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United States General Accounting Office
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Decision

Matter of: Information Spectrum, Inc.

File: B-285811; B-285811.2

Date: October 17, 2000

Claude P. Goddard, Jr., Esq., and Brian P. Waagner, Esq., Wickwire Gavin, for the protester.
David R. Johnson, Esq., and Michael K. Murphy, Esq., Gibson, Dunn & Crutcher, for PricewaterhouseCoopers, the intervenor.
John A. Thompson, Esq., Kathy B. Cowley, Esq., and R. David Gale, Jr., Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Even though the contemporaneous evaluation documentation was inadequate, the General Accounting Office finds, based upon credible testimony consistent with the contemporaneous record, that the agency reasonably evaluated the staffing level proposed by the awardee in its quote for technical support services to be obtained from a Federal Supply Schedule contract, where the record reflects that the agency evaluators considered, in addition to the total number of hours proposed, the awardee's proposed organizational structure, quality of personnel, and balance of hours between tasks.

DECISION

Information Spectrum, Inc. (ISI) protests the award of an order to PricewaterhouseCoopers (PWC) under its Federal Supply Schedule (FSS) contract, pursuant to request for quotations (RFQ) No. N00600-99-Q-2444, issued by the Department of the Navy, for technical support services. ISI contends that the Navy's evaluation of its and PWC's quotes was unreasonable and inconsistent with the terms of the solicitation.

We deny the protest.

The RFQ was issued for the operation and maintenance of the Navy Visibility and Management of Operating and Support Cost (VAMOSC) database for the Naval Center for Cost Analysis (NCCA). Agency Report at 1. The VAMOSC database

tracks the operating and support cost portion of the life cycle costs of various naval weapon systems. Hearing Transcript (Tr.) at 8, 12.

The RFQ included a statement of work (SOW) that listed six tasks, each with subtasks and relevant deliverables, to be performed by the successful contractor.[1] RFQ, amend. No. 1, at 5-8. The RFQ stated that award would be made to "the contractor who provides the best value based on the combination of capability, performance history and price," and listed the following evaluation criteria: technical and management capability, past performance, and cost/price. Id. at 8, 10. The solicitation specified that in determining which quote would be selected for award, technical and management capability would be more important than past performance and cost/price, and that past performance and cost/price would be equal in importance. Id. at 10.

The RFQ requested that vendors submit quotes addressing each of the three evaluation criteria (technical and management capability, past performance, and cost/price). The RFQ provided that the technical and management capability section was to include, at a minimum, an organizational chart, resumes for staff, and a completed copy of the "staffing-task matrix" included in the RFQ. The staffing-task matrix included, on one axis, the tasks and sub-tasks that were detailed in the RFQ's SOW, and required the vendors to provide their proposed labor categories on the other axis, and insert their proposed number of hours in the field. Id. at 8-9.

Vendors were also instructed to provide "hours, rates and prices to perform the tasks and provide the deliverables described in the [solicitation's] SOW," and were instructed here to ensure that their proposed hours were consistent with their staffing-task matrices. Id. at 9. The RFQ added that vendors were to provide "current GSA [General Services Administration] schedule pricing only," and informed vendors that the agency expected "a discount on prices for this requirement if it exceeds the maximum order limitations under [the] schedule." RFQ at 1. With regard to past performance, vendors were instructed to provide "a brief summary . . . of up to five recent projects comparable in scope and complexity to VAMOSC." RFQ, amend. No. 1, at 9.

The agency received quotes from three vendors, including ISI and PWC. The quotes were forwarded to the cognizant technical evaluation team (TET). Contracting Officer's Statement of Fact at 2. The TET evaluated the quotes under the technical and management capability criterion using the following three subcriteria: management and team organizational structure; understanding requirements and reasonableness of proposed hours; and staff knowledge, skills, and abilities. Agency Report, Tab M, Evaluation of Proposals Memorandum.

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[1] For example, "Database Operations & Maintenance" was listed as task 1, and "Database Enhancement & Modernization" as task 2.

