

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Johnson Controls World Services, Inc.

File: B-286714.2

Date: February 13, 2001

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DIGEST

1. Protest that awardee had unfair competitive advantage due to organizational conflict of interest is sustained where awardee's proposed subcontractor possessed information through its work as a government contractor, the information was not available to other offerors, the agency took no steps to identify or mitigate the conflict in advance, and there were no meaningful procedures in place to prevent interaction between the employees possessing the information and the employees preparing the proposal.
 2. Protest that awardee has impaired objectivity type of organizational conflict of interest is sustained where record shows that, under the terms of another contract, proposed subcontractor will be making recommendations that could benefit the awardee, and the proposed subcontractor could be called upon to evaluate the performance of the awardee team.
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DECISION

Johnson Controls World Services, Inc. (JCWSI) protests the award of a contract to IT Corporation under request for proposals (RFP) No. DABT60-99-R-0013, issued by the Department of the Army for services to be performed at Fort Benning, Georgia. JCWSI maintains that IT, through one of its subcontractors (Innovative Logistics Techniques, Inc. (INNOLOG)), has an impermissible organizational conflict of interest (OCI), and that the award therefore was improper.

We sustain the protest.

BACKGROUND

This acquisition was conducted pursuant to Office of Management and Budget Circular A-76, and is one of numerous A-76 studies being conducted by the Army in connection with its installation support services requirements. A broad array of services are contemplated for this requirement, including buildings maintenance, family housing maintenance, utility systems operations and maintenance, heating, ventilation and air conditioning systems maintenance, grounds maintenance, self-help services, water and wastewater plant operations and maintenance, range maintenance, installation transportation services, base supply services, material maintenance services, cemetery services, military logistical planning, support and execution, and remote camp operations, maintenance and support. RFP at C-vi-vii. The solicitation provided that the lowest-cost technically acceptable proposal would be selected for purposes of the cost comparison with the Army's most efficient organization (MEO). RFP at M-1. After the receipt of offers, the evaluation of proposals, the conduct of discussions and the submission of final proposal revisions, IT was selected as the lowest-cost, technically acceptable offeror. IT's proposal was then compared to the government's MEO and found to offer a cost savings as compared to performance by the government.

JCWSI's does not challenge any aspect of the agency's conduct of the procurement from the standpoint of its evaluation of proposals, conduct of discussions or eventual source selection. Instead, the protest centers on a teaming arrangement between IT and INNOLOG. According to JCWSI, INNOLOG's activities under another contract created an impermissible OCI that should have led to the exclusion of the IT team from competing for this requirement. In this regard, INNOLOG currently is performing another contract, known as the integrated sustainment maintenance (ISM) contract. Under that contract, according to JCWSI, INNOLOG had access to detailed agency information that provided the IT team with an improper competitive advantage in preparing its proposal. The protester further maintains that INNOLOG's responsibilities under its ISM contract will conflict with the IT team's performance under the Fort Benning contract at issue here.

INNOLOG's ISM Contract

Under its ISM contract, INNOLOG established and maintains the Executive Management Information System (EMIS) database, which compiles detailed work order information relating to maintenance activities performed at various Army installations worldwide (including Fort Benning). Hearing Transcript (Tr.) at 297. For example, when a piece of Army equipment (such as a vehicle or weapon) requires repair, a work order is issued for that repair. In the course of the repair effort, information from the work order (including the identity of the equipment, the parts used to make the repair, the number of productive labor hours required to

perform the repair, the average hourly cost of labor (both direct and indirect) and the amount of time the piece of equipment remains in a repair status) is entered into other Army databases (such as the Standard Army Maintenance System (SAMS)). Tr. at 298-99. Data from these other systems is loaded from each installation into the larger EMIS database. The data in the EMIS can be retrieved in the form of either standardized reports or, using a software tool that allows the user to formulate custom search queries, in a customized format. Tr. at 13-15. What is pertinent for purposes of this protest is that, using the EMIS, it is possible to obtain relatively in-depth, comprehensive historical information relating to maintenance activities performed at Fort Benning.

