



Comptroller General
of the United States

REDACTED VERSION'

Washington, D.C. 20548

Decision

Matter of: Information Spectrum, Inc.

File: B-256609.3; B-256609.5

Date: September 1, 1994

Joel R. Feidelman, Esq., Anne B. Perry, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. William W. Goodrich, Jr., Esq., Thomas W. A. Barham, Esq., and John J. O'Brien, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for Value Systems Services, a Division of VSE Corporation, an interested party. Ivana Sustersic, Esq., and Kathy Cowley, Esq., Department of the Navy, for the agency. Mary G. Curcio, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that procuring agency unreasonably evaluated protester's proposal as having a high performance risk is denied where the decision is based on the agency's reasonable determination that the protester's proposed salaries were low and its proposed uncompensated overtime was excessive, thus creating a risk that it would be unable to retain qualified personnel.
2. Procuring agency reasonably found that protester's proposed use of 10 subcontractors created a critical deficiency in the protester's management proposal where solicitation specifically stated that proposal would be downgraded in evaluation for proposing a high number of subcontractors.
3. Protest that agency treated offerors unequally and evaluated awardee's proposal unreasonably based on protester's assertion that both proposals contained similar deficiencies is denied where there were significant differences between the proposals which warranted the different evaluation results.

The decision issued on September 1, 1994, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletion are indicated by "[deleted]."

4. Agency properly awarded contract without holding discussions with the protester where solicitation indicated agency's intention to award the contract without discussions and the agency reasonably determined that discussions were not necessary because the protester's proposal contained critical deficiencies and the awardee's proposal contained no deficiencies and was reasonably priced.

5. Protest that agency improperly awarded contract at a price \$15 million greater than that offered by the protester is denied where the agency reasonably determined that the protester's price was unrealistic and that the awardee's technically superior and realistically priced proposal was worth the additional expense.

DECISION

Information Spectrum, Inc. (ISI) protests the award of a contract to Value Systems Services, a division of VSE Corporation (VSS), under request for proposals (RFP) No. N00019-92-R-0051, issued by the Naval Air Systems Command (NAVAIR) for the acquisition of logistics support services to support Navy and Marine avionics weapons systems. ISI asserts that the Navy failed to follow the stated evaluation criteria, unreasonably evaluated its proposal, did not treat the offerors equally, improperly failed to hold discussions, and failed to perform a price/technical tradeoff.

We deny the protest.

BACKGROUND

The RFP, issued on June 30, 1992, contemplated the award of an indefinite-delivery, indefinite-quantity contract for a base year and four 1-year options. Offerors were required to submit a technical proposal and a price proposal. The technical proposals were to be evaluated against the following four factors: Personnel, Sample Tasks, Management Plan/Manpower Utilization Matrix, and Corporate Experience. The personnel and sample tasks factors were equal in weight with the remaining two factors listed in descending order of importance. Regarding price, the solicitation listed the labor categories and the estimated number of hours of each labor category that would be required to perform the contract. Offerors were required to propose fully burdened, fixed hourly rates for each labor category listed in the solicitation. Prices were to be evaluated by multiplying the proposed rate for each labor category by the estimated number of hours for the category set forth in the RFP. The prices were also to be evaluated for realism. The RFP advised offerors that a price proposal determined to be unrealistic would be assessed as having high performance

risk. The solicitation provided that the price realism evaluation:

"may include consideration of actual salaries being paid for similar work under other NAVAIR contracts, salaries being paid for comparable civil service employees, excessive amounts of competitive time (uncompensated overtime), DCAA [Defense Contract Audit Agency] audit information, and evaluation of compensation for professional employees."

The solicitation advised offerors that the government intended to evaluate proposals and award the contract without holding discussions except for discussions conducted for the purpose of minor clarifications. The award was to be made to the offeror whose proposal was considered to be the most advantageous to the government; in reaching the award decision, the technical factors were considered slightly more important than price.

Six offerors including the protester and the awardee responded to the solicitation. The technical proposals were evaluated by a technical evaluation team (TET) and the cost proposals were evaluated by a cost evaluation team (CET). The TET evaluated the technical proposals by assigning each factor, and the overall technical proposal, an adjectival rating of outstanding, better, acceptable, marginal, or unacceptable. The TET rated VSS better for sample tasks, acceptable for personnel, better for management plan and corporate experience, and better overall. ISI was rated better for sample tasks, acceptable for personnel and management plan, better for corporate experience, and acceptable overall.

In evaluating the price proposals, the CET compared the proposed salaries to those being paid to comparable civil service employees, compared the proposed rates to those being paid under similar contracts, and considered proposed compensation plans, the amount of uncompensated overtime the offerors proposed, and information provided by the DCAA. The CET found that ISI proposed salaries that were too low, expected its employees to work an excessive amount of uncompensated overtime, and offered a compensation plan that did not offset these unfavorable working conditions. As a result, the CET rated ISI's price proposal as unrealistic with a high performance risk. VSS' price proposal was rated realistic.

