



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** International Management and Communications Corporation

**File:** B-272456

**Date:** October 23, 1996

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Jon W. van Horne, Esq., McDermott, Will & Emery, for the protester.  
William T. Irelan, Esq., Freideman, Irelan, Ward & Lamberton, P.C., an intervenor.  
Gary M. Winter, Esq., and Rumu Sarkar, Esq., United States Agency for International Development, for the agency.  
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protest that the contracting agency improperly selected the awardee despite an alleged organizational conflict of interest (based upon a debt owed to an affiliate) is denied where the record does not support this allegation.

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## DECISION

International Management and Communications Corporation (IMCC) protests the award of a contract to Credit Union National Association (CUNA) under request for proposals (RFP) No. 96-02, issued by the United States Agency for International Development (USAID) for technical assistance services to help revitalize Nicaragua's rural credit union system. The protester contends that CUNA is ineligible for award due to an improper organizational conflict of interest stemming from a debt owed by a recipient of services under the contract to an affiliate of the contractor.

We deny the protest.

USAID's Rural Credit Unions Program (RCUP) in Nicaragua aims to increase access to financial services for small savers and producers in and around market towns. The contractor, under the terms of the RFP, will provide technical assistance services to help credit unions and national credit union associations develop and market attractive financial services; the RFP's RCUP program provides for a 5-year period of restructuring and modernizing two national credit union associations and

approximately 28 rural credit unions. The RFP provides that the contractor will evaluate potential recipients of the available assistance and make its recommendations to USAID for approval.

Two proposals, IMCC's and CUNA's, were received in response to the RFP and were evaluated. After holding discussions with both offerors and evaluating their best and final offers, USAID awarded the contract to CUNA on June 19, 1996. This protest followed.

IMCC contends that CUNA, acting as the contracting agent for the World Council of Credit Unions (WOCCU), should be found ineligible for award due to an improper organizational conflict of interest.<sup>1</sup> IMCC states that the Latin American Confederation of Credit Unions (COLAC), which is a member of WOCCU, is owed a debt (of approximately \$200,000) from the Federacion de Cooperativas de Ahorro y Credito (FECACNIC), one of the national credit union associations in Nicaragua that will receive advice and assistance under the contract. The protester contends that WOCCU's interest in promoting repayment of the debt owed to WOCCU's member, COLAC, will improperly influence the performance of the contract.<sup>2</sup> Citing

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<sup>1</sup>Hereafter, we refer only to WOCCU as the contractor, although CUNA acted as the contracting agent.

<sup>2</sup>Specifically, IMCC states the following in its July 3 protest:

" . . . CUNA/WOCCU will be working closely with . . . FECACNIC . . . [a debtor] to COLAC, an organization affiliated with CUNA/WOCCU. WOCCU has an unavoidable interest in promoting the repayment of the overdue debts owed to COLAC. This could directly influence the advice given to . . . FECACNIC, the selection with . . . FECACNIC of individual credit unions to participate in the program and the qualification of the individual credit unions for grants and access to the USAID-managed funds. WOCCU would be influenced to select credit unions that are currently members of FECACNIC for the Project. WOCCU would also be influenced to select credit unions that would be willing to purchase services from FECACNIC, which in turn would make FECACNIC more likely to be able to repay the loans owed to WOCCU's affiliated member organization, COLAC. Individual credit unions unwilling to participate with FECACNIC or possibly to choose to work with FECACNIC . . . could be prejudiced from WOCCU's management of the program, to the overall detriment of the USAID and its Rural Credit Union Project."

(continued...)

the FECACNIC debt to COLAC, and maintaining that the debt is materially related to the awardee's performance of the contract due to WOCCU's membership relationship with COLAC and WOCCU's provision of assistance to FECACNIC under the contract, IMCC contends that WOCCU should be precluded from receiving the award and that the agency acted unreasonably in failing to exclude WOCCU from the competition.<sup>3</sup>

An organizational conflict of interest occurs where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Federal Acquisition Regulation (FAR) § 9.501. Contracting officials are to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR § 9.504(a); CH2M Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203. The responsibility for determining whether an actual or apparent conflict of interest will arise, and to what extent the firm should be excluded from the competition, rests with the contracting agency. We will not overturn the agency's determination in this regard except where it is shown to be unreasonable. SRS Technologies, B-258170.3, Feb. 21, 1995, 95-1 CPD ¶ 95.

