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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: Network Engineering, Inc.

File: B-292996

Date: January 7, 2004

Ernest W. McIntosh, Esq., and Anthony G. Newman, Esq., Newman & McIntosh, for the protester.

Edward H. Kim, Esq., and Kenneth J. Ingram, Esq., Whiteford, Taylor & Preston, for Access Systems, Inc., an intervenor.

James L. Weiner, Esq., and Alton E. Woods, Esq., Department of the Interior, U.S. Fish and Wildlife Service, for the agency.

Susan K. McAuliffe, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of agency's evaluation of quotations and "best value" selection of slightly higher-priced, higher technically rated quotation is denied where record shows evaluation and selection were reasonable and consistent with solicitation.

DECISION

Network Engineering, Inc. protests the agency's evaluation of quotations, and the selection of a higher-rated, slightly higher-priced quotation from another vendor, Access Systems, Inc., under request for quotations (RFQ) No. 9821-03-Q121, issued by the Department of the Interior, U.S. Fish and Wildlife Service, for information technology systems support services. The protester contends that the agency's evaluation of its quotation was improper and that it should have been the successful vendor because its quotation was technically acceptable and it offered a lower price than did Access.

We deny the protest.

The RFQ, set aside for small business concerns, was issued on August 21, 2003 under simplified acquisition procedures. The solicitation contemplated a base year blanket purchase agreement, with four option periods, for local area network (LAN) support services, including assistance in planning, installing, and optimizing hardware, software, and procedures for information technology systems. The source selection was to be based on the agency's determination of which quotation presented the best

overall value considering the following three evaluation factors, listed in descending order of importance: past performance of a similar nature; relevant staff experience and availability; and price. For the past performance factor, firms were to describe their relevant experience and provide up to three references for recent similar work. For the evaluation of relevant staff experience and availability, firms were to include detailed staffing plans, letters of intent for certain positions, and information regarding recruiting and training employees.

Five vendors submitted quotations which, along with their oral presentations, were evaluated and ranked by the agency. Access's quotation, at an evaluated price of \$1,424,924, was ranked highest for technical merit; Network's quotation, at an evaluated price of \$1,384,059.60, was ranked fourth. Access's quotation received ratings of "exceptional" under both technical evaluation factors (past performance and staff experience/availability), and an overall technical rating of "exceptional." Network's quotation received a rating of "good" under the past performance factor, a rating of "poor" under the staffing factor, and an overall technical rating of "good." Finding the difference in price between Access's and Network's quotations minimal, the agency concluded that the quotations were essentially equal in terms of price, and that technical merit would become the discriminator in the source selection.¹ The agency determined that the technical superiority of the Access quotation, primarily under the staffing factor, presented the best value to the agency and was worth the minimal additional cost. Network learned of the agency's source selection on September 26. This protest followed the firm's October 1 debriefing.

Network contends that the agency's evaluation of its quotation was improper, arguing that the agency unfairly failed to give the firm credit for offering to consider the use of incumbent personnel; alternatively, Network argues that the agency failed to advise vendors that additional evaluation credit would be granted for using incumbent personnel. Network also generally protests the agency's evaluation of its past performance.

We will review an agency's technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria and applicable procurement laws and regulations; a protester's disagreement with an agency's evaluation does not render

¹ Network does not challenge the agency's determination of its evaluated price at \$1,384,059.60, and also does not challenge the agency's determination that the Network and Access quotations were essentially equal in evaluated price. In its comments responding to the agency report, Network, for the first time, challenges the agency's communications about, and acceptance of, a price reduction by Access after oral presentations. We will not review this contention, however, as it was not filed within 10 days of Network's receipt of the agency's report that discussed vendor pricing, and thus is untimely. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2003).

it unreasonable. See Lynwood Mach. & Eng'g, Inc., B-285696, Sept. 18, 2000, 2001 CPD ¶ 113 at 4. In a best-value procurement, there is no requirement that the source selection be made on the basis of lowest price unless the solicitation so specifies; rather, price/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the solicitation's evaluation terms. See DDD Co., B-276708, July 16, 1997, 97-2 CPD ¶ 44 at 3. Based on our review of the record here, we have no basis to question the reasonableness of the agency's evaluation or source selection.

Although Network's quotation was considered acceptable, the agency reports that it was rated "poor" under the staffing factor due to numerous weaknesses. For instance, the evaluators found that although the RFQ required that all LAN engineers be Microsoft Certified Systems Engineers, two of Network's engineers did not possess the requisite certification; the firm's quotation was downgraded on this basis. Additionally, Network's limited training budget and self-paced training program were considered weaknesses, since the evaluators questioned whether employees could or would find the time for self-training. Also, while Network's quotation emphasized the firm's networking and telecommunications work, the agency downgraded it for failing to detail relevant user support work. Finally, the evaluators questioned the accuracy of resumes submitted for Network's proposed staff (as outdated, incomplete, or suggesting periods of unexplained unemployment). The protester does not challenge any of these negative determinations. Instead, Network argues only that, since Access was credited for submitting letters of intent from each of the incumbent contractor's employees, Network should have been told that staffing the project with incumbent employees was either required or preferred by the agency; Network alternatively argues that it should be credited for at least showing a general intent or willingness to review incumbent personnel qualifications for possible future employment.