The reports prepared by the CET and TET were forwarded to the procurement review board (PRB), which was responsible for assessing risk, reducing technical scores where necessary, and recommending an offeror for award to the

source selection official (SSO) who was responsible for selecting the awardee. The PRB found that ISI's low proposed salary, excessive uncompensated overtime, and average compensation plan created a risk that ISI would be unable to retain a qualified work force. The PRB also determined that the protester's proposed use of 10 subcontractors was excessive for this effort and was a critical deficiency in the ISI management proposal. The PRB also found that ISI's proposed use of a part-time project manager was a critical deficiency in its management plan. The PRB also agreed that ISI's price proposal was unrealistic and created a high performance risk. On the other hand, the PRB found that VSS submitted a better technical proposal with no critical deficiencies and a realistic price proposal. As a result, the PRB recommended VSS for award.

The SSO agreed with the PRB's recommendation. In doing so, the SSO considered the evaluations performed by the TET, the CET, and the PRB. The SSO also independently evaluated the proposals. The SSO found that the low salaries and excessive uncompensated overtime reflected in ISI's proposal created a high risk that ISI would be unable to retain its personnel in the high cost Washington, D.C., area. The SSO also agreed that the proposed 10 subcontractors in conjunction with a part-time project manager was a critical deficiency in the management plan, and that ISI's proposed price was unrealistic and created a high performance risk. The SSO agreed with the PRB that VSS offered a sound technical proposal and a realistic price proposal and that VSS offered the best value to the government. As a result, VSS was selected for award.

PROTEST OVERVIEW

ISI, the incumbent contractor for these services, asserts that the Navy used performance risk as the primary basis to eliminate its proposal from consideration for award. ISI protests that since performance risk was not a stated evaluation criterion, the Navy improperly deviated from the RFP evaluation scheme in awarding the contract to VSS. ISI argues that in any case the Navy's conclusion that ISI's proposal represented a high performance risk was unreasonable because that conclusion was based on an erroneous evaluation of its proposal. Specifically, ISI asserts that it proposed the same salaries it is paying under its incumbent contract for the same services, it proposed that its employees work the same number of hours of uncompensated overtime that they are working under the incumbent contract, and that its proposed compensation plan is better than the compensation plan it offered under the incumbent contract. ISI also protests the Navy's conclusion that ISI's management plan contained a critical deficiency

because ISI proposed to use 10 subcontractors and a part-time project manager. ISI further asserts that to the extent there were deficiencies in its proposal, the Navy improperly failed to hold discussions with the firm, that the Navy did not treat VSS and ISI equally, that the award decision is improper because the agency failed to perform an adequate price/technical tradeoff, and that the SSO had no foundation for his source selection decision.¹

As we discuss below, the Navy followed the stated evaluation criteria in awarding the contract and reasonably determined that ISI proposed low salaries and excessive uncompensated overtime which resulted in an unrealistic price proposal and a high performance risk. We also conclude that the Navy reasonably evaluated ISI's management plan and VSS' proposal, treated offerors equally, correctly awarded the contract without holding discussions, and performed a proper price/technical tradeoff in determining to award the contract to VSS despite its higher price.

FAILURE TO FOLLOW EVALUATION CRITERIA

ISI asserts that the Navy's primary basis for determining that the ISI proposal did not provide the best value to the government was its determination that ISI's price and management proposals presented a high performance risk. ISI protests that since performance risk was not listed as a significant evaluation factor in the solicitation, the Navy improperly used performance risk to eliminate ISI's proposal from consideration for award.

In response, the Navy argues that performance risk was not an unstated evaluation factor. Rather, asserts the Navy, it properly considered the technical performance risk associated with each offeror's price proposal as part of its price realism assessment. In this regard, the Navy points out that the solicitation specifically provided that a price proposal that was evaluated as unrealistic would result in a high performance risk rating. The Navy further points out that section M-1(2) of the solicitation provides that in

¹The Navy and ISI also disagreed over whether ISI agreed to comply with a solicitation provision that required offerors to perform the contract within 15 miles of the Pentagon unless otherwise specified. The Navy asserted that it could not award the contract to ISI without holding discussions since ISI in its proposal did not clearly agree to comply with this provision. ISI argues that it did agree to comply with the provision. Since we have otherwise concluded that the Navy properly evaluated ISI's proposal and awarded the contract without holding discussions, we have not addressed this issue.

reaching the award decision, "[s]trengths and weaknesses of the offeror's proposal and performance risks will be assessed in determining which proposal is most advantageous to the Government."