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<sup>2</sup>(...continued)

In its protest, IMCC also alleged that a debt owed to COLAC by Fundacion Nicaraguense de Desarrollo (FUNDE), another national credit union association to be provided assistance under the contract, creates a similar conflict of interest for CUNA/WOCCU. In its comments responding to the agency's report on the protest, however, IMCC failed to discuss the alleged FUNDE debt or that debt's role in the protest; we therefore consider this protest allegation abandoned. See Scott & Sons Maintenance, Inc., B-255328.2, Mar. 14, 1994, 94-1 CPD ¶ 200.

<sup>3</sup>IMCC also protests that an improper organizational conflict of interest exists in that the RFP provides that WOCCU's credit rating system is considered acceptable for use under the contract. According to IMCC, the awardee will not objectively or independently evaluate other available credit rating systems prior to deciding which system to implement since it will probably choose its own approved system. The RFP, however, in permitting WOCCU to choose and implement the approved WOCCU rating system, does not require, as alleged by the protester, an "objective" assessment by the contractor of all available rating systems.

USAID reports that WOCCU certified in its proposal that no known organizational conflict of interest existed, and that the agency had no reason to question the alleged debt-related organizational conflict of interest prior to making the award. The agency states that after IMCC brought its post-award challenge, USAID reviewed the protester's conflict allegation. The agency concluded that there was no apparent conflict of interest that would improperly influence WOCCU's performance of the contract. Specifically, USAID found that the challenged debt was not owed to the contractor itself (the extended relationship described by the protester between the parties to the debt and the contractor was found by USAID to be too attenuated to constitute an improper conflict), the limited assistance to be provided by WOCCU to FECACNIC was determined by USAID, the contract does not include direct financial assistance from the contractor, and WOCCU would not be controlling program resources since the awardee would only be recommending program recipients for agency approval.

Our review of the record does not support the protester's contention that the agency acted unreasonably in awarding the contract to WOCCU despite the debt owed by FECACNIC to COLAC. The relationship described by the protester in its effort to tie the existing debt to WOCCU's performance of the contract is too indirect; in other words, there is no direct means or basis for WOCCU to benefit FECACNIC financially for purposes of repayment of its debt. Under this contract, USAID will approve the actual credit union recipients of services under the contract recommended by the contractor, and WOCCU will then provide the recipients with assistance--primarily limited technical assistance (management, facility, and training support). The protester has not shown that FECACNIC's debt to COLAC could reasonably be expected to influence WOCCU's performance of the contract or impair its objectivity. Given that WOCCU has no direct involvement with the debt in question, WOCCU's relationship to FECACNIC under the contract is defined by

USAID, the beneficiaries of assistance are ultimately chosen by USAID, and the assistance to be given by WOCCU is not financial; we agree with the agency that award to WOCCU does not present an organizational conflict of interest.<sup>4</sup>

The protest is denied.

Comptroller General  
of the United States

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<sup>4</sup>In its August 29 comments on the agency report, IMCC argues for the first time that the "essence" of its protest is that since WOCCU is a membership-for-fee organization, there is an inherent conflict of interest in the firm's performance of the contract since it is at odds with WOCCU's basic mission to benefit its members over non-members. In this regard, IMCC also states in its comments for the first time that the protested debt relationship is merely illustrative of a broader, more persuasive conflict due to WOCCU's overall commitment to and dependence on the international credit union federation hierarchy. The protester, in its August 29 comments, also challenges certain alleged past performance problems of WOCCU and WOCCU's alleged faulty hierarchical approach to the provision of services under the contract. These contentions, however, were not raised in IMCC's initial protest, which focused solely on the challenged debt relationship and choice of credit rating system as the bases for the alleged organizational conflict of interest; the protest did not state that these specific bases of conflict were merely examples of the conflict now challenged by IMCC. The record shows that the information relied upon by IMCC in raising these new protest allegations was known by IMCC (through the personal knowledge of its proposed Chief of Party) or should have been known (through its access to the public information provided in its comments) earlier than 14 calendar days prior to the filing of its August 29 comments. These protest allegations are untimely filed and thus not proper for our consideration. 4 C.F.R. § 21.2(a)(2) (1996).