



G A O

Accountability * Integrity * Reliability

**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: ACS Government Services, Inc.

File: B-293014

Date: January 20, 2004

Robert J. Sherry, Esq., Kathleen M. Paralusz, Esq., and Marc R. Baluda, Esq., Kirkpatrick & Lockhart, for the protester.

Edward J. Tolchin, Esq., Fettmann, Tolchin & Majors, for Metrica, Inc., an intervenor.

Maj. Anissa N. Parekh, Capt. M. Turner Pope, Jr., and Kenneth J. Allen, Esq., Department of the Army, for the agency.

Louis A. Chiarella, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee misrepresented that three proposed key personnel had agreed to work for the firm is sustained where the record shows that the three individuals had not so agreed, and where the misrepresentation materially affected the evaluation of the awardee's proposal.

DECISION

ACS Government Services, Inc. (ACS) protests the issuance of a purchase order to Metrica, Inc. under a request for quotations (RFQ) issued by the Army Medical Research Acquisition Activity (USAMRAA), Department of the Army, for installation and training services of the Defense Medical Logistics Standard System (DMLSS) Deployment Release 3.X. ACS argues that Metrica materially misrepresented the availability of certain key personnel, that the Army's evaluation of Metrica's quotation was unreasonable, and that the agency's source selection decision was improper.

We sustain the protest.

Background

DMLSS Deployment Release 3.X is part of an automated information system which standardizes medical inventory management practices, equipment management, medical maintenance, financial accounting and tracking, customer area inventory

management, electronic and web-based ordering, and warehousing function throughout a medical treatment facility (MTF) for defense health care operations. Contracting Officer's Statement at 1. The procurement here is to acquire the support services necessary to the functional implementation of DMLSS Deployment Release 3.X at specified Army MTFs. The specific tasks required to be performed by the contractor include: (1) conducting onsite/telephonic pre-deployment site surveys, (2) coordinating in-briefing and out-briefing meetings, (3) conducting pre-conversion database validations, (4) providing onsite deployment support to the gaining MTF, and (5) providing extensive onsite training. Statement of Work (SOW) § 1.1.

On July 23, 2003, the Army issued the RFQ to five vendors holding General Services Administration (GSA) Federal Supply Schedule (FSS) contracts for information technology services. The solicitation included the SOW, instructions to vendors regarding the submission of quotations, and the evaluation factors for award. Contracting Officer's Statement at 2. The RFQ contemplated the award of a fixed-price purchase order for 1 year, with one 1-year option.¹ The solicitation established four evaluation factors: technical qualifications of key personnel, past performance, management's technical approach, and price. The RFQ stated that the first two evaluation factors were of equal importance and that each was more important than the management's technical approach factor. The solicitation advised vendors that all non-price factors, when combined, were more important than price (price, however, could become the deciding factor if quotations were evaluated and determined to be technically equivalent). The solicitation also notified vendors that the basis for award was "best value," based on an overall consideration of the evaluation factors.² Agency Report (AR), Tab 12, Evaluation Factors for Award, at 1.

Three vendors, including ACS and Metrica, submitted quotations, each consisting of a technical proposal and price proposal, by the August 8 closing date.³ An Army source selection evaluation board (SSEB) rated vendors' technical proposals using an adjectival rating system: excellent, above average, average, and unacceptable. After the initial evaluation of quotations, the Army conducted written discussions

¹ The agency informed vendors that while travel costs and other direct costs would be treated on a cost-reimbursement basis, and quoted as a separate line item, the remaining aspects of the contemplated purchase order would be fixed-price items.

² The RFQ also stated that the agency's award decision would be made through a competitive source selection conducted in accordance with Federal Acquisition Regulation (FAR) Subpart 15.3.

³ Because the record refers to these submissions as "proposals," we use that term here as well, despite the fact that submissions in response to a request for quotations are not proposals. See FAR § 13.004.

with all three vendors. The SSEB subsequently evaluated vendors' revised quotations as follows:

Factor	Metrica	ACS	Vendor C
Key Personnel	Above Avg.	Excellent	Excellent
Past Performance	Excellent	Excellent	Excellent
Technical Approach	Excellent	Excellent	Excellent
Price	\$2,202,290	\$2,563,627	\$2,897,219

AR, Tab 43, Source Selection Decision, at 10-11, Tab 42, SSEB Consensus Evaluation Record. The SSEB also developed an overall rating for each vendor's technical proposal—excellent for ACS and Vendor C, and above average to excellent for Metrica. AR, Tab 42, SSEB Consensus Evaluation Record, Tab 43, Source Selection Decision, at 11.

The contracting officer then determined that ACS's superior rating under the key personnel factor (primarily the result of program manager experience) did not outweigh the \$361,337 price difference between its quotation and that of Metrica, and deemed Metrica's quotation to be most advantageous to the government, all factors considered. This protest followed.

In its protest ACS raises numerous issues regarding the agency's evaluation of Metrica's quotation as to key personnel as well as the resulting source selection decision. ACS's protest centers, however, upon the assertion that Metrica's quotation materially misrepresented the availability of certain personnel proposed. Specifically, ACS contends that three of the individuals offered and certified as available by Metrica (i.e., Messrs. A, B, and C) had never agreed to work for Metrica, nor given their consent to be proposed by Metrica, but instead had exclusively committed themselves to the incumbent ACS for the DMLSS 3.X effort. ACS contends that by inaccurately certifying the availability of the individuals proposed, Metrica committed misrepresentations that materially affected the agency's evaluation of quotations and award decision. As a result, ACS argues, the agency's award decision should be overturned and Metrica disqualified from further consideration for award here.