In addition to maintaining the EMIS database, INNOLOG's ISM contract includes responsibilities relating primarily to providing the Army with analytical assistance in evaluating the agency's logistics needs and planning. Among other activities, INNOLOG may be called upon to, for example, participate on command logistics review teams (CLRT). These CLRTs review the performance of logistics functions (whether the activity is performed by government or contractor personnel) at various installations; essentially, the objective of these reviews is to identify inefficiencies and deficiencies in the performance of installation support activities. ISM Contract, Statement of Work (SOW). Under the terms of the ISM contract, INNOLOG may also be called upon (whether as a member of a CLRT or in some other capacity) to evaluate the performance of installation support functions on a broader basis, and to make recommendations that could result in the transfer of a function from one installation to another. Id.

The Federal Acquisition Regulation (FAR) generally requires contracting officials 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 § 9.505. JCWSI alleges that the award to IT presents both types of conflict, and that they have not been mitigated. We discuss each separately below.

UNFAIR COMPETITIVE ADVANTAGE

JCWSI asserts that INNOLOG's access to the information in the EMIS database, as well as its familiarity with the management of installation support activities at Fort Benning, gained through its performance of the ISM contract, provided the IT team with an unfair competitive advantage in preparing its proposal. JCWSI maintains that INNOLOG's unique position—which gave it access to far more valuable information than that included in the RFP and available to JCWSI—gave the IT team detailed insight into how it could reduce its staffing or otherwise make its proposed organization more efficient and, therefore, less costly.

Both the agency and the intervenor contend that the EMIS data would not have been useful in the competition because offers were to be evaluated against the workload information included in the RFP, and because the information in the EMIS database

does not reveal the current staffing, organization or structure. They also contend that, in any case, INNOLOG had an effective “firewall” in place that prevented the information from being transmitted. The Army and the intervenor also assert that there is no evidence in the IT proposal showing that the information was used and in fact conferred a competitive advantage.

FAR § 9.505(b) cites two kinds of information that can provide an offeror an unfair competitive advantage: proprietary information obtained from the government without proper authorization, and source selection information. However, the regulation recognizes that “conflicts may arise in situations not expressly covered in this section 9.505. . . . Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract.” FAR § 9.505. The information principally in question here, EMIS data, does not fall within either category specified in the regulation, since it was presumably obtained with proper authorization and not in the course of the source selection process. However, if the information is as JCWSI alleges, it clearly could have provided the IT team with an advantage in the competition. That advantage would be an unfair competitive advantage to the extent that the IT team, and no other offeror, had relevant nonpublic information—beyond that which would be available to a typical incumbent installation logistics support contractor—that would assist it in obtaining the contract. Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129, at 18. Once it is established that an offeror has an unfair competitive advantage, the relevant question becomes whether the agency took reasonable steps to avoid, neutralize or mitigate the advantage. Id.

As discussed in detail below, the record shows that the information in the EMIS database, which was available only to the IT team, through INNOLOG, is competitively useful, and that the agency took no effective steps to prevent the information from being shared between INNOLOG’s ISM contract personnel and the IT team personnel preparing the proposal.

Competitive Utility of EMIS Data

The record shows that the EMIS data provides a significant level of detail that was not provided in the RFP. The RFP provided only gross information relating to categories of equipment and numbers of work orders. RFP at Tech. exh. 5.14-003. For example, the RFP specified that there were 19,612 weapons at Fort Benning, and that there were 1,497 work orders processed against that equipment in 1997. Id. In comparison, the limited amount of EMIS data in the record¹ shows that, in the area

¹ The EMIS data in the record is comprised of spreadsheets generated in response to sample queries submitted by JCWSI’s personnel during their demonstration of the system. The information in the record thus is illustrative of only some of the capabilities of the EMIS.

