec [REDACTED]. GSA stated that it had rated EDS "Excellent" and XTec [REDACTED] under the Technical factor. According to press reports and debrief, six offerors submitted proposals in response to the solicitation.

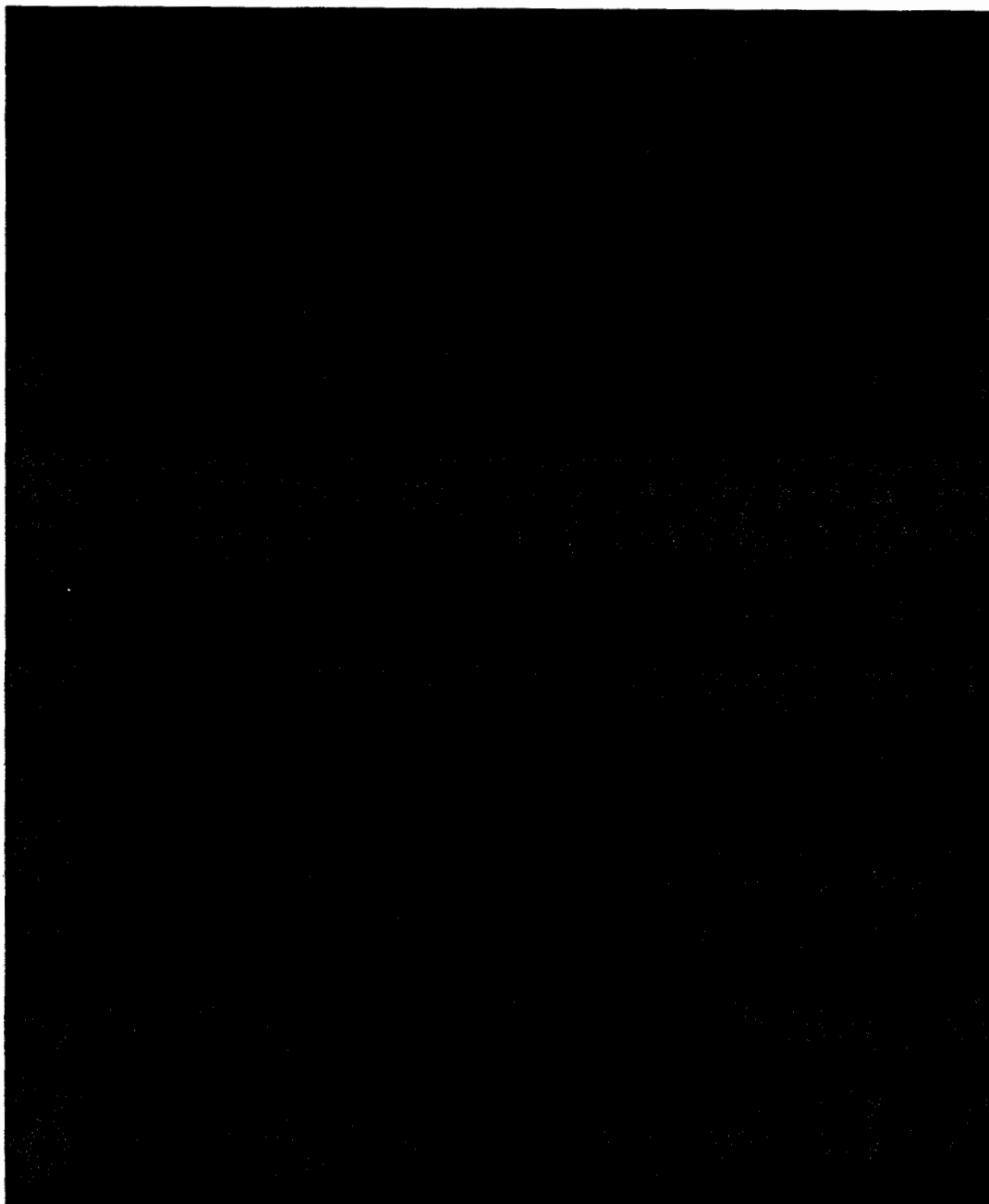
**I. GSA Conducts Debriefing for XTec**

On April 27, 2007, GSA conducted a debriefing for XTec. During the debriefing, GSA provided the following information:

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U.S. Government Accountability Office  
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~~CONTAINS XTEC PROPRIETARY  
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[REDACTED]		
EDS	\$66,084,536	\$66,379,641
[REDACTED]		



During the debriefing, GSA provided written answers to questions asked by XTEC. Among other things, GSA provided the following answers:



1. Did the winning proposal price a solution that was demonstrated?

The awarded task order complies with the RFQ and Schedule 70 requirements including SIN 132-62 where applicable.

2. Did EDS' OCD card pass the GSA 800-85B Test Tool? If so, what version?

The awarded task order complies with the RFQ and Schedule 70 requirements including SIN 132-62 where applicable.

\* \* \*

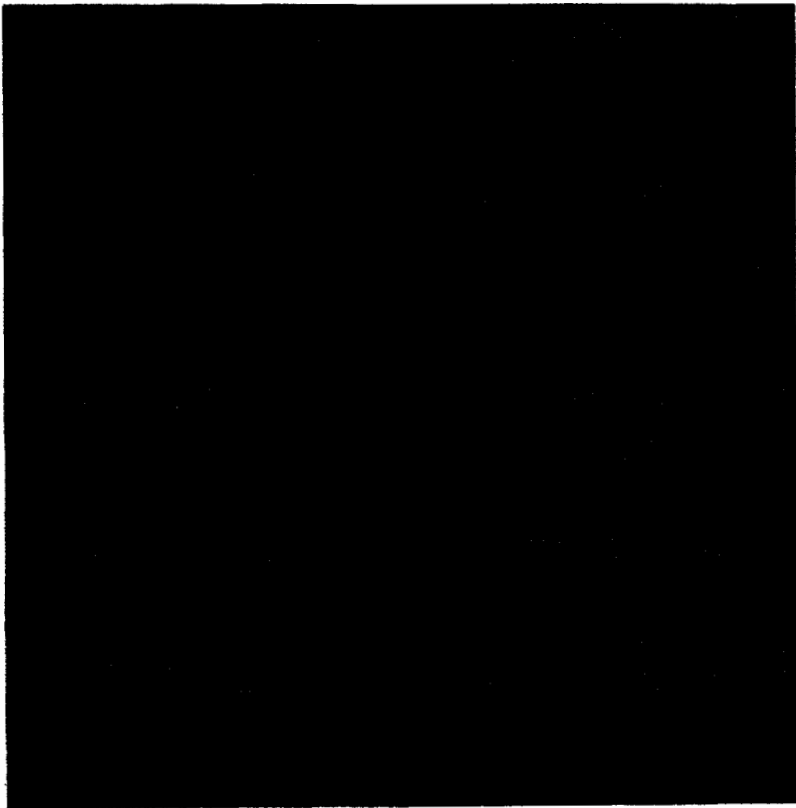
7. Did GSA determine whether EDS had all requirements on the GSA APL? How was the determination made?   


The awarded task order complies with the RFQ and Schedule 70 requirements including SIN 132-62 where applicable.

8. Did GSA ensure that all EDS offered items complied with FIPS-201? How was this done?

The awarded task order complies with the RFQ and Schedule 70 requirements including SIN 132-62 where applicable.

\* \* \*





## DISCUSSION

### **I. GSA Failed to Conduct Meaningful Discussions**

CICA and FAR require that agencies conduct meaningful discussions with all offerors in the competitive range. 10 U.S.C. § 2305(b)(4)(B); FAR 15.306(d). Discussions must address all deficiencies and material weaknesses and other items that restrict an offeror from award. GAO has interpreted the FAR and CICA provisions to require that agencies provide offerors in the competitive range with "meaningful discussions." Alliant Techsystems, Inc.; Olin Corp., B-260215.4; B- 260215.5, August 4, 1995, 95-2 CPD ¶ 79. Here, GSA failed to conduct meaningful discussions with XTEC regarding the technical and program management factors.

