Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SEMCOR, Inc.; HJ Ford Associates, Inc.

File: B-279794; B-279794.2; B-279794.3

Date: July 23, 1998

Claire E. Kresse, Esq., Eun K. Chung, Esq., Jonathan D. Shaffer, Esq., and John S. Pachter, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for SEMCOR, Inc., and Richard A. Maresca, Esq., Porter, Wright, Morris & Arthur, for HJ Ford Associates, Inc., protesters.
Ronald G. Schumann, Esq., and Marian E. Sullivan, Esq., Department of the Air Force, for the agency.
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

While contracting agency improperly relied upon the "expert" exception to full and open competition to justify the award of a sole-source contract to an incumbent contractor for litigation support services, protests that the agency's sole-source award based upon that exception are denied where the record reasonably supports the conclusion that the agency's action more properly should be viewed as a procurement under the exception to full and open competition where there is only one source capable of meeting the agency's needs.

DECISION

SEMCOR, Inc. and HJ Ford Associates, Inc. protest the decision by the Department of the Air Force to award a sole-source contract to Innovative Technologies Corporation (ITC) for litigation support services associated with the C-130 Gunship Program. SEMCOR and HJ Ford contend that the Air Force improperly relied upon the "expert" exception to full and open competition to justify this sole-source acquisition.

We deny the protests.

BACKGROUND

Gunship Program Litigation Support

Rockwell International was awarded an Air Force contract in 1987 to modify C-130 aircraft to a gunship configuration. Three years later, Rockwell submitted a request for equitable adjustment (REA), which was followed by an updated REA in 1991 and a second updated REA in 1995. This last updated REA, valued at $547.45 million plus interest, ultimately formed the basis for a complaint in the Court of Federal Claims. Rockwell Int'l Corp. v. United States, No. 95-425C (Fed. Cl. filed June 26, 1995). Trial is scheduled to commence on October 1, 1999. The Air Force is assisting with trial preparation and is conducting a parallel alternative dispute resolution (ADR) effort as well. The services at issue here support both activities.

In late 1994, the Air Force formed a Contract Issues Resolution Team (CIRT) to analyze the REA. The CIRT's government personnel were soon supported by employees of two firms at issue here--ITC and The Analytical System Corporation (TASC). ITC was issued task orders under an existing contract to provide technical and cost/price analysis support to the CIRT. Contract No. F33657-90-D-2248, Task Order Nos. 0014 and 0016, Statement of Work (SOW) ¶ 3.0. In May 1995, coincidental with the expiration of its should-cost contract, ITC was awarded a contract to provide integrated engineering and technical management support. After Rockwell filed its complaint, ITC was issued a task order to provide engineering, manufacturing, and specialized cost/price analysis support to the CIRT.[1] Contract No. F33657-95-D-2050, Task Order No. 0001 § B.

The court's June 1996 scheduling order required the parties to image most documents related to the litigation onto electronic media for exchange and to produce various databases associated with the documentation. The period for document production was to end on September 30, 1997; the discovery period was to end on December 1, 1998; and final depositions were to be taken by March 31, 1999. Comprehensive Stipulated Scheduling Order at 12-18, 25-29.

ITC was issued a task order to help the government meet these requirements for imaging, databasing, and exchange of documentation. ITC was asked to identify, collect, document, and file all program-related documentation; perform in-depth technical analysis of the issues and detailed cost/price analysis of the claimed damages; support the development and establishment of the database systems; and support Department of Justice (DOJ) attorneys in litigation activities such as depositions, interrogatories, interviews, production of documents, and pre-trial activities. Contract No. F33657-95-D-2050, Task Order No. 0013, SOW ¶ 2.0. Various modifications extended ITC's performance of this task order to May 26,

[1]TASC became a subcontractor to ITC under this contract.

1998, the expiration date of its contract. As discussed further below, ITC supports the CIRT with [DELETED] personnel--[DELETED] analysts and [DELETED] technical editors and clerical support staff.

Omnibus Support Contracts

In July 1997 the Air Force issued a solicitation which anticipated the award of multiple contracts to obtain various categories of support services, including support for engineering, manufacturing, and litigation. The record shows that the Air Force intended to procure the Gunship litigation support services under these contracts. Contracting Officer's (CO) Statement at 13; Supplemental Agency Report at 2. In November, the Air Force announced its planned award of indefinite-delivery, indefinite-quantity (ID/IQ) omnibus support contracts to five firms, SEMCOR and HJ Ford among them.