of weapons, the system can show not only the gross number of weapons repaired during 1997, but also the specific types of weapons repaired and the parts used for the repair. JCWSI Comments, Dec. 15, 2000, at exh. K. From this information, an offeror could deduce the percentage of total repairs by category of weapon (for example, 90 percent of all repairs were made to M-16 rifles as opposed to anti-tank weapons), as well as the type of repair made and the frequency of that type of repair (of all M-16 repairs, 90 percent involved replacement of the rifle stock instead of the trigger mechanism). The protester also testified that the EMIS data is useful in other specific ways. For example, the protester's information technology manager (who was provided an opportunity to run sample queries on the EMIS database during the pendency of the protest for purposes of learning about the system) testified that the EMIS data allowed him to obtain detailed work order information. Tr. at 11. He asserted (unrebutted by the agency and intervenor) that an offeror could use this data to reach conclusions about the organization of work among the various shops and to discern "peaks and valleys" in the workflow, which would provide insight for purposes of refining an offeror's staffing configuration through cross-utilization. Tr. at 24. JCWSI's proposal manager provided similar testimony. Tr. at 95-96, 102-03 and 180-81.

The Army and the intervenor also offered extensive testimony on the usefulness of the EMIS data. However, this testimony was aimed at establishing, not that the EMIS data would be of no use in preparing a proposal, but that the database does not include the best possible information. For example, INNOLOG's program manager for the ISM contract testified that direct labor rates--and, thus, the precise staffing used for a particular repair--were not discernible from the cost information in the EMIS database because of the way costs are accounted for in the system. Tr. at 407-10. Similarly, the contracting officer testified that relying on the EMIS database in formulating a proposal would involve some risk because the evaluators looked to the RFP's evaluation criteria and performance work statement in evaluating the proposals. Tr. at 193. However, the contracting officer also testified that the EMIS data would be of some utility in preparing an offer, although the information would have to be deciphered. Tr. at 191-93. The record also includes an affidavit executed by another contracting officer at Fort Gordon--where JCWSI is the incumbent contractor, and where INNOLOG had been denied permission to compete because of its access to the EMIS database--in which he states: "The information collected by INNOLOG was expended manhours as well as total manhours by work center for the work performed at Fort Gordon only. This could be used to determine staffing for the maintenance shops as well as how they were organized." Affidavit of Fort Gordon Contracting Officer, Dec. 22, 2000.

Considering the record as a whole, we find that, while the EMIS data perhaps would not enable an offeror to determine the most efficient--and thus least costly--staffing scheme, it would make it possible to refine and reduce staffing levels significantly beyond what would be possible using the RFP information alone. While the agency and intervenor appear to be correct, for example, that precise labor rates cannot be determined, it nonetheless appears that the EMIS data could be useful in

determining the nature of the work performed in far greater detail than would be possible otherwise. Such enhanced detail regarding the actual work performed could provide an offeror the opportunity to formulate a better staffing profile in the sense that the firm could propose a smaller number of employees (at a lower skill level) in arriving at its proposed staffing mix.

Information Known to the INNOLOG ISM Contract Analysts

Beyond the information in the EMIS database, the record shows that INNOLOG's ISM contract analysts may have had further insight into how the maintenance activities are staffed and organized at Army installations. In this regard, the training and doctrine command's (TRADOC) director of logistics had occasion to comment as follows on the roles and responsibilities of INNOLOG's ISM contract analysts:

My Innolog Maintenance Analyst here [TRADOC headquarters] and at the installations are embedded in our organization and know everything that goes on to include the number of people we use to conduct maintenance and supply.

E-mail from TRADOC Director of Logistics, Dec. 8, 1999. This conclusion about the INNOLOG analysts is consistent with the statement of work in the ISM contract. For example, INNOLOG's is required to provide evaluation services in connection with maintenance planning at the local, regional and command levels by evaluating existing maintenance concepts and policies related to maintenance activities at TRADOC installations, and by determining the efficiency and impact of proposed solutions to maintenance requirements. ISM Contract, SOW, Task 3. As noted, INNOLOG analysts may also act as members of the CLRTs, which assist the agency in evaluating the efficiency of logistics support activities. *Id.*, Tasks 7, 8, 9. These activities illustrate that, by virtue of its performance of the ISM contract, INNOLOG is uniquely positioned to know about the way in which logistics support activities are performed and organized.

