

NATURE OF THE ACTION

1. This action protests the terms of U.S. Department of the Interior (“DOI”) Request for Quotation No. 503786 (the “RFQ”) for hosted email and collaboration services and DOI’s supporting “Limited Source Justification” and two “Standardization Decisions” executed on July 15, 2010, and seeks preliminary and permanent injunctions against the DOI proceeding with the RFQ (as well as the supporting “Limited Source Justification” and the two “Standardization Decisions”), or any related procurement, solicitation or task order, without first complying with applicable statutory and regulatory requirements, including but not limited to conducting a competition in accordance with applicable law and regulations to select a hosted email and collaboration solution that best satisfies DOI’s minimum needs.

JURISDICTION

2. This Court has jurisdiction over the subject matter of this Complaint pursuant to the Tucker Act, as amended by the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, §12(a), (b), 110 Stat. 3870 (Jan. 3, 1996), codified at 28 U.S.C. § 1491(b)(1).

THE PARTIES

3. Plaintiff Google is a corporation organized and doing business under the laws of the State of Delaware with its principal place of business in Mountain View, California. Google is the developer and owner of computer software products and solutions, including its Google Apps Premier and Google Apps for Government messaging solutions, and Google licenses its products and solutions to customers either through direct agreements or Google’s licensed resellers.

4. Plaintiff Onix is a corporation organized and doing business under the laws of the State of Ohio with its principal place of business in Westlake, Ohio. Onix is a licensed reseller of Google products and solutions through its GSA Schedule 70 contract.

5. Defendant, the United States of America, for all purposes relevant hereto, acted by and through the Department of the Interior (“DOI”), an agency of the federal government.

6. Defendant-Intervenor Softchoice Corporation is a GSA Schedule 70 Contract holder and authorized reseller of Microsoft Corporation products, and it submitted a quotation in response to Defendant’s RFQ.

FACTUAL BACKGROUND

Overview

7. Because the DOI’s bureaus and offices were using many different messaging products, the DOI determined that it would acquire a single hosted email and collaboration services solution (“messaging solution” or “messaging requirement(s)”) to support its approximately 88,000 users throughout the agency. Before DOI issued the RFQ, Google representatives made numerous attempts to engage DOI in substantive discussions regarding the technical and cost-saving benefits of the Google Apps solution for DOI’s messaging requirements. Google’s objective was to have the opportunity to compete for DOI’s messaging requirements. Notwithstanding Google’s efforts and DOI’s assurances to Google representatives that DOI would conduct a full and open competition for its messaging requirements, the RFQ specified that only the Microsoft Business Productivity Online Suite-Federal (“BPOS-Federal”) could be proposed. DOI’s restrictive specification was based upon two “Standardization Decisions” executed by DOI’s Assistant Secretary – Policy, Management and Budget on July 15, 2010 and a “Limited Source Justification” executed by DOI’s Director, Office of Acquisition and

Property Management, on August 30, 2010. Plaintiffs protest DOI's specification of the Microsoft BPOS-Federal solution on the grounds that such specification is unduly restrictive of competition in violation of the Competition in Contracting Act, 41 U.S.C. § 253a(a)(1)(A), and DOI's two "Standardization Decisions," which were issued contrary to the requirements of Federal Acquisition Regulation ("FAR") Subpart 6.3, and the "Limited Source Justification" comprised a sole-source procurement that is arbitrary and capricious, an abuse of discretion, and otherwise contrary to law.

Discussions Prior to DOI's Issuance of the RFQ

8. In June 2009, Google representatives met with the DOI Chief Technology Officer ("CTO"), who outlined the general functional requirements that DOI had defined to meet its need for an improved e-mail, calendaring and collaboration system. Google confirmed that all outlined needs could be met with its Google Apps product, and requested an opportunity to meet again with DOI to further discuss DOI's needs in greater detail and to provide DOI with a fuller understanding of the technical and security aspects of the Google Apps solution. On September 15, 2009, Google publicly announced its intent to create a Google Apps cloud computing environment dedicated only to government customers, and that Google was near the completion of its Federal Information Security Management Act ("FISMA") Certification & Accreditation ("C&A") package to be submitted to the Government by the end of the year. *See* <http://googleenterprise.blogspot.com/2009/09/google-apps-and-government.html>. After the June meeting and despite Google's several meeting requests, no meetings were held between Google and DOI until February 2010, when DOI representatives accepted a Google request for an executive introductory meeting. The agenda included executive introductions, an update on the

FISMA certification status of Google's Messaging solution, Google Apps, for federal government use, and Google's request to meet further for more detailed discussions.