Department of Defense contracting agencies are required by statute to set forth, at a minimum, all significant evaluation "factors (and significant subfactors) . . . (including cost or price, or price-related factors, and non-cost or non-price related factors)" and their relative importance. 10 U.S.C. § 2305(a)(2)(A) (Supp. V 1993). Agencies, however, are not required to specifically identify each element to be considered during the course of the evaluation where a particular, not specifically identified, element is intrinsic to the stated factors or subfactors. Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

Here, the Navy did not use risk as a separate evaluation factor. That is, unlike the situation in H.J. Group Ventures, Inc., B-246139, Feb. 19, 1992, 92-1 CPD ¶ 203, cited by the protester, the Navy did not eliminate ISI's proposal based on an assessment of performance risk which was unrelated to the specific evaluation factors provided in the solicitation. Rather, the agency considered risk in conjunction with the specific evaluation factors listed in the solicitation and its determination of which proposal offered the best value to the government. In this regard, consideration of the risk involved in an offeror's proposed approach is inherent in the evaluation of proposals. Communications Int'l Inc., B-246076, Feb. 18, 1992, 92-1 CPD ¶ 194. Thus, the agency's consideration of risk in connection with ISI's plan to use 10 subcontractors and a part-time project manager and with regard to personnel retention was not improper. Moreover, since the RFP provided that performance risk would be considered in connection with proposals deemed unrealistic as to price, the Navy's risk assessment in this regard could not be viewed as contrary to the evaluation criteria. In short, we have no basis to conclude that the agency improperly considered risk in reaching its determination that ISI's proposal did not offer the best value to the government.

PROPOSAL EVALUATION

Personnel Factor and Price Realism/Performance Risk Assessment

The RFP required offerors to submit resumes for all personnel being proposed for the positions of Program Manager, Senior Logistics Manager, and Senior Analyst. The solicitation provided that the evaluation of proposals under the personnel factor would be based on the extent to which

personnel resumes submitted by the offeror reflected the education and experience required by the labor category descriptions. The RFP also provided that annual salaries would be evaluated to verify the offerors' clear understanding of the work to be performed and their capability to obtain and keep suitably qualified personnel to meet mission objectives. The solicitation advised that unrealistic annual salaries and/or unrealistic fully burdened hourly rates would result in a reduced technical rating. With regard to price, the RFP required offerors to propose fully burdened, fixed hourly rates for each required labor category and to demonstrate support for the proposed rates. The solicitation provided that prices would be evaluated for realism including consideration of "actual salaries being paid for similar work under other NAVAIR contracts, salaries being paid for comparable civil service employees, excessive amounts of competitive time, DCAA audit information, and evaluation of compensation for professional employees. . . ." The RFP also advised that a price proposal that was determined to be unrealistic would be assessed as having high performance risk.

After reviewing the cost and technical evaluation information, the PRB and the SSO determined that for the personnel factor ISI's proposal presented a risk that it would be unable to retain its personnel because it proposed low salaries, excessive uncompensated overtime, and only an average compensation plan. The agency used this same information to conclude that ISI's proposed price was unrealistic and presented a high performance risk. ISI argues that the agency unreasonably determined that ISI proposed low salaries and excessive uncompensated overtime. ISI also asserts that it offered a very beneficial compensation package. ISI concludes that because the agency's evaluation of its proposal in these areas was unreasonable, the agency's conclusion that ISI's proposal presented a high performance risk, which was based on its evaluation of these areas, also is unreasonable.

In reviewing protests against the propriety of an agency evaluation of proposals, it is not the function of our Office to independently evaluate those proposals. Rather, the determination of the relative desirability and technical adequacy of the proposal is primarily a matter of agency discretion which we will not disturb unless it is shown to be without a reasonable basis or inconsistent with the evaluation criteria listed in the RFP. Axion Corp., B-252812, July 16, 1993, 93-2 CPD ¶ 28. A protester's disagreement with the agency's evaluation is not itself sufficient to establish that the agency acted arbitrarily. ASR Management & Technical Servs., B-252611, July 15, 1993, 93-2 CPD ¶ 22. Based on our review of the record, we

conclude that the Navy reasonably evaluated ISI's proposal under the personnel and price realism factors.

Proposed Salaries

In determining that ISI's proposed salaries were too low for retention of a qualified work force, the Navy compared ISI's proposed salaries with the salaries for comparable civil service employees; the average fully burdened rate ISI proposed, with ISI's average fully burdened rate on two other contracts (N00019-88-D-0076 and N00140-92-C-8004) which ISI was performing; ISI's proposed fully burdened rates for certain key labor categories with those being offered on other recently awarded contracts; ISI's proposed average, fully burdened, hourly labor rate with the independent government cost estimate; ISI's average fully burdened labor rate with that proposed by the awardee; ISI's proposed average fully burdened rates for the Senior Logistics Manager and the Senior Analyst with those on ISI's incumbent contract; and ISI's proposed average direct rate (salary) with that on ISI's incumbent contract.

ISI challenges each basis which the Navy considered in determining that ISI's proposed salaries were so low as to create a risk that ISI would be unable to retain qualified personnel to perform the contract. ISI also generally asserts that the Navy's decision that its proposed salaries are lower than the salaries under its incumbent contract is unreasonable because, according to ISI, it proposed the same personnel at the same salaries as it is using under its incumbent contract, with an escalation factor.

While we have considered each of ISI's arguments, our role here is not to determine if each individual finding of the Navy concerning ISI's proposed salaries is accurate. Rather, our role is to determine whether the Navy had a reasonable basis for concluding that ISI's proposed salaries would create a risk that ISI would be unable to retain its work force. Based on our review of the record, we conclude below that the Navy properly determined that ISI's rates were below civil service rates, were below the awardee's rates, were below the government's estimate, and were below rates on recently awarded similar contracts. Based on these conclusions, we find that the Navy had a reasonable basis for determining that ISI's salaries were sufficiently low as to create the risk that ISI would be unable to retain its personnel.

