



Decision

Matter of: Information Systems & Networks Corporation

File: B-258684.2; B-258684.3

Date: April 4, 1995

James J. McCullough, Esq., and Catherine E. Pollack, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester. David Z. Bqdenheimer, Esq., Crowell & Moring, for ANSTEC, Inc.; John S. Pachter, Esq., and Jonathan D. Shaffer, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for SEMCOR, Inc., interested parties. Gregory H. Petkoff, Esq., and William Landsberg, Esq., Department of the Air Force, for the agency. Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. In reviewing protests concerning the evaluation of proposals, the General Accounting Office will examine the agency's evaluation to ensure that it had a reasonable basis. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable.
2. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. In exercising that discretion, they are subject only to the tests of rationality and consistency with the established evaluation factors.

DECISION

Information Systems & Networks Corporation (ISN) protests the proposed award of two contracts, on the basis of initial proposals, to SEMCOR, Inc. and ANSTEC, Inc., under request for proposals (RFP) No. F08626-94-R-0026, issued by the Department of the Air Force, Aeronautical Systems Center, Eglin Air Force Base, Florida, for technical and acquisition

'The decision issued on April 4, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions are indicated by "[deleted]."

management support services (TAMS).¹ ISN argues that its proposal represented the best value to the government and that the agency's proposed award of the two contracts is otherwise unlawful for a variety of reasons addressed below.

We deny the protest.

THE RFP

The RFP was issued on May 10, 1994; the requirement was for a 3-year basic performance period with two 1-year options. The RFP stated that the agency contemplated the award of two cost-plus-award-fee contracts consisting of a small business set-aside contract and a small disadvantaged business (SDB) set-aside contract; the agency, however, reserved the right to make only one award if an SDB firm was the overall successful offeror. Thus, a small business firm was only entitled to award under the small business set-aside portion of the RFP; an SDB firm was eligible for a single award under both set-asides, if otherwise successful. The RFP stated that award would be made to the offeror or offerors that the government determines can accomplish the requirements "in a manner most advantageous to the government," and whose proposal or proposals "provides the best overall value to satisfy the government's needs, cost or price and other factors considered." The agency reserved the right to award a contract or contracts to other than the low offeror and to award without discussions after consideration of all factors.²

¹TAMS is the successor requirement to three existing contracts, entitled "Technical Evaluation and Acquisition Management Support (TEAMS)" that were awarded to ISN, Computer Sciences Corporation, and RMS Technologies, Inc. in 1989. The protester explains that despite the name change, the services to be provided under TAMS are largely identical to the previous TEAMS effort. Under the TAMS solicitation, the contractor is required to provide a wide range of non-engineering, technical and acquisition management support services for the development, production, and support of equipment and weapon systems within various Air Force organizations. Contemplated tasks include analysis of problems, definition of alternate solutions, recommendations, and the accomplishment of specifically assigned work as defined in individual tasks by the agency.

²The RFP specifically incorporated the provision found in Federal Acquisition Regulation (FAR) § 52.215-16, Contract Award (July 1990), Alternate III (Aug. 1991), which advises offerors of the government's intent to evaluate proposals and award a contract without discussions with offerors.

(continued...)

The RFP stated that proposals would be evaluated in two areas, management and cost, with the management area more important than the cost area.³ The RFP contained the following management area factors: (1) management planning (including organization and staffing, proposed teaming approach and approach to cost management); (2) transition planning (including phase-in approach and continuity of service); (3) personnel management (including the offeror's experience, employment of qualified personnel, and the use of subcontractors or consultants in the accomplishment of assigned tasks). The RFP also stated that the assessment criteria, of equal importance, to be used to evaluate proposals would be compliance with requirements, soundness of approach, and understanding the problem. Additionally, the RFP stated that the management area would be rated in three ways: (1) a color/adjectival rating; (2) a proposal risk rating; and (3) a performance risk rating.⁴

The RFP contemplated that the level of effort during the contract would be determined by task directives issued by the agency. The RFP contained numerous labor categories of specified and varying skill levels (such as logistics specialist, management information systems specialist, and budget analysis specialist) for which each offeror had to provide labor rates for two levels of effort: the most probable contract (MPC) level (145 man-years) and the program ceiling level (330 man-years) for years 1 through 5

²(...continued)

This clause also cautions offerors that each initial offer "should contain the offeror's best terms from a cost or price and technical standpoint."

