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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Johnson Controls World Services, Inc.

File: B-286714.3

Date: August 20, 2001

Stuart B. Nibley, Esq., Joseph J. Dyer, Esq., and Robert F. Pezzimenti, Esq., Seyfarth Shaw, for the protester.

Richard L. Moorhouse, Esq., Dorn C. McGrath III, Esq., and Mary Kay Ogden, Esq., Reed Smith, for IT Corporation, an intervenor.

Col. Michael R. Neds, and Raymond M. Saunders, Esq., Department of the Army, for the agency.

Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against agency's proposed corrective action regarding organizational conflicts of interest addressed in prior decision is denied, where agency's proposed actions are a reasonable means for mitigating prior awardee's potential competitive advantage and potential impaired objectivity.

DECISION

Johnson Controls World Services, Inc. (JCWSI) protests the Department of the Army's proposed corrective action in response to our decision in Johnson Controls World Services, Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20. In that decision, we found that the awardee, IT Corporation, had improper organizational conflicts of interest (OCI) under request for proposals (RFP) No. DABT60-99-R-0013, issued to acquire various services at Fort Benning, Georgia. JCWSI maintains that the proposed correction action is inadequate to address the OCIs.

We deny the protest.

BACKGROUND

This acquisition (conducted under Office of Management and Budget Circular A-76) was for a broad array of services to be performed at Fort Benning. The Army identified IT as the apparent successful offeror under the solicitation, and thus

compared that firm's proposal to the in-house proposal under the A-76 cost comparison procedures. As a result of this comparison, the agency determined that it would be less expensive to contract with IT for these services than to perform them in-house; it thus awarded IT a contract.

JCWSI protested the agency's selection decision, maintaining that IT, by virtue of the activities of one of its subcontractors (Innovative Logistics Corporation (INNOLOG)), had an impermissible OCI. Specifically, JCWSI argued that INNOLOG's activities in performing another contract (the integrated sustainment maintenance (ISM) contract) unfairly gave the IT team access to information (the executive management information system (EMIS) database) and expertise (through INNOLOG's analysts performing the ISM contract) that resulted in an impermissible competitive advantage. JCWSI also contended that INNOLOG's contractual responsibilities under the ISM contract conflicted with the IT team's performance of the Fort Benning services contract, resulting in an "impaired objectivity" type of OCI.

We sustained the protest, agreeing that the IT team had both unfair competitive advantage and impaired objectivity OCIs. We recommended that the Army review the OCIs and consider whether steps could be taken to avoid, neutralize or mitigate them, and that it exclude IT from the acquisition if it determined that there were no feasible corrective measures.

In response to our decision, the agency advised our Office that it will terminate IT's contract; it has required IT to terminate its teaming relationship with INNOLOG for the Fort Benning procurement;¹ it will make available to IT and JCWSI both the contents of the EMIS database and agency personnel familiar with the database (as well as the ISM contract) to assist the offerors in using and interpreting the database contents; and it will then reopen the acquisition to allow the offerors an opportunity to submit proposal revisions in those areas of their offers that relate to the data contained in the EMIS database, and select a proposal for use in the A-76 public/private cost comparison. The agency then will conduct a new cost comparison.

JCWSI challenges the agency's proposed actions on several grounds.² In addressing possible OCIs, agencies are required to exercise common sense, good judgment and

¹ The record shows that IT also has terminated its teaming arrangement with INNOLOG with respect to a contract awarded to the team at Fort Rucker.

² To the extent JCWSI takes the position that the OCIs identified in our earlier decision are not susceptible to mitigation, its protest is untimely. In sustaining its protest, we did not rule that mitigation was not feasible; if JCWSI believed the OCIs could not be mitigated, it was required to protest on this basis within 10 days after receiving our decision. See 4 C.F.R. § 21.2(a)(2) (2001).

sound discretion. Federal Acquisition Regulation § 9.505. The agency's proposed actions meet this standard.

DISCLOSING EMIS DATA

JCWSI contends that providing the EMIS data is insufficient to put JCWSI on an equal footing with IT, since it lacks access to the expertise of the INNOLOG ISM contract analysts. JCWSI asserts that IT's relationship with INNOLOG provided an opportunity for the expertise of the ISM analysts to "percolate" through the IT organization. JCWSI also asserts that, even with the EMIS information, it still would not have other ISM contract data that was available to IT through the ISM analysts.

This argument does not provide a basis for questioning the proposed mitigation approach. The agency states that the personnel it will make available to IT are familiar with the EMIS database itself, as well as the use and manipulation of the database, and that these personnel are familiar with the information produced in connection with the performance of the ISM contract (which is nothing more than a contract to provide the agency detailed information about installation management activities). JCWSI has proffered no evidence suggesting that the agency personnel are less familiar with the database or its use than INNOLOG's personnel, or that their expertise and familiarity with the overall management of the Fort Benning installation is somehow inferior. Nor is there anything in the record that would lead us to assume that this is the case. Thus, this argument does not provide a basis for us to find the proposed mitigation action to be inadequate.