During discussions, GSA asked XTEC seventeen detailed questions [REDACTED] GSA asked no questions regarding any other area. XTEC was [REDACTED] adversely affected XTEC's chances for award. If GSA had conducted meaningful discussions, XTEC would have had an opportunity to address the GSA concerns and improve

its proposal. As a result XTec was prejudiced by the failure to conduct meaningful discussions.

In Alliant Techsystems, GAO stated:

Competitive prejudice is an essential element of every viable protest. Where an agency violates procurement requirements, a reasonable possibility of prejudice is a sufficient basis for sustaining a protest, and we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester. *Where, as here, an impropriety in the conduct of discussions is found, it must be clear from the record the protester was not prejudiced in order to deny the protest.* Here, the record establishes a reasonable possibility of prejudice.

Alliant Techsystems, Inc., supra (emphasis added). But for GSA's actions, XTec would have received the award.

## II. EDS Should Have Been Disqualified for Changing Its Solution After OCDs

The RFQ required that offerors provide an OCD, technical proposal and price proposal for their proposed solutions. An offeror could only meet the requirements of the RFQ if the proposed solution demonstrated during the OCD was the same solution that was priced. Otherwise, an offeror could engage in a "bait and switch" by demonstrating one solution but then pricing a less expensive solution. Based on information known within the industry and confirmed at the debriefing, it appears that it is exactly what EDS did.

During the debriefing, XTec specifically asked whether the winning price proposal was actually demonstrated. GSA refused to provide any information regarding the EDS proposal. However, based on [REDACTED] EDS did not price the same solution it demonstrated during the OCD. In effect, EDS engaged in a "bait and switch," by demonstrating one system for the OCD and pricing another system. This approach violates the RFQ terms and fundamental fairness. XTec was materially prejudiced. XTec could have offered a substantially lower price if it knew that it could demonstrate a solution different than that it priced, contrary to the RFQ terms. Accordingly, EDS should have been disqualified from award.

### III. GSA Improperly Evaluated Proposals Under the Technical and Project Management Factors

Both CICA and the FAR mandate that proposal evaluation be conducted in accordance with stated criteria and on a fair and reasonable basis. 41 U.S.C. § 253b(a) (an agency must evaluate offers only on the basis of factors specified in the solicitation). Accordingly, the GAO will examine the record to ensure that the evaluation was reasonable and consistent with the RFQ evaluation criteria, as well as applicable procurement laws and regulations. Computer Info. Specialist, Inc., B-293049, B-293049.2, January 23, 2004, 2004 CPD ¶ 1 (GAO considers whether "[agency] evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations"); Atlantic Research Mktg. Sys., Inc., B-292743, December 1, 2003, 2003 CPD ¶ 218 (GAO "review[s] the record to determine whether the evaluation was reasonable and consistent with the terms of the solicitation"). It is fundamental that agencies treat offerors fairly and equally. CRAssociates, Inc., B-282075.2-.3, March 15, 2000, 2000 CPD ¶ 63 ("It is a fundamental principle of government procurement that the contracting agency must treat all offerors equally; it must evaluate offers evenhandedly against common requirements and evaluation criteria.").