³The RFP stated that it was a "management competition" with cost considered as specified elsewhere in the solicitation and that offerors should perform management/cost tradeoffs to achieve a balance which reflects and permits "cost-effective" and "high quality" performance.

⁴Under the evaluation scheme, the color/adjectival rating would depict how well the offeror's proposal met the evaluation standards, factors, and requirements; blue was exceptional; green was acceptable; yellow was marginal; and red was unacceptable. Proposal risk would assess the risk associated with the offeror's proposed approach to satisfying the requirements. Performance risk would assess the probability of the offeror successfully accomplishing the proposed effort based on the offeror's demonstrated present and past performance. Within each area or item, each of the three ratings (color/adjectival, proposal risk, and performance risk) would be given equal consideration "in making an integrated source selection decision."

of the contract. The MPC level was based on the assumption that two contracts (of near equal value) would be awarded and represented the agency's best estimate of staffing requirements for each of the two contracts. The program ceiling level represented the maximum level of total program staffing for any and all contracts. Within each of these two levels of effort (MPC and program ceiling), offerors were required to propose both average fully burdened labor rates and maximum fully burdened labor rates (a total of four cost scenarios) for all labor categories. Under the RFP, the maximum burdened cost per man-hour represented the maximum labor costs "which can be billed to the government for any man-hours under this contract at the level of support contracted for without the prior written approval of the Procuring Contracting Officer." The RFP also stated as follows:

"The offeror's cost/price proposal will not be rated or scored, but will be evaluated for realism, reasonableness, and completeness, at the total Cost Plus Award Fee at Most Probable Contract and Program Ceiling Levels of manning; all of these are of equal importance for the basic and all options."⁵ (Emphasis Added.)

In sum, the RFP stated that the agency's cost evaluation was to be based on the offeror's proposed costs plus award fee based on the following four cost scenarios: (1) average fully burdened rates at the MPC level; (2) maximum fully burdened rates at the MPC level; (3) average fully burdened rates at the program ceiling level; and (4) maximum fully burdened rates at the program ceiling level.

RECEIPT AND EVALUATION OF OFFERS

Thirteen offerors submitted proposals in response to the solicitation, including SEMCOR (a small business),

⁵Under the RFP, realism would be evaluated by assessing the compatibility of proposed costs with proposal scope and effort, including cost realism; reasonableness would be evaluated by assessing the acceptability of the offeror's methodology used in developing cost estimates and by conducting a standard price analysis; and completeness would be evaluated by assessing the responsiveness of the offeror in providing cost data for all RFP requirements and items. The RFP required offerors to explain "the method of cost buildup" for their labor rates for all five contract years, including the base or bases used in applying rates, factors, and burdens; offerors were also required to include explanations of how their average and maximum base labor rates were calculated.

ASEC, Inc. (also a small business), ANSTEC (an SDB), and ISN (also an SDB). We limit our discussion to these four firms whose proposals were rated as relatively better by the agency than the other proposals received.

Briefly, proposals were evaluated by a source selection evaluation team (SSET). For each evaluation factor, the SSET rated the proposals using the color/adjectival rating. In addition, proposals were evaluated for performance risk and proposal risk. The proposal and performance risk ratings were expressed as High, Moderate, or Low risk. SEMCOR, ASEC, ANSTEC, and ISN were all rated "green" by the evaluators with low risk. The following were the cost evaluation results for the four firms:

<u>MPC</u>	<u>SEMCOR</u>	<u>ASEC</u>	<u>ANSTEC</u>	<u>ISN</u>
Average: " (145 man-years)	\$39,344,597	[deleted]	39,603,391	[deleted]
Maximum: (145 man-years)	42,218,262	[deleted]	41,773,579	[deleted]

