



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: Overlook Systems Technologies, Inc.

File: B-298099.4; B-298099.5

Date: November 28, 2006

Drew A. Harker, Esq., Jennifer A. Frericks, Esq., Joan G. Ochs, Esq., Matthew H. Solomson, Esq., and Chad E. Miller, Esq., Arnold & Porter, for the protester. Jessica C. Abrahams, Esq., and Jeniffer M. De Jesus Roberts, Esq., McKenna Long & Aldridge, for LinQuest Corporation, an intervenor. Michael J. O'Farrell, Jr., Esq., and Maj. Stacie A. Remy, Department of the Air Force, for the agency. Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's contention that the agency failed to adequately mitigate the risk of organizational conflicts of interest (OCI) associated with the selection of the awardee is denied where the record shows that: the contracting officer reasonably concluded that the risk of a conflict of interest in this procurement is not great; the agency requested a detailed OCI mitigation plan from the awardee and sought additional information about, and modifications to, the plan; and the contracting officer reasonably concluded, after performing a detailed analysis, that the modified plan--together with certain steps designed to increase agency oversight of the contractor--was sufficient to protect the government's interest.
 2. Protester's contention that the agency improperly held discussions with only the awardee while exchanging information about the adequacy of the awardee's plan to mitigate the risk of an OCI, and thus should have held discussions with the protester as well, is denied; a contracting officer's consideration of whether a contractor is eligible for award despite an OCI is analogous to a responsibility determination, and the exchanges here--like a request for information that relates to an offeror's responsibility, rather than proposal evaluation--did not constitute discussions.
-

DECISION

Overlook Systems Technologies, Inc. renews its protest of the award of a contract to LinQuest Corporation by the Department of the Air Force pursuant to request for proposals (RFP) No. FA2550-05-R-2000, issued to procure support services for the

Global Positioning System Operations Center located at Schriever Air Force Base (AFB), Colorado. This protest follows corrective action taken by the Air Force earlier this year in response to Overlook's contention that the Air Force failed to properly assess an organizational conflict of interest (OCI) presented by the award to LinQuest. The Air Force has now completed its review of the alleged OCI and reaffirmed its earlier selection decision. In response, Overlook again argues that the LinQuest mitigation plan does not adequately address the OCI here. In addition, Overlook argues that the agency's evaluation of LinQuest's past performance was unreasonable, the selection decision was improper, and exchanges with LinQuest regarding the OCI issue constituted discussions that also should have been held with Overlook.

We deny the protest.

BACKGROUND

The Global Positioning System (GPS) is a satellite-based position, velocity, and timing information system that broadcasts simultaneously to an unlimited number of military and civilian users based on land and in space. RFP, Statement of Work (SOW), at 3. The GPS Operations Center (GPSOC) monitors and analyzes the GPS satellite signal 24 hours per day, 7 days a week, "to ensure optimal data, products and services support to GPS users." Id. Since 1999, Overlook has been the contractor supporting the GPSOC.

On December 22, 2005, the Air Force issued the RFP here to hold a competition for these services, limited to small businesses. The RFP anticipated the award of a fixed-price incentive fee contract for a 6-month base period, followed by four 1-year options, to the offeror whose proposal presented the best value to the government "based upon a trade-off between past performance and price." RFP at 54. In this tradeoff, the RFP advised that past performance would be "significantly more important" than price. Id. at 53. Although the RFP requested technical proposals, they were only to be evaluated on a pass/fail basis--i.e., rated either acceptable or unacceptable; offerors submitting unacceptable technical proposals were excluded from further consideration. Id. Finally, the RFP indicated that the agency intended to make award without discussions, if possible. Id. at 54.

With respect to past performance, the solicitation anticipated that the agency would assign an overall performance confidence rating, based on the agency's assessment of the relevance and recency of the offeror's past performance. The performance confidence ratings were: high confidence, significant confidence, satisfactory confidence, unknown confidence, little confidence, or no confidence. Id. at 53.

To prepare the performance confidence ratings set forth above, the RFP explained that the Air Force would consider customer past performance questionnaires, contractor assessment surveys, Contract Performance Assessment Reporting System

(CPARS) records, and “any other information available.” RFP at 53. The RFP defined “recent” contracts as those completed within the last 3 years and “relevant” contracts as those calling for “performance of efforts involving mission analysis of the GPS constellation or relevant system that are similar or greater in scope, magnitude and complexity than the effort described in this solicitation.” RFP at 54. In addition, the RFP identified three different “degrees of relevance”—relevant, somewhat relevant, and not relevant—and indicated that the government reserved the right to give greater consideration to information on those contracts deemed “most relevant to the effort described in this RFP.” *Id.* “Relevant” past performance was defined by the RFP as efforts involving “much of the magnitude of effort and complexities this solicitation requires;” “somewhat relevant” was defined as efforts involving “some of the magnitude of effort and complexities [] this solicitation requires.” *Id.*

With respect to the price evaluation, the RFP required offerors to propose “all target costs, target profits, target prices, ceiling prices and sharing ratios for overruns/underruns (i.e. example format 80/20 refers to, contractor’s share of 80%/government’s share of 20%).” RFP at 51.

The RFP also contained an attached memorandum advising that certain potential offerors might have an OCI due to their involvement with other GPS efforts. Offerors were asked to notify the contracting officer (CO) of any possible OCI, and to do so not later than January 3, 2006.