The CET compared ISI's proposed salaries with the salaries for comparable civil service employees and found that for all key labor categories, 71 percent of ISI-proposed personnel were being compensated at least one General Schedule (GS) level below comparable civil service

employees, and of that 71 percent, 38 percent were being compensated at least two GS levels below comparable civil service employees. ISI asserts that the Navy has not demonstrated that the civil service salaries it compared ISI's salaries against were for similar employees performing comparable work.

The record shows that the Navy assigned a GS level to each key employee category and then compared the salaries proposed by ISI for employees in that category to the applicable salary for the GS level. While the Navy hasn't explained why it assigned the particular GS levels it did, the protester has not shown, or even argued, that the GS levels assigned by the Navy to particular labor categories were incorrect. Since ISI had access to the GS grade assigned to each labor category and the grades assigned to its employees within those labor categories, ISI could have argued that the Navy erroneously classified any employee. We have no basis to conclude that the Navy's comparison of ISI's proposed salaries against GS salary rates was unreasonable.

ISI also complains that the Navy improperly compared ISI's proposed average hourly labor rates for certain key employees to the average hourly rates that were offered for employees in these labor categories on recently awarded contracts. The Navy found that ISI's proposed fully burdened rates for certain key labor categories were below the rates being offered on other recently awarded contracts. Specifically, ISI proposed \$[deleted] for the Program Manager, while on two recently awarded contracts, the rates for the Program Manager were \$44.33 (N00019-93-D-0184) and \$52.02 (N00019-94-D-0060); for the Senior Logistics Manager, ISI proposed \$[deleted] compared to a rate of \$[deleted] on contract N00019-93-D-0075; and for the Senior Analyst, ISI proposed a fully burdened rate of \$[deleted] while on two recently awarded contracts the rates for the Senior Analyst were \$37.45 (N00019-94-D-00300) and \$38.71 (N00019-94-0060). While ISI agrees that the labor categories that were compared are the same, ISI asserts that the contracts are for different end items and that the experience required is different and therefore the Navy could not reasonably compare ISI's rates against these contracts. ISI further states that two of the contracts were awarded as small disadvantaged business (SDB) set-asides and argues that SDB set-asides have higher-burdened rates, so that it is improper to compare its rates to rates on SDB set-aside contracts.

We disagree with ISI's analysis. Since the labor categories are the same, and ISI has not pointed to anything which demonstrates that the rates should be different based on the end items involved in the contracts, the Navy could

reasonable compare ISI's proposed rates against the rates in these contracts. Similarly, we have no basis to question the agency's decision to compare ISI's proposed rates to those being paid to employees in comparable labor categories who are working on SDB set-aside contracts. While ISI argues that such set-aside contracts are generally higher in cost than non-set-aside contracts, we have no reason to believe, and ISI has not demonstrated, that this is because the employees working on those contracts are being paid more.

The Navy also compared ISI's proposed, average fully burdened rate of \$[deleted] to the independent government cost estimate of \$30.08 and VSS' proposed fully burdened rate of \$[deleted]. While ISI questions whether the government's estimate and VSS' proposed average, fully burdened labor rates are realistic, they are in line with each other and at the midpoint of the offers received by the Navy. In any case, it is reasonable to assume that higher rates will be less likely to result in a potential loss of employees.

UNCOMPENSATED OVERTIME

The Navy found that ISI proposed to have its employees work 47 hours per week including 7 hours of uncompensated overtime. The Navy concluded that 7 hours of uncompensated overtime is excessive, and in part, based on that conclusion, decided that ISI would not be able to retain employees assigned to the contract. The Navy reached its conclusion that ISI would require its employees under the contract to work 47 hours per week despite the representation in the ISI proposal that its employees would work 45 hours per week because the Navy found that ISI understated its indirect hours (hours attributable to leave and holidays). Thus, the Navy computed that for ISI to recover the salary it proposed for any of its key personnel, those personnel would be required to work 45 hours per week for 52 weeks per year--a full year.² When the Navy factored leave and holidays into the calculation, the employees would be required to work 47 hours per week in order to work all the hours required. More specifically, in its proposal, ISI included 208 indirect hours for each employee to account for leave and 10 paid holidays. Once 80 hours are subtracted from the 208 hours to account for the 10 holidays, there are 128 indirect hours or 16 days remaining for leave. Therefore, ISI based its proposal on each of its employees being entitled to 16 days per year of leave. However, according to ISI's compensation plan,

²This 45 hours includes 40 hours of direct time plus 5 hours of proposed uncompensated overtime.

employees who have worked for ISI for 5 years or less earn 16 days per year of leave. Employees who have worked for ISI between 6 and 10 years earn 21 days per year of leave and those who have worked for ISI more than 10 years earn 26 days per year of leave. Thus, ISI's proposal only accounted for the correct number of hours for employees who worked for ISI for less than 6 years. When the Navy factored in the leave for those employees who worked for ISI for 6 or more years, the Navy computed that in reality the employees would be required to work 47 hours per week in order to take their leave and still work the number of hours ISI proposed them for.

