

GAO Deference to Agency Assessments of Organizational Conflicts of Interest

As reported in an earlier Client Alert discussing the recent decisions in *Alion Science & Technology Corp.*, B-297022.4 and .5, Sept. 26, 2006 (*Alion II*) and *Alion Science and Technology Corp. v. United States*, No. 06-682C (Oct. 11, 2006 Fed. Cl.) (*Alion III*), the Government Accountability Office (GAO) continues to demonstrate deference to an agency's analysis of an offeror's potential organizational conflicts of interest (OCIs) and the appropriateness of measures to mitigate those OCIs. In *Overlook Systems Technologies, Inc.*, B-298099.4, B-298099.5, Nov. 28, 2006, GAO affirmed the award of a contract to provide support services to the Global Positioning System (GPS) Operations Center and rejected the protester's claims that a subcontractor, General Dynamics Advanced Information Systems (General Dynamics), of the awardee LinQuest Corporation (LinQuest) had an "unmitigatable" OCI. The decision is available at <http://www.gao.gov/decisions/bidpro/2980994.pdf>.

Facts and Procedural History

The Air Force originally awarded the contract to LinQuest on February 21, 2006. Overlook protested to GAO that the Air Force failed to properly assess the magnitude and risk of OCIs associated with General Dynamics' performance of the contract because of General Dynamics' status as a manufacturer of GPS units and other equipment that depend upon GPS. The Air Force elected to take voluntary corrective action and requested a revised OCI Mitigation Plan from LinQuest and General Dynamics.

After conducting a thorough analysis of the OCI Mitigation Plan, the Air Force determined that the risk that General Dynamics would encounter an impaired objectivity OCI was "slight" because the vast majority of the work was objective in nature and required limited subjective analysis. Importantly, in reaffirming the award to LinQuest, the Air Force determined that any risk of access to information OCIs could be adequately mitigated through internal firewalls between General Dynamics and other divisions, while impaired objectivity OCIs could be resolved through LinQuest's performance of the conflicted tasks. This OCI analysis differed from the Air Force's OCI analysis that triggered the first protest, in which the Air Force asserted no conflict would arise regardless of the manufacturer of the systems.

Overlook protested again, renewing its argument that General Dynamics has an "unmitigatable" OCI and that the Air Force improperly evaluated the revised OCI Mitigation Plan. In evaluating the nature of the contract work, GAO agreed with the Air Force that the contractor was seldom required to exercise subjective judgment and noted that the Air Force did not identify a single instance in which the limited subjective work involved General Dynamics equipment. In short, GAO found the Air Force's analysis reasonable and supported by the record.

Analysis

Organizational conflicts of interest are addressed in FAR subpart 9.5. "Impaired objectivity" OCIs arise where a contractor has other business interests that could bias its judgment in performing contract services. (See generally FAR 2.101 (definition of OCI); FAR 9.505(a)(identifying principles underlying OCI rules)). The FAR requires contracting officers to "identify and evaluate" potential OCIs during the

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acquisition process and to "avoid, neutralize, or mitigate significant potential conflicts before contract award." (FAR 9.504(a)).

In cases dating back more than a decade, GAO has sustained protests regarding impaired objectivity OCIs because the agency failed even to acknowledge the awardee's potential OCIs, and therefore did not take adequate steps to avoid, neutralize, or mitigate potential conflicts. (See, e.g., *PURVIS Systems, Inc.*, B-293807.3, Aug. 16, 2004, 2004 CPD ¶ 177; *Science Applications Int'l Corp.*, B-293601, May 3, 2004, 2004 CPD ¶ 96; *Aetna Gov't Health Plans, Inc.*; *Foundation Health Fed. Servs., Inc.*, B-254397 *et al.*, July 27, 1995, 95-2 CPD ¶ 129). The decision in *Overlook Systems*, along with a number of recent denied protests involving impaired objectivity OCIs, affirms the established principle that GAO will defer to agency determinations that are reasonable and supported by the record. With respect to agency judgments involving OCIs, once an agency applies the correct legal principles by clearly recognizing the nature and extent of the potential conflicts an awardee may encounter and takes steps to avoid, neutralize, or mitigate those potential conflicts, GAO will not substitute its judgment for that of the agency. (See *Leader Comms. Inc.*, B-298734, B-298734.2, Dec. 7, 2006; *Alion Science & Technology Corp.*, B-297022.4 and .5, Sept. 26, 2006, 2006 CPD ¶ 146).

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