In response to this request, LinQuest advised the agency, by letter dated January 3, that it anticipated submitting a proposal with two subcontractors, one of whom, General Dynamics Advanced Integration Systems (GDAIS)—a business unit of General Dynamics Corporation—would be responsible for the GPS Interference and Navigation Tool (GIANT) software, which was identified in the RFP (in the Statement of Work at 16) as government-furnished equipment. LinQuest’s letter to the agency explained that GDAIS had been supporting the GPS Joint Program Office for 9 years, and that other General Dynamics divisions were performing other GPS-related work. Initial Agency Report (AR), Tab 29.¹ In addition, the LinQuest letter advised that GDAIS had been operating under an approved OCI plan for the GPS Joint Program Office and would develop an additional plan, if need be, for this work. By letter also dated January 3, the CO acknowledged receipt of LinQuest’s letter, and advised the company that no further action was required to address the OCI clauses in the RFP. *Id.*

¹ This decision references materials from both the agency report produced in response to the earlier protest, and the report produced in answer to the current protest, filed after the agency completed its corrective action. We will refer to the former as the Initial AR, and the latter as the Supplemental (Supp.) AR.

The agency received four offers—including the offers received from Overlook and LinQuest—by the January 27 due date for the receipt of initial proposals. Upon completion of the initial review, the evaluators concluded that additional discussions and submissions were not needed, and none were requested or received.

With respect to Overlook, the evaluators concluded that its proposal was technically acceptable, and that its past performance as the incumbent currently providing these services was “relevant.” In addition, since Overlook’s past performance questionnaire scores had no unsatisfactory or marginal scores, and had a majority of scores in the exceptional category,² the company received a performance confidence assessment of “high confidence.” Overlook’s target price was \$14.047 million, its ceiling price was \$14.546 million, and it proposed a 50/50 share ratio for both cost overruns and underruns from the target price. AR, Tab 13, at 11.

With respect to LinQuest, the evaluators concluded that its proposal was also technically acceptable, and that LinQuest’s past performance involved matters analogous, though not identical, to the services required here. As a result, LinQuest’s past performance was rated as “somewhat relevant.” In reaching this conclusion, the evaluators considered a total of 15 past performance customer questionnaires, 12 contractor assessment surveys, and 2 CPARS records for LinQuest and its subcontractors. As with Overlook, the questionnaires, surveys, and CPARS records reflected a majority of scores in the exceptional category, with no unsatisfactory or marginal ratings. Based on this information, the Air Force assigned LinQuest the second highest performance confidence rating of “significant confidence.”

LinQuest’s target price was \$12.860 million, its ceiling price was \$14.5 million, and it proposed separate share ratios for cost underruns and overruns—for cost underruns up to the target price, LinQuest proposed a 30/70 contractor/government share ratio; for cost overruns from the target price up to the price ceiling, LinQuest proposed a 70/30 contractor/government share ratio. Thus, under the LinQuest proposal, the government would enjoy a greater share of the savings when costs are lower than the target price, and a smaller share of the burden when costs exceed the target price.

On February 16, the evaluators provided a briefing for the source selection authority (SSA); a summary of the results presented to the SSA are set forth below.

² The past performance questionnaire used here asked respondents to rate the offerors in several areas as either unsatisfactory, marginal, satisfactory, very good, exceptional, or neutral. Initial AR, Tab 14, at 7.

OFFEROR	TECHNICAL RATING	PAST PERFORMANCE CONFIDENCE	TOTAL TARGET PRICE
Offeror A	Unacceptable	N/A	N/A
LinQuest	Acceptable	Significant Confidence	\$12.860 million
Offeror B	Acceptable	Satisfactory Confidence	\$13.652 million
Overlook	Acceptable	High Confidence	\$14.047 million

Initial AR, Tab 13, at 11 (as corrected by the Memorandum to the Air Force Counsel from the Contract Specialist, Apr. 24, 2006). Although the evaluators concluded that award could not be made to Offeror A due to its unacceptable technical rating, and ruled out an award to Offeror B's proposal, they had no recommendation about whether award should be made to LinQuest or Overlook at the February 16 briefing for the SSA. Declaration of the SSA, May 9, 2006, at 1. Over the course of several days after the briefing, the SSA met with evaluators to discuss the results of the competition. By memorandum dated February 21, the SSA decided that the difference between the confidence ratings given Overlook and LinQuest did not warrant the higher price in the Overlook proposal. Initial AR, Tab 15, at 2. That same day, the agency provided written notice to the unsuccessful offerors of its intent to award this contract to LinQuest. *Id.*, Tab 20.

On February 24, Overlook requested a debriefing, which was provided on March 8. On February 28, Overlook filed a size protest with the Small Business Administration (SBA) arguing that LinQuest was not a small business for purposes of this procurement. On March 16, the SBA denied Overlook's size protest and determined that LinQuest was eligible for award; later that day, the contracting officer (CO) awarded the contract here to LinQuest. CO's Statement, Apr. 6, 2006, at 2. The next day, March 17, Overlook filed a protest with our Office, which it supplemented with additional arguments after receipt of the initial agency report.

Events Related to the Previous Protests

In its initial protest (B-298099), Overlook argued that LinQuest was precluded from performing this contract due to an OCI stemming from LinQuest's inclusion of GDAIS as a member of its team. Overlook alleged that GDAIS would have an impaired objectivity OCI when asked to evaluate problems with, and the performance of, GPS in equipment manufactured by General Dynamics or manufactured by General Dynamics' competitors. As described by Overlook, General Dynamics "manufactures GPS equipment . . . as well as commercial aircraft

. . . and many multi-million dollar weapon systems and munitions that depend upon GPS for their proper operation.” Protest B-298099, Mar. 17, 2006, at 6. In addition, Overlook argued that the agency improperly concluded LinQuest’s past performance was relevant to the contract here, and argued that the Air Force’s best value decision was arbitrary.³

On April 14, the Air Force filed a report addressing the issues raised by Overlook. With regard to the OCI issue, the Air Force maintained that the GPSOC contractor does not analyze the performance of weapons systems (or other GPS-based devices), and therefore the alleged OCI is unfounded. According to the Air Force, the GPSOC contractor is responsible solely for analyzing and evaluating problems with the GPS signal as caused by satellite issues, signal strength, signal gaps, or environmental issues, such as interference and space weather, or “some outside cause such as the receiver failure, operator error, etc.” Air Force Memorandum of Law, Apr. 14, 2006, at 7. Regarding its evaluation of LinQuest’s past performance, the Air Force provided our Office with the record of its past performance review, which reflected the agency’s deliberations about whether LinQuest’s past performance should be considered relevant to the effort here. In its report, the agency explained that while LinQuest’s record of contract performance was largely exemplary, its team’s experience was considered only “somewhat relevant” based on the fact that it lacked experience in “a very small number of the areas related to performance of the GPSOC contract.” *Id.* at 12. The agency also disputed Overlook’s allegation that its best value determination was unreasonable.