The agency and intervenor argue that any advantage available to the IT team through INNOLOG's ISM contract is essentially the same as the advantage JCWSI had due to the detailed information it gained through performance of its installation support contract at Fort Gordon. We disagree. INNOLOG's ISM contract responsibilities are fundamentally different from those responsibilities typically borne by an incumbent installation support contractor. While an installation support contractor performs the day-to-day activities, and may garner detailed information about the organization and staffing used to perform its work, the resulting advantage that the contractor may gain for future procurements is no different than the advantage gained by any incumbent contractor; such an advantage is not unfair or otherwise improper. PRC, Inc.-Recon., B-274698.4, July 10, 1997, 97-2 CPD ¶ 10 at 2. In contrast, INNOLOG's ISM contract duties are comprehensive and extend well beyond the level of an installation logistics support contractor. Specifically, under the ISM contract, INNOLOG not only gathers EMIS data concerning the performance of the services,

but also provides the agency with analysis and evaluation of how the work is (and should be) performed. For example, as noted, INNOLOG participates as a member of CLRTs, which evaluate installation support functions and make recommendations to improve efficiency. INNOLOG's involvement in the management of the support activities is of such great depth that INNOLOG actually developed the level of effort used in the solicitation for the Fort Knox installation support requirement, Tr. at 419-20; TRADOC's director of logistics herself confirms the depth of INNOLOG's involvement in stating that the INNOLOG analysts are "embedded" in the agency. Thus, it is our sense from the record that INNOLOG indeed was in the unique position of both having access to information to which no other offeror had access, and being involved in the management of the Fort Benning support activities and the Army's installation support activities generally. This being the case, any incumbency advantage enjoyed by JCWSI (or by any other installation support contractor) is simply not comparable to the IT team's competitive advantage by virtue of INNOLOG's ISM contract.

We conclude that the EMIS data and ISM contract information available to the IT team was competitively useful and not of the type available to any other offeror, and that mitigation was required to prevent IT from having an unfair competitive advantage in preparing its proposal for the Fort Benning requirement.²

Mitigation

Under FAR subpart 9.5, the contracting agency is responsible for avoiding, mitigating or neutralizing OCIs. One method for accomplishing this under the regulation is the inclusion of a clause in a contract outlining the restrictions concerning the contractor's eligibility for future awards. FAR § 9.507-2. INNOLOG's ISM contract contains such a clause, entitled "Organizational Conflict of Interest Clause," which states, in relevant part, as follows:

This . . . clause is included in this contract per the requirements of FAR Subpart 9.5. Effective with the date of this contract, the Contractor is restrained from . . . 3) [engaging] in any contractual activities which may impair his ability to render unbiased advice and recommendation; or 4) in which he may have an unfair competitive advantage as a result

² The intervenor urges our Office to find that there was no possibility that JCWSI was prejudiced by the potential availability of the EMIS information because, even if the information was useful, the number of employees JCWSI claims could have been affected is not adequate to eliminate the price difference in the proposals. Such an analysis, however, ignores consideration of the number of employees by which the IT team may have reduced its proposal through the use of the information. Such possible prejudice is sufficient to establish an impropriety. See Aetna, supra, at 19.

of the knowledge, information and experience gained during the performance of this contract. . . .

The contractor agrees to develop, maintain, and administer such programs as are necessary to thoroughly train and educate its appropriate employees as to the provisions of Part 9 of the [FAR] and its underlying policy, and this contract provision so that each employee will know and understand the absolute necessity of safeguarding information developed under this contract from anyone other than the contractor's employees who have a need to know, and the U.S. Government.

INNOLOG ISM Contract, at H-11.