PWC's quote was rated as "outstanding" under all three subcriteria, and thus "outstanding" under the technical and management capability criterion. PWC's past performance was also rated as "outstanding." Id. ISI's quote was rated as "marginal" under each of the subcriteria, and thus "marginal" under the technical and management capability criterion. ISI's past performance was rated as "satisfactory." Id. The quote of the third vendor was rated as unacceptable under the understanding requirements and reasonableness of proposed hours subcriterion to the technical and management capability criterion, and thus unacceptable overall, based upon the agency's conclusion that the vendor proposed an "unrealistically low estimate for required labor hours . . . which indicates they do not understand the requirements for managing, operating and enhancing VAMOSC." Id.

In accordance with the terms of the RFQ, the quotes were evaluated for "reasonableness and affordability" under the cost/price criterion. RFQ, amend. No. 1, at 10. In conducting her evaluation of the quotes, the contracting officer states that she calculated the total price for each quote using the information provided by the vendors in their staffing-task matrices. Contracting Officer's Statement of Fact at 4. In this regard, PWC's and ISI's quotes totaled $6,332,052 and $8,073,329, respectively. Id. The quotes were next evaluated for reasonableness and affordability, with the rates included in the quotes (and thus the quotes) being found reasonable "based on their inclusion in the GSA Federal Supply Schedule," and the quotes being found affordable "based on the amount of funds available to the Government for this order."[2] Id.

Based on the foregoing, the agency determined that PWC's highest rated, low priced quote represented "the best value and provided the lowest overall cost to the government," and awarded the delivery order to PWC. Contracting Officer's Statement of Fact at 4; Agency Report, Tab N, Cost/Price Documentation. After requesting and receiving a debriefing, ISI filed this protest.

ISI protests that the agency did not reasonably evaluate PWC's quote with regard to the number of hours proposed by PWC to accomplish the tasks set forth in the solicitation, contending that PWC offered an unacceptably low staffing level. The protester also argues that the agency's evaluation of its quote under the technical and management capability and past performance criteria was unreasonable. The protester also points out that there is little documentation regarding the agency's evaluation of proposals under each of the three evaluation criteria.

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[2] PWC and ISI offered discounts from their FSS rates of 30 and 4 percent, respectively. Contracting Officer's Statement of Fact at 4; Agency Report, Tab N, Cost/Price Documentation.

Under the FSS program, agencies are not required to conduct a competition before using their business judgment in determining whether ordering supplies or services from an FSS vendor represents the best value and meets the agency's needs at the lowest overall cost. Federal Acquisition Regulation (FAR) § 8.404(a); Amdahl Corp., B-281255, Dec. 28, 1998, 98-2 CPD ¶ 161 at 3. However, where, as here, an agency conducts a competition, we will review the agency's actions to ensure that the evaluation and source selection were reasonable and consistent with the terms of the solicitation. Computer Prod., Inc., B-284702, May 24, 2000, 2000 CPD ¶ 95 at 4-5. For such a competition, the agency should contemporaneously document the basis for its determinations regarding its needs and the FSS supply or service that meets those needs at the lowest overall cost in a manner that is adequate to permit meaningful review; however, in appropriate circumstances, our Office will consider post-protest evidence that is a memorialization of the contemporaneous record. Draeger Safety, Inc., B-285366, B-285366.2, Aug. 23, 2000, 2000 CPD ¶ 139 at 4, 6; Delta Int'l, Inc., B-284364.2, May 11, 2000, 2000 CPD ¶ 78 at 4.

We share ISI's concern regarding the lack of contemporaneous written documentation of the evaluation in this case. The contemporaneous record consists primarily of a three-page memorandum that provides little explanation of the agency's evaluation and findings regarding the three vendors' quotes. Agency Report, Tab M, Evaluation of Proposals Memorandum. For example, this memorandum provides only the following with regard to the evaluation of PWC's proposal under the understanding requirements and reasonableness of proposed hours subcriterion:

> We rated PWC as outstanding since their total proposed hours are reasonably close to NCCA's independent estimate. Their balance of hours between major tasks is also close to NCCA's estimate. They also manage resources conservatively by limiting the hours of high priced senior staff and use lower priced junior staff for most routine work.

