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**Comptroller General
of the United States**

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

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Decision

Matter of: Valdez International Corporation

File: B-402256.3

Date: December 29, 2010

Robert S. Gardner, Esq., for the protester.
Kenneth B. Weckstein, Esq., and Shlomo Katz, Esq., Brown Rudnick LLP, for Sabreliner Corporation, the intervenor.
Robert J. Brown, Esq., and Larry M. Anderson, Esq., Department of the Air Force, for the agency.
Peter D. Verchinski, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting officer's determination that the awardee's contract performance would not pose an organizational conflict of interest (OCI) was reasonable, where the contracting officer engaged in an extensive investigation to determine whether award would present an OCI and reasonably found that it would not.

DECISION

Valdez International Corporation, of Colorado Springs, Colorado, protests the award of a contract to Sabreliner Corporation, of St. Louis, Missouri, under request for proposals (RFP) No. FA7000-09-R-0059, issued by the Department of the Air Force, U.S. Air Force Academy, to obtain support for engineering tasks and research activities for aging structures initiated by the Academy's Center for Aircraft Structural Life Extension (CAStLE) program. Valdez contends that Sabreliner has an organizational conflict of interest (OCI).

We deny the protest.

BACKGROUND

The CAStLE program, located in the Academy's Department of Engineering Mechanics, has a dual mission of supporting the education and training of cadets by bringing Air Force-relevant research and engineering activities into the classroom and by providing structural integrity tools and information to the aerospace structure communities of the Department of Defense, the National Aeronautics and

Space Administration, and the Federal Aviation Administration. RFP, Statement of Work (SOW) ¶ 1.1. CASTLE activities cover a variety of tasks that follow aircraft and other structures through their life-cycle from cradle to grave. These tasks span a wide range of structure-related topics, including basic development and characterization of materials, mechanical testing of structures, material corrosion susceptibility and mitigation, computer modeling and finite element analysis, flight data acquisition, structural teardown and analysis, and analysis of damaged, failed and/or aged structures. SOW ¶ 1.2.

One of CASTLE's ongoing projects is the KC-135 Teardown Analysis Program. This program involves the Air Force's fleet of KC-135 tanker and transport aircraft, which were built by The Boeing Company in the 1950s and 1960s. These aircraft, which the Air Force continues to fly, are well past their originally-planned service life. Task Order 0001, SOW ¶ 3. Since August 2008, the Air Force has obtained KC-135 teardown and analysis requirements via two task orders (TOs) issued to Valdez under a previously competed contract for research support for various Academy departments. Under these TOs, Valdez developed procedures for KC-135 teardown and analysis and performed teardown and analysis of a KC-135 damaged during operations in the Arabian Peninsula.

In the spring of 2009, the Air Force initiated this acquisition. The agency conducted market research; analyzed potential OCIs, particularly with respect to the KC-135 teardown and analysis activities being performed by Valdez; conducted an industry day for potential offerors in order to answer questions and disseminate acquisition information; and posted on-line answers to industry questions, draft solicitation documents, and the procedures and related documents for the KC-135 teardown program delivered under Valdez's existing task orders.

On September 29, 2009, the Air Force issued the RFP, as a small business set-aside, for the award of an indefinite-delivery, indefinite-quantity contract with fixed-price, fixed-price level-of-effort, and reimbursable contract line items, for a base year and 4 option years. The RFP provided that the contract value would not exceed \$90 million.

The SOW outlined six major task sections—engineering; research, engineering, design analyses & development testing; full-scale testing; certification & force management development; force management execution; and general training/education/cadet learning environment and CASTLE support. The engineering task section includes structures teardown and non-destructive analysis. See RFP, SOW ¶ 2.2.2.1. Offerors were advised that contractor may be required to perform the CASTLE activities outlined above, as well as engineering, structures teardown, non-destructive analysis, design analysis and development testing, full scale testing, certification and force management development, force management execution, training/procedural support, and written reports/briefings. SOW ¶ 2.2.1.

In addition to the “basic” SOW, the RFP included SOWs for three TOs. These task orders specifically concern teardown and analysis for the KC-135 aircraft. The SOWs explain that the KC-135 teardowns are necessary to determine the current condition of the fleet and to generate useful structural engineering data. TO 0001, SOW, at 185. The SOW for TO 0001 identified a number of expectations and objectives for the ordered engineering efforts, including performing non-destructive inspection/evaluation (NDI) and conducting failure analysis on “all fatigue cracks, intergranular corrosion cracks, stress corrosion cracks and any other NDI indications of significance as determined by the government program manager.”¹ TO 0001, SOW, at 186. In this regard, the contractor was informed that it would determine the root cause of NDI indications.