ISI protests that it proposed to have its employees work 45 hours per week, the same number of hours that it is requiring its employees to work on the incumbent contract and an amount the Navy agrees is not excessive. In this regard, ISI stresses that its proposal specifically states that it is proposing 5 hours per week of uncompensated overtime. ISI explains that it did not understate its indirect hours. Rather, according to ISI, its proposal is based on the number of hours of leave that employees are actually expected to take instead of the number of hours they are entitled to. Thus, for example, ISI states that while its senior employees may earn 26 days per year of leave, last year they took only 14 days of leave.

Proposals must generally be evaluated solely on the basis of the information provided in the proposal. Monopole, S.A., B-252745, July 23, 1993, 93-2 CPD ¶ 51. In its proposal, ISI did not explain the basis for the number of indirect hours it proposed for each employee despite the fact that the solicitation stated that the Navy would evaluate uncompensated overtime. Moreover, while ISI may have based its proposal on its expectation that its employees would take less leave than they earned, the fact is, unless ISI misrepresented its compensation plan, the employees could in fact take the amount of leave that they earned. In such event, any employee doing so would in fact be required to work more than 45 hours per week to account for his or her salary and to put in the number of hours that he or she was proposed to work under the contract. Accordingly, based on the proposal as submitted, the Navy could reasonably conclude that ISI expected its employees to work 47 hours per week.

Compensation Package

The Navy found that the compensation plan ISI offered its employees was adequate but did not have any outstanding features to compensate for the low salaries and the number of hours of uncompensated overtime that the employees were expected to work. ISI disagrees with this conclusion.

Specifically, ISI states that its plan has one leave account rather than separate accounts for sick leave and annual leave which provides more vacation time for employees who do not use their leave for illness and which allows employees to accrue more leave time for which they are entitled to be paid upon termination. ISI further points out that its plan includes long-term care, a stop smoking program, and a profit sharing plan that has paid employees about 2 percent of their salaries since 1990. ISI concludes that its current compensation package clearly benefits its employees and provides outstanding benefits to the extent they are necessary to compensate for its salaries and uncompensated overtime.

The protester's disagreement with the procuring agency over what incentives are necessary to retain a qualified work force does not demonstrate that the agency's conclusions are unreasonable. Service Ventures, Inc., B-233318, Feb. 15, 1989, 89-1 CPD ¶ 162. As the Navy points out, the stop smoking program has limited applicability and employees pay for the long-term care program. Further, although ISI offers a profit sharing plan, there were no details of the plan in ISI's proposal so the Navy could not evaluate it. Based on these factors, we cannot conclude that the Navy unreasonably determined that there was nothing special about ISI's compensation package that would overcome ISI's low salaries and excessive uncompensated overtime.

Performance Risk

As discussed above, the Navy concluded based on the low salaries ISI proposed, the excessive number of hours of uncompensated overtime it expected employees to work and the average compensation plan it offered, that ISI's proposed price was unrealistic and that ISI's proposal therefore presented a high performance risk and a risk that ISI would be unable to retain its personnel. ISI challenged the Navy's conclusion that its proposal presented high performance risk because it did not believe that the Navy reasonably determined that it proposed low salaries, excessive uncompensated overtime, and an average compensation package. Since we have concluded that the Navy's conclusions regarding these factors were reasonable, we also find it reasonably concluded that ISI's proposed price was unrealistic and that its proposal presented a high performance risk. In this regard, the agency could reasonably conclude that a performance risk is created when a contractor is required to perform services with an undercompensated work force, Oshkosh Truck Corp., B-252708.2, Aug. 24, 1993, 93-2 CPD ¶ 115, and where employees are expected to work an excessive amount of

uncompensated overtime. Quantum Research, Inc., B-242020, Mar. 21, 1991, 91-1 CPD ¶ 310.³

MANAGEMENT PLAN

Under the management plan/manpower utilization matrix evaluation factor, the RFP provided that: "A large number of subcontractors, or a poorly structured partnership/joint venture, or a high proportion of contingent hires will result in a reduced technical rating." ISI submitted a management plan showing the use of 10 subcontractors. The plan also indicated that ISI intended to utilize a part-time project manager for the contract. The PRB found that 10 subcontractors was an unacceptable number for this contract effort, and in conjunction with the use of a part-time project manager, was a critical deficiency in ISI's management plan. The SSO agreed with this conclusion, stating that the hours required to coordinate the input of 11 companies would require excessive government management and the ordering of significant additional program management hours from the prime contractor. The SSO additionally concluded that the use of 10 subcontractors presented a management burden and a performance risk and that this was exacerbated by the use of a part-time project manager. The agency points out that when contracting officer's representatives (CORs) on ISI's incumbent contract were interviewed concerning ISI's performance, they cited ISI's management and coordination of subcontractors as a weakness on that contract.