Program Ceiling

Average: (330 man-years)	[deleted]	[deleted]	[deleted]	[deleted]
Maximum: (330 man-years)	[deleted]	[deleted]	[deleted]	[deleted]

The SSET prepared a Proposal Analysis Report summarizing its findings and conclusions and briefed the source selection authority (SSA). The SSET, in the briefing, recommended two awards--one to ASEC and the other to ISN. In his subsequent September 14, 1994, source selection decision, which lacked specific details, the SSA nevertheless concluded that the proposals of SEMCOR and ANSTEC represented the best value to the government. Further, on September 28, the SSA executed a "Post-decision Narrative," in which he set forth his findings of the strengths and weaknesses of each proposal. Specifically, he determined that SEMCOR, although not the low offeror at any of the four "cost data points," had "the strongest management proposal" and was superior from a technical (management) standpoint to ANSTEC and ISN. The SSA therefore determined that SEMCOR, a small business, had submitted the best value proposal.

Because the RFP contemplated at least one award to an SDB, and Semcor was not an SDB, the SSA was required to select an SDB offeror for a second award. The two best SDB offerors were ANSTEC and ISN. The SSA determined that ANSTEC's and ISN's management proposals were essentially equal, since

both were rated "green" with low risk and had no perceived weaknesses. Given the essential equality between ANSTEC's and ISN's management proposals, the offerors' proposed costs became the determinative factor in the award decision. The SSA made the following determination:

"There is a cost risk to the government due to the significant differences between ISN's average and maximum labor rates. Given ISN's current labor and overhead rates on the TEAMS contract, the risk of cost migration toward the maximum is considered significant. Due to ANSTEC's relatively low cost at the total estimated cost plus award fee for the Most Probable Contract level and their having the lowest differential between their average and maximum rates, ANSTEC is deemed to be the best value SDB offeror."⁶

On September 16, 1994, the agency notified unsuccessful offerors of the proposed awards to SEMCOR and ANSTEC. This protest by ISN followed.

ANALYSIS OF BEST VALUE DETERMINATION CONCERNING SEMCOR'S PROPOSAL

In reviewing protests concerning the evaluation of proposals, we will examine the agency's evaluation to ensure that it had a reasonable basis. RCA Serv. Co., et al., B-218191; et al., May 22, 1985, 85-1 CPD ¶ 585. The fact that a protester does not agree with the agency's evaluation does not render the evaluation unreasonable. Logistics Servs. Int'l, Inc., B-218570, Aug. 15, 1985, 85-2 CPD ¶ 173. Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In exercising that discretion, they are subject only to the tests of

⁶The SSA also noted that at both the MPC and program ceiling levels, ISN had the largest disparity between its average and maximum labor rates. The SSA perceived a risk that ISN's proposed cost could potentially increase by [deleted] and [deleted] at the MPC and ceiling levels, respectively--"without contracting officer approval." The SSA also determined that ISN's rates could "gravitate" toward the maximum rates unless current salaries are cut (ISN is an incumbent under the TEAMS effort and proposed to retain 90 percent of incumbent personnel). He concluded that "[b]ased on [these risks and factors], ISN's ability to contain costs at the average labor rate is considered to be risky."

rationality and consistency with the established evaluation factors. Id.

Here, the SSA specifically determined that while SEMCOR was not the lowest offeror (at any of the four "data points"), the firm represented the "overall best value" because of its "[deleted]."

Further, the Proposal Analysis Report prepared by the evaluators contains an analysis of the strengths and weaknesses of each offeror's technical (management) proposal. Concerning SEMCOR, the evaluators found that SEMCOR presented key personnel from a strong management team with good qualifications and experience; adequately proposed continuance of ongoing tasks without disruption; had an integrated approach and thorough planning for hiring employees, "thereby minimizing transition risk; was thoroughly familiar with the current TEAMS tasking; had proposed a team member with a strong functional experience base; and that SEMCOR and its team member had worked together successfully for years and would continue many members of their professional staff.

