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

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## Decision

**Matter of:** Hurricane Consulting, Inc.

**File:** B-404619; B-404619.2; B-404619.3

**Date:** March 17, 2011

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Mark A. Allen, Esq., and Barbara Walthers, Esq., Department of Homeland Security, for the agency.  
Paul N. Wengert, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that agency misevaluated protester's proposed staffing and failed to provide meaningful discussions about staffing is denied where discussions informed protester of the agency's concerns over the proposed lower staffing level, and the contemporaneous evaluation record for the protester's final proposal revision demonstrated a reasonable basis for downgrading the protester's proposal where evaluators questioned the protester's explanation and viewed its lower staffing as only minimally adequate.
2. Protest grounds arguing that successful vendor's joint venture was not a properly constituted service-disabled veteran owned small business joint venture, and therefore the agency should have rejected the successful vendor's proposal, are dismissed where the essence of the protest is a matter of small business status, for which protest jurisdiction is reserved to the Small Business Administration, not GAO.

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### **DECISION**

Hurricane Consulting, Inc. (HCI), doing business as HCI Integrated Solutions, of Fairfax, Virginia, a small business, protests the issuance of a task order to Longview-FedConsulting JV (LVFC JV), of Rockville, Maryland by the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (USCIS), under task

order request for proposals<sup>1</sup> (RFP) No. HSSCCG-10-R-00022 for records management services at service centers in California and Vermont. HCI argues that USCIS misevaluated the firm's proposal, failed to conduct meaningful discussions, and made an unreasonable source selection decision.

## BACKGROUND

USCIS issued the RFP on June 28, 2010, seeking proposals from PACTS vendors<sup>2</sup> to provide services for the agency's service centers in the states of California and Vermont.<sup>3</sup> The RFP provided that award would be made to the vendor whose proposal represented the best value, considering three factors: technical capability, price, and past performance. The RFP stated that technical capability was slightly more important than price, and that price was significantly more important than past performance. RFP at 232. The technical capability factor consisted of three subfactors, listed in descending order of significance: operational approach, management approach, and corporate capability. RFP at 233-34. The most important subfactor, operational approach, contemplated the evaluation of each vendor's concept of operations, their management of work flow and work prioritization, whether proposed staffing is sufficient and appropriate for the requirements of the performance work statement, and the vendor's approach to maintaining quality standards. RFP at 233. Under the technical capability factor, and each of its subfactors, proposals were to be assigned adjectival ratings of outstanding, good, acceptable, or unacceptable. Agency Report (AR), Tab 9, Source Selection Plan, at 11.

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<sup>1</sup> The solicitation was a task order request for proposals, and sought responses only from vendors holding DHS program management, administrative, clerical, and technical services (PACTS) indefinite-delivery/indefinite-quantity (ID/IQ) contracts (specifically, "functional category 2" of those contracts), and resulted in the issuance of task orders under the successful vendors' PACTS contracts. Consistent with the terminology used by the parties, we refer to the solicitation as the RFP, and refer to the vendors' responses as proposals.

<sup>2</sup> The PACTS ID/IQ contracts were set-aside for award to service-disabled veteran-owned small businesses (SDVOSB). Contracting Officer's Statement at 2.

<sup>3</sup> The California and Vermont service centers were designated as "Group B." The RFP also requested quotations for two "Group A" service centers in Nebraska and Texas. Although HCI also submitted an unsuccessful proposal for the "Group A" task order, the firm has not protested the placement of that task order. For sake of clarity, although the exhibits to the agency report reference both source selections, our decision does not address the Group A procurement further, and all references are to the Group B procurement record.

Four vendors, including HCI and LVFC JV, submitted proposals by the due date of August 2. The incumbent service provider, Stanley Associates, Inc., does not hold a PACTS contract for functional category 2 (apparently because the firm is not an SDVOSB), and therefore did not compete for the task order. However, HCI proposed to utilize Stanley as a subcontractor.

The proposal submitted by HCI emphasized Stanley's status as the incumbent contractor, and the firm's access to experienced personnel. AR, Tab 10, HCI Initial Proposal, Vol. II (Technical), at 1. The technical proposal also set forth HCI's staffing approach by function, job title, and location. Id. at 19.

In the evaluation of the initial proposals, the evaluators described HCI's operational approach as good and HCI's staffing as "lean but workable." AR, Tab 12, HCI Initial Technical Capability Evaluation Report, at 1, 7. Based on the evaluation, USCIS rated HCI's proposal good under all three technical capability subfactors, and good overall for the technical capability factor. Id. at 20.

USCIS then established a competitive range of three vendors, including HCI, and initiated discussions. Contracting Officer's Statement at 3. During discussions, USCIS posed questions about the staffing levels proposed by HCI. In one, USCIS questioned what appeared to be a significant reduction overall from the staffing level of the incumbent, Stanley, as follows:

T8. Staffing: Offeror states that their subcontractor Stanley currently employs [DELETED] employees as of July 1, 2010 . . . , whereas this staffing plan totals approximately [DELETED] FTE [full-time equivalent]. Please explain how the reduction in FTE staffing will be sufficient to successfully perform the contract requirements.