ITC was one of several disappointed offerors who filed protests of the Air Force's decision in our Office. All of these protests were denied on March 4, 1998. Modern Techs. Corp. et al., B-278695 et al., Mar. 4, 1998, 98-1 CPD ¶ 81. Two days later, ITC's on-site project leader told the CIRT Chief that if the Air Force decided to procure the litigation support under the omnibus support contracts, he anticipated that approximately [DELETED]--later revised to [DELETED]--key support personnel would be offered work on other ITC contracts and would, therefore, be unavailable to the CIRT. CIRT Chief's Undated Memorandum for the Record.

At the same time, the Air Force knew that the omnibus contractors, SEMCOR in particular, were gearing up to provide these support services.[2] In a March 9 letter to the CIRT Chief, SEMCOR stated that it had contacted [DELETED] CIRT personnel--[DELETED] had committed to SEMCOR if the Air Force transitioned the work to the omnibus contracts and most of the rest were waiting until the Air Force decided what to do. This claim was supported by a written record of the contacts. SEMCOR also stated that it had offered most of these individuals higher salaries, and had offered full-time benefits to certain part-time personnel.

In a justification and approval document (J&A) drafted March 12, the Air Force requested permission to waive the use of the omnibus contract and to award a sole-source contract to ITC for these services. As discussed further below, the Air Force's justification for the sole-source award relied upon the "expert" exception to full and open competition at 10 U.S.C. § 2304(c)(3)(C) (Supp. II 1996), as implemented by Federal Acquisition Regulation (FAR) § 6.302-3. The (J&A) explained:

---

[2]As recently as February 5, 1998, the Air Force sent the omnibus contractors its projection for phase-in of new workload from existing contracts. The contract under which ITC was providing litigation support was on this list.

> [ITC] personnel currently providing support to the CIRT have the corporate knowledge required to enable [the government] to continue the ongoing litigation effort for the upcoming trial. ITC experts have analyzed Rockwell's Complaint for over 3 years. They have in-depth knowledge of this highly complex claim involving [DELETED] major technical issues, [DELETED] sub-issues and Rockwell's 13,070 page REA upon which the claim is based. . . . ITC experts [DELETED]. They have the only knowledge [DELETED]. ITC is the only contractor [DELETED]. No amount of training can replace this knowledge which gives this contractor the unique ability to quickly and accurately retrieve information required to respond to discovery requests. . . .
>
> . . . .
>
> There is no guarantee that the critical personnel currently working for ITC on the CIRT will become available for the omnibus contractors to hire. While it may be expected that many of the litigation experts working for ITC could be hired by the omnibus contractors the Air Force has knowledge from good authority that [DELETED] to [DELETED] technical team lead analysts . . . would remain with ITC and would be used on [another] contract . . . that continues for five years. Retention of seniority within ITC and the security of employment for five years on the [contract] are strong motivators for remaining with ITC. It is unlikely that the omnibus contractors could provide incentives to lure them from ITC. . . . Even if the majority of the personnel were hired by the omnibus contractors, loss of even a few at this critical stage of the discovery process would cause a major impact. . . . Any disruption at this point in discovery will present grave problems for the [DOJ] strategy, defense, and ability to respond to the Orders of the Court. . . .

J&A at 3, 5.

On April 2, the deputy director of the office authorized to approve the J&A and waiver request advised that his office had "reservations about the legitimacy" of considering the entire clerical staff as experts. He agreed that if the Air Force had to replace the current clerical workforce it would experience a short disruption of service, but stated that the information provided by the omnibus contractors gave him "good reason" to believe that almost all of the clerical staff would remain in place and merely change employers; since they would gain increased benefits and wages there was little incentive for them to stay with ITC. He recommended that the J&A be revised to include only the analysts and technical editors.