The record shows that the contracting activity relied solely on the terms of this clause in concluding that there were adequate protections against a disclosure of INNOLOG's ISM contract information to the IT team members preparing the IT proposal. After becoming aware of INNOLOG's involvement with the IT team, the activity took no affirmative steps to determine whether a conflict existed or whether mitigation was called for, and never determined whether INNOLOG itself had moved to mitigate any conflict by preventing interaction between INNOLOG ISM contract personnel and the personnel preparing the IT team proposal. Tr. at 376-77. In other words, it appears the agency did not enforce the terms of the OCI clause. Instead, the Army proceeded as if the clause were self-executing, leaving INNOLOG to determine how the provisions should apply. The agency's reliance on INNOLOG, in lieu of the agency taking affirmative action, was inconsistent with the FAR. Under FAR § 9.504(a), contracting officers are required to analyze planned acquisitions to identify potential OCIs as early in the acquisition process as possible, and to avoid or mitigate them before award. The Army did not do this. Further, beyond compliance with the FAR, the agency's approach of essentially leaving the determination of the existence, as well as the mitigation, of a potential conflict solely to the contractor—who is not in a position to make an objective judgment—simply is not a reasonable means of avoiding or mitigating an OCI.³ See Aetna, supra, at 15-16.

³ The agency's failure extended to the OCI training provision, with which, the record shows, INNOLOG had not fully complied. The intervenor has provided documents embodying INNOLOG's compliance and ethics policies, Intervenor's Hearing exh. 3, but there is no indication that these materials are used in connection with any training program conducted for INNOLOG's ISM employees, or that these materials are provided to those individuals. The record also includes a copy of INNOLOG's training materials for ISM/EMIS database users. Intervenor's Hearing exh. 2. These materials contain no mention of any issue relating to the sensitivity of the data, the employees' obligation to safeguard the information in the EMIS database, or the employees' overall obligations under FAR part 9 or the ISM contract. INNOLOG's business development manager testified that he was unaware of any training efforts

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The activity's failure to act is puzzling in light of the fact that INNOLOG had been openly pursuing installation logistics support contracting opportunities, and that other entities within the Army were aware of INNOLOG's potential conflict and had advised INNOLOG of their views. Specifically, in October 1999, the contracting officer at Fort Gordon denied INNOLOG permission to attend a presolicitation conference for the logistics support contract there, based on her conclusion that the OCI clause precluded it from competing for that contract. E-mail Exchange Between INNOLOG's Business Development Manager and the Fort Gordon Contracting Officer, Oct. 29, 1999. Thereafter, in response to a December 1999 inquiry from INNOLOG's ISM program manager regarding whether INNOLOG had an OCI that would prevent it from competing as a team member to perform the automation and supply operations portions of the Fort Knox requirement, the director of logistics for TRADOC stated (in a message quoted in part above):

We need to talk. My Innolog Maintenance Analyst here and at the installations are embedded in our organization and know everything that goes on to include the number of people used to conduct maintenance and supply. There is concern from the installations that they may be feeding you or their respective corporations (for non INNOLOG folks) the information on how many and how. You know how open I have been with those who work for me. Only the lawyers can tell you whether there would be protests on conflicts of interest. You could be wrapped up in litigation forever.

E-mail from TRADOC Director of Logistics, Dec. 8, 1999.

Firewall

Notwithstanding the agency's failure to take steps when the potential conflict first arose, the agency and intervenor maintain that no competitive advantage resulted because IT never actually obtained INNOLOG's ISM contract information or used it in preparing its proposal. In this connection, we obtained extensive evidence relating to the agency's claim that INNOLOG had effective "firewall" procedures in place that precluded INNOLOG employees working on the ISM contract from interacting with the IT team member employees who prepared IT's proposal. We find that there were not adequate procedures in place. Rather, there was both

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(or written materials) within the company that were designed to provide guidance to the ISM employees regarding OCIs and that, in fact, he had never heard the term "mitigation plan." Tr. at 246-48. INNOLOG's ISM program manager testified that, to the extent the ISM employees receive any training in this area, it is in the context of describing to the employees the structure of the EMIS database. Tr. at 402-03.

attempted and actual interaction between IT team employees and INNOLOG's ISM employees.