This description of the reasons underlying the agency's rating of PWC's quote under this subcriterion is inadequate because PWC's proposed total of 19,109 hours to perform the work does not on its face appear "reasonably close" to the agency's independent government estimate (IGE) of 26,040 hours. Agency Report, Tabs J & P, Staffing-Task Matrix of Labor Hours for Navy VAMOSC Support and NCCA IGE for VAMOSC Support. The description of PWC's proposal under this subcriterion is also questionable because the IGE does not provide for a comparison of the "balance of hours between major tasks." That is, the IGE sets forth the hours estimated by labor category, but not by task. Agency Report, Tab P, NCCA IGE for VAMOSC Support.

As a result of the questions raised by the rather limited record of the agency's evaluation, our Office held a hearing--at which the contracting officer and two members of the TET testified--in order to clarify the thoughts and considerations of

the TET and contracting officer at the time of the evaluation of the vendors' quotes and source selection.

With regard to the evaluation of the number of hours proposed by the vendors, one evaluator testified that, in the TET's view, the number of hours associated with the performance of past contracts for the operation and maintenance of the VAMOSC database was of limited relevance, given the degree to which the tasks to be performed here differ from those previously performed. Tr. at 14, 143-44, 187, 194-95. The evaluator explained, for example, that the RFQ's task 2 (Database Enhancement & Modernization) had not been previously solicited, and that while the performance of this task will take some time, the net result should be to reduce the number of hours required for overall database operation and maintenance. Tr. at 14, 18-20, 188-89, 192, 194-95.

Accordingly, the TET used an "engineering build-up" approach to arrive at an estimate of the number of hours that it would take to accomplish each of the six tasks set forth in the RFQ. Tr. at 109-10, 155, 187. In this regard, the TET developed its IGE by first constructing what it believed to be an "efficient organization," comprised of nine labor categories, to perform the tasks. Tr. at 109-10, 155-56. The TET next determined the number of hours required per labor category, by estimating how many personnel were needed per labor category and whether the personnel were needed on a full-time basis. According to the agency evaluator, the TET based its estimate of the number of hours required per labor category, in part, on its experience with contractor personnel who had performed work on the VAMOSC database and other databases. Tr. at 132-33; 155-56. The agency ultimately estimated that it would take contractor personnel 26,040 hours per year to accomplish the tasks set forth in the RFQ, based upon an organization comprised of the equivalent of 14 full-time personnel.[3] Agency Report, Tab P, NCCA IGE for VAMOSC Support. The agency evaluator emphasized that the IGE "is an estimate," adding that while the IGE "is the way the evaluation team saw a typical organizational setup to accomplish the work," the TET recognized that it would not receive quotes depicting these precise labor categories or number of hours.[4] Tr. at 196.

The evaluator explained that in determining the reasonableness of the vendors' proposed hours under the understanding the requirements and reasonableness of proposed hours subcriterion, the TET considered, in addition to the total number of hours proposed, each vendor's proposed organizational structure, quality of

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[3] The IGE assumed that a full-time position totaled 1,860 hours per year. Agency Report, Tab P, NCCA IGE for VAMOSC Support; Tr. at 110, 134.

[4] The protester, whose quote totaled 40,078 hours for the base year, and 36,390 hours for each of the option years, does not contend that the agency's IGE was flawed. Agency Report, Tab F, ISI's quote.

personnel proposed, and balance of hours between tasks. Tr. at 118, 122, 133, 197. With regard to PWC's quote, the TET found that PWC's proposed organizational structure promoted efficiency because, for example, it clearly set forth lines of responsibility from PWC's proposed project manager down through each of its proposed team leaders to each of the team members, while allowing the appropriate contractor personnel to "take[] ownership of their respective functional areas." Agency Report, Tab M, Evaluation of Proposals Memorandum; Tr. at 81-85, 100-01, 103. The TET thus rated PWC's quote under the understanding the requirements and reasonableness of proposed hours subcriterion as "outstanding." Agency Report, Tab M, Evaluation of Proposals Memorandum.