ISI challenges the Navy's conclusions that ISI's proposed use of 10 subcontractors and a part-time project manager were weaknesses or deficiencies in its management proposal. ISI first notes that it proposed fewer subcontractors than the 12 that it is currently using on its incumbent contract. In addition, ISI asserts that the subcontractors will not require substantial supervision because the proposed subcontractors all have experience performing the required work and they all have worked with ISI in the past. In addition, ISI points out that not all subcontractors will be performing at the same time; individual subcontractors will be performing only when their particular expertise is required by a work order. ISI also argues that its proposed use of 10 subcontractors will not require additional

³ISI and the Navy also argue over how much turnover ISI experienced on its incumbent contract. However, given our conclusion that the Navy otherwise reasonably determined that ISI's proposed salaries and uncompensated overtime create a risk that ISI will be unable to retain its personnel, we have not considered ISI's turnover on its incumbent contract.

government supervision. In this regard, ISI asserts that in its proposal it explained how it intended to manage the contract effectively and efficiently with 10 subcontractors and pointed out that it would be the single point of contact between the subcontractors and NAVAIR, and would be solely responsible for all aspects of performance under the contract.⁴

Concerning its proposed use of a part-time project manager, ISI argues that its proposed project manager is the incumbent project manager and thus possesses an intimate knowledge of the contract requirements and the management necessary to perform those requirements. ISI also explains that the project manager's other time, which is spent on corporate matters such as reporting to the company president on this contract, enhances his effectiveness as a project manager. ISI concludes that because the project manager is uniquely qualified for this contract and because his other responsibilities in the ISI organization enhance his effectiveness, it has confidence that the project manager will be able to perform his responsibilities in the number of hours he is proposed to work on this contract.

ISI's arguments do not convince us that the Navy unreasonably concluded that ISI's proposed use of 10 subcontractors and a part-time project manager was a critical deficiency in ISI's management plan. First, while ISI states that it proposed to use fewer subcontractors on this contract than it is currently using on its incumbent contract, the Navy has pointed out, and ISI has not disputed, that based on the number of hours that the contractors are expected to perform on this contract, and using the 12 subcontractors ISI is using on its incumbent contract as a baseline, ISI should have proposed no more than 6 subcontractors for this contract. In addition, while ISI explained in its proposal how it would manage the subcontractors, we find it was reasonable for the Navy to conclude, in spite of that explanation, that the use of 10 subcontractors posed an increased risk regarding effective management, control and communication, response times, and quality assurance. That is, it is reasonable for the Navy to conclude that the more subcontractors there are to coordinate, the higher probability there is of having problems with management and communications. See Hercules Engines, Inc., B-246731, Mar. 19, 1992, 92-1 CPD ¶ 297. In

⁴ISI also argues that the SSO unreasonably determined that ISI failed to adhere to the government policy regarding subcontracting with SDBs on its incumbent contract. Since our review does not show that this was a factor in the source selection decision, and it would not change the result of our decision, we have not considered this issue.

this regard, as noted, interviews with CORs indicated that ISI had trouble managing its subcontractors on its incumbent contract. In fact, the Navy has pointed out that ISI's performance on the incumbent contract was the impetus for including the RFP provision stating that the use of a large number of subcontractors would result in a reduced rating. To the extent ISI chose to ignore this warning, ISI did so at its own risk.

In addition, while ISI has argued the merits of its project manager, the Navy has not questioned the project manager's overall capability. Rather, the Navy has expressed its concern that it will be difficult for the project manager to manage the entire project, including 10 subcontractors, on a part-time basis. To the extent ISI believes that the project manager's experience and other responsibilities eliminate this concern, ISI has done no more than express its disagreement with the agency. Such disagreement does not demonstrate that the agency's concern is unreasonable. Tracor, Inc., B-250716.2, Feb. 23, 1993, 93-1 CPD ¶ 165.

UNEQUAL TREATMENT AND UNREASONABLE EVALUATION OF VSS' PROPOSAL

ISI protests that the Navy's evaluation of VSS' proposal was unreasonable and that the Navy did not treat the two offerors equally. ISI notes that under the personnel evaluation factor, both VSS and ISI were given ratings of acceptable, even though only 75 percent of VSS' proposed personnel were judged acceptable while 92 percent of ISI's proposed personnel were judged acceptable. In addition, asserts ISI, VSS offered Senior Analysts that generally did not have Integrated Logistic Support (ILS) experience, although ILS experience was an area of primary concern for the agency in evaluating Senior Analysts. Finally, ISI complains that 15 percent of VSS' proposed personnel were contingent hires, while ISI proposed no contingent hires. Based on these factors, ISI asserts that VSS should not have been given the same acceptable rating for the personnel factor as ISI.

Under the management plan factor, ISI states, the Navy found a critical deficiency in ISI's management plan because ISI proposed a part-time project manager but did not find a critical deficiency in VSS' proposal even though VSS also offered a part-time project manager. ISI further asserts that the Navy's decision to rate VSS' management proposal as better rather than acceptable was unreasonable because 15 percent of VSS' proposed personnel are contingent hires.

Finally, ISI states that if its price proposal was unrealistic and presented a high performance risk because 71 percent of its proposed personnel were being compensated

at least one GS level below comparable civil service employees and of that 71 percent, 38 percent were being compensated at least two GS levels below comparable civil service employees, VSS' proposal should have been similarly viewed because 63 percent of VSS' proposed personnel were being compensated one GS level below comparable civil service employees and of that 63 percent, 23 percent were being compensated at least two GS levels below comparable civil service employees.