Overlook’s comments disputed the agency’s characterization of this contract as not requiring analysis or evaluation of GPS-dependent systems. According to Overlook, the GPSOC contractor is required to “troubleshoot” the cause of GPS signal failures, which are ultimately attributed to either the GPS signal or the GPS-dependent system itself. Overlook argues that allowing GDAIS to participate in providing these services means the company will be evaluating the GPS performance of systems built by General Dynamics or its competitors. Overlook buttressed its contention by submitting a declaration from its chief engineer, who serves as the program manager for the GPSOC under Overlook’s current contract. Overlook’s chief engineer explained that the GPSOC contractor evaluates problems with GPS signal failure using a checklist that includes assessing the operational status of the GPS satellites, space weather conditions, atmospheric conditions, and terrain. He indicated that after all the items above have been excluded, the weapon system itself becomes the subject of further investigation. Protester’s Comments, Tab 1, Declaration of Chief Engineer, Apr. 27, 2006, at 3.

³ Overlook also challenged the Air Force’s determination that LinQuest’s proposal was technically acceptable. After receipt of the agency report, however, Overlook expressly withdrew this basis of protest. Protester’s Comments, Apr. 28, 2006, at 2.

Overlook's comments also raised a supplemental OCI protest issue regarding the reasonableness of the Air Force's analysis of potential conflicts resulting from GDAIS's and General Dynamics' involvement in five other GPS-related procurements. These procurements were raised by LinQuest in a letter to the Air Force, dated January 3. In this letter, LinQuest represented that GDAIS "does not believe it has any OCI issues" resulting from its involvement in other GPS-related procurements. Initial AR, Tab 29. The Air Force accepted this representation; Overlook disagrees.⁴

In answer, the Air Force again disputed its incumbent contractor's representations about the nature of the work under the GPSOC contract. According to the agency, the GPSOC contractor only analyzes GPS signals, and does not perform an analysis of the system receiving the signal. In support of its position, the Air Force submitted an additional response from the contracting officer and declarations from the Commander of the Air Force's 2nd Space Operations Squadron, the Deputy Commander of the 50th Space Operations Group, and the head of the Source Selection Evaluation Team.

To resolve the factual dispute between the Air Force and its incumbent contractor about the scope of the contractor's responsibilities under the GPSOC contract, our Office convened a hearing with the parties on June 5-6. After the hearing, but prior to the submission of post-hearing comments, the Air Force elected to take corrective action to further evaluate the impaired objectivity OCI issue raised by Overlook to determine "whether the Air Force should take appropriate steps to avoid, neutralize or mitigate any significant potential conflicts of interest before contract award" Letter from the Air Force to GAO, June 9, 2006. Based on this proposed corrective action, our Office dismissed Overlook's protest as academic on June 13; our decision dismissing Overlook's protest expressly reserved the company's right to again seek review of any previously-raised issue that was not superseded by the corrective action, or had not been expressly withdrawn. Overlook Sys. Techs., Inc., B-298099, B-298099.2, June 13, 2006, at 2.

⁴ The difference between Overlook's initial allegation that LinQuest would have an impaired objectivity OCI, and the related allegation in its supplemental protest filing, was one of magnitude. The initial protest allegation involved every instance where GDAIS might be involved in troubleshooting a problem with GPS in equipment provided by General Dynamics or equipment provided by one of its competitors, and hence can be described as the macro OCI allegation. The supplemental protest was limited to the adequacy of the agency's OCI review related to the five GPS-related procurements disclosed by LinQuest in its January 3 letter to the CO, and thus is more of a micro OCI allegation.

Events Related to the Agency's Corrective Action

Shortly after dismissal of the earlier protests, the Air Force requested that LinQuest address any possible actual or potential OCIs that could arise during its performance of this contract. The request advised that if LinQuest decided no actual or potential conflicts exist, the company should explain the basis for its determination. On the other hand, the request stated that if there was a potential OCI, LinQuest should advise what steps would be taken "to avoid, neutralize or mitigate any significant potential conflicts of interest, in accordance with Federal Acquisition Regulation (FAR) 9.5." Supp. AR, Tab 5.

On July 6, LinQuest provided the requested plan to the Air Force. The plan included 10 pages of narrative, followed by 8 attachments, one of which, attachment 4, was specific to GDAIS. Supp. AR, Tab 6. Of particular interest here, the GDAIS portion of the plan stated:

General Dynamics is a large business involved in the development, production, support, and analysis of numerous DoD weapon systems, as described throughout this document. These development efforts do not constitute a real OCI since the GPSOC Statement of Work does not include evaluating the adequacy of these systems against their specifications or other contractual requirements and does not involve source selection support to the government for these systems. However, there may be the appearance of an OCI and, in extremely remote circumstances, the GPSOC may be asked to help in the evaluation of a system that GD is the developer [sic] or a major contributor.

Id., attach. 4, at 1.

The Air Force did not accept LinQuest's post-protest mitigation plan as originally tendered and opted to request additional information. By letter dated July 27, the agency asked LinQuest to address six specific issues in an addendum to the mitigation plan. Of particular relevance to this dispute, the letter asked:

Both LinQuest and GDAIS reference the Statement of Work (SOW) as not requiring "evaluation" of systems against specifications; however, the SOW does anticipate troubleshooting that may require LinQuest or GDAIS to assist a user by providing information regarding a GPS receiver or to discuss issues related to GPS receiver integration. Request LinQuest clarify how it intends to address any potential OCI issues that may arise in this context.