In April 6 and 7 letters, SEMCOR stated that [DELETED] of the [DELETED] CIRT personnel contacted had committed to SEMCOR the use of their resumes if the Air

Force decided to use the omnibus contract and most of the rest were waiting for the Air Force to make a decision. Only five individuals indicated that they would remain with their current employer should work be available. SEMCOR asserted that since its omnibus team could provide [DELETED] of [DELETED] incumbent personnel in a "seamless and transparent transition," at a savings to the government, a waiver did not seem to be justified.

In its briefing to the approving authority, the CIRT stated that any change in contractors would cause delay and disruption with respect to discovery opportunities in the litigation, as well as significant risk to the ADR effort. The CIRT advised that ITC's plan to retain [DELETED] percent of its key personnel would mean the loss of their experience when there was no time for a learning curve for new personnel. The CIRT finally asserted that the cost of ITC's performance--$9.017 million--was within the range of that estimated for the omnibus contractors--between $8.418 and $11.157 million when adjusted for learning loss and overtime. Briefing Charts at 20-37.

On April 13, the waiver and the J&A to award ITC a 2-year, $14 million ID/IQ contract were approved. SEMCOR and HJ Ford subsequently filed their protests. On May 8, citing urgent and compelling circumstances, the Air Force executed a determination and findings to award the contract notwithstanding the protests. See 31 U.S.C. § 3553(c)(2) (1994).

PARTIES' POSITIONS

SEMCOR and HJ Ford argue that the Air Force's sole-source award to ITC is improper because the agency is not acquiring the services of "an expert" but, rather, litigation support services akin to paralegal, clerical, or administrative services. SEMCOR, in particular, further contends that it was not necessary to award the contract to ITC to obtain the services of these personnel given the existence of the omnibus support contracts and the evidence provided by SEMCOR of its ability to recruit most of ITC's personnel for an omnibus support contract task order.

The Air Force contends that the ITC personnel are experts by virtue of the "special and current knowledge of the claim" that they have gained over the past 3 years which is used to assist the CIRT in the analysis of and defense against the claim and in the ADR effort. The Air Force further contends that it could not be certain of obtaining the services of ITC's personnel through any means other than awarding the contract to ITC and could not afford the disruption caused by the loss of even a few of these individuals. In its agency report on the initial protests, the Air Force also stated that it could have relied upon the exception to full and open competition authorized by 10 U.S.C. § 2304(c)(1)--i.e., that there is only one source capable of meeting the agency's needs.

DISCUSSION

The overriding mandate of the Competition in Contracting Act (CICA) is for "full and open competition" in government procurements, which is obtained through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A) (1994). As set forth in its J&A, the Air Force's justification for awarding this sole-source contract relies solely upon the exception to full and open competition authorized by 10 U.S.C. § 2304(c)(3)(C). This exception permits the use of noncompetitive procedures when:

> (3) it is necessary to award the contract to a particular source or sources in order . . . (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert . . . for use in any part of an alternative dispute resolution . . . process, whether or not the expert is expected to testify.

An agency may not award a contract using noncompetitive procedures pursuant to 10 U.S.C. § 2304(c)(3) unless it has executed a written J&A with sufficient facts and rationale to support the use of the specific authority, and unless that J&A has been properly approved. 10 U.S.C. § 2304(f)(1)(A) and (B); 10 U.S.C. § 2304(f)(3); FAR §§ 6.302-3(c), 6.303, 6.304. Moreover, an agency may not award a contract using any noncompetitive procedures on the basis of a lack of advance planning. 10 U.S.C. § 2304(f)(5)(A); FAR § 6.301(c)(1).[3]

Our review of an agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. Although we closely scrutinize procurement actions using other than competitive procedures, decisions as to whether an individual is an expert and which expert to use in support of litigation, disputes, or ADR processes involve complex judgments which must be left to the discretion of the agency. See Magnavox Elec. Sys. Co.; Ferranti Techs., Inc., B-247316.2, B-247316.3, May 28, 1992, 92-1 CPD ¶ 475 at 4. As a result, an agency's decisions in this regard will not be questioned by our Office so long as the agency has substantially complied with the procedural requirements of CICA, set forth above, and so long as the J&A sets forth reasonable justifications

---

[3]In its supplemental protest, SEMCOR alleged, for the first time, that the Air Force failed to engage in adequate advance planning because, among other things, it knew when it issued the RFP that ITC might not be one of the omnibus contractors. Since SEMCOR was aware of this fact at the time it filed its initial protest, on April 14, its failure to raise the matter until its supplemental protest, on May 29, renders the allegation untimely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1998) (protests not based upon alleged solicitation improprieties must be filed within 10 days after the basis of protest is known or should have been known).

for the agency's actions. Mnemonics, Inc., B-261476.3, Nov. 14, 1995, 96-1 CPD ¶ 7 at 3; see also EMCO, Inc., B-240070.2, Sept. 19, 1990, 90-2 CPD ¶ 235 at 2.

