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**Comptroller General
of the United States**

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

Decision

Matter of: Computers Universal, Inc.

File: B-292794

Date: November 18, 2003

Peter L. Cannon for the protester.

Jonathan A. Beyer, Esq., Department of Defense Dependents Schools, for the agency.
Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that awardee has a prohibited “impaired objectivity” organizational conflict of interest because under the awarded contract it will be required to perform quality assurance of its own work under an existing contract is denied; since any such quality assurance will not entail a subjective evaluation of its performance under the existing contract, there is no basis for finding that awardee’s objectivity will be impaired.
 2. There is no basis for finding an improper personnel “bait and switch” by the awardee where solicitation did not require vendors to, and the awardee did not, identify specific personnel to fill positions.
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DECISION

Computers Universal, Inc. (CUI) protests the award of a delivery order to Critel, Inc. under request for quotations (RFQ) No. MDA416-03-Q-0228, issued by the Department of Defense Dependents Schools (DODDS) for an information management specialist (IMS) to support the Korea Joint Vehicle Tracking System. (KJVTS). CUI complains that Critel has a prohibited organizational conflict of interest (OCI) and engaged in an improper “bait and switch,” and that the agency was biased in favor of Critel.

We deny the protest.

The KJVTS uses cellular services, global positioning systems, databases, the Internet and other communication and tracking technologies to track vehicles and student-passengers in South Korea. The RFQ was issued for an IMS to administer

the KJVTS system and support the networks (CUI is the incumbent contractor). Critel currently is furnishing the global positioning system (GPS) for the tracking system under a separate contract. The RFQ provided for award of a delivery order on a “best value” basis, considering technical, past performance and price factors. The technical factors were rated on a pass/fail basis and past performance was rated using an adjectival scale (excellent, good, satisfactory, marginal, unsatisfactory), based on responses from customer surveys. Past performance was to be considered significantly less important than price in the award decision.

Four vendors, including Critel and CUI, responded to the solicitation. Both Critel and CUI passed the technical evaluation and were rated excellent for past performance. Since Critel’s price was low (\$64,800 versus CUI’s price of \$72,000), the agency selected Critel for award.

CUI protests that the award to Critel is improper because Critel has an OCI as a result of its contract to supply the GPS. In this regard, CUI notes that, under the IMS contract, Critel will be “the technical expert for all KJVTS software modules and [will be] responsible for . . . developing a quality assurance surveillance program to surveil required scheduled maintenance by the KJVTS contractor [and] provide surveillance over the KJVTS contractor’s scheduled maintenance plan.” RFQ at 4. CUI maintains that Critel has a conflict because these responsibilities as the IMS put it in the position of performing quality assurance for its own work under its existing equipment contract.

A potential OCI exists where, because of a contractor’s other activities, the contractor may enjoy an unfair competitive advantage, or where award of the subject contract could put the contractor in the position of performing conflicting roles that might bias the contractor’s judgment. Federal Acquisition Regulation (FAR) §§ 9.501, 9.505. OCI situations can be grouped into three general categories, depending on the impact of the OCI: (1) unequal access to information; (2) impaired objectivity; and (3) biased ground rules. Aetna Gov’t Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12-13. An impaired objectivity OCI exists where a firm’s work under one government contract could entail its evaluating itself, either through an assessment of performance under another contract or an evaluation of a proposal submitted to obtain another contract. Id. at 13. The concern in such situations is that the firm’s ability to render impartial advice to the government could appear to be undermined by its relationship with the entity whose work product is being evaluated. Id. CUI’s allegation that Critel will be unable to render impartial judgments because of conflicting obligations under different government contracts involves impaired objectivity.

We find no prohibited OCI here. Under its equipment contract, Critel is required to provide preventative and corrective maintenance and an inspection system covering the required services, and also must maintain and make available to the government records of all inspection work performed. While the IMS contractor is required to

develop a quality assurance program to provide surveillance of--that is, to monitor--the required scheduled maintenance, it is not responsible for making judgments as to what maintenance is required or how well the maintenance is being performed. We note in this regard that monitoring, standing alone, does not necessarily create the potential for impaired objectivity. Rather, as noted above, an impaired objectivity OCI typically arises where a firm is evaluating its own (or a related firm's) activities, because the objectivity necessary to impartially evaluate performance may be impaired by the firm's interest in the entity being evaluated. See Johnson Controls World Servs., Inc., B-286714.2, Feb. 13, 2001, 2001 CPD ¶ 20 at 11-12. Since the IMS contractor's responsibilities are not based on subjective judgments or evaluations, there is no basis for finding that the objectivity of the IMS contractor will be impaired under the circumstances here. Cf. Ktech Corp., B-285330, B-285330.2, Aug. 17, 2002, 2002 CPD ¶ 77 (prohibited OCI found where subcontractor was to establish requirements for tests it or its prime contractor would perform).

CUI further asserts that, as the "system expert," the IMS will be in a position to hide systems problems, which could lead the government to recommend expansion of the system, to the benefit of Critel as the GPS equipment contractor. However, DODDS is not relying on the IMS contractor to determine whether problems exist; rather, this is the responsibility of systems operators, who are DODDS employees. Supplemental Agency Report at 2.

"BAIT AND SWITCH"

CUI asserts that Critel has attempted to hire the individual who has been performing the IMS contract for CUI. CUI concludes that Critel must have proposed in its quotation an individual that it did not intend to provide, and thus engaged in an improper "bait and switch."

To establish an improper "bait and switch" a protester must show that a firm either knowingly or negligently represented that it would rely on specific personnel that it did not expect to furnish during contract performance, and that the misrepresentation was relied on by the agency and had a material effect on the evaluation results. Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 10. Here, the RFQ did not require offerors to include the name or resume of the individual proposed, and Critel did not provide that information. Accordingly, there could be no improper "bait and switch."

BIAS

CUI asserts that DODDS was biased in favor of Critel. To support this position, CUI asserts that DODDS rated the technical qualifications of CUI and Critel the same, even though CUI proposed the incumbent individual and has substantially more experience than Critel. CUI further alleges that agency personnel requested that CUI's incumbent IMS employee join Critel to perform this contract.

In order for a protester to succeed in a claim of bias on the part of a contracting official, the record must establish that the official intended to harm the protester, since government officials are presumed to act in good faith; our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Moreover, in addition to providing credible evidence of bias, the protester must show that the agency bias translated into action that unfairly affected the protester's position. AllWorld Language Consultants, Inc., B-291409.3, Jan. 28, 2002, 2003 CPD ¶ 31 at 2.

CUI has not met this burden. With respect to the evaluation, as noted, vendors were not required to identify any specific individual for the IMS position, and experience was not evaluated. Thus, neither CUI's proposed employee nor its alleged greater experience could have had any impact on the technical evaluation. As for the agency's alleged recruitment of CUI's employee, the agency has provided affidavits from the two personnel named by CUI. Both employees state that they had limited contact with the CUI employee related to his contract performance, and deny having attempted to recruit the employee on behalf of Critel. CUI has provided no countervailing statements or other evidence in support of its allegation. We conclude that there is no basis for finding agency bias.

The protest is denied.

Anthony H. Gamboa
General Counsel