Supp. AR, Tab 7.

The LinQuest response to this request begins by disputing the agency's premise that OCI issues could arise during troubleshooting, and contends that there is no evaluation of GPS-based systems taking place because the GPSOC contractor is "not performing a formal test under controlled conditions." Supp. AR, Tab 9, at 2. The response continues by stating:

Due to the sensitivity of OCI on this procurement, however, GDAIS will implement the OCI Mitigation Plan measures from the first day of performance. The implementation of these OCI mitigation measures allows GDAIS GPSOC personnel to support any and all GPSOC activities by protecting sensitive information and eliminating any incentives that might bias the actions of these personnel.

Id. at 3.

On August 21, the CO prepared an Analysis and Recommended Course of Action Document. Supp. AR, Tab 13. In this document, the CO included a Determination and Findings (D&F) regarding the adequacy of LinQuest's Mitigation Plan. The D&F noted that: (1) there are an "incalculable" number of systems with GPS components that could be the subject of some level of analysis under the GPSOC contract; (2) the predominant type of analysis performed by the GPSOC contractor will be objective in nature, and will not involve subjective judgments; (3) the types of analysis that might require subjective judgments appear to account for less than 10 percent of the inquiries to the GPSOC; and (4) the judgments provided by the GPSOC contractor do not involve recommendations for procurement decisions, do not involve determinations about whether a system complies with its specifications, and do not involve the intake, disassembly or repair of GPS equipment. Id. at 24-25.

Based on these findings, the CO concluded that "a substantial majority of the work reasonably contemplated under the GPSOC contract creates no potential conflict of interest," but LinQuest's reliance on GDAIS as a teaming member does create a slight potential for a conflict. Id. at 25-26. As a result, the CO further concluded that the risk of conflict is sufficient to require adequate safeguards, and that "the OCI Mitigation Plan submitted by LinQuest Corporation coupled with Government oversight is more than adequate to mitigate any OCI concern related to performance of the GPSOC contract." Id. at 26. Accordingly, the CO concluded that LinQuest was eligible for award.

In addition to the mitigation considerations set forth above, the CO reexamined the source selection process and reaffirmed the earlier selection decision. Supp. AR, Tab 11. On August 21, the Air Force provided notice to Overlook that it had completed its corrective action, and this protest followed.

DISCUSSION

Overlook's renewed protest reiterates its earlier arguments that LinQuest, through its reliance on GDAIS as a teaming member, has an OCI that cannot be mitigated. Overlook also renews its earlier challenges to the evaluation of past performance and to the decision to select LinQuest for award. In addition, after receipt of the documents generated by the agency in its reassessment of LinQuest's eligibility for award, Overlook raised two supplemental protest issues. Specifically, Overlook argues that the agency improperly failed to make a new award decision considering the impact on LinQuest's technical proposal of the company's plan to mitigate any OCI, and that the agency's exchanges with LinQuest regarding the adequacy of its mitigation plan constituted discussions, which also should have been held with Overlook.

The Revised OCI Review

As discussed earlier, Overlook's arguments that LinQuest (through its teaming member, GDAIS) has an OCI that cannot be mitigated have both a macro and micro component. We turn first to the macro component of Overlook's challenge—*i.e.*, that allowing GDAIS to help provide these services will place the company in the position of analyzing the GPS performance of systems built by its General Dynamics affiliates, or those built by competitors of General Dynamics and its affiliates. The Air Force responds that the record here supports its conclusion that the risk of a conflict of this type is small, and that the combination of LinQuest's Mitigation Plan—as amended after the agency first opted not to accept it as written—and increased government oversight, is sufficient to adequately mitigate the risk of a conflict of interest. We agree with the Air Force.

The regulatory guidance governing OCIs that may arise in the performance of government contracts is set forth in the Federal Acquisition Regulation (FAR) at subpart 9.5. One of the situations that creates a potential OCI is where a firm's work under a government contract entails evaluating itself or its own products. FAR §§ 9.505, 9.508, PURVIS Sys., Inc., B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7. The concern in such situations is that a firm's ability to render impartial advice to the government will be undermined, or impaired, by its relationship to the product or services being evaluated; as a result, such situations are often referred to as "impaired objectivity" conflicts of interest. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 13.

When the facts of a procurement raise a concern that a potential awardee might have an OCI, the FAR requires the agency to determine whether an actual or apparent OCI will arise, and to what extent the firm should be excluded from the competition. Id. at 12. The specific responsibility to avoid, neutralize or mitigate a potential

significant conflict of interest—and to do so as early in the acquisition process as possible—lies with the CO. Id.; see FAR § 9.504.

As a prelude to addressing the adequacy of the Air Force’s decision that the conflict here can be mitigated—and that the actions taken are sufficient to do so—we note first that the dispute between Overlook and the Air Force is not the same dispute that was before us at the start of these protests. Prior to taking corrective action, the Air Force view was that its GPSOC contractor does not perform analysis of the GPS components of systems, and thus no conflict arises regardless of who built the system. During its corrective action review, the Air Force concluded that “there is a slight potential for a situation to occur that could create the appearance of a potential conflict.” Supp. AR, Tab 13, at 26. While Overlook contends that this does not constitute sufficient recognition of a conflict to change the analysis, we think the disagreement between these parties is now a matter of degree. To address the dispute over the degree to which a conflict could arise here, we set forth below certain information in the record about the GPSOC workload.

The record developed during the course of these protests, including the hearing held prior to the agency’s decision to take corrective action, shows that the GPSOC both monitors performance of the GPS system, and responds to telephone and e-mail inquiries from military users and military testing organizations. Hearing Transcript (Tr.) at 210-11, 345. User inquiries range from simple questions quickly answered, to questions regarding anomalies in the operation of GPS-based systems that require nuanced judgments and analysis. For example, the Commander of the 2nd Space Operations Squadron testified that one inquiry was answered by advising the caller to switch on his GPS device, Tr. at 26, while another, from officials testing an Army mobile launch rocket system in White Sands, New Mexico—who were attempting to understand why the rocket was routinely missing its target by significant distances—required considerably more analysis. Id. at 97-103. Ultimately, the GPSOC was able to help the testing officials determine that the GPS device at issue was properly receiving signals from the GPS satellite array, but a problem with the software that translated those signals was causing the rocket to veer off-course. Id. at 97.