A plain reading of the statutory language makes it clear that an agency seeking to justify a sole-source award based upon the "expert" exception must show both that the contract is being awarded to "an expert" and that it is necessary to award the contract to "a particular source or sources" in order to procure the services of that expert. The protests at hand challenge the agency's showings as to both of these considerations.

The "expert" exception to full and open competition was added to CICA by section 1005 of the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. No. 103-355, § 1005, 108 Stat. 3243, 3254 (1994). Neither the statute nor its legislative history defines the term "expert" or indicates any reason for the addition of the exception, and CICA is similarly silent.

The FAR provisions implementing the exception are of limited assistance. Section 6.302-3(a)(2)(iii) merely repeats the statutory instruction, and section 6.302-3(b)(3) provides that "[u]se of [this] authority . . . may be appropriate when it is necessary to acquire the services of either--

> (i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether or not the expert is expected to testify. Examples of such services include, but are not limited to:
>
> (A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency; or
>
> (B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or
>
> (ii) A neutral person, e.g., mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.

Hence, while the applicable regulation provides a few examples of the services an expert might provide, neither it nor any other section of the FAR defines "an expert." In the absence of a directly applicable definition, the parties urge us to rely on definitions from various sources to ascertain whether the Air Force reasonably determined that ITC's personnel are "experts" within the meaning of this exception.

SEMCOR's view of the term's "well-established meaning" is "an individual possessing special skills or knowledge competent to offer opinion testimony in court."[4] Initial Protest at 4. HJ Ford proposes reliance upon Federal Rule of Evidence 702: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." The Air Force offers up the definition once found at FAR § 37.203(a).[5] The provision defined "individual experts and consultants" as:

> persons possessing special, current knowledge or skill that may be combined with extensive operational experience. This enables them to provide information, opinions, advice, or recommendations to enhance understanding of complex issues or to improve the quality and timeliness of policy development or decisionmaking.

Though our review is hindered by the absence of a directly applicable definition, certain common elements of the proffered definitions form a framework to guide our determination. See also 31A Am. Jur. 2d at 19-20, 61-65, Expert and Opinion Evidence, §§ 1, 55-58. For the purpose of the exception, we conclude that experts may be individuals who possess special skill or knowledge of a particular subject, that may be combined with experience, which enables them to provide opinions, information, advice, or recommendations to those who call upon them.

The J&A's rationale for concluding that ITC's personnel are experts[6] is limited to the assertion that they have "in-depth knowledge" of the claim by virtue of the fact

---

[4]SEMCOR does not specify the source of this "well-established meaning," but Black's Law Dictionary defines an expert as "[o]ne who is knowledgeable in [a] specialized field, that knowledge being obtained from either education or personal experience." Black's Law Dictionary (5th Ed. 1979) at 519.

[5]This provision was in effect when the applicable regulation was promulgated but has since been deleted for apparently unrelated reasons. When asked to adopt a particular definition of the term expert, the FAR Council declined and stated that it had reviewed the definition of expert then in the FAR and believed that it met the intent of the law. Secretary of the Air Force Contract Award Drafting Team, SAF/AQCO, Memorandum for Office of Defense Under Secretary of Defense for Acquisition Reform [ODUSD(AR)] regarding Contract Award FAR Case 94-701; Final Rule; Federal Acquisition Streamlining Act of 1994, Public Law 103-355, Tab B at 5.

[6]While the Air Force apparently believes that the ITC CIRT team as an aggregate is an expert, the language of the exception specifically refers to "an" expert, and we have no reason to believe that this means anything other than an individual expert.

that they collected, organized, and reviewed the data over the last 3 years and developed an "intimate knowledge" of the litigation support database. J&A at 2-3; see also Air Force Legal Memorandum at 10. However, the mere fact that one gains knowledge during one's employment does not make that knowledge "special"; the nature of that knowledge and its associated skills must be examined.