The TET also evaluated PWC's quote as "outstanding" under the staff knowledge, skills and abilities subcriterion to the technical and management capability criterion. Most important here, the TET determined, based upon its review of the resumes of the individuals that PWC was proposing for the labor categories identified, that PWC's proposed personnel were more capable than the quality of staff that the agency had considered in formulating its IGE, and accordingly, that these individuals would be able to accomplish the work required in less time than the TET had estimated. Tr. at 133, 161, 180, 197. The TET noted in this regard that:

> PWC has several former Navy officers who are experienced with Navy weapons systems, Navy management and operations and Navy cost and budget data systems. PWC's proposed IT [information technology] staff is well educated in modern IT practices and has recent experience relevant to the VAMOSC database.

Agency Report, Tab M, Evaluation of Proposals Memorandum; see Tr. at 225.

For example, PWC's proposed project manager has a master's degree in engineering science and mechanics, and a bachelor's degree in engineering science and mechanics with a minor in mathematics. Agency Report, Tab H, PWC's quote, at R-1; Tr. at 203. This individual is also very experienced, having served, for example, as the project manager for the NCCA VAMOSC Improvement Project. Agency Report, Tab H, PWC's quote, at R-1; Tr. at 205-06. The evaluator explained that in this position, PWC's proposed project manager had headed "an independent verification and validation effort performed on the VAMOSC database," and that the proposed project manager's "firsthand knowledge of the weaknesses inherent in the current VAMOSC database" gained as the result of this effort was especially relevant to performance of task 2 (Database Enhancement & Modernization). Tr. at 211-12.

By way of another example, the evaluator pointed out that a proposed member of PWC's staff had a 24-year career in the Navy, during which the individual served as the comptroller of the Long Beach Naval Shipyard, and attained the rank of captain.

Tr. at 228-31; Agency Report, Tab H, PWC quote, at R-4. The evaluator explained that, in the TET's view, this individual's experience was highly relevant "in that he understands the workings of the Navy . . . how ships and other weapons systems are operated and maintained within the Navy [and the] . . . data systems that are used by U.S. Navy personnel."[5] Tr. at 229. The agency thus reasonably determined that PWC's proposed personnel were more capable and experienced than those envisioned when the agency prepared its IGE.[6]

The TET also reasonably found that PWC's completed staffing-task matrix reflected what the agency believed was the appropriate balance of hours between tasks. Agency Report, Tab M, Evaluation of Proposals Memorandum; Tr. at 122-23, 175, 219. Specifically, the evaluator testified that in considering PWC's quote, the TET "looked at PWC's array of hours across the different tasks," and concluded that PWC's staffing-task matrix reflected PWC's understanding, consistent with the agency's view, that task 2 (Database Enhancement & Modernization) would require more senior, rather than junior, staff hours to accomplish.[7] Tr. at 122-23.

The protester contends that the testimony elicited at the hearing that constitutes the primary basis for determining the selection is reasonable "is merely a post hoc rational[e] prompted by a desire to prevail in this protest litigation," and thus should be rejected by our Office. Protester's Post-Hearing Comments at 4. In support of this position, the protester points out various inconsistencies in the testimony.

As explained below, although we agree with the protester that there were some inconsistencies in the testimony, we find that, when the record is considered as a whole, the testimony was credible and generally consistent and did not contradict any of the determinations set forth in the contemporaneous written record, and that the inconsistencies are relatively minor.

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[5] The protester does not challenge the agency's evaluation of PWC's quote under the staff knowledge, skills and abilities subcriterion as outstanding.

[6] In contrast, ISI's quote was evaluated under the staff knowledge, skills and abilities subcriterion as marginal "primarily because their management and senior staff has limited experience outside their specific area of expertise," and because the agency found that "[t]he education of their IT staff is not recent nor extensive in the areas required for successful operation and maintenance of VAMOSC." Agency Report, Tab M, Evaluation of Proposals Memorandum; see Tr. at 198-205, 213-15; 221-22, 231-33; 235; 250.