In its protest, ISN emphasizes its understanding and expertise as an incumbent and essentially argues that while SEMCOR [deleted] that the agency left uncorrected (by not conducting discussions), "ISN had no proposal weaknesses, [offered] a more advantageous cost proposal than [SEMCOR], [and therefore ISN's proposal should have been evaluated as] the best overall value to the government." The protester also argues that with its experience it should have received at least as high a score as SEMCOR under the transition planning and personnel management factors. Finally, the protester advances the argument that its proposal was superior because it proposed to perform all of the work itself, while SEMCOR proposed [deleted].⁷

⁷In its comments on the first agency report (filed more than 10 working days after the protester's receipt of the report), the protester also argues that the SSA failed to adequately explain why SEMCOR's strengths offered any better value to the government than did ISN's strengths. Specifically, the protester does not believe that the agency's documentation sufficiently explains why perceived weaknesses in SEMCOR's proposal do not outweigh its "unidentified strengths." In short, ISN contends that the agency evaluation and selection record fail "to show the relative differences between proposals, their weaknesses and risks, and the basis for the selection decision." However, the SSA's source selection decision, his Post-decision Narrative, the Proposal Evaluation Report, and other

(continued...)

As stated above, the agency specifically determined that SEMCOR had submitted the strongest management proposal. Except for its timely allegations concerning the weaknesses found by the agency in SEMCOR's proposal, the protester has submitted nothing substantive except its experienced incumbency status to rebut this fundamental finding by the agency.⁸ We think the protester's arguments concerning the seriousness of the [deleted] found by the agency in SEMCOR's proposal represent a mere disagreement with the agency's technical and management judgment. For example, we think the agency could rationally determine that a short delay by SEMCOR's completely qualified contract leader in assuming his duties is an insignificant weakness that is self-correctable; we think the same applies to the agency's determination that information in SEMCOR's cost proposal provided sufficient information to rectify minor weaknesses in its management proposal. In short, we think the agency reasonably disregarded these minor weaknesses as insignificant, and the protester has failed to show that the agency's fundamental finding of overall technical (management) superiority of SEMCOR's proposal was

⁷(...continued)

evaluation documents on which the agency relied in defending the protest were available to the protester in the agency report. These documents and the agency report as a whole did not reasonably indicate to the protester that other material relevant documents relied upon by the agency in finding SEMCOR to be technically superior existed but were not furnished. Thus, while the protester requested additional documents, for example, "related to the issuance of the Post-decision Narrative," we think the protester was reasonably apprised of this basis of protest upon receipt of the agency report. Accordingly, we find that these arguments were untimely filed because they were asserted by the protester more than 10 working days after the protester's receipt of the agency report upon which these allegations are or should have been based. See 4 C.F.R. § 21.2(a)(2) (1995).

⁸As stated above, ISN relies on the fact that the agency found no weaknesses in its proposal. However, as counsel for SEMCOR states, a "proposal's lack of weaknesses does not necessarily make it the best overall value." While we agree that the protester's proposal contained no weaknesses, the SSA here weighed both the strengths and weaknesses of the individual proposals and made a reasoned selection decision that SEMCOR was the best value offeror. In contrast to the management strengths of SEMCOR's proposal as reflected in the evaluation documents, the record does not support a finding that the agency in any way considered ISN to have submitted the "strongest management proposal."

unreasonable. Finally, we note that the RFP contemplated teaming/subcontracting by offerors and that any downgrading of proposals for this reason would therefore have been inconsistent with the terms of the RFP.

Accordingly, we find that the agency specifically reserved the right in the RFP to award a contract to other than the low offeror; that technical (management) area was more important than price under the RFP's evaluation scheme; that the protester has failed to show that SEMCOR was unreasonably found by the agency to have a superior management approach (including SEMCOR's teaming approach with a highly experienced firm); that ISN's incumbency, experience, and lack of weaknesses in its proposal, by themselves, do not establish the firm's superiority in the management area; and that the protester has therefore also failed to show that the agency unreasonably determined that SEMCOR was technically superior overall in the management area. Thus, given the agency's evaluation of SEMCOR's proposal as technically superior, we have no basis to disturb the award to SEMCOR regardless of its somewhat higher average rates as compared with ISN.⁹ This ground of protest is denied.