9. Despite repeated requests and offers from Google for such detailed discussions, the next follow-up from DOI was acceptance of an invitation to a public Google session in April 2010 where Google provided information about its enterprise computing vision, why large organizations have selected Google's technology and the benefits they have experienced, and how to begin a cloud computing initiative at a federal agency. The public session was attended by then-U.S. Fisheries and Wildlife Service Chief Information Officer ("CIO"), Mr. Bernard Mazer (who subsequently became the DOI CIO), and the DOI CTO, Mr. William Corrington, who informed Google that a "path forward had already been chosen" for the DOI Messaging solution and there would be no opportunity for Google to compete because its product was not compliant with DOI's security requirements. Despite Google's many requests for such information, DOI declined to define its security requirements or to meet with Google to conduct more detailed discussions about Google Apps, including a full review of Google's security documentation.

10. Google then contacted the DOI's National Business Center's Chief Contracting Officer, Ms. Debra Glass, by sending her a formal letter of interest on May 17, 2010. That letter expressed Google's keen interest in competing for DOI's Messaging solution, and outlined the technological and financial advantages of the Google Apps solution. Google also expressed its view that a solicitation with brand-name specific requirements would violate CICA's requirements and would unfairly preclude the offer of Google Apps or any other competitive or innovative software product. Administrative Record ("AR") Tab 2.

11. On May 27, 2010, Ms. Glass sent Google a letter that did not respond to or reference Google's May 17 letter, but instead requested that Google respond to fifteen broadly-worded requirements to "enhance" the DOI's market research. Those questions notably requested a discussion of Google's "[a]bility to meet FISMA security certification requirements" and Google's "[a]bility to provide an underlying infrastructure that is operated solely for DOI." The letter claimed that market research had been conducted by DOI between October 2009 and March 2010. AR Tab 4.

12. On June 9, 2010, Google met with DOI representatives in an effort to "enhance" the DOI's market research. Those attending from DOI included: Mr. Andrew Jackson, Deputy Assistant Secretary for Technology, Information and Business Services; Ms. Debra Sonderman, Director, Office of Acquisition and Property Management; Mr. Mazer; and Mr. Corrington. During the meeting, Mr. Jackson stated that DOI had previously standardized on Microsoft solutions, but he claimed DOI was nevertheless committed to conducting a full and open competition. In turn, Google explained how its product would satisfy each of DOI's requirements outlined in the May 27, 2010 letter.

13. The DOI representatives expressed some concern regarding whether Google could provide an underlying infrastructure that was operated solely for DOI. Google explained that the service for DOI can be isolated to a single domain that is run on a logically separate network. Further, Google explained how its Government-only cloud (reserved for federal, state, and local governments) would sufficiently address DOI's concerns. Google also requested that DOI provide a comprehensive list of objectives and requirements to which Google could respond; however, DOI never provided such information to Google.

14. Google followed up this meeting with another letter addressed to Mr. Jackson on June 17, 2010. AR Tab 5. Google enclosed with the letter written documentation demonstrating that Google Apps could meet or exceed each of the requirements described in DOI's May 27, 2010 letter. Regarding DOI's alleged need for an underlying infrastructure operated solely for DOI, Google explained that such a "private cloud" was not required for security certification under FISMA and, similar to GSA's recent solicitation for "Enterprise E-Mail and Collaboration Services" from a commercial provider of Cloud Computing services and software, DOI could address its security requirements by requiring that the contractor "provide security controls that are confirmed to meet the security standards for Moderate Impact systems as described in NIST SP 800-53 with an accepted Certification and Accreditation (C&A)." Google also explained that DOI's requirement for a private cloud did not represent "industry best practice," referencing examples of federal Government entities and major organizations that use Google Apps. Finally, since Mr. Jackson had referenced certain authority from a 2002 Microsoft standardization decision, Google reminded DOI that standardization decisions are not licenses to circumvent the CICA.