[7] In contrast, the TET found that ISI had "too many management and senior staff hours for routine processing and IT functions, and not enough for functional and IT improvements and enhancements." Agency Report, Tab M, Evaluation of Proposals Memorandum.

For example, the protester points out that the evaluator's testimony regarding the TET's development of the IGE was inconsistent, in that the evaluator at times indicated that the TET had performed an engineering build-up to develop the IGE, and at other times indicated that the IGE was based upon the agency's experience with contractor personnel who had performed work on the VAMOSC and other databases. Protester's Post-Hearing Comments at 8.

In our view, it appears clear from the evaluator's testimony that while the TET developed its IGE primarily through an engineering build-up, it also considered its experience with other contractors. That is, as explained by the evaluator at the hearing and mentioned previously in this decision, the TET performed an engineering build-up by constructing what it believed to be an efficient organization to perform the tasks, but also considered its experiences with contractor personnel in estimating the number of hours required for each labor category it identified in the organization. Tr. at 109-10, 132-33 155-56, 187. In our view, the evaluator's testimony in this regard was consistent and credible.

The protester contends that the evaluator's testimony regarding the development of the IGE was inconsistent regarding the similarity of the work solicited through this RFQ and that required under the predecessor contract. In this regard, the protester points out that the evaluator first testified that the work solicited was essentially the same as that contracted for previously, except for the addition of the work required under task 2 (Database Enhancement & Modernization), and the effect that the performance of task 2 would have on task 1 (Database Operations & Maintenance). Protester's Post-Hearing Comments at 7-8. The protester next points to the evaluator's response to a question regarding the TET's failure to use historical data in developing its IGE, where the evaluator stated that the work being solicited under the RFQ "is not analogous to the prior work. It is different." Tr. at 187.

Again, in our view the evaluator's testimony here can readily be reconciled and does not cast doubt on the credibility of the witness or the veracity of his testimony. That is, while the work being solicited under the RFQ is similar to that contracted for previously, in that it generally requires the operation and maintenance of the VAMOSC database, it is different in that, as mentioned previously, it requires that the VAMOSC database be enhanced and modernized, which will, according to the record (and not contested by the protester), have a substantial effect on the operation and maintenance of the VAMOSC database.

The protester argues that the evaluator's testimony regarding the written statement in the record that PWC's "balance of hours between major tasks is . . . close to NCCA's estimate" must also be rejected because, in the protester's view, it was unreasonable. Agency Report, Tab M, Evaluation of Proposals Memorandum; Protester's Post-Hearing Comments at 13-15. The protester contends that ISI's balance of hours between tasks 1 and 2 is relatively close to that proposed by PWC, such that "there is no logical basis to contend that PWC's proposal matched the

evaluator's supposed 'mental model' but that ISI's didn't." Protester's Post-Hearing Comments at 14. The protester adds that "there is no reasonable basis in light of these facts for the Navy's conclusion that PWC understood the requirement but ISI didn't." Id.

As mentioned previously, the IGE included in the written record does not provide for a comparison of the balance of hours between major tasks. When questioned as to the meaning of this statement, the evaluator testified that the written statement was "misleading" because the agency had never prepared a written staffing/task matrix setting forth an estimate of the spread of hours among the six tasks. Tr. at 168, 170-71, 217-18. The evaluator nevertheless testified, we think credibly, that the TET, as indicated by the statement, did have a "mental model of how the hours would be allocated," and that according to this model, "the hours for senior staff on task 2 should be greater than the hours for senior managers on task 1." Tr. at 218. As stated previously, while the TET found that PWC's balance of hours reflected the TET's estimate, ISI's did not because, in the TET's view, ISI had "too many management and senior staff hours for routine processing and IT functions, and not enough for functional and IT improvements and enhancements." Agency Report, Tab M, Evaluation of Proposals Memorandum.