The RFQ included a forty-five page limit for the non-price proposal, with the exception of past performance and personnel resumes. That is, the offerors had only forty-five pages to address how their proposed solution met the RFQ requirements. Offerors had to include in the forty-five pages a written description of how the products demonstrated during the OCD met the RFQ technical requirements. During the debriefing, [REDACTED]

The RFQ required that offerors' technical and management proposals address all RFQ requirements, even items demonstrated during the OCDs. However, it appears, based on the debriefing information that EDS, and possibly other offerors, were not required to include in their technical proposal information related to the products demonstrated during the OCD. GSA did not make known that it was relaxing this requirement. Had GSA done so, XTec would have substantially revised its proposal to provide additional detail for items not specifically demonstrated during the OCD. As a result, XTec was materially prejudiced by this unequal treatment. If XTec had been permitted to use the full forty-five pages without needing to address technical requirements related to the OCD, XTec would have [REDACTED]

During the debriefing, GSA informed XTEC that it had received [REDACTED]. However, it appears that GSA was evaluating XTEC against criteria other than that stated in the RFQ. First, many of the areas where XTEC received [REDACTED] rating were due to the page limitations. As discussed above, the page limitation was applied on an unfair and inconsistent basis.

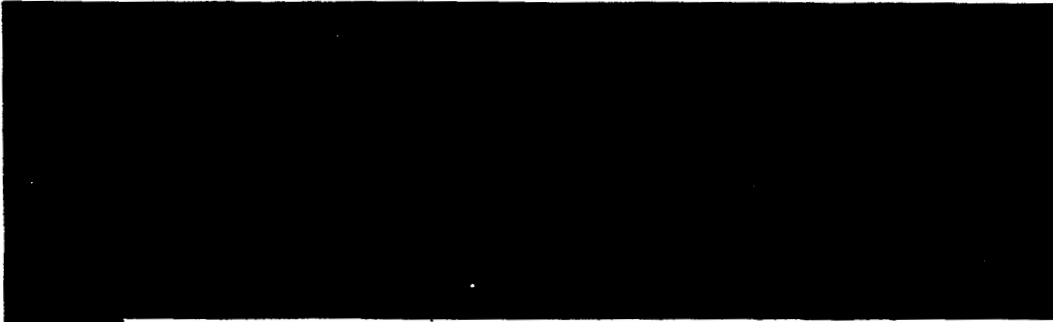
In addition, at the debriefing, GSA could not provide XTEC with the basis for the [REDACTED]. Based on information provided at the debriefing and information in XTEC's proposal, [REDACTED] rational basis. If GSA had conducted a proper evaluation, XTEC would have received [REDACTED].

For example, under Factor 2, Compliance with Terms and Conditions, XTEC

[REDACTED]

Similarly, under Factor 3, Project Management, [REDACTED]

[REDACTED] XTEC, while managing the overall page count of its response, clearly demonstrated its expertise in this Factor. For the quality of its project management plan, XTEC [REDACTED]



As a result, XTec should have received a higher rating for Factor 3.

Under the RFQ, the offerors' proposed items had to be on the GSA Schedule 70 and the GSA APL. To be added to the APL, products had to pass GSA testing by the GSA evaluation lab. For the required cards, the cards were tested by GSA using the GSA SP 800-85B test tool.

During the debriefing, XTec asked whether the EDS OCD card passed the GSA SP 800-85B test tool and, if it did, which version. GSA refused to provide any substantive response. However, based on the timing of testing and XTec's own experience with the test tool (see Procurement Background, Section B, *supra*), it appears that the EDS [REDACTED] was tested to the earlier version of the GSA SP 800-85B test tool. In that event, EDS's proposed [REDACTED] did not pass the required testing and should have been removed from the APL. As a result, EDS should have not been included in the competitive range and should have been ineligible for award.