AR, Tab 14, Discussions Letter (Group B) to HCI, Sept. 13, 2010, at 2.<sup>4</sup>

Upon the completion of discussions, USCIS requested final proposal revisions. In its final proposal, HCI acknowledged that its staffing represented a reduction of approximately [DELETED] percent from the staffing level under the incumbent contract. HCI stated that this reduction in force could be achieved through "[DELETED] processes/procedures." AR, Tab 18, HCI Discussions Response, at 3. The response also stated that HCI would track employee hours using [DELETED]. Id. at 4.

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<sup>4</sup> USCIS also held oral discussions. Notes from the technical evaluator of the oral discussions reflect that USCIS learned that the incumbent staffing was actually [DELETED] FTEs and not [DELETED] FTEs. AR, Tab 16, Technical Evaluator Notes of Oral Discussions, at 3.

In evaluating HCI's response to the discussion questions, the agency found that the responses had not addressed the agency's concern about staffing. Instead, HCI's response caused the evaluators to believe that HCI had proposed a minimum staffing level, which lowered their assessment of the firm's operational approach. The evaluators explained that HCI's response to discussions and final proposal revision had not adequately explained how the reduction in staffing would be sufficient to successfully perform the contract requirements. For example, HCI had not provided a "numerical analysis of actions per hour assumptions," which is something that "would normally be used to determine how many staff are needed to meet the given requirements." AR, Tab 20, HCI Final Technical Capability Evaluation Report, at 25. While recognizing that HCI had identified techniques as justifying the reduction in force, the evaluators criticized the firm's response as lacking specifics to show how those techniques would achieve an [DELETED] percent reduction in FTE levels. The evaluators also questioned the realism of HCI's plan to [DELETED], particularly given the firm's [DELETED]. Accordingly, the evaluators explained that HCI's proposal rating under the operational approach subfactor was being lowered from good to acceptable. AR, Tab 20, HCI Final Technical Capability Evaluation Report, at 25-27.

The evaluation of proposals resulted in the following final evaluation ratings for the technical capability factor and subfactors, as reflected below:<sup>5</sup>

<b>Vendor</b>	<b>Operational Approach Subfactor</b>	<b>Management Approach Subfactor</b>	<b>Corporate Capability Subfactor</b>	<b>Overall Technical Capability Factor</b>
<b>HCI</b>	Acceptable	Outstanding	Outstanding	<b>Good</b>
<b>LVFC JV</b>	Outstanding	Good	Outstanding	<b>Outstanding</b>

AR, Tab 23, Source Selection Decision, at 3.

The overall technical capability ratings, along with the ratings for price and past performance, were as follows:

<b>Vendor</b>	<b>Technical Capability</b>	<b>Price</b>	<b>Past Performance</b>
<b>HCI</b>	Good	\$140.3 million	Low Risk
<b>LVFC JV</b>	Outstanding	\$147.8 million	Low Risk

Id. at 4-5.

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<sup>5</sup> The evaluation of the third vendor's proposal has no bearing on the protest issues, so this decision discusses only the evaluation of HCI's and LVFC JV's proposals.

Based on the evaluation, the source selection authority determined that a “significant discriminat[or]” favoring the selection of LVFC JV was the firm’s staffing plan, which the source selection authority characterized as a “more realistic plan” than HCI’s plan, and one that would result in reduced operational risk to the government. AR, Tab 23, Source Selection Decision, at 5, 8. The source selection authority explained that LVFC JV’s staffing and other advantages resulted in its proposal receiving a higher rating than HCI’s proposal under the operational approach subfactor. Since the operational approach subfactor was the most important subfactor under the technical capability factor, this resulted in LVFC JV’s proposal receiving a higher overall rating for the technical capability factor. Considering the strengths and weaknesses of both LVFC JV’s and HCI’s proposals, the source selection authority determined that LVFC JV’s advantages justified paying the proposal’s higher evaluated price. Id. at 5, 7-9.

After receiving the decision of the source selection authority, the contracting officer issued the task order to LVFC JV. Following a debriefing, HCI filed this protest.

## DISCUSSION

HCI challenges the evaluation of its proposed staffing, the adequacy of discussions, and the reasonableness of the source selection decision.<sup>6</sup> HCI also argues that LVFC JV is not an SDVOSB, and that LVFC JV’s proposal was unacceptable because the joint venture is not properly constituted.

First, HCI argues that LVFC JV is not an SDVOSB joint venture because a statement on the FedConsulting Internet site appears to state that the managing joint venture partner is not an SDVOSB. Supplemental Protest at 3. HCI also argues that the structure of LVFC JV’s joint venture violates the Small Business Act, Small Business Administration (SBA) regulations, and guidance issued by the Department of Veterans Affairs. HCI Comments at 29. In an attempt to lay a basis for our Office to exercise jurisdiction for these allegations, HCI argues that the issues are a matter of proposal acceptability, and it maintains that its protest does not challenge the status, ownership, or control of Longview, nor the terms of the LVFC JV joint venture agreement. Id.