We found the testimony of the Air Force Commander about the range of activities performed by the GPSOC contractor to be consistent with the testimony of all of the witnesses, both those presented by the Air Force, and the testimony of Overlook’s Chief Engineer and Program Manager. In his own way, each of them described a spectrum of possible activities ranging from those that required little more than objective answers to straightforward questions, to those that required more subjective judgments about the operation of the GPS equipment involved, and the conditions under which it was being used. Additional testimony (as well as data developed by the Air Force after the hearing) helped quantify and organize the range of activities provided by the GPSOC contractor.

Specifically, the hearing revealed that user inquiries to the GPSOC can be categorized as requests for information (RFI) or requests for anomaly analysis (RAA). Id. at 27, 208 (Air Force witnesses), 389-90 (Overlook witness). RFIs can be further categorized according to the amount of effort required to answer the request. An RFI that can be answered during the course of the call, or in approximately 15 minutes, is termed a Level 1 RFI; an RFI that requires a more in-depth review is termed a Level 2 RFI. Id. at 203.

While RAAs are not categorized by the amount of effort required to answer them, there seemed to be a consensus that an RAA requires a more nuanced analysis and possible exercise of judgment. Id. at 61, 215-21 (Air Force), 392-98 (Overlook). Even so, this analysis begins with a standard set of cascading inquiries, beginning with considering whether the GPS satellite array is operational, then considering any atmospheric or geographic conditions that might be causing the anomaly, and ultimately, considering the specific GPS device and how that device is integrated into the system at issue. Id. at 63-64 (Air Force, referencing witness's earlier Declaration), 392-95 (Overlook). Notably, all of these inquiries are user-driven; in many cases the user does not desire additional assistance and the contact with the GPSOC ends. Id. at 36, 54.

As mentioned above, the Air Force also developed additional data regarding the workload of the GPSOC contractor after the hearing. Specifically, the CO's D&F document advises that:

From the period 1 January 2005 to 31 July 2006 (a year and a half), there have been 721 Level 1 & 2 [RFIs]. Conversely, there have been only 61 RAAs within that same period. Of the 61 RAAs reported, 16 RAAs were for assistance related to space segment anomalies.

Supp. AR, Tab 13, at 25. (The CO notes that the 16 RAAs related to the space segment are not at issue here, as they are not handled by the GPSOC contractor, id.; Overlook has not disputed this assertion.) Although the CO's D&F did not elaborate on how many of the 721 RFIs since January 1, 2005, were Level 1 versus Level 2 inquiries, the record contains additional analysis that provides this breakdown. Specifically, the Air Force's on-site manager of the GPSOC advised the CO, via e-mail, that in 2005, there were 308 Level 1 RFIs, 159 Level 2 RFIs, and 28 RAAs; he advised that as of July 31, 2006, there were 175 Level 1 RFIs, 79 Level 2 RFIs, and 33 RAAs. Supp. AR, Tab 20, at 22.

In our view, the data above helps illuminate the extent to which the GPSOC contractor might be involved in rendering judgments about equipment that the contractor (or its competitors) provided to the government. First, there seems to be no dispute here that answering a Level 1 RFI should not raise any significant concern about a conflict of interest. This is because Level 1 RFIs usually involve objective answers to straightforward inquiries that are quickly resolved during the course of a

telephone call. In addition, there is little dispute that a significant majority of the inquiries to the GPSOC take the form of Level 1 RFIs. We think the CO acted reasonably when he concluded that there is almost no possibility of an impaired objectivity conflict of interest related to answering a Level 1 RFI. D&F, Supp. AR, Tab 13, at 24.

With respect to Level 2 RFIs, and the 45 RAAs that were not related to anomalies in the space segment (which are not reviewed by the GPSOC contractor), we think there is little evidence in this record to support a conclusion that any significant percentage of this minority portion of the workload raises concerns about an OCI. We note first that both the Air Force and Overlook described a cascading checklist of what, essentially, seem to be troubleshooting questions that are used to help resolve these more detailed inquiries. Tr. at 63-64 (Air Force), 392-95 (Overlook). These questions included looking into the operation of the GPS satellite array, considering conditions in space and in the atmosphere, considering geographic conditions (such as operation of the GPS device in geologic or urban canyons), and then turning to questions about the GPS antenna, the GPS device itself, and the integration of the GPS device into the overall system (including software that translates properly received GPS signals into useable information. Id. at 58-64 (Air Force), 392-95 (Overlook). In our view, some portion of these troubleshooting analyses--such as considerations of the operation of the satellite array, conditions in space and the atmosphere, and geographic conditions--present a smaller risk of impaired objectivity than considerations related to the equipment itself. Thus, we think this minority portion of the workload is reduced even more.⁵

In addition, we found particularly telling the Air Force's review of all 45 of the non-space segment RAAs since January 1, 2005. At the conclusion of this review, the agency was unable to identify a single RAA that involved equipment developed by General Dynamics.⁶ Supp. AR, Tab 20, at 19 (e-mail to the CO from the on-site Air

⁵ We also think there is no inconsistency between this conclusion and the credible testimony of Overlook's Chief Engineer that he spends approximately 25 percent of his time on RAAs. Tr. at 347. Overlook's Chief Engineer is not the only person in the GPSOC. As he, and the Air Force explained, numerous inquiries are resolved without the involvement of more senior people; it is the more difficult inquiries that are passed to people like Overlook's Chief Engineer. Id. at 82-87 (Air Force), 353-54 (Overlook). In addition, Overlook's Chief Engineer testified that he has had single inquiries that have taken him months to answer. Id. at 354.