During the debriefing, XTec asked GSA whether EDS had all of its requirements on the GSA APL and how this determination was made. GSA did not provide any substantive response. Similarly, XTec asked whether GSA ensured that all EDS-offered items complied with FIPS 201. Again, GSA did not provide a substantive response. Based on XTec's experience getting items on the APL and ensuring they met FIPS 201 requirements and given XTec's industry knowledge of the items EDS apparently selected, it appears EDS failed to meet requirements in the categories identified [REDACTED]

XTec was materially prejudiced by the flawed evaluation. If GSA had evaluated in accordance with the RFQ criteria, XTec would have received [REDACTED] for all factors. Moreover, XTec was materially prejudiced by how GSA handled compliance with APL and FIPS 201 requirements. While XTec incurred substantial costs meeting APL requirements, it appears EDS was not held to the same standards. Further, it is unclear to what extent

XTec's [REDACTED] under Factor 2 were related to issues concerned with the APL and FIPS 201. Again, XTec was materially prejudiced by the flawed evaluation and failure to follow the RFQ terms.

### III. GSA Improperly Evaluated Price

The RFQ stated, in part, the basis for award would be an award made to:

An award will be made to the responsible offeror whose proposal represents the best overall value to the Government, including options, considering the factors listed in this section. Prices will not be rated or scored, but they will be evaluated. *Prices shall be evaluated to determine whether an offeror's proposed price is fair and reasonable and complete in relation to the solicitation, the OCD, the offeror's overall proposal.* The non-price factors (technical, OCD, management and past performance) are collectively more important than price. As the non-price evaluation rating become more equal, price becomes more important. A trade-off process may be employed in making the best value determination. The trade-off process permits trade-offs among price and non-price evaluation factors and allows the Government to consider award to other than the lowest priced or highest technically rated offeror.

RFQ, Amendment 4, at 127-28. (emphasis added). Further, the RFQ offered a special notice to offerors regarding formulation of pricing strategy to respond to the eighty-two CLINs:

If the offerors determine their current schedule offering does not include these CLINs, then the offeror must take immediate steps to ensure the new CLIN pricing is added to their schedule contract. This must be accomplished prior to the time Price Proposals are submitted. All products and services must be available on SIN 132-62 and/or Schedule 70. If a product, service or labor category is not required to be on SIN 132-62, then it must be on Schedule 70. No other Schedules may be offered and open market items may not be proposed. All products and services must be on Schedules by the time Price Proposals are submitted. It is the responsibility of each contractor or team to ensure that all required HSPD-12 contract

line items that constitute an end-to-end solution are priced on their Schedule 70 SIN 132-62. There will be no open market items permitted under this task order.

RFQ, Amendment 4, at 130-31.

The RFQ makes clear that GSA would review offerors' proposed pricing for realism, reasonableness and completeness. However, GSA failed to conduct any rational price evaluation and failed to ensure price realism, reasonableness and completeness.

Based on information provided to XTEC on April 23 and 27, 2007, GSA failed to conduct a proper price evaluation and analysis. Moreover, it appears that EDS may have engaged in price gamesmanship and may have manipulated options and other items to offer an illusory low price.

On April 23, 2007, GSA notified XTEC that XTEC's [REDACTED] and the EDS's evaluated price was \$66,379,641. At the debriefing, GSA informed XTEC that its [REDACTED] and the EDS evaluated price was \$66,084,536. GSA did not explain the change in the XTEC evaluated price of approximately [REDACTED] XTEC requested during the debriefing that GSA explain how its price analysis was conducted. GSA responded as follows:

All CLINS were used in the price evaluation. However, CLIN 74 for overlays was removed from the Total Evaluated Price (TEP) totals. Core services for milestones 1 through 4 was calculated on the basis of 420,000 identity accounts, using 13 months for the maintenance basis. To get to a full TEP on 1.5 million identity accounts, all discounted CLINS that were available above the 420,000 identity accounts were applied using the maximum quantity for discounts in that band. Identity account maintenance was distributed evenly over the remaining life of the contract. The total for optional additional items was derived using a quantity of one unit per item.

GSA's response is unclear and confusing. It appears that the GSA price evaluation was conducted by a single individual and the price evaluation numbers could not be replicated during the debriefing. On its face, the EDS proposed price appears unreasonably low. There are indications that EDS engaged in price gamesmanship. Among other things, there can be no rational basis for a [REDACTED] in the XTEC evaluated price from April 23-27, 2007, with no change in the EDS evaluated price. It does not appear that GSA

ensured an apples-to-apples price comparison. Nor does it appear that GSA conducted any price risk analysis.