For example, in November 1999, the IT team considered establishing a teaming arrangement for installation support services acquisition at Fort Knox. IT's Senior Operations Manager's First Declaration, Nov. 16, 2000, at 2. In reaction to this, INNOLOG's business development manager suggested that IT's senior operations manager contact INNOLOG's ISM analyst at Fort Knox to query him regarding the organization and staffing at Fort Knox. Id. at 3. IT's senior operations manager and INNOLOG's business development manager worked, together with INNOLOG's program manager for the ISM contract, to arrange a meeting among IT's senior operations manager, INNOLOG's business development manager and INNOLOG's ISM analyst at Fort Knox. Id. at 3-4; Tr. at 411-12. IT's senior operations manager states in his declaration that he had a telephonic discussion with INNOLOG's Fort Knox ISM analyst and that he "expressed to him that I would like him to show me these facility areas and to explain the reorganization and present staffing of the DPW and DOL functions." IT's Senior Operations Manager's First Declaration, Nov. 11, 2000, at 3. The Fort Knox ISM analyst was concerned that this contact might be inappropriate in light of his ISM contract duties, so he apparently contacted the program manager for the ISM contract, who directed the parties not to meet. IT's Senior Operations Manager's First Declaration, Nov. 11, 2000, at 4; Declaration of INNOLOG's Fort Knox ISM Analyst, Nov. 16, 2000. Accordingly, the record shows that the IT team proposal preparation personnel contacted the INNOLOG ISM contract analyst, there was an attempt to obtain information that would be useful in preparing the IT team's proposal, and this attempt was actively facilitated by the INNOLOG ISM contract manager until the INNOLOG ISM analyst raised a concern.

As another example, when IT and INNOLOG subsequently began preparations for the Fort Benning acquisition, INNOLOG sought the expertise of the INNOLOG ISM analyst that had the most information relating to the installation under consideration. Among the individuals designated as possible attendees for the Fort Benning presolicitation site visit was INNOLOG's ISM analyst for Fort Rucker. Of significance for our purposes, this individual was a member of the CLRT that reviewed Fort Benning operations in 1998. This ISM analyst ultimately did not attend the site visit at Fort Benning because he was apparently unavailable during the dates in question. Affidavit of INNOLOG's Fort Rucker ISM Analyst, Nov. 17, 2000, at 1. INNOLOG's business development manager then contacted the ISM program manager to see whether another ISM analyst might be available to participate in the Fort Benning site visit. Tr. at 492. The ISM program manager arranged for the senior ISM analyst responsible for INNOLOG activities at the headquarters for the U.S. Army Forces Command (FORSCOM) in Atlanta, Georgia, to attend the site visit. Id. This individual (whom the record shows has "regional" access to the EMIS database, which includes data for Fort Benning, Tr. at 493) accompanied INNOLOG's business manager on the Fort Benning site visit. (We note as well that, although the intervenor provided nondisclosure statements executed by several ISM employees with access to the EMIS database, a nondisclosure statement

was not furnished for this individual despite a request by our Office that the intervenor provide evidence reflecting the existence of a firewall between ISM and other INNOLOG employees.) The activities surrounding the Fort Benning acquisition show that every effort was made to obtain the advice and assistance of the INNOLOG ISM analyst possessing the greatest expertise pertaining to the installation, and that INNOLOG's ISM program manager actively facilitated this effort.

In light of the foregoing, there is no basis for finding that there was an effective firewall between INNOLOG's ISM employees and the IT team employees preparing the proposal for this acquisition. Since we also conclude that the agency failed to take any other steps to mitigate the IT team's OCI resulting from INNOLOG's ISM contract, we sustain this aspect of JCWSI's protest.

IMPAIRED OBJECTIVITY

An impaired objectivity OCI exists where a firm's obligations under one contract could impair its objectivity in providing advice or assistance to the government under another contract. See FAR 9.505(a); Aetna, supra, at 13. JCWSI maintains that INNOLOG has an impaired objectivity OCI with regard to the Fort Benning contract because it will be required under its ISM contract to provide the agency with advice concerning the efficiency of the logistics operations that will be run by the IT team, and to recommend the allocation of work and manpower from one installation to another based on its evaluation and analysis. According to JCWSI, INNOLOG will be in a position to evaluate itself and its team members, and to make recommendations that additional work be moved from another facility to Fort Benning where either it or one of its team members will benefit from the increased requirements.