15. DOI's Mr. Jackson responded to Google's letter by email on June 18, 2010 with a follow-up question and the following assurances:

Also, I feel I need to clarify a misconception noted in your letter. As I stated last week, DOI has not finalized its procurement strategy for the planned cloud messaging solution. We continue to evaluate all options in light of our business requirements.

AR Tab 32, p. 1034.

16. Similarly, Ms. Brigitte Meffert, DOI's Competition Advocate, acknowledged her receipt of a copy of Google's June 17 letter, and she stated on behalf of the Office of Acquisition

and Property Management that it was “confident that Google, and all interested parties, will be treated fairly during the process.” AR Tab 32, p. 1033.

17. On June 23, 2010, Google answered Mr. Jackson’s follow-up question, explaining that Google was committed to meeting federal security requirements and would commit to meeting any DOI-defined implementation timelines. In addition, Google alerted Mr. Jackson to rumors circulating in the industry that DOI had already selected a Microsoft product:

Finally, we are encouraged by your clarification that the DOI has not finalized its procurement strategy for the planned cloud messaging solution and is continuing to evaluate all options in light of DOI’s business requirements. However, we believe you should know that we continue to hear very disconcerting rumors that project deployment activities are already underway to migrate the DOI to a pre-determined messaging solution notwithstanding the lack of any legitimate market research or a “full and open” competition for the DOI’s messaging solution. We would therefore appreciate your confirmation that product selection remains part of DOI’s procurement strategy that is currently being defined.

AR Tab 32, pp. 1029-30.

18. Later that same day, Mr. Jackson responded with another question and further assurances indicating that the “messaging provider” had not been selected despite the rumors heard by Google:

As for the “disconcerting rumors” you allude to below, I would encourage you to treat rumor and innuendo as just that. As I am sure you are aware, moving from 13 separate messaging platforms to 1 messaging instance is necessarily a traumatic process for many of our bureaus. It is one of the challenges of bringing transformative change to a very decentralized department. We have of course required our bureaus to commence preparations for a migration to our new messaging system, and we believe that these preparation activities will be useful for a successful migration, no matter which messaging provider is ultimately selected. If you are being told otherwise, I would request that you recommend that your source contact me directly, so that I can help correct any misconceptions.

AR Tab 32, pp. 1026-27.

19. The next day, June 24, Google responded by thanking Mr. Jackson for his assurances that the procurement strategy and product selection were still being evaluated. In doing so, Google reaffirmed its sincere interest in competing for DOI's Messaging requirements. Google again explained that DOI's security requirements can be stated in terms of FISMA certifications and controls without requiring a particular infrastructure or computing delivery model. Finally, Google notified DOI that its Government-only cloud (federal, state and local) had been completed ahead of schedule and was available with the capabilities that had been discussed with DOI. Google also invited DOI to review its FISMA C&A package. AR Tab 32, p. 1023.

20. Mr. Jackson did not respond to Google's June 24 email. On July 19, Google attempted to reach Ms. Meffert, the Competition Advocate, by telephone. Ms. Meffert responded in an e-mail message that she had no information to provide and that Google should speak to Ms. Glass, the contracting officer. Google followed up with Ms. Glass that same day, re-emphasizing its interest in competing for DOI's messaging solution requirement. Google was told that there had been no developments and that the next step would be the issuance of a solicitation.

21. Google also sent another e-mail to Mr. Jackson on July 26, 2010. In this e-mail, Google notified Mr. Jackson that Google Apps had recently been approved as the first suite of cloud-computing applications to receive a FISMA certification and accreditation from the Government. Additionally, Google continued to express concerns about information it heard from market research discussions with other Federal agencies. Specifically, Google alerted Mr. Jackson that Google had heard that DOI might soon issue to a competitor (meaning Microsoft) a

FISMA C&A for the competitor's cloud-computing messaging system, even though DOI had repeatedly refused to review Google's FISMA certification package. After a week had passed with no response, Google sent another e-mail to Mr. Jackson requesting confirmation that DOI was still planning a competitive solicitation, and asking if there were any opportunities for Google to pilot or demonstrate its product offering. Mr. Jackson immediately responded that all correspondence had to be directed to Ms. Glass. AR Tab 6, pp. 108-110.