GSA failed to evaluate price in accordance with the RFQ. The RFQ required evaluation of all CLINs and all option periods. [REDACTED]

[REDACTED] If GSA had followed the RFQ price requirements, the EDS evaluated price would have been substantially higher. [REDACTED]

#### IV. GSA Improperly Evaluated Past Performance

GAO will question agency conclusions on past performance that are not reasonably based, are inconsistent with the solicitation criteria or are undocumented. Sonetronics, Inc., B-289459.2, March 18, 2002, 2002 CPD ¶ 48 at 3. Here, GSA's conclusions are unreasonable, inconsistent with the solicitation criteria, and unsupported.

For Past Performance, GSA looked to three XTec projects: [REDACTED]

[REDACTED] XTec's performance on all three contracts was excellent. However, GSA rated the [REDACTED] GSA indicated that the [REDACTED] rated [REDACTED] because it was limited to [REDACTED]

[REDACTED] Thus, GSA was required to give credit for comparable experience but improperly failed to do so.

#### V. GSA Failed to Conduct a Proper Best Value Determination

GSA's determination to award to EDS as the best value is arbitrary and without a rational basis. It appears from the debriefing that the best value determination was based on GSA's erroneous beliefs that: (1) EDS demonstrated and priced the same system; [REDACTED] and (3) [REDACTED]

█ These underlying assumptions are erroneous and without a rational basis, as discussed above. GSA's best value determination, based on information provided during debrief, was arbitrary, capricious and without a rational basis. The agency has provided no reasoned justification for awarding the contract to EDS. Accordingly, the best value determination is flawed and must be set aside.

\* \* \*

XTec was materially prejudiced by each of the procurement errors and improper agency conduct identified above. But for the errors discussed above, XTec would have received contract award.

#### NOTICE TO CONTRACTING OFFICER

The contracting officer's name, address and telephone number are as follows:

Phillip L. Barber, Contracting Officer  
General Services Administration  
Office of Acquisition  
10300 Eaton Place, Suite 572  
Fairfax, VA 22030  
Telephone No. (703) 306-6441  
Facsimile No. (703) 306-6445

Pursuant to 4 C.F.R. § 21.1(e), a copy of this protest is being furnished to Mr. Barber by Federal Express within one day of the filing of this protest.

#### REQUEST FOR ISSUANCE OF PROTECTIVE ORDER

This protest contains XTec proprietary material. The agency report required under 4 C.F.R. § 21.3 will contain source selection sensitive and proprietary information. Accordingly, XTec requests that GAO issue a protective order. 4 C.F.R. § 21.4(a). XTec will separately file a redacted version of this protest for release to the public.

#### CONCLUSION AND REQUEST FOR RELIEF

XTec requests a ruling by the Comptroller General of the United States that the award to EDS is in violation of statute and regulation. The Comptroller General should recommend that the award to EDS be set aside, and that the GSA award to XTec. In the alternative, XTec requests that GAO recommend that the award to EDS be set aside, that


GSA conduct meaningful discussions with XTec and EDS, that GSA request final proposal revisions from XTec and EDS and that GSA evaluate FPRs and make a new award determination.

Additionally, XTec requests a ruling that it is entitled to an award of protest costs, including attorneys' fees, and bid and proposal preparation costs. 4 C.F.R. § 21.8 (d).