The agency and the intervenor take the position that, because any recommendations made under INNOLOG's ISM contract are closely scrutinized by agency personnel, there is no reasonable possibility that a biased recommendation would ever be implemented. The agency and intervenor also take the position that INNOLOG's ISM services would never be ordered for Fort Benning because the Army is aware of INNOLOG's status as an installation support contractor at the facility.⁴

⁴ The agency and intervenor take the position that this allegation is untimely because the record shows that, as of November 14, 2000, JCWSI clearly knew that INNOLOG performed CLRT review services for the Army, and the assertion was not raised until December 15, more than 10 days later. See 4 C.F.R. § 21.2(a)(2) (2000). We find the argument timely. Even if JCWSI was aware of the CLRT activities of one of INNOLOG's ISM analysts, JCWSI did not have a copy of the SOW for INNOLOG's ISM contract until it was furnished by the agency in a supplemental filing on December 5, 2000, and was therefore unaware of the true breadth of the ISM contract or INNOLOG's involvement with the agency's review and oversight activities. We think
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The SOW under the ISM contract encompasses reviews where INNOLOG will evaluate the efficiency of operations at any TRADOC installation, and make recommendations that could affect the workload at any given installation. In this regard, as discussed in some detail above, INNOLOG's personnel are required to provide evaluation services in connection with maintenance planning at the local, regional and command levels by assessing existing maintenance concepts and policies related to maintenance activities at TRADOC installations, and by determining the efficiency and impact of proposed solutions to maintenance requirements. INNOLOG ISM Contract, SOW, Task 3. INNOLOG analysts may also act as members of the agency's CLRTs, which assist the agency in evaluating the efficiency of logistics support activities. *Id.*, Tasks 7, 8, 9. The record also shows that INNOLOG provides advice and assistance to the agency under what is referred to as its center of excellence program, Tr. at 442-44, under which different installations "compete" to perform a particular activity, for example, the repair of heavy vehicles. INNOLOG's analysts provide analysis and recommendations to support the Army's decisions regarding where particular maintenance activities should be performed. Tr. at 442-44, 455-59.

In our view, even if INNOLOG were not called upon to directly evaluate and make recommendations about the logistics activities at Fort Benning, it could be called upon to evaluate and make recommendations relating to other installations, and those recommendations could ultimately have an impact on the amount of work to be performed by the IT team at Fort Benning. Simply stated, there is a fundamental conflict between performing installation support services, on the one hand, and evaluating the efficiency of those services (and making recommendations about where those activities should be performed), on the other.

Neither the agency nor the intervenor denies that such a conflict potentially may exist. Rather, they take the view that the agency can mitigate such a potential conflict, either by not using the ISM contract where a conflict exists with regard to a particular task, or by discounting the weight given to the firm's recommendations. Such ad hoc mitigation activity, however, is not a substitute for the preaward deliberation contemplated under FAR § 9.504. Especially in light of evidence in the record reflecting an interest by the IT team in participating in more than one of the agency's installation support procurements, there is the potential for progressively greater concern about an appearance of impaired objectivity on the part of INNOLOG in the performance of its ISM contract. Accordingly, we also sustain this aspect of JCWSI's protest.

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the protester reasonably could withhold filing its protest until it received this document; since its protest on this issue was filed within 10 days after it received the SOW, it is timely.

RECOMMENDATION

We recommend that the Army review both of the IT team's apparent OCIs and consider whether they can be avoided, neutralized or mitigated. Based on that review, the Army should take appropriate corrective measures. If the Army concludes that no feasible corrective measures would be adequate to address the conflicts, we recommend that the IT team's contract be terminated, that it be disqualified from the competition, and that the agency perform its cost comparison under Circular A-76 using JCWSI's proposal, if otherwise proper. We further recommend that the agency reimburse JCWSI the reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). JCWSI's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
Acting General Counsel