22. Google responded later that day to Ms. Glass and Mr. Jackson asking to whom discussions should be routed and whether they could discuss any updates, announcements or areas of interest. Mr. Jackson again responded only to state that questions should be routed through Ms. Glass, who did not respond.

23. On August 2, 2010, Google sent an e-mail to Mr. Corrington, DOI's CTO, to ensure that he had seen the public announcement that Google Apps was the first suite of cloud-computing messaging and collaboration applications to receive FISMA certification and accreditation. Google also requested confirmation from Mr. Corrington as to DOI's plans for a competitive procurement for the selection of a messaging solution. On August 3, Mr. Corrington responded by stating that all correspondence and phone calls should be directed to Ms. Glass. AR Tab 6, p. 108.

24. On August 11, 2010, Google reached out to Mr. Jackson and Ms. Glass one more time to express Google's concerns that recent information it had received conflicted with DOI's past assurances that Google would have an opportunity to compete for DOI's Messaging requirements. Google attached to the e-mail a DOI screen shot, which indicated that a "pilot" project to migrate 5,000 DOI users to the Microsoft platform had been underway for months. Google explained that the "pilot" would severely harm any future competition and requested that

DOI conduct a similar test program using the Google Apps solution in order to fairly compare the technologies. AR Tab 32, pp. 1004-05.

25. Neither Mr. Jackson, Ms. Glass nor any other DOI official responded to Google's August 11 e-mail. On September 8, 2010, after intervention by DOI's Office of the Solicitor at the request of Google's counsel, Ms. Glass finally advised Google's counsel that an RFQ had been issued via GSA's e-Buy and that offers were due within days.

The RFQ (AR Tabs 22-26, 28-30)

26. The RFQ was posted on e-Buy on August 30, 2010. The RFQ requested offerors to submit proposals providing hosted e-mail and collaboration services for all DOI bureaus and offices. The contract is intended to be a single award, firm-fixed-price Blanket Purchase Agreement ("BPA") awarded against a GSA Federal Supply Schedule. The period of performance will end after five years, unless the maximum dollar threshold of \$59.3 million is reached first. The RFQ required offerors to submit three proposal volumes: Volume 1 – Management/Technical Approach; Volume 2 – Past Performance; and Volume 3 – Price/Business. The RFQ's instructions advised prospective offerors to submit questions or comments by noon on September 3, and that the initial due date for proposal submission was September 10, 2010.

27. The offerors' Management/Technical Approach proposal, limited to 17 pages, was required to "reflect a thorough understanding of the requirements and a detailed description of techniques, procedures and tools used for achieving the objectives of the Statement of Work (SOW)." The Past Performance proposal, limited to three pages, could include references from the Federal government, state or local governments, quasi-government organizations within the USA, educational entities, or commercial organizations within the USA within the past three

years. Those references were required to demonstrate how successful the offerors “have been in the past to complete all aspects of the SOW.” The offerors’ Price/Business proposals were required to include a completed pricing table and any associated assumptions.

28. Section L.9 of the RFQ stated that the Government would make an award to the contractor that “represents the best value, price and other factors considered.” The RFQ advised that “[t]echnical evaluation factors [were] more important than price; however, between quotes that are evaluated as technically equal in quality, price will become a major consideration in selecting the successful Offeror.” Section L.8 of the RFQ explained that the Management/ Technical Approach would be evaluated based on 1) evidence of infrastructure and specific methods for support; 2) the offerors’ described ability to anticipate problems; and 3) the offerors’ described standard reports. Past Performance proposals would be evaluated based on evidence of success supplying similar services and evidence of the ability to advocate for client issues with a manufacturer. The RFQ did not describe how the Price/Business proposal would be evaluated or what the source selection team might consider to evaluate price reasonableness. Rather, the RFQ stated that “[w]hen combined, the non-price factors are more important than price.”