Based on our review of the evaluation documents, we conclude that the Navy did not treat VSS and ISI differently and did not unreasonably evaluate VSS' proposal. Concerning the personnel factor, while ISI argues that VSS should not have been given the same rating as ISI because 92 percent of ISI's proposed personnel were judged acceptable while only 75 percent of VSS' proposed personnel were judged acceptable and because VSS' Senior Analysts lacked ILS experience, the agency's rating was not based on these factors alone. Rather, the Navy found other merits in VSS' personnel proposal which warranted rating VSS acceptable for this factor. Specifically, the agency found that VSS proposed well-qualified personnel for its Program Managers and its Senior Logistics Managers. In addition, the agency found that VSS rather than its proposed subcontractors would perform a majority of the key labor hours. Finally, the agency considered that based on its proposed salaries and low uncompensated overtime, VSS probably would experience low turnover. Given these factors, we cannot say that the Navy unreasonably rated VSS' proposal acceptable for the personnel factor.

Concerning the management plan, while the Navy considered ISI's proposed use of a part-time project manager a critical deficiency and did not consider VSS' proposed use of a part-time manager a critical deficiency, ISI proposed its project manager for only 1,500 hours while VSS proposed its project manager for 1,900 hours per year, which is substantially closer to full time. Moreover, according to ISI's calculation, the difference between the number of hours that ISI proposed its project manager and the number of hours that VSS proposed its project manager equates to 1.5 hours per day. Since a project manager who is present for an additional 1.5 hours will be able to perform more tasks in that time and will be available more often for consultations with employees, subcontractors and government personnel, in our view, this difference provided a basis for distinguishing between the proposals. More importantly, however, the agency's criticism of ISI's proposed use of a part-time project manager was related to the fact that ISI proposed 10 subcontractors and the fact that the project manager would have to supervise and coordinate the work of these

subcontractors, a problem that was not present in VSS' proposal.

Nor do we agree that because 15 percent of VSS' proposed staff were contingent hires, the agency unreasonably rated VSS' management plan "better." In our view, the agency could reasonably determine that 15 percent was not an excessive number of proposed contingency hires for a contractor that was not the incumbent. ISI's mere disagreement with the agency's decision does not render that decision unreasonable. Tracor, Inc., supra. Moreover, the agency's decision that VSS' management proposal should be rated better was also based on other factors in the proposal, such as the interface of the proposed task leaders with the technical staff for delivery order performance and a good mix of prime and subcontractor personnel.

Finally, we disagree with ISI that VSS' price proposal should have been rated unrealistic with a high performance risk because VSS proposed salaries for 63 percent of its proposed personnel that were at least one GS level below comparable civil service employees and of that 63 percent, 23 percent were being compensated at least two GS levels below comparable civil service employees. As discussed, ISI bases its argument on the fact that its price proposal was so rated because it proposed salaries for 71 percent of its proposed personnel that were at least one GS level below comparable civil service employees and of that 71 percent, 38 percent were at least two GS levels below comparable civil service employees. ISI asserts that the differences in these percentages do not warrant the difference in ratings. As discussed above, however, the agency's determination that ISI's proposed price was unrealistic and presented a high performance risk was based not only on the number of employees that ISI proposed with wages below GS levels; it also reflects the Navy's overall conclusion that ISI proposed low salaries and excessive uncompensated overtime, a problem the Navy did not have with VSS. ISI's argument is without merit.

AWARD WITHOUT DISCUSSIONS

ISI protests that the Navy improperly awarded the contract to VSS on the basis of initial proposals without holding discussions. ISI argues that if it had been given the opportunity to participate in discussions it would have been able to correct the "minor" deficiencies in its proposal without making major revisions and would have received the award because its price proposal was \$[deleted] million less than the proposal submitted by VSS. Specifically, ISI asserts that it could easily have corrected its proposal by eliminating some of the subcontractors, increasing its project manager's hours, and explaining why its proposed

salaries were not too low and why its proposed uncompensated overtime was not excessive. ISI further argues that the agency was required to hold discussions because it found the same deficiencies in VSS' proposal so that, if it could not award the contract to ISI without holding discussions, it could not award the contract to VSS without holding discussions. Finally, ISI points out that its proposal was considered acceptable in all areas and that while the agency considered ISI's unrealistic price proposal as a critical deficiency, it did not render the proposal unacceptable.

Where a solicitation is issued by an agency of the Department of Defense, and it advises offerors of the agency's intent to award the contract without holding discussions, the agency may properly do so, even awarding a contract to a firm not offering the lowest price. Federal Acquisition Regulation (FAR) § 15.610(a)(4); Macro Serv. Sys., Inc., B-246103; B-246103.2, Feb. 19, 1992, 92-1 CPD ¶ 200. While the contracting officer has the discretion to hold discussions in such circumstances, the contracting officer may dispense with discussions where he has a reasonable basis for concluding that the proposal of the intended awardee will result in the contract most advantageous to the government. See The Jonathan Corp.; Metro Mach. Corp., B-251698.3, B-251698.4, May 17, 1993, 93-2 CPD ¶ 174.