Proposals were received from Valdez and Sabreliner. The Air Force selected Sabreliner’s proposal for award, and, at the same time, issued TO 0001 to the firm. Valdez protested to our Office, asserting that Sabreliner had an OCI because the firm had manufactured some of the KC-135’s structures and subsystems, and thus would be in the position of evaluating itself. The agency took corrective action in response to the protest, suspending Sabreliner’s performance and reviewing whether Sabreliner had an OCI. We dismissed Valdez’s protest as academic.

The contracting officer conducted a review to determine whether contracting with Sabreliner created an impermissible OCI. In this regard, he requested that Sabreliner provide, among other things, information concerning its relationship with Boeing and that Sabreliner identify any parts the firm had manufactured or provided for the KC-135. See AR, Tab 10, Air Force Letter to Sabreliner. He also discussed Sabreliner’s possible OCI with technical experts, such as the KC-135 Aircraft Structural Integrity Program manager (sustainment division) and the former CASTLE technical director. Contracting Officer’s Statement at 5-7.

The contracting officer concluded that there was no actual or potential OCI in contracting with Sabreliner. AR, Tab 4, OCI Analysis, at 8. In his analysis, the contracting officer considered whether contracting with Sabreliner presented either an impaired objectivity, unfair competitive advantage, or biased ground rules OCI.

¹ The agency’s teardown and analysis protocols also describe this work as follows:

The USAF is performing structural teardown inspection and analysis of three retired C/KC-135 aircraft to determine the current structural condition and long-term structural viability of the C/KC-135 fleet. This program addresses all damage types to include corrosion and fatigue.

C/KC-135 Teardown Analysis Program Protocols, Protocol 7: Nondestructive Inspection (NDI), Feb. 19, 2009, iii.

With respect to an impaired objectivity OCI,² which is relevant here, the contracting officer noted, “as a threshold matter,” that the amount of independent judgment a contractor would have in performing the teardown and analysis work was significantly reduced by the teardown protocols and processes adopted by the Air Force before the acquisition. Specifically, the contracting officer found that the protocols and processes standardized the teardown efforts and limited the amount of independent judgment required.³ Id. at 3. The contracting officer also found that the purpose of this contract and TO was to assess the structural integrity of aging aircraft, such as the KC-135, generally, and not to evaluate underlying design or manufacturing defects. Id. at 5. In this regard, the contracting officer noted that it has been the Air Force’s experience that it is nearly impossible to determine whether discrepancies related to a specific part or assembly occurred during the initial manufacture or sometime thereafter (for example, as part of depot maintenance). The contracting officer also found that under the contract Sabreliner would not be in a position to analyze its own, or a related entity’s work, because Sabreliner proposed to have the analysis, such as the failure analysis, structural tests, finite elements analysis, fatigue testing and analysis, performed by two subcontractors. Finally, the contracting officer noted that, with respect to the two retired KC-135s that had been selected for teardown, no parts had been provided by Sabreliner, and thus Sabreliner would not be evaluating its own work. Id. at 4-5.

Although not specifically documented in the contracting officer’s OCI analysis,⁴ the contracting officer states that in performing his OCI analysis he found nothing

² An “impaired objectivity” OCI is found in cases 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 proposals. FAR § 9.505-3. In these cases, the concern 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.; see also FAR § 2.101 (OCI definition).

³ The contracting officer noted that Sabareliner will be required to follow specific instructions for dismantling the plane, and required to enter the resulting data into a standardized teardown data management system. Thus, the teardown work would be performed in a predetermined manner, “effectively reducing the likelihood or ability of any contractor to ‘capture’ or ‘steer’ such efforts nearly completely.” See AR, Tab 4, OCI Analysis, at 3.

⁴ The contracting officer’s OCI analysis states that he performed a detailed analysis of Sabreliner’s relationship with Boeing, but the document does not specifically describe that analysis. AR, Tab 4, OCI Analysis, at 2. In his statement to our Office, the contracting officer details his investigation of Sabreliner’s and Boeing’s relationship and states why he did not find that this relationship posed any OCI problems. See Contracting Officer’s Statement at 7-8.

unusual in Sabreliner's and Boeing's relationship. Specifically, the contracting officer concluded that Sabreliner and Boeing had "nothing more than an ordinary purchaser/supplier relationship." Contracting Officer's Statement at 8.