⁶ The Air Force review was limited to the 45 RAAs because in its view--and the record supports this view--RAAs are the inquiries most likely to involve the exercise of judgment and analysis by the GPSOC contractor. Tr. at 61, 215-21 (Air Force), 392-98 (Overlook). In resolving this protest, however, we were persuaded by Overlook that any analysis of these issues should also consider Level 2 RFIs. See Tr. 389-90 (where Overlook's witness describes certain complex RFIs). Even so, there is
(continued...)

Force manager of the GPSOC). To be fair, we note that this finding does not answer the question of whether General Dynamics' competitors were involved; does not conclusively establish that General Dynamics (or its competitors) were not involved--only that there is no record of it; and does not address the question of whether any Level 2 RFIs might have involved General Dynamics (or its competitors). On the other hand, we note that Overlook, the long-standing incumbent contractor here, has also provided little hard evidence to establish a high risk that GDAIS will face significant conflicts performing this work.⁷

In summary, given: (1) the consensus in this record that the RAAs are the inquiries most likely to involve an exercise of judgment by the GPSOC contractor (Tr. at 61, 215-21 (Air Force), 392-98 (Overlook)); (2) the data developed that shows that RAA's account for approximately six percent (45/721) of all inquiries to the GPSOC since January 1, 2005; and (3) the fact that neither party has yet identified a specific RAA or Level 2 RFI that posed the risk of an impaired objectivity OCI for LinQuest/GDAIS, we think the evidence here supports the CO's conclusion that the risk of an impaired objectivity OCI for LinQuest is not great, and can be mitigated.

For the record, we do not want to leave the impression that we were not concerned about the possibility of an OCI in this procurement. Simply put, we were. Overlook provided pleadings, and credible testimony, that raised the possibility of the GPSOC contractor being drawn into situations where it had the ability to exercise judgment that could be impaired by a conflict of interest. On the other hand, this testimony was cast in doubt by the serious dispute between the Air Force and its incumbent contractor about the extent of the analysis required of its contractor. By the end of the hearing before our Office, it was apparent that this dispute extended into the Air Force as well.⁸ Our Office never reached a conclusion on this question because the Air Force elected to take corrective action after the hearing.

(...continued)

little evidence in the record of any significant risk of the conflicts of interest that Overlook contends cannot be mitigated.

⁷ During the hearing, Overlook's witness provided one example of a General Dynamics weapons system on which a GPS device had been evaluated. Tr. at 456. Given Overlook's long-standing incumbency and presumed knowledge of the systems it has reviewed, and given that it has identified only one General Dynamics system on which it has conducted a GPS-related review--and it has provided no explanation of whether that review was straightforward or involved a subjective judgment--we think Overlook has not made the case that any conflict here cannot be adequately mitigated despite being in an excellent position to do so.

⁸ Although Air Force pleadings indicated that the GPSOC contractor did not provide any analysis of weapons systems that could lead to a conflict of interest, testimony from the agency's own credible and authoritative witness described situations that
(continued...)

As indicated at the outset of this analysis, the dispute now before our Office turns on the degree of risk present, not on whether there is, or is not, a possibility of a conflict of interest. As discussed above, the evidence in the record leads us to conclude that the risk of a conflict of interest here is not so great that the agency was barred from reasonably concluding that it could be mitigated. We turn next to the adequacy of the CO's determination that the possibility of a conflict here has been mitigated.

As set forth earlier, the Air Force returned to LinQuest after the initial protest was dismissed and asked for a revised review of any possible OCIs. The review it received was not ideal. For example, LinQuest (and GDAIS) produced a report to the agency that argued there was no OCI because the GPSOC contractor was not engaged in advising the agency on source selection decisions, and was not evaluating these systems against their specifications or any other contractual requirements. Supp. AR, Tab 6, attach. 4, at 35. Later, LinQuest argued in response to a request for additional information from the Air Force that there was no possible OCI because the company was not "performing a formal test under controlled conditions." Supp. AR, Tab 9, at 2.

LinQuest's arguments in the face of the agency's attempts to address these allegations were not persuasive--not to the Air Force, and not to our Office. We have previously held that a contractor need not be involved in providing source selection information to an agency to have an impaired objectivity OCI. See PURVIS Sys., Inc., supra, at 11. In addition, we know of no reasonable basis to argue that a situation does not create an impaired objectivity OCI because the assessment was not tied to whether the system complied with its own specifications, or because the assessment was not part of a formal test under controlled conditions. In short, an impaired objectivity OCI is created whenever a contractor's judgment and objectivity in performing contract requirements may be impaired due to the fact that the substance of the contractor's performance has the potential to affect other interests of the contractor. Alion Science & Tech. Corp., B-297342, Jan. 9, 2006, 2006 CPD ¶ 1 at 6;

(...continued)

clearly included judgments about how the GPS components of systems were performing. This apparent disconnect between the agency's pleadings and its witness led the GAO hearing officer to ask, at the end of the first day of testimony, if there was "some kind of dispute within the Air Force about what should be required of the contractor in performing this contract?" Id. at 108. Although the first Air Force witness advised there was not a dispute, id. at 113, the CO had a different view. During the second day of the hearing, the CO testified that he disagreed with the Commander's description of the requirements of this work, id. at 304, and testified that he had raised with the Commander "on more than one occasion" the issue of whether the contractor was providing services beyond the scope of the contract. Id. at 325.

PURVIS Sys., Inc., supra; Science Applications Int'l Corp., B-293601 et al., May 3, 2004, 2004 CPD ¶ 96 at 4; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra.