THE SDB AWARD SELECTION DETERMINATION

A. Conflict of Interest

In its initial protest and based solely on its "belie[f]," ISN alleged that ANSTEC, the SDB firm selected by the agency for award, had proposed Dr. Andy Vasiloff as its contract leader; according to the protester, this individual "served in several key positions that apparently were significantly involved in the issuance of the TAMS [RFP]" and also had "direct input" into the development of the requirements. The protester also listed the management positions and government organizations in which Dr. Vasiloff allegedly served and generally argued that a violation of the procurement integrity law had occurred.

In its agency report, the Air Force presented detailed evidence to show that Dr. Vasiloff did not have any input and did not participate in any way in any TAMS procurement activities. The Air Force states that Dr. Vasiloff did not help prepare, review, or approve any aspect of the TAMS procurement. The Air Force provided supporting documentation to our Office. For example, the agency

⁹SEMCOR's MPC average rates amounted to a total of \$39,344,597; ISN's rates were [deleted]. As discussed below, ISN's maximum rates were considerably higher than all offerors' maximum rates.

presented minutes of all major meetings concerning the TAMS procurement with a list of attendees (which never included Dr. Vasiloff). Also, Dr. Vasiloff, in the agency report, submitted a statement independently corroborating the agency's position. Dr. Vasiloff's statement, which contained his work history and post-retirement activities, showed no evidence of his involvement in the TAMS procurement process. Further, the agency states that Dr. Vasiloff's involvement with ANSTEC became known to the government during evaluation of proposals; the contracting officer brought this matter to the attention of legal counsel who referred it to the agency's ethics expert. The agency's ethics expert issued a written legal opinion that "[i]n regards to Dr. Vasiloff there appears to be no prohibitions that would prevent him from performing the functions of [ANSTEC] contract leader."

In response to the agency's evidence, the protester relies only on a brochure (a one-page biographical sketch) with Dr. Vasiloff's picture, which states that Dr. Vasiloff was chief of the Air Base Systems Planning and Analysis Division at Eglin Air Force Base and, as chief, directed "acquisition planning activities . . . for all Air Base systems programs." The protester also faults Dr. Vasiloff for failing to obtain a written ethics advisory opinion before, rather than after, he became involved in ANSTEC's TAMS proposal. However, in view of the speculative nature of the protester's allegations, and in view of the facts presented by the agency, which remain unrebutted, we deny this protest ground.

B. Cost Evaluation of ISN's and ANSTEC's Proposals

As stated above, the agency determined that ANSTEC's and ISN's management proposals were essentially equal, since both were rated "green" with low risk and had no perceived weaknesses; proposed costs therefore became the determinative factor in the award decision. We repeat here the cost evaluation results for these two firms at the MPC level:¹⁰

	ISN	ANSTEC
Average:	[deleted]	39,603,391
Maximum:	[deleted]	41,773,579

¹⁰In a dual-award scenario, the costs proposed by ISN and ANSTEC at the MPC level (145 man-years--approximately one-half of the total contract amount) are the only relevant cost data points for the selection decision.

The agency considered the difference between the average and maximum rates at the MPC level and determined that ANSTEC provided the best value in a dual-contract award because the "difference between [ANSTEC's] average and maximum rates [at the MPC level] is the lowest, providing a low risk to the government in the event [it is] unable to control [its] costs at the proposed average rate." ISN, with the "largest disparity between [its] average and maximum rates," was found to present a cost risk. Specifically, the agency found that "[g]iven [ISN's] current labor and overhead rates on the TEAMS contract," its risk of "cost migration to the maximum rates [was] considered significant."¹¹ The agency therefore selected ANSTEC for award.