Here, as discussed above, the Navy reasonably determined that ISI's proposal had critical deficiencies in the management and price areas and that there was a high risk that ISI would be unable to retain its personnel. The Navy also reasonably determined that the proposal submitted by VSS had no deficiencies, was overall technically superior to the proposal submitted by ISI, and was reasonably and realistically priced. Accordingly, the Navy could reasonably determine that VSS' proposal represented the best value to the government and therefore properly could award the contract to VSS without holding discussions. A Plus Servs. Unlimited., B-255198.2, Jan. 31, 1994, 94-1 CPD ¶ 52.

AWARD DECISION

ISI asserts that the Navy's decision to award the contract to VSS at a \$[deleted] million price premium is unreasonable because it is based upon a failure by the SSO to either rely on or discredit the conclusions of the evaluators regarding the technical merit of ISI's proposal, and a failure to apply the relative weights specified in the solicitation. On the first point, the protester asserts that according to the agency, the SSO and the PRB relied only on the summary cost and technical reports and did not review the individual evaluators worksheets. ISI argues that there is no basis in the record for many of the conclusions of the SSO regarding

the performance risks associated with ISI's proposal. Nor, according to ISI, is there any documentation in the record establishing that the SSO independently reviewed the proposals of ISI. Thus, ISI asserts, the SSO's conclusion that the proposal of VSS offered the best value to the government is irrational. In any case, ISI argues that the award decision did not follow the RFP evaluation criteria which stated that technical considerations were to be weighted only slightly more important than cost since ISI's proposed price was substantially lower than VSS' proposed price and ISI's technical proposal was rated only slightly lower than VSS' technical proposal.⁵

Insofar as ISI asserts that in awarding the contract to VSS, the Navy failed to weigh technical factors only slightly more important than price, as required by the RFP, ISI is essentially protesting that the Navy failed to perform a proper price/technical tradeoff. In a negotiated procurement, there is no requirement that award be made on the basis of low price unless the solicitation so specifies. Agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the stated evaluation criteria. Award may be made to a higher-rated, higher-priced offeror where the decision is consistent with the evaluation factors and the agency reasonably determines that the technical superiority of the higher-priced proposal is worth the additional expense. General Servs. Eng'g, Inc., B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44.

Here, in reaching the award decision, the SSO noted that ISI's excessive uncompensated overtime and low salaries indicated a high performance risk. The SSO also considered the proposed use of 10 subcontractors as a critical deficiency. The SSO, on the other hand, found that VSS' price was reasonable and realistic and that, in addition, the proposal had no deficiencies, a manageable number of subcontractors, realistic annual salaries, and low uncompensated overtime. Based on this analysis, the SSO determined that the proposal submitted by VSS offered the best value to the government. While ISI asserts that the SSO did not specifically discuss ISI's price advantage in

⁵Since we have already concluded that the evaluations of both the technical and price proposals submitted by VSS and ISI were reasonably conducted, ISI's argument that the award decision is unsupported fails to the extent ISI premises its argument on its belief that the agency conducted flawed and unequal technical and price proposal evaluations.

his price/technical tradeoff, in the statement he prepared for the protest, the SSO states, "I consciously made the decision that it was in the Government's best interest--most advantageous to the Government--to pay the rates proposed by [VSS] to gain the benefits of: low turnover; quality work; low rework; low government training, oversight and management, while avoiding extremely high performance risk with ISI." Further, because he considered ISI's proposed price totally unrealistic, the SSO did not believe that the government would actually receive a price benefit if it awarded the contract to ISI. In this regard, we note that far from considering ISI's low price an advantage, the SSO considered it a problem that could result in delayed and questionable performance. Based on this assessment, we find that the SSO properly followed the evaluation criteria and reasonably determined that an award to VSS presented the best value to the government.

Finally, insofar as ISI asserts that the award decision is improper because the SSO neither relied on or discredited the conclusions of the technical evaluators concerning ISI's technical proposal, we have consistently stated that the SSO is not bound by the conclusions of lower-level technical evaluators. Verify, Inc., 71 Comp. Gen. 158 (1992), 92-1 CPD ¶ 107. Rather, SSOs are entitled to independently judge the merits of competing proposals provided the judgment has a rational basis. TRW, Inc., B-254045.2, Jan. 10, 1994, 94-1 CPD ¶ 18. Here, the SSO's decision had a reasonable basis. First, while the SSO did not rely on the individual evaluator's conclusions, he did consider the summary reports. To the extent that ISI asserts that these reports provide no justification for the SSO's conclusions regarding performance risk, we point out that the individual evaluators did not assess risk. Rather, the individual evaluators evaluated the price and technical merits of the proposals and based on those evaluations the PRB assessed risk. Thus, for example, the TET determined that ISI proposed too many subcontractors and the PRB concluded that this presented a risk. In addition, the SSO states that he independently reviewed the price and technical proposals. Accordingly, we find that the record adequately supports the source selection decision.

The protest is denied.

Robert P. Murphy
Acting General Counsel