Despite LinQuest's arguments, this review did not end with the first version of the LinQuest Mitigation Plan. As reflected above, the Air Force requested additional information in several areas, and asked that the plan be modified. Upon receipt of the additional information, the CO prepared a detailed analysis of the LinQuest Mitigation Plan, as modified. In this analysis, the CO concluded that the modified plan—together with certain steps designed to increase Air Force oversight of the GPSOC contractor, and with the factual information produced showing “that a substantial majority of the work reasonably contemplated under the GPSOC contract creates no potential conflict of interest”—was sufficient to protect the Government's interest here. Supp. AR, Tab 13, at 25-26. We agree.

While Overlook raises numerous complaints about the plan, and points out its disagreement with several of the plan's assertions, once an agency has given meaningful consideration to potential conflicts of interest, our Office will not sustain a protest challenging a determination in this area unless the determination is unreasonable or unsupported by the record. Alion Science & Tech. Corp., B-297022.4, B-297022.5, Sept. 26, 2006, 2006 CPD ¶ 146 at 8; SRS Techs., B-258170.3, Feb. 21, 1995, 95-1 CPD ¶ 95 at 9. In this regard, COs are allowed to exercise “common sense, good judgment, and sound discretion” in assessing whether a potential conflict exists and in developing appropriate ways to address it. FAR § 9.505; Epoch Eng'g, Inc., B-276634, July 7, 1997, 97-2 CPD ¶ 72 at 5. Here, given the limited possibility of serious OCIs demonstrated in this record, the agency's comprehensive approach to addressing any conflicts that might arise, and the protester's failure to establish that these actions were unreasonable, we think the CO acted appropriately in mitigating the risk of macro OCIs that could arise from allowing LinQuest (and its teaming member GDAIS) to serve as the GPSOC contractor.⁹

⁹ Overlook contends that it was unreasonable for the agency to allow LinQuest to address an impaired objectivity OCI through the use of the firewall arrangement proposed by GDAIS. We share Overlook's skepticism in this area, and have noted that while walling off employees using a firewall arrangement (sometimes also referred to as a “Chinese wall” arrangement) may resolve other types of conflicts of interest (such as those involving unfair access to information), it does not resolve an OCI involving potentially impaired objectivity. Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., supra, at 16. This is because the conflict at issue pertains to the organization, and not the individual employees. Id.; see FAR § 9.501. On the other hand, we note that the LinQuest Mitigation Plan, as modified, did not limit its mitigation approach to the use of firewalls for GDAIS employees. The CO noted that the plan also included OCI training on an annual basis, and a

(continued...)

With respect to the small number of GPS procurements that LinQuest identified for the agency in its January 3 disclosure letter—*i.e.*, the micro OCI issues Overlook raised in its earlier protests—the protester again argues that the agency failed to take adequate steps to mitigate those conflicts. During the agency’s corrective action, the CO reviewed again the procurements disclosed prior to the submission of proposals, and again concluded that either no conflict was presented, or that any conflict was adequately mitigated. In response, Overlook states:

Although the new CO appears to have attempted to remedy that problem since the hearing, the CO’s conclusion with respect to [General Dynamics]’s participation in the upcoming **[deleted]** procurement is based on an erroneous premise and is thus arbitrary and capricious.

Overlook’s Comments, Oct. 11, 2006, at 38-39. Overlook raises no challenge to any of the other procurements identified by LinQuest that were reviewed by the CO during the course of the corrective action. As a result, we view the challenges to any of the other disclosures (and the agency’s conclusions about them) as abandoned.

With respect to the protester’s remaining OCI challenge, the CO noted that LinQuest had previously disclosed that General Dynamics C4 Systems (GDC4S), an affiliate of GDAIS, planned to pursue the award of the **[deleted]** contract as a prime contractor, and might propose using **[deleted]** as a subcontractor. AR, Tab 13, at 11. The CO noted that an RFP for this effort had not yet been released, and that the development of the **[deleted]** work was not scheduled to be completed until 2013. *Id.* The CO also noted that the **[deleted]** contractor would interface with **[deleted]**. As a result, the CO concluded that there was no risk of an OCI on the GPSOC contract, and that the CO for the **[deleted]** contract would make an assessment of whether an OCI exists at the time that contract is awarded. *Id.*

Overlook points to industry news items indicating that the draft RFP for the **[deleted]** contract has been recently released, and that the **[deleted]** effort may not be as far in the future as the CO thought. In addition, Overlook argues that a prior

(...continued)
reassignment of tasks from GDAIS to LinQuest personnel when questions arise about the ability of a GDAIS employee to be objective. Supp. AR, Tab 13, at 15-16. In addition, the CO took steps to ensure increased government oversight of GPSOC activities. *Id.* at 16-17. Finally, the CO examined the risk of a conflict of interest posed by most of the work contemplated here and concluded that a substantial majority of the work did not raise a conflict. In our view, these considerations together rendered reasonable the CO’s decision that the minimal risk of an OCI here was adequately mitigated.

decision of our Office, Washington Util. Group, B-266333, Jan. 29, 1996, 96-1 CPD ¶ 27 at 6, suggests that the CO should find the existence of an OCI here based on the possibility of future conflicts.

Assuming, arguendo, that the **[deleted]** contract may, in fact, get underway sooner than the CO believed at the time he prepared his most recent analysis of the possible OCIs disclosed by LinQuest, the fact remains that there is, as yet, no competition underway. In addition, any award of the **[deleted]** contract, even under Overlook's scenario, seems to remain one or several years in the future.

We also disagree with Overlook's assertion that our decision in the Washington Utility Group protest controls the situation here. In that case, a CO excluded a protester from a competition for support services after determining that professional and business relationships disclosed by the protester and its proposed subcontractor, had the potential for impairing the protester's ability to provide objective and impartial advice to the agency. Washington Util. Group, supra, at 4. In denying the protest, our Office held that the CO's actions were reasonable because the protester "had several past, present, or currently planned interests that are inextricably related to the work to be performed under the contemplated contract." Id. at 6.