Nearly [DELETED] of ITC's personnel are technical editors or clerical support staff [DELETED]. The record shows that their tasks are paralegal, clerical, and secretarial in nature. [DELETED]. Briefing Charts at 13-14, 16-18. Tasks performed by the remaining staff include [DELETED]. Id. at 12-19; ITC Letter of April 23, 1998, Unnumbered Staffing Charts at 6-14.

The J&A states that most of these tasks must be accomplished by technical specialists intimately familiar with the substance and issues in the case and specifically references four tasks, principally database work. J&A Attachment No. 3 at 2. The Air Force states that these are the only individuals who know the litigation support database [DELETED]. The Air Force claims that these abilities are unique because [DELETED]. Id.; Contracting Officer Statement at 12; Air Force Legal Memorandum at 10.

The record does not reasonably support the Air Force's assertion that the knowledge--or skill--gained by working with the databases for some time is sufficiently special to render these personnel "experts." It is commonplace to use litigation support databases in large-scale litigation such as this, and it is reasonable to conclude that any competent provider of such services, including the omnibus support services contractors, would possess the knowledge and skill to use such databases. To be sure, the organization and content of such databases will differ from case to case, making each database unique. The Air Force has not shown, however, the differences here are so unusual as to bestow upon the users of the databases the "special" skill or knowledge of a particular subject required here. Moreover, we are not persuaded by the Air Force's arguments that photocopying, assemblying deposition books, and bibliographic indexing are skills requiring unique abilities and training; these are the sorts of tasks that can be accomplished by any competent legal support staff including, presumably, those of the omnibus support contractors. We therefore conclude that the nearly [DELETED] of the personnel who are technical editors or clerical support staff do not qualify as experts for purpose of the CICA exception.

The remaining ITC personnel are [DELETED] engineering, manufacturing, and cost analysts. Briefing Chart at 10. Relying on ITC's staffing charts, SEMCOR contends that these individuals perform primarily paralegal tasks--the charts show that their primary activities involve reviewing proposed responses to interrogatories, requests for admissions, and requests for production of documents; ensuring that suspense dates are met; supporting depositions; and preparing chronologies. ITC Letter of April 23, 1998, Unnumbered Staffing Charts at 1-5. Intrinsic in these tasks, however,

is the long-standing involvement of these analysts in the substantive analysis of the issues. As the contracting officer states, ". . . the technical analysts have engineering, financial, cost or other technical experience in the Air Force. These individuals have a thorough understanding of the acquisition process and the technical areas . . . at issue. . . . A number of [them] worked the Gunship program previously and have unique factual backgrounds for the effort that is being performed." Contracting Officer Statement at 12.

It may well be that some or all of these analysts possess "special skill or knowledge of a particular subject, combined with experience," that renders them "experts" for the purpose of the CICA exception, but the J&A and post-protest submissions do not set forth adequate justifications for so concluding. That the analysts possess knowledge and skills with respect to engineering and manufacturing is not, in itself, evidence that these individuals are "experts." We note that the omnibus support contracts were also intended to provide engineering and manufacturing support, and we can only assume that the omnibus support contractors' personnel possess such knowledge and skills. The Air Force suggests that it is the combination of this knowledge and skill with the experience of working on the Gunship program that makes these individuals "experts," but the record is not sufficient to support this suggestion.

Notwithstanding the inapplicability of the "experts" exception, our review of the record leads us to conclude that the Air Force's action here is more properly covered by 10 U.S.C. § 2304(c)(1). That section permits an award based on other than competitive procedures when the property or services are available from only one responsible source, or a limited number of sources, and no other type of property or services will satisfy the agency's need.[7] While the agency did not specifically rely on 10 U.S.C. § 2304(c)(1) to justify its award to ITC, the justification approved by the Air Force indicated that the agency was convinced that ITC was the only source that could satisfy the agency's critical need to meet the aggressive discovery schedule by retaining the entire experienced team of personnel. See Magnavox Elec. Sys. Co., B-230297, June 30, 1988, 88-1 CPD ¶ 618 at 5; see also Information Ventures, Inc., B-246605, Mar. 23, 1992, 92-1 CPD ¶ 302 at 4.