29. The SOW set forth the technical requirements applicable to the messaging solution. The Background section contained a two-page discussion regarding cloud computing and described a “risk assessment” conducted by DOI resulting in DOI’s conclusion that it required the following attributes of a cloud computing deployment:

- Compliance with security requirements defined by the Federal Information Security Management Act (FISMA) along with enhanced DOI-specific security requirements
- Dedicated data storage infrastructure (both physically and logically) to DOI or to DOI and other Federal government customers only

- Dedicated computing infrastructure (both physically and logically) to DOI or to DOI and other Federal government customers only
- Implementation of at least two data centers located within the continental United States.
- Enterprise e-mail and collaboration services provided by an external vendor as a standardized service offering

30. The stated requirement for an infrastructure that is dedicated to the DOI and other Federal government customers only was not explained in the SOW. However, the SOW stated that “extensive market research” led to a determination that the Microsoft BPOS Federal solution was “the DOI’s product selection of choice.” Further, the SOW explained that a 2002 Microsoft standardization decision was reviewed and re-affirmed in an updated standardization memo in July 2010.

31. The requirements outlined by the SOW reflect an emphasis on compliance with FISMA security controls. Section 2.1, “Information Security,” provided as follows:

Underlying all of the requirements described herein is the need for DOI to meet the obligation to secure the messaging and collaboration system in compliance with the Federal Information Systems Management Act (FISMA) ...

Similarly, Section 10.5, “Security Requirements,” stated that the DOI’s risk assessment resulted in a determination the DOI needed to implement a system that was FISMA-compliant, and Section 10.5.3 required that “[a]t all times, the Contractor shall comply and the Contractor shall cause Microsoft to agree to comply with the [FISMA].” As the SOW acknowledged, the Microsoft BPOS-Federal product is not yet FISMA-certified. As such, this essential element would be pursued and developed during contract performance. A discussion on how the Contractor, Microsoft, and DOI can, at some unknown point in the future, establish the technological controls to achieve this critical certification follows in Sections 10.5.3 and 10.5.4.

32. Significantly, the SOW requirements and even certain terminology were closely aligned with Microsoft's product literature for its Exchange Online, SharePoint Online, and Office Communications Online applications. This was because DOI had defined its needs and requirements around the Microsoft products.

DOI's Limited Source Justification (AR Tab 27)

33. The background section of the RFQ's SOW, described above, was based upon a "Limited Source Justification" ("Justification") executed by the Director of DOI's Office of Acquisition and Property Management, on August 30, 2010. The Justification stated that two features of the Microsoft BPOS-Federal suite (consisting of hosting services, Exchange Online, SharePoint Online, and Office Communications Online) are critical to DOI's successful implementation of a transition from a disparate and disjointed email message system to a consolidated and secure system, and form the basis for the Justification. Those features are a unified and consolidated email system and enhanced security.

34. The Justification described DOI's current email implementation, which consists of 13 systems owned and operated by each bureau and office supporting approximately 85,000 users, and DOI's failed efforts during 2002-2006 to obtain an e-mail system custom-built by a systems integrator to DOI's specifications. After that project was cancelled in 2006, DOI began researching other options for a centralized e-mail system. The Justification then described the security challenges associated with implementing a department-wide e-mail solution, as follows:

Underlying the requirement for a functioning email system is the need for the Department to universally meet the obligation of a secure enterprise messaging, collaboration and storage system. In order to maintain a robust approach to achieving its mission, the Department requires the ability to seamlessly share, store and integrate information in a highly secure environment. This requirement is based not only on Federal security requirements; it is also based on the diverse functions of DOI. In particular, the

Department has the primary fiduciary duty to manage tribal trust funds and Individual Indian Money (IIM) accounts, as well as the resources that generate income for those accounts. The Department also has a fiduciary duty to protect procurement and business sensitive communications for itself, its collaborators and its customers. Furthermore, the Department has law enforcement and investigative authorities, resource protection and management authorities (especially with regard to culturally sensitive areas); and lab and research authorities which also subject the Department to rules and regulations regarding collection, storage and sharing of protected information.

35. Next, under the heading “Identifying Solutions,” the Justification stated as follows:

The commercial market has developed several solutions that may better meet the needs of the federal Government as a whole, including cloud computing models. Given the rapidly changing technical environment, the Department needed to assess what model would best meet its current needs. To that end, the Department determined that a dedicated private cloud service model, combined with robust messaging and collaboration tools would best meet its current needs.