We see no basis to conclude that the agency used unstated evaluation criteria in considering the use of incumbent personnel. While procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify various aspects of each factor which might be taken into account, provided that they are reasonably related to or encompassed by the RFP's evaluation criteria. NCLN20, Inc., B-287692, July 25, 2001, 2001 CPD ¶ 136 at 2. Here, the RFQ specifically advised firms that relevant staff experience and availability constituted an important selection factor. Without question, Access's use of highly experienced incumbent personnel is relevant to the staff experience factor; likewise, their letters of intent directly demonstrate staffing availability and commitment to perform under the RFQ; and, as the agency evaluators concluded, the experience and availability of the incumbent staff adds benefits in terms of a smooth transition and start-up by the new vendor. The agency thus reasonably regarded these features of Access's proposal as directly related to, and encompassed by, the RFQ's staff experience and availability evaluation factor.

To the extent the protester is arguing it had no basis to think that use of incumbent personnel would be viewed as a strength in the evaluation, the protester's position is without merit. Not only is the area reasonably encompassed by the RFQ's evaluation scheme, as discussed above, but the record shows that the agency asked clarification questions of the firm during oral presentations on the matter, indicating the agency's interest in any intended use of incumbent personnel. Moreover, Network's own alternative argument--that mentioning the possible use of incumbent personnel in its quotation should be credited as a strength in the evaluation--undermines its argument that it had no reason to think the agency would consider the benefits of using experienced incumbent staff.

In this regard, while Network contends that it should have received evaluation credit for simply mentioning in its quotation that it plans to review incumbent personnel qualifications for possible employment for work to be performed under the RFQ, we see no basis to conclude that such credit was warranted. Unlike Access's detailed incumbent staffing plan and letters of intent, Network did not demonstrate in any way how, when, or where such incumbent staff would be used by the firm. As the agency's evaluators pointed out, Network instead staffed its project with its own personnel, some of whom lacked proper certification.

Next, Network questions the propriety of the agency's past performance evaluation, arguing that the agency improperly selected Access without waiting to receive past performance information from Network's references. The agency reports that, since only one of Network's prior contracts appeared relevant to the work required here, the agency only attempted to contact the two individuals cited as the contact points for that reference; neither individual, however, could be reached that day, and neither responded prior to the agency's issuance of its source selection determination. Shortly thereafter, one of the individuals did respond and provided a positive reference for Network. The agency reports, however, that the reference did no more than support the "good" rating for past performance that Network had already received from the evaluators. According to the agency, Network, with only one relevant contract, did not show the level or quality of past performance necessary to justify an "exceptional" rating. In comparison, Access's rating of "exceptional" was based on that firm's and its subcontractor's more relevant and more substantial experience in providing, for example, excellent services under the predecessor contract for the same requirements, and user support services to over 80 agencies nationwide, including one contract that serves 14,000 users. We see no basis to question the adequacy of the past performance evaluation here or the difference in ratings between Access and Network based upon the breadth of experience and quality of performance shown in the quotations and the evaluation record.

The protester argues that the agency was required by the terms of the RFQ to make contact with its references prior to making its selection decision. An agency properly may proceed with an evaluation without input from references if

reasonable efforts have been made to contact them. See Lynwood Mach. & Eng'g. Inc., supra, at 5. Here, the record shows that the agency initially made a relevance determination concerning the three projects listed, and then reasonably chose to contact a reference for the only relevant contract.² The RFQ specifically provided that repeated attempts to contact references would not be made; it also specifically provided that after two failed attempts to reach a reference, the reference would be eliminated from consideration. Consistent with the language in the RFQ, the agency made two attempts (one to each of two individuals) to contact a reference for the relevant contract. Further, the agency already had assigned a rating of “good” to Network under the past performance factor, apparently based on the description in Network’s quotation of the one relevant contract referenced. As explained above, when one of the contacts for that contract responded to the agency, he gave a positive reference that simply confirmed the agency’s rating. Our review of the record shows no basis to suggest that Network’s rating would have increased even if the reference had been provided earlier.

In any event, as the agency and intervenor point out, it appears that Network was not prejudiced by the alleged error in the overall past performance rating. The protester has not challenged the agency’s determination that the difference in price between the Access and Network quotations was not significant, and, as stated above, Network has not shown that its rating of “poor” under the staff experience and availability factor lacks a reasonable basis. Thus, even if the protester’s past performance rating were raised from “good” to “exceptional,” making its rating under that factor equal to Access’s, in light of the significant difference in ratings under the staffing factor (“poor” versus “exceptional”), Access’s quotation would clearly remain the higher technically rated of two quotations essentially equal in price, thus providing no basis to change the agency’s best-value source selection determination. Competitive prejudice is a critical element of a viable basis of protest, and Network has not shown that, but for the agency’s evaluation of its past performance, it would have had a substantial chance of selection here.³ McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3.; see Statistica, Inc. v. Christopher, 102 F. 3d 1577, 1581 (Fed. Cir. 1996).

The protest is denied.

Anthony H. Gamboa
General Counsel

² The protester does not challenge the agency’s conclusion that only one of the three referenced contracts was relevant.

³ Although Network generally alleges that an agency employee may have shared inaccurate negative performance information about the protester with the evaluators, the agency states that the challenged communication took place after the source selection had been made, and thus was not a basis for the selection.