As noted above, the Air Force had a critical, time-sensitive requirement for litigation support due to an aggressive, court-imposed discovery schedule in a complex, high-dollar claim. The discovery period was to end on December 1, 1998, and the Air Force viewed this period as a critical point in the discovery schedule. In order

[7]As the Air Force points out, the requirement to show that it is necessary to award to contract to "a particular source or sources" in order to procurement the services of an expert is similar to that required under the exception authorized by 10 U.S.C. § 2304(c)(3).

to meet that discovery schedule, uninterrupted litigation support was essential. The Air Force viewed any disruption in the litigation support as presenting "grave problems" and risk in its defense of the claim. J&A at 5; Briefing Charts 2, 20.

While the Air Force was aware that SEMCOR, in particular, had provided evidence that many of ITC's personnel were at least open to the possibility of transitioning to an omnibus contractor, the Air Force was concerned about its ability to retain the services of the entire CIRT team to avoid the risk of delay and disruption to the discovery schedule. The J&A stated that there was no guarantee that ITC's critical personnel would be available for the omnibus support contractors because the Air Force had knowledge that [DELETED] to [DELETED] technical team lead analysts would remain with ITC and be used on a particular contract that extends to 2002. Retention of seniority within ITC and the security of employment for 5 years on that contract, as opposed to the 2 years of employment on the Gunship program litigation support contract, were cited as strong motivators for remaining with ITC. The J&A further stated:

> While it may be reasonable to expect that some of the personnel working for ITC could be hired by the omnibus contractors, the disruption to the personnel caused by changing companies and the potential for a break in work during the process of changing contractors is unacceptable at this stage of the litigation. Even if the majority of the personnel were hired by the omnibus contractors, loss of even a few at this critical stage of the discovery process would cause a major impact. . . . Any disruption at this point in discovery will present grave problems for the Department of Justice strategy, defense, and ability to respond to the Orders of the Court.

J&A at 5. We do not believe that the Air Force was required to accept this risk. In view of the critical need for this entire litigation support services team and the experience and skill that it had accumulated, and in view of the fact that the Air Force could not be certain of retaining that entire team through a source other than ITC with attendant risk to meeting the court-imposed discovery schedule, the record supports the procurement of these services under section 10 U.S.C. § 2304(c)(1) and the sole-source award was therefore proper.

We recognize that when an agency relies on 10 U.S.C. § 2304(c)(1) to justify the use of other than competitive procedures, the agency must publish a notice to permit potential competitors to challenge the proposed sole-source award and consider all bids or proposals received in response to that notice. 10 U.S.C. § 2304(f)(1)(C); FAR § 6.302-1(d). The Air Force did not comply with these requirements because it concluded that the sole-source award was justified based on 10 U.S.C. § 2304(c)(3)(C), an exception not subject to these requirements. While normally an agency's failure to comply with mandatory notice requirements would require

corrective action, see World-Wide Sec. Serv., Inc.; Philips Elec. Instruments, Inc., B-224277, B-224277.2, Jan. 8, 1987, 87-1 CPD ¶ 35 at 3-4, aff'd, B-224277.3, Apr. 22, 1987, 87-1 CPD ¶ 430, we think the Air Force's failure to do so here was not fatal to the procurement since it is clear, as discussed above, that only ITC was in a position to perform the contract without significant risk under the constraints of the court-imposed discovery schedule. Information Ventures, Inc., supra, at 4 n.4; Magnavox Elec. Sys. Co., supra, at 6. Additionally, the protesters were aware of the proposed award to ITC in sufficient time to file these protests. See Magnavox Elec. Sys. Co., supra. Indeed, in an April 7 letter to the Air Force, SEMCOR stated that the firm was aware of a proposed non-competitive award to ITC and endeavored to persuade the Air Force that SEMCOR could satisfy the agency's requirements. The purpose of the mandatory notice was thus served. See World-Wide Sec. Serv., Inc.; Philips Elec. Instruments, Inc., B-224277, B-224277.2, supra, at 3.

The protests are denied.

Comptroller General
of the United States