36. Section 3 of the Justification described the specific “supplies or services required to meet the agency’s needs.” The first requirement that “must be met by a messaging and collaboration system in order to support the DOI mission” was identified as “Core Functionality,” described as follows:

In a standardization memo issued in September 2002, DOI established Microsoft Office suite as a departmental standard. In July 2010, the standardization decision was reviewed and re-affirmed through the issuance of an updated standardization memo. The Microsoft Office suite includes the Microsoft Outlook e-mail client, which provides a full-featured e-mail system that also provides calendaring and scheduling functionality.

37. Seven additional requirements were described in Section 3, including “Information Security” headlined by “the need for DOI to meet the obligation to secure the messaging and collaboration system in compliance with the Federal Information Systems

Management Act (FISMA) and other Federal security requirements.” Section 3 concluded by stating that the estimated contract award amount “will be \$59 million over the expected five (5) year contract life cycle.”

38. Section 4 of the Justification described DOI’s rationale, under FAR 8.405-6(a)(2), for “the acquisition of an item peculiar to one manufacturer.” According to the Justification, DOI utilized the “accepted methodology” set out by the Cloud Security Alliance (“CSA”) and the National Institute of Standards and Technology (“NIST”) to determine “its risk tolerance for implementing current solutions in light of its goals, objectives and mission.” According to the Justification:

Specifically, DOI followed an assessment process recommended by the CSA to establish that the following attributes of a cloud computing deployment meet DOI’s requirements for the implementation of an enterprise email and collaboration system:

- Collaboration services provided by an external vendor as a standardized service offering
- Ability to comply with security requirements defined by FISMA
- A data storage infrastructure that is solely dedicated (both physically and logically to DOI or to DOI and other Federal government customers only
- A computing infrastructure that is solely dedicated (both physically and logically to DOI or to DOI and other Federal government customers only
- Implementation at a minimum of two data centers that are located within the continental United States

Significantly, the Justification does not evidence or explain why DOI relaxed its requirement from an underlying infrastructure that is operated solely for DOI, as expressed by DOI in its May 27, 2010 letter to Google to an underlying infrastructure that can be dedicated to DOI and any other Federal government customers. Finally, Section 4 cites DOI’s reliance on two Determinations and Findings signed by the Assistant Secretary for Policy, Management and

Budget on July 15, 2010 designating “Microsoft products for word processing, office automation, operating system and asset management software for desktop and server devices,” and BPOS-Federal for messaging and collaboration services, as the official standard for all DOI offices and bureaus.

39. The Justification stated that DOI had conducted “extensive market research” soliciting product and Federal security compliance information from vendors, trusted third-party research, and other Federal government informational resources. According to DOI, “[m]ethodology included personal knowledge, contacting knowledgeable individuals in Government and industry, reviewing recent market research results for similar services, and reviewing generally available product literature.” DOI concluded: “Based on this extensive market research, the Department determined that although many companies can provide messaging services in general, they either cannot provide services that address the complexity of messaging requirements within DOI, or they could not meet the degree of security required by DOI.”

40. The Justification stated the following conclusion: “Based on the risk assessments and market research conducted, the Department determined that the Microsoft BPOS solution is the only commercial product that satisfies every requirement identified by the Department.”

Additional Facts Revealed In The Administrative Record

41. The AR reveals that in April 2009, after a number of discussions between DOI officials and [REDACTED] [REDACTED] recommended that DOI only consider the Microsoft single-tenant cloud model. AR Tab 14, p. 176. In June 2009, DOI began preparing a Project Plan stating DOI’s intention “[REDACTED] [REDACTED]

46. On June 29, 2010, DOI issued its “Risk Assessment of Cloud Deployment Models for Department of Interior Unified Messaging. Based on the Risk Assessment, DOI determined that it required specific attributes for its external cloud solution, including a computing and data storage infrastructure logically and physically dedicated to DOI or to DOI and other Federal agencies. AR Tab 31.

47. ██████’s market research report was also issued on June 29, 2010. AR Tab 12. Based on requirements provided by DOI to ██████, including a requirement for an external private cloud, ██████’s report concluded that only the Microsoft BPOS-Federal solution would meet DOI’s technical and security requirements.