ISN argues that the agency miscalculated its cost proposal because it failed to give "equal consideration in the award decision" to the average and maximum rates as required by the RFP. The protester argues that its proposed maximum rates "represented something completely different than [other offerors'] proposed maximum rates." ISN points to the following in its cost proposal:

"The average fully burdened amount was calculated using [deleted]."

¹¹The agency later explained that it believed that ISN's proposed indirect rates--overhead and general and administrative expenses--were understated in its proposal, or, at least, presented a significant risk that they were understated and might gravitate toward the maximum rates.

ISN states that its maximum rates for each labor category were based upon [deleted] (all rates were also subject to an escalation factor). ISN argues that this approach was consistent with the RFP instruction that the proposed maximum rates be the maximum burdened rates per man-hour that the contractor may charge the government during performance of the contract without the contracting officer's prior written approval. Thus, ISN emphasizes that its maximum rates were proposed to "[deleted]."¹² ISN concludes that the agency failed to consider the differences among offerors' costing methodologies (as explained in their proposals), and, in the alternative, failed to conduct discussions to ascertain each offeror's costing methodologies and to ensure that labor costs were proposed on a common basis.

Second, the protester argues that the agency's best value determination was flawed because it was based on a flawed cost evaluation. We view this argument as a contention that the agency should have given more weight to ISN's average costs which, according to the firm, were realistic and reasonable, especially in view of ISN's explanation in its cost proposal as to the meaning of its maximum rates, which the agency allegedly improperly evaluated as significant and as the "equivalent of capped or ceiling rates."

We do not find the protester's argument to be persuasive. First, the RFP did not specify any particular methodology or approach for proposing average and maximum labor rates; rather, the RFP left it to the business discretion of each offeror to propose on any reasonable basis that it selected.

¹²ISN states that its average rates were fundamentally reliable since they were based on actual current employee rates and that it was irrational for the agency to conclude that ISN's rates would escalate sharply toward the maximum. For example, the agency noted that ISN's indirect rates for the TEAMS extension contract, which ISN is currently performing, were higher than its proposed indirect rates for the TAMS contract. Concerning these indirect rates, ISN has presented evidence that its indirect rates for its TEAMS extension contract were misevaluated by the agency as indicating a potential upward "drift" to the maximum rates, because the agency knew, or should have known, that these rates reflect only provisional indirect rates recently established by the Defense Contract Audit Agency (DCAA). ISN also notes that the TEAMS extension rates were based on a much smaller direct labor base than the TAMS proposal rates. Additionally, ISN states that it has achieved overhead rates comparable to those proposed in the TAMS contract on another contract of similar size.

Second, we find nothing wrong or uncommon in ISN's maximum cost methodology which consisted of [deleted]:

"[deleted]."

[deleted]:

"[deleted]."

[Deleted] is simply a business circumstance of the protester's own choosing for which the agency is not responsible.

Finally, the RFP stated that each cost data point (average and maximum) would be given "equal consideration." The RFP explicitly stated that the maximum burdened rates represented the maximum labor costs "which can be billed to the government . . . without the prior written consent of the Procuring Contracting Officer." While the protester argues that this provision is not an absolute "cap" or "ceiling" because the maximum rates can be exceeded with the permission of the contracting officer, we find that this provision, although not an absolute cap, is a legally significant government imposed cost containment point which the agency could rationally evaluate as significant. The agency could therefore evaluate cost proposals consistent with this provision by giving essentially equal consideration to the maximum rates and the average rates.¹³

Given that the agency cannot be faulted for evaluating ISN at its own proposed maximum rates, and given ISN's extremely

¹³The protester itself acknowledges that proposing high maximum rates would [deleted]. We note that from a legal standpoint, the protester, by proposing very high maximum rates, also reserved for itself the right to bill any employee within each labor category--and not just those are currently the highest paid--at the maximum rates if circumstances change or otherwise warrant in the future.

high maximum rates, we conclude that the agency could reasonably conclude, after examining and equally weighing all data points, that ANSTEC's cost proposal was most advantageous.

The protest is denied.

Robert P. Murphy
General Counsel