We also do not agree with the protester that the evaluator's testimony should be rejected as a "post hoc rationalization." The evaluator's testimony is consistent with the contemporaneous record, in that the contemporaneous record references "estimates" which, while not written, evidently existed in some form, given the written conclusions of the TET. The evaluator's testimony in this regard was also internally consistent throughout the hearing. Additionally, and contrary to the protester's claim, our review of the record confirms the agency's view that with regard to the performance of task 2, PWC's quote set forth a greater absolute number of hours, and a far greater percentage of the total number of hours proposed, than did ISI in its quote. Agency Report, Tabs F & H, ISI's and PWC's Staffing Task Matrices of Labor Hours for VAMOSC Support.

In sum, we find credible the testimony provided at the hearing regarding, among other things, the agency's consideration of the hours proposed by PWC for the performance of the work. Our conclusion is based upon the hearing official's observations of the demeanor of the witnesses, and our view that the testimony was generally consistent and did not contradict any of the determinations set forth in the contemporaneous written record. We conclude that the testimony at the hearing reflected the agency's contemporaneous, but undocumented, analysis of PWC's quote, and accordingly, decline the protester's request that we reject the testimony and not consider it in rendering this opinion. See Draeger Safety, Inc., supra, at 6; NWT, Inc., PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

Based on our review of the record, including the contemporaneous evaluation documentation, the parties arguments and explanations, and testimony elicited at the hearing, we do not find unreasonable the agency's determination regarding the acceptability of the number of hours proposed by PWC to perform the VAMOSC effort, or its evaluation of PWC's quote as "outstanding" under the understanding requirements and reasonableness of proposed hours subcriterion. As the above discussion indicates, the TET's evaluation of PWC's quote was thoughtful in that it took into consideration a number of aspects of PWC's quote, that is, its proposed organizational structure, quality of personnel, and balance of hours between tasks. The protester, while contending vigorously that our Office should not consider the testimony of the agency personnel, has otherwise done little more than disagree with the merits of the agency's assessment.[8]

The remainder of ISI's protest challenges the agency's evaluation of its quote as marginal under each of the subcriteria to the technical and management capability criterion, and as satisfactory under the past performance criterion. However, in light of our finding that the TET's evaluation and the contracting officer's consideration of PWC's quote with regard to the number of hours proposed were reasonable, and the lack of any other challenge to the evaluation of PWC's quote, we need not consider these protest contentions. This is so because even if we were to find that ISI's quote should have been rated as outstanding under each of the evaluation subcriteria and criteria, PWC's quote is $1.74 million less, or more than 27 percent lower, than ISI's quote. Prejudice is an essential element of a viable protest, and here, there is no

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[8] The protester argues that the contracting officer did not have a reasonable basis to select PWC for award given that the contracting officer thought that the TET had developed a written estimate that would permit a comparison of the balance of hours between tasks. Protester's Post-Hearing Comments at 13; Tr. at 321. Based upon our finding that the TET's evaluation of PWC's quote was reasonable, including its evaluation of PWC's proposed balance of hours, we fail to see, and the protester has not explained, how the contracting officer's selection decision was adversely affected by the lack of a written estimate in this regard.

possibility of prejudice regarding the remainder of the issues given the price difference between the quotes.[9] See Electro-Voice, Inc., B-278319, B-278319.2, Jan. 15, 1998, 98-1 CPD ¶ 23 at 7.

The protest is denied.

Anthony H. Gamboa
Acting General Counsel

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[9] The protester also contends that "[t]he contract issued here" violates FAR §16.601(c) which states that a time-and-materials contract may be used "only if the contract includes a ceiling price that the contractor exceeds at its own risk." Supplemental Protest at 3. The agency points out that PWC's quote states that "under no circumstances will price exceed the total dollar value stated," and that while PWC's quote was not made part of the "contract" issued here, it has since issued an administrative modification to PWC that confirms that PWC actual price will not exceed the total dollar value stated in its quote. Supplemental Agency Report at 8; Agency Submission, Oct. 3, 2000 at 1-2, Attached Amend. of Solicitation/Modification of Contract. We fail to see how the agency's actions here prejudiced the protester, or "undermine[] the integrity of the bidding process" as asserted by the protester, and thus will not consider the issue further. Protester's Supplemental Comments at 3.