LIMITED PROPOSAL REVISIONS

JCWSI argues that the agency's proposal to limit proposal revisions to sections of their proposals affected by the EMIS data is inadequate to overcome IT's alleged competitive advantage. According to JCWSI, the IT team's access to the EMIS and ISM data provided it a competitive advantage with respect to a large portion of the entire requirement, and allowing offerors to revise only a small portion of their proposals thus will not correct the problem.

The agency has proposed to allow the competitors an opportunity to revise their proposals to the extent that they may be affected by the firms' access to the EMIS data. Thus, nothing limits the degree to which offerors may revise their proposals, provided they can legitimately show a nexus between a proposal revision and the offeror's receipt and evaluation of the EMIS data. To the extent that the protester's contention is that JCWSI and the Army may disagree over a particular change, the protest is premature, since there is no indication that such a disagreement has occurred. There thus is no basis for questioning this aspect of the agency's proposed mitigation effort.

FORT GORDON INFORMATION

JCWSI contends that the IT team had access to data relating to JCWSI's performance of a contract at Fort Gordon, and that this data could conceivably provide IT insight into how JCWSI prepared its proposal for the Fort Benning requirement. JCWSI contends that the agency's proposed corrective action fails to address this possible competitive advantage.

This assertion is without merit. Most importantly, JCWSI's own personnel testified during our consideration of the protest that, because there were significant differences between Forts Benning and Gordon in terms of troop levels and types of equipment, data concerning Fort Gordon would be of only limited utility and relevance in preparing a proposal for Fort Benning. Hearing Transcript at 117-20. Moreover, the protest record contained no evidence (and JCWSI provides none in connection with this challenge) that JCWSI's Fort Gordon information was ever provided to IT by INNOLOG's ISM contract analysts. On the contrary, to the extent that there is any evidence bearing on this question, the protest record shows that INNOLOG was denied permission to compete for the Fort Gordon contract because of its access to the EMIS database; since the IT team did not submit an offer for Fort Gordon, there would have been no reason for INNOLOG to have examined the data for that installation or provided it to IT.³ Finally, although JCWSI was provided a copy of the IT team's proposal for the Fort Benning acquisition, it has not identified anything in that proposal which reflects knowledge of JCWSI's Fort Gordon performance information. Under the circumstances, and especially in view of the admittedly limited usefulness of this information, this argument does not establish that the proposed corrective action is unreasonable.

IMPAIRED OBJECTIVITY

JCWSI contends that the proposed corrective action does not adequately address the IT team's impaired objectivity OCI. As noted in our prior decision, INNOLOG's ISM contract responsibilities included making recommendations to the agency regarding the allocation of work and manpower among the agency's various installations. We found that this responsibility was potentially inconsistent with INNOLOG's teaming arrangement with IT; since INNOLOG was in a position to recommend that work be allocated to Fort Benning, such a recommendation could potentially benefit IT. We concluded that INNOLOG's objectivity regarding its ISM contract recommendations could be impaired by virtue of its teaming relationship with IT. In response to this

³ There is no suggestion that the IT team knew that JCWSI was competing for the Fort Benning contract, and there would therefore have been no incentive for the IT team to have attempted to review the performance of unknown competitors in preparing its Fort Benning offer.

concern, the Army's corrective action requires IT to terminate its relationship with INNOLOG at Fort Benning. JCWSI asserts that this is inadequate to address IT's impaired objectivity, because it deals only with the firms' relationship at Fort Benning, and does not address any continuing relationship at other installations.

This allegation ignores the fact that the record shows that IT and INNOLOG do not have any current teaming relationships. In this regard, IT has submitted letters in which it advised INNOLOG of its termination of the teaming arrangement between the two firms, not only at Fort Benning, but also at Fort Rucker, the only other installation where the team was awarded a contract. Intervenor's Comments, exh. A. In the absence of a teaming agreement between the two firms, there is no basis to find potential impaired objectivity and, accordingly, no basis to object to the Army's proposed corrective action.

RESPONSIBILITY

JCWSI asserts that IT should be found ineligible for the contract on grounds that the firm is not a responsible contractor. JCWSI maintains that IT's prior actions reflect a lack of integrity, and that the firm should be found nonresponsible, and precluded from receiving the award, on that basis. Our Office will not review an affirmative responsibility determination absent a showing either that government officials have acted in bad faith, or that definitive responsibility criteria have not been followed. 4 C.F.R. § 21.5(c). Neither exception applies here. In any case, the assertion is premature, since the agency has not yet identified the apparent successful offeror for the Fort Benning requirement.

The protest is denied.

Anthony H. Gamboa
General Counsel