We disagree with HCI’s effort to recharacterize an issue that fundamentally requires a determination of the validity of LVFC JV’s eligibility to compete as an SDVOSB—and thus challenges the firm’s eligibility to compete under this RFP—as a question of proposal acceptability. In our view, the question posed is whether LVFC JV is an

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<sup>6</sup> HCI also speculates that the agency was improperly influenced by Congressional correspondence sent to the Secretary of Homeland Security and the Secretary of Labor, and correspondence from a labor union to the Secretary of Homeland Security. However, the record does not provide any evidence that these letters affected the procurement.

eligible SDVOSB, and that question is reserved for determination by the SBA. Accordingly, we dismiss HCI's grounds of protest challenging the acceptability of LVFC JV's proposal on grounds related to the eligibility of LVFC JV as an SDVOSB.

Next, HCI challenges the agency's evaluation of its staffing under the operational approach subfactor of the technical capability factor. HCI focuses this ground of protest on particular statements in the record, most prominently that HCI failed to submit "numerical analysis of actions per hour assumptions that would normally be used to determine how many staff are needed to meet the given requirements." See AR, Tab 20, HCI Final Technical Capability Evaluation Report, at 25. HCI argues that USCIS failed to inform HCI of this concern, and that the concern was an unstated evaluation standard that resulted in an unreasonable evaluation of HCI's operational approach. HCI Comments at 3-4.

USCIS argues that it provided adequate discussions to inform HCI of the agency's concern about the firm's staffing levels. When HCI provided explanations for the lower staffing that, in the view of the USCIS evaluators, lacked supporting explanation and did not appear to be achievable, the evaluators lowered the operational approach subfactor rating from good to acceptable. USCIS argues that both the discussions and subsequent evaluation of HCI's revised proposal were reasonable. Supp. AR at 2, 6.

We recognize that FAR Part 15 procedures do not, as a general rule, govern task and delivery order competitions conducted under FAR Part 16. Thus, our Office will review task order competitions to ensure that the competition is conducted in accordance with the solicitation and applicable procurement laws and regulations. Bay Area Travel, Inc., et al., B-400442 et al., Nov. 5, 2008, 2009 CPD ¶ 65 at 9 n.13. In that regard, FAR § 16.505 does not establish specific requirements for discussions in a task order competition; exchanges in that context, like other aspects of such a procurement, must be fair. When discussions are held, they must be fair and not misleading. CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 9; see also Imagine One Tech. & Mgmt., Ltd., B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7-8.

Here, the discussion question posed by USCIS adequately informed HCI of the agency's concern over the firm's proposed [**DELETED**] percent reduction in staff. In this regard, the agency specifically identified HCI's reduced staffing as an issue for discussion and requested that the firm "explain how the reduction in FTE staffing will be sufficient to successfully perform the contract requirements." AR, Tab 14, Discussions Letter (Group B) to HCI, Sept. 13, 2010, at 2. Although the evaluators commented that HCI's proposal did not provide detailed numerical analysis to support the lower staffing, read as a whole, the record does not support HCI's contention that the evaluators imposed a requirement for such an analysis as an unstated evaluation criterion. Rather, the record shows that USCIS downgraded HCI's final proposal revision because it provided inadequate support to justify HCI's

operational approach using lower staffing. We see no flaw in the discussions provided to HCI on this issue.<sup>7</sup>

With regard to the evaluation of HCI's proposed staffing, the record supports the decision to rate HCI's final proposal revision as acceptable, rather than good, under the operational approach subfactor. The record reflects that the evaluators were concerned that the explanations submitted by HCI, in response to discussions on its reduced staffing, were inadequate. For example, HCI stated that it was planning on increasing efficiency through techniques such as "[DELETED] processes," and [DELETED]. AR, Tab 18, HCI Discussions Response, at 3. However, as the evaluators noted, HCI merely listed, but did not provide details concerning these techniques, or explain how the techniques would achieve the reductions in work force proposed. The agency also did not believe that [DELETED] would achieve significant staffing reductions given HCI's approach. AR, Tab 20, HCI Final Technical Capability Evaluation Report, at 25, 27. Based on our review, the record provides a reasonable basis for the agency's evaluation judgments, and thus we have no basis to question them.

Finally, HCI challenges the source selection decision rationale, but these challenges are dependent on the protester showing that the evaluation was improper. To the contrary, the record reflects that the source selection authority understood the differences between the proposed approaches of HCI and LVFC JV, and determined that the advantages of the LVFC JV proposal's better operational approach outweighed the proposal's lower rating for management approach and still justified paying the higher price. Since the source selection decision was reasonable and consistent with the RFP, we have no basis to question it.

The protest is denied.

Lynn H. Gibson  
General Counsel

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<sup>7</sup> To the extent that HCI argues that DHS failed to hold discussions regarding other issues that were evaluated as weaknesses in its proposal (relating to its quality manager and a deputy site manager), the record does not support HCI's claim that these weaknesses affected the source selection decision. Thus, the lack of discussions on these issues was not prejudicial.