48. On July 15, 2010, DOI issued two standardization decisions, both executed by DOI’s Assistant Secretary for Policy, Management & Budget. Neither decision cited the authority under which they were issued. The first decision, entitled “Standardizing on Microsoft and Server Software,” determined that DOI would realize significant benefits from the standardization to Microsoft products (Windows desktop operating system, Office desktop productivity suite, Windows Server operating system, and Systems Center Configuration Manager) and that no viable alternatives existed. AR Tab 16. The second decision, entitled “Standardizing on Microsoft Business Productivity Online Suite-Federal,” concluded that “DOI requires the use of an external private cloud deployment model to meet security and risk tolerance requirements” and “Microsoft BPOS-Federal is the only available standard service offering that meets all of DOI’s requirements.” AR Tab 16, p. 756. Neither standardization decision was made available to the public and there is no evidence in the record establishing that the Assistant Secretary for Policy, Management & Budget was the appropriate approval authority pursuant to FAR 6.304.

The Microsoft BPOS-Federal Solution

49. There is very little to no publicly-available information about the Microsoft BPOS-Federal solution other than a Microsoft press release on its website. The press release states that Microsoft announced on February 24, 2010, at its eighth annual Microsoft U.S. Public Sector CIO Summit, the unveiling of a number of new enhancements and certifications for its BPOS-Dedicated solution and the launch of BPOS-Federal. The press release further stated that:

Business Productivity Online Suite Federal is launching today for U.S. federal government agencies, related government contractors and others that require the highest levels of security features and protocols. The new offering includes all the certifications and security features of the Business Productivity Online Suite and more. The service is housed on separate, dedicated infrastructure in secured facilities. Physical access to those systems is limited by biometric access controls to a small number of individuals who, in compliance with International Traffic in Arms Regulations (ITAR), must be citizens of the United States who have undergone rigorous background checks, including fingerprinting.

50. The BPOS-Federal solution is therefore a new product, and there are no publicly-identified customers who have either purchased or implemented the BPOS-Federal solution. In OMB's recent report on the State of Public Sector Cloud Computing (available at <http://www.cio.gov/pages.cfm/page/State-of-Public-Sector-Cloud-Computing>), there are no case studies reported of any customer using the BPOS-Federal product. Moreover, as of the date of this protest, the BPOS-Federal solution has not been certified according to FISMA standards by any government agency at any risk level. Notwithstanding these glaring deficiencies, DOI has concluded that only the BPOS-Federal solution can meet the degree of security required by the DOI.

51. Additionally, even prior to the completion of DOI's test use of the solution at the BIA, DOI designated BPOS-Federal as its official standard for messaging and collaboration

services on July 15. This standardization on BPOS-Federal appears to conflict with the Justification's statement that the determination was made in accordance with 375 DM 12, which is DOI's departmental manual describing its Information Resources Standards Program. Section 12.3(A) of the manual provides that the primary objective of the Information Resources Standards Program is to "promote compatibility and interoperability to minimize costs for information systems." The BPOS-Federal solution does not uniquely support compatibility and is more restrictive of interoperability than other options available to DOI. There are other solutions available in the marketplace which are compatible with the Microsoft products selected as DOI's official standard in 2002 and are substantially less expensive to the customer than BPOS-Federal.

52. Moreover, based on publicly-available information gleaned from internet searches, Microsoft topped a list of 12 major software providers for the number of security vulnerabilities and software patches needed to plug security holes (23% of "disclosures with no patch") that affect both on-premise and "hybrid" cloud technology. In contrast, Google was the only provider on the list with 0% "disclosures with no patch." The likely reason for this difference is that Microsoft BPOS is based on the same Microsoft Exchange and SharePoint servers that are made for an on-premise, legacy model, and users therefore inherit the same feature refresh limitations and patch model/security vulnerabilities. The Google Apps system, on the other hand, was built for the cloud from the ground up, providing continuous access to new features, faster response to security vulnerabilities, and better real-time collaboration. Only a web browser, rather than client software, is required to use the Google Apps solution. Apparently, despite its "extensive market research," DOI did not uncover this information about Microsoft's security vulnerabilities.