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to GAO bid protest regulations, 4 C.F.R. § 21.1(d), XTec requests that the GSA produce the following documents:

1. The proposals of XTec and EDS and all related documents.
2. All documents memorializing communications, including exchanges, discussions, clarifications or any oral or written formal or informal provision of information, between the GSA and EDS relating to the procurement.
3. All documents related to the GSA's assessment of the evaluation factors stated in the RFQ, including the award decision, and any best value decision.
4. The acquisition plan, the source selection plan and all related documents.
5. All documents prepared by or for the SSA, the Past Performance evaluators, the contracting officer, the price analyst or any other similar agency committee or team related to the protested procurement.
6. All individual team member worksheets, team consensus summaries, team ratings and all related evaluation documents.
7. All contract clearance review documents.
8. All information guides or templates used by the source selection team.
9. All documents relating to discussions or negotiations with EDS whether these discussions included the contracting officer or not.
10. All documents related to the Past Performance evaluation and Past Performance proposals of all offerors included in the competitive range.

11. All documents related to the overall standing or ranking of offerors (included in the competitive range and not included in the competitive range).
12. All documents related to the overall standing of offerors for the non-price factor, including those in the competitive range and those outside the competitive range.
13. All documents related to the establishment of the competitive range.
14. All documents relating to the determination to select EDS as the successful offeror.
15. All documents provided by EDS to the GSA related to the procurement, including notes of meetings or telephone conversations.
16. All documents related to the debriefing conducted by the GSA for XTec, including a copy of the script used to debrief.
17. All documents, including correspondence and emails, between the GSA and EDS related to this procurement.
18. All documents related to the evaluation factors and the GSA's evaluation of XTec and EDS proposals with respect to each and every one of these factors.
19. All documents related to the determination of overall final standing.
20. All documents related to the facts and events described in the debriefing provided XTec.
21. All documents relating to whether EDS' OCD solution was the same solution priced by EDS in its price proposal and final proposal provision.
22. All documents relating to whether all products and services used in the EDS priced solution were on the GSA APL.
23. 
24. All documents related to communications between offerors and GSA or NIST or OMB in the possession of GSA relating to discrepancy, problems, concerns or other issues related to the capabilities of the SP 800-85B test tool.


25. All email and other communications exchanged between GSA and any offeror for the HSPD-12 procurement after the agency took corrective action in November 2006 and the April 23, 2007 date of award.

26. All documents related to whether the EDS offered items complied with FIPS-201.

27. All documents related to whether EDS' OCD card passed the GSA 800-85B test tool, including documents related to which version of the test tool was used to test the EDS OCD card.

28. All documents related to whether EDS had all requirements for this procurement on the GSA APL.

29. All documents related to EDS being Awarded Seat Pricing on the IT 70 Schedule, including proof of using APL products/services.

30. All emails and documents between the GSA APL program and 

31. List and description of any documents withheld by the GSA on grounds of privilege or any other ground.

32. All other documents or records relating in any other way to this protest.

Pursuant to 4 C.F.R. § 21.1 (d)(2), the documents requested above are relevant because they relate to each ground of the protest and the factual background of this procurement.

The term "document" is used in its broadest sense and includes, without limitation, information contained in electronic storage, electronic mail, internal memoranda, notes, and all non-identical copies of all requested documents.

Pursuant to 4 C.F.R. §21.3(c), the GSA is required to identify all documents it intends to produce or withhold and provide a specific explanation as to why it is not required to produce each of the requested documents at least five days prior to the filing of the agency report.

smith·pachter·mcwhorter PLC

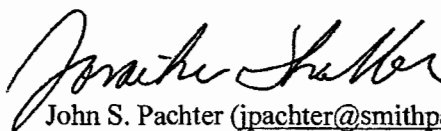
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~~CONTAINS XTEC PROPRIETARY  
INFORMATION NOT TO BE DISCLOSED  
OUTSIDE THE GOVERNMENT~~

Pursuant to 4 C.F.R. § 21.7(a), XTec reserves the right to request a hearing to the extent that the GSA contests any of the factual statements contained in this protest.

Respectfully submitted,

SMITH PACTHER MCWHORTER PLC



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*Attorneys for XTec, Incorporated*

cc: Phillip L. Barber