DISCUSSION

The protester argues that the contracting officer's documented OCI analysis is flawed because it does not evidence the contracting officer's consideration of Sabreliner's "longstanding and particularly close relationship with Boeing." Protest at 4. In this regard, Valdez contends that Sabreliner's duty under this contract to report to the Air Force potential problems with the KC-135 conflicts with the firm's "fiduciary obligation to its own shareholders to preserve and enhance its business with Boeing." *Id.* Valdez points to newspaper articles and information from Sabreliner's website showing that certain Sabreliner executives used to work at Boeing, and that Sabreliner is primarily a subcontractor which has received subcontracts from Boeing for work on the KC-135. *See* Protest, exh. 4.

The responsibility for determining whether a conflict exists rests with the procuring agency. 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. In making this determination, the FAR expressly directs contracting officers to examine the particular facts associated with each situation, paying consideration to the nature of the contracts involved, and further directs contracting officers to obtain the advice of counsel and appropriate technical specialists before exercising their own sound discretion in determining whether an OCI exists. FAR §§ 9.504, 9.505. In reviewing bid protests that challenge an agency's conflicts determinations, the Court of Appeals for the Federal Circuit has mandated application of the "arbitrary and capricious" standard established pursuant to the Administrative Procedures Act. *See Axiom Res. Mgmt, Inc. v. United States*, 564 F.3d 1374, 1381 (Fed. Cir. 2009). In *Axiom*, the Court of Appeals noted that "the FAR recognizes that the identification of OCIs, and the evaluation of mitigation proposals are fact-specific inquiries that require the exercise of considerable discretion." *Id.* The standard of review employed by this Office in reviewing a contracting officer's OCI determination mirrors the standard required by *Axiom*. In this regard, where an agency has given meaningful consideration to whether an OCI exists, we will not substitute our judgment for the agency's, absent clear evidence that the agency's conclusion is unreasonable. CIGNA Gov't Servs., LLC, B-401068.4; B-401068.5, Sept. 9, 2010, 2010 CPD ¶ 230 at 12.

Here, we find from our review of the record that the contracting officer performed a comprehensive OCI analysis. In performing this analysis, the contracting officer considered the particular facts involved, including the nature of the contract and TO at issue here, and obtained the advice and assistance of technical experts. As noted above, the contracting officer found Sabreliner's performance would not create an OCI. This conclusion was based upon his finding that the purpose of the contract was to assess the structural integrity of aging aircraft (and not to evaluate the underlying

design or manufacture of aircraft built more than 40 years ago), that the amount of independent judgment involved in conducting this analysis was limited by standardized protocols and procedures already in place, and that Sabreliner would subcontract the analysis portion of the work.⁵ Although Valdez disagrees with the contracting officer's conclusions with respect to this work, it does not show that the contracting officer's judgment reflects an abuse of discretion.

With respect to Valdez's objections to Sabreliner's relationship with Boeing, we recognize that the contracting officer's analysis documentation does not detail his review of this relationship. In reviewing the contracting officer's judgment concerning a contractor's possible OCI, we consider the entire record, including the contracting officer's statement to our Office that describes in detail his contemporaneous investigation and evaluation of Sabreliner's relationship with Boeing. This record supports the contracting officer's conclusion that there was nothing unusual in Sabreliner's past relationship with Boeing. That is, Sabreliner's relationship to Boeing has been limited to Sabreliner serving as a subcontractor to Boeing on other work. Although Valdez contends that Sabreliner's desire for future subcontract work with Boeing will compromise Sabreliner's judgments, the possibility of future contracting opportunities—at least as described here—is too remote a financial relationship on which to base an impaired objectivity OCI. See, e.g., L-3 Servs., Inc., B-400134.11, B-400134.12, Sept. 3, 2009, 2009 CPD ¶ 171 at 15. Generally, we look for some indication that there is a direct financial benefit to the firm alleged to have the OCI. See American Mgmt. Sys., Inc., B-285645, Sept. 8, 2000, 2000 CPD ¶ 163 at 5. Such a direct financial benefit is absent here.

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁵ Valdez does not contend that Sabreliner would be evaluating its own work.