53. DOI also was apparently unconcerned about the numerous outages that Microsoft has experienced this year for BPOS-Standard – a January outage lasted nearly four days. The two most recent outages occurred on August 23 and September 3 and impacted users throughout North America. *See* <http://www.zdnet.com/blog/microsoft/microsoft-bpos-down-for-90-minutes-second-outage-in-a-month/7302>. Given the DOI's requirement, as specified in the SOW, for 99.95% system uptime, Microsoft's outages this year cast doubt on whether the BPOS-Federal solution will satisfy all of DOI's requirements.

Google's GAO Protest

54. On Friday, September 10, 2010, Google filed a timely protest at the U.S. Government Accountability Office ("GAO") against the RFQ's restrictive requirement that offerors only propose the Microsoft BPOS-Federal solution and DOI's determination in the "Limited Source Justification" that the BPOS-Federal solution is the only product that can satisfy DOI's minimum needs. Google's protest alleged that DOI's restriction that the messaging solution's data storage and computing infrastructure be physically and logically dedicated only to Federal government customers, which is the primary justification for DOI's selection of the Microsoft BPOS-Federal solution, is not necessary to satisfy DOI's minimum needs. The protest further alleged that Microsoft's BPOS-Federal product did not satisfy the RFQ's restrictive requirement.

55. On September 30, 2010, DOI filed with the GAO a request for dismissal of Google's protest on the basis that Google, which does not have a GSA Schedule contract, was not an "interested party" as defined in GAO's Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1). Google opposed the dismissal request on October 4, 2010. In addition, Plaintiff Onix filed its own protest on October 4 with the GAO to effectively join Google's protest because of its

common interest, via its reseller agreement with Google, in challenging DOI's restrictive requirement and seeking an opportunity to compete for DOI's messaging requirements. Another licensed reseller, Daston Corporation, also filed a similar protest on October 4.

56. On October 25, 2010, the GAO issued its decision dismissing Google's protest on the ground that Google was not an interested party. On October 26, the GAO dismissed the Onix protest. It appears that the GAO never docketed the Daston protest.

**COUNT I
(VIOLATION OF THE COMPETITION IN CONTRACTING ACT AND THE FAR)**

57. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 through 56 above, as if fully set forth herein.

58. Defendant's three justifications (POC Justification and two standardization decisions) to implement the Microsoft BPOS-Federal solution at the BIA and to standardize the entire agency on Microsoft Desktop and Server Software and on the BPOS-Federal cloud solution for messaging and collaboration were issued contrary to the requirements of FAR 6.304 and 6.305.

59. Defendant's implementation of the RFQ, by imposing the selection of the Microsoft BPOS-Federal solution for DOI's agency-wide messaging requirements based on the "Limited Source Justification," without obtaining any sort of product competition, violates the statutory requirement of 41 U.S.C. § 253(a) to obtain full and open competition through the use of competitive procedures.

60. Defendant did not comply with FAR 8.405-6 in that DOI's market research, consisting in part of many months of communications with Plaintiff Google, established that

another company's product (*i.e.*, Google's Google Apps messaging solution) does meet, or can be modified to meet, DOI's needs.

COUNT II
(AGENCY ACTION IN SELECTION OF MESSAGING SOLUTION IS ARBITRARY, CAPRICIOUS, AN ABUSE OF DISCRETION, AND CONTRARY TO LAW)

61. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 through 60 above, as if fully set forth herein.

62. DOI's selection of the Microsoft BPOS-Federal messaging solution, as reflected in the POC Justification, the two standardization decisions, and the "Limited Source Justification," for implementation throughout the agency is arbitrary, capricious, an abuse of discretion, and contrary to law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court enter judgment for Plaintiffs on this Complaint for injunctive and declaratory relief prohibiting DOI from proceeding with the RFQ, or any related solicitation, task order or activity (such as DOI's current 5,000-user pilot program) that furthers or facilitates the implementation of the Microsoft BPOS-Federal solution at DOI, without first complying with applicable statutory and regulatory requirements, including but not limited to conducting a competitive procurement in accordance with applicable law and regulations to select a messaging solution that best satisfies DOI's minimum needs. In addition,

Plaintiffs request that this Court afford Plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Timothy Sullivan
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Dated: December 30, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 2010, a copy of the foregoing Amended Complaint was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Timothy Sullivan