In Overlook's view, our holding in Washington Utility Group means the CO here acted improperly when he failed to exclude LinQuest (and GDAIS) from this procurement because a GDAIS subsidiary hopes to submit a proposal in a future competition for the **[deleted]** contract. In our view, the conflict, if any, between GDAIS's performance of the GPSOC contract, and GDC4S's performance of the **[deleted]** contract, will arise with the award of the **[deleted]** contract, not with the award of this one.

Evaluation Issues

Overlook reasserts several of the challenges to the evaluation conclusions that were raised in its earlier protests, and also raises new issues. Among the issues raised earlier were assertions that it was unreasonable to assign LinQuest a performance confidence assessment (PCA) rating of "significant confidence," that the best value decision failed to comply with the RFP, and that the agency's Proposal Analysis Report was an unreliable "post hoc" justification. In the current protest, Overlook argues that the previous past performance evaluation and source selection decision cannot provide a basis for a reasonable award decision because of the agency's allegedly profound misunderstanding of the work required of the GPSOC contractor. In addition, Overlook complains that the agency improperly failed to make a new best value tradeoff that considered the impact of the LinQuest Mitigation Plan, which in Overlook's view, will significantly reduce the technical merit of the awardee's proposal.

Although we will not address each of these issues separately, we have reviewed the entire record, including all of Overlook's allegations, and find no basis for concluding that the award decision was unreasonable, or in any way violated the stated evaluation scheme. For example, with respect to the agency's evaluation of LinQuest's past performance, the agency explained that the solicitation did not require GPS experience per se, but rather defined relevant past performance information to include performance of efforts "that are similar or greater in scope, magnitude and complexity than the effort described in this solicitation." RFP at 54. Moreover, the record reflected that the Air Force rated LinQuest's past performance as only "somewhat relevant" since its past performance information reflected only "some of the magnitude of effort and complexities" required under the RFP. Initial AR, Tab 14, at 44. Given the largely exceptional reviews of its somewhat relevant past performance, the Air Force concluded that LinQuest deserved a PCA rating of "significant confidence." Id. In our view, this conclusion was both reasonable, and consistent with the stated evaluation scheme.

For a second example, we disagree with Overlook's assertion that the agency acted unreasonably by not conducting a new best value tradeoff to consider the effect of the LinQuest Mitigation Plan on the technical merit of the awardee's proposal. The RFP here required only that technical proposals be evaluated on a pass/fail basis; it then anticipated a tradeoff between past performance and price. RFP at 53-54. There is no suggestion in this record that LinQuest's proposal was rendered technically unacceptable because of its mitigation plan. In addition, if the tradeoff Overlook seeks had been made, the best value decision would have violated the stated evaluation scheme.¹⁰ Accordingly, we conclude there was nothing unreasonable about the agency's decision not to conduct a new best value tradeoff as urged by Overlook.

Exchanges Regarding OCI Mitigation

Finally, Overlook argues that the exchanges between the Air Force and LinQuest regarding the company's mitigation plan constituted discussions, which, therefore, should have been held with Overlook as well. We disagree.

¹⁰ We recognize that Overlook bases this argument on an e-mail in the record wherein an Air Force official questions whether the mitigation approach taken by LinQuest will dilute the strength of the company's technical approach. Supp. AR, Tab 20, at 4. These deliberations, and others like them in the record, contribute to our view that the mitigation approach here received careful consideration by the agency. We do not read the question raised in this e-mail to support a conclusion that the agency should have undertaken a new best value tradeoff, which per the RFP, was limited to the consideration of price versus past performance.

As a general rule, discussions occur where the government communicates with an offeror for the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror an opportunity to revise or modify its proposal in some material respect. Priority One Servs., Inc., B-288836, B-288836.2, Dec. 17, 2001, 2002 CPD ¶ 79 at 5. In situations where there is a dispute regarding whether communications between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal. TDS, Inc., B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6. Where an agency engages in discussions, it must afford all offerors in the competitive range an opportunity to engage in meaningful discussions. FAR §15.306(d)(1).

We note first that the exchanges between LinQuest and the Air Force regarding the mitigation plan did not result in changes to the company's proposal, which, as indicated above, is the acid test for determining whether discussions have occurred. TDS, Inc., *supra*. In addition, we think the language of the FAR requiring COs to resolve OCIs supports our view that these exchanges were not discussions. Specifically, the FAR requires that:

The [CO] shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the [CO] shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond.

FAR § 9.504(e). This scheme contemplates a review that occurs after evaluations are completed and after an apparent awardee has emerged. Nothing about this scheme suggests that the CO would then be required to reopen discussions with all offerors.¹¹

Consistent with the FAR scheme described above, and consistent with the placement of this scheme in Part 9 of the FAR (which, as its title indicates, addresses contractor qualifications), we think a CO's consideration of whether a contractor is eligible for award despite an OCI is analogous to a responsibility determination. As we have noted, concerns about OCIs call into question the integrity of the competitive procurement process, see Aetna Gov't Health Plans, Inc.; Foundation Health Fed.

¹¹ We note also that the RFP here contained an attached memorandum requesting information about any potential OCIs by January 3, a date well in advance of the January 27 due date for the receipt of initial proposals. If this exchange had been sufficient to resolve concerns about any OCIs, it would have been completed before proposals were even received. Thus, the fact that OCIs can be resolved before the submission of proposals, or after evaluations are completed, further suggests that these exchanges should not be considered discussions.

Servs., Inc., supra, at 19, and matters of integrity are more closely related to matters of responsibility than evaluation matters. We have also held that a request for information that relates to an offeror's responsibility, rather than proposal evaluation, does not constitute discussions, and does not trigger the requirement to hold discussions with other offerors in the competitive range. General Dynamics--Ordnance & Tactical Sys., B-295987, B-295987.2, May 20, 2005, 2005 CPD ¶ 114 at 10. Accordingly, we think the facts here, the nature of the concerns involved, and the regulatory framework that applies to these situations, supports a conclusion that the exchanges here did not constitute discussions.

The protest is denied.

Gary L. Kepplinger
General Counsel