Metrica contends that its quotation did not misrepresent the availability of the three individuals in question, and that the certifications submitted were accurate. Metrica argues that based upon the statements made by the three individuals in question, together with existing facts and circumstances, Metrica had a valid belief upon which it based the certifications of availability submitted as part of its technical proposal.

Analysis

Where, as here, an agency solicits FSS vendor responses and arrives at its source selection decision using negotiated procurement procedures, our Office will review the agency's actions, if challenged pursuant to our bid protest regulations, to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. See COMARK Fed. Sys., B-278343, B-278343.2, Jan. 20, 1998, 98-1 CPD ¶ 34 at 4-5.

In our review of protests involving service contracts, where the most qualified personnel are often those currently performing the services, we are mindful of the difficulty faced by a nonincumbent contractor in securing a qualified workforce sufficient to win the competition. Aerospace Design & Fabrication, Inc., B-278896.2 *et al.*, May 4, 1998, 98-1 CPD ¶ 139 at 5; ManTech Advanced Sys. Int'l, Inc., B-255719.2, May 11, 1994, 94-1 CPD ¶ 326 at 5. Specifically, providing certifications of availability may create difficulties both for non-incumbent offerors and incumbent employees, and, as result, should be required only when necessary to meet the agency's needs. Nevertheless, where a proposal ultimately selected for award included certifications concerning the availability of personnel, a material misrepresentation in the certifications generally provides a basis for rejection of the proposal or reevaluation of the award decision. ManTech Advanced Sys. Int'l, Inc., *supra*, at 5, 13 (misrepresentation of personnel commitments, reevaluation recommended); CBIS Fed. Inc., B-245844.2, Mar. 27, 1992, 92-1 CPD ¶ 308 at 6-7, 17 (misrepresentation of personnel availability, reevaluation recommended); Ultra Tech. Corp., B-230309.6, Jan. 18, 1989, 89-1 CPD ¶ 42 at 5 (misrepresentation of availability of key person and use of name in proposal without permission, termination recommended absent other agency findings); Informatics, Inc., B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53 at 13 (misrepresentation of results of a survey of the availability of incumbent's personnel, exclusion of awardee from further consideration recommended). A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. Integration Techs. Group, Inc., B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 at 2-3; Sprint Communications Co. LP; Global Crossing Telecomms., Inc.--Protests and Recon., B-288413.11, B-288413.12, Oct. 8, 2002, 2002 CPD ¶ 171 at 4.

For the reasons set forth below, we find that Metrica misrepresented that three of the key personnel that it proposed had agreed to work for the firm. We also find that Metrica included in its quotation the names and resumes of these three individuals without having gained their permission to do so, and cognizant of the fact that the individuals had given exclusive permission to ACS to submit their resumes. Further, we conclude that these actions resulted in a material misvaluation of the key personnel portion of Metrica's proposal.

The SOW set forth the requisite position descriptions, a government estimate of the number of personnel needed for each position (11 personnel total), and established that vendors were required to provide personnel who possessed the knowledge,

skills, and abilities to fully perform the SOW's identified tasks and functions. SOW § 1.4.2, 1.4.4. The solicitation also deemed all personnel to be key in nature. AR, Tab 11, Instructions to Vendors, § L.2.1.1. With regard to the technical qualifications of key personnel, the RFQ instructed vendors to list the personnel and skill level categories available to work on the start-up date. Relevant to the protest here, the solicitation expressly required that vendors "[i]dentify personnel proposed for assignment to the project, [and] certify that the information on each person is accurate and complete and that the individuals named are available for assignment on the date the award is effective." Id. § L.2.1.2.

The personnel staffing plan of incumbent ACS, as set forth in its technical proposal, was to use all the employees and subcontractor employees then performing the DMLSS contract. Among the 11 names and resumes submitted by ACS in its quotation were those of Messrs. A, B, and C. Attached to the resume of each of these individuals was a signed statement declaring, "I have authorized ACS exclusive rights to submit my resume as part of a proposal submitted in response to the [DMLSS Deployment Release 3.X] solicitation."⁴ AR, Tab 27, ACS's Technical Proposal, attach. 2, at 12, 17, 30.

Metrica, the incumbent prior to ACS, proceeded similarly. In its technical proposal Metrica declared that its staffing approach was "to maintain the existing teams that are currently involved in the DMLSS 3.X deployment process, if possible," AR, Tab 28, Metrica's Technical Proposal, at 4, and when not possible, that Metrica's staff would be comprised of those individuals as represented by the resumes submitted. Among the 11 names and resumes provided by Metrica in its quotation were those of Messrs. A, B, and C.⁵ For each of the other eight key personnel proposed by Metrica, the named individual certified that his or her resume was accurate and that he or she was available to work on the contract if awarded to Metrica. By contrast, included with the resumes of Messrs. A, B, and C were certifications signed by a Metrica representative, each stating in relevant part, "Metrica hereby certifies that this resume is accurate and that [the named individual] has agreed to work on this

⁴ Similar statements were included with nearly all of the resumes submitted by ACS as part of its technical proposal here. While Metrica argues that ACS's quotation failed to provide the certifications required by the solicitation, Protester's Post-Hearing Comments, at 11-12, we think that based upon the resumes and declarations included in ACS's quotation the Army reasonably determined that ACS's technical proposal satisfied the RFQ's requirements.

⁵ Metrica possessed older versions of the resumes of Messrs. A, B, and C, which Metrica updated prior to submission to reflect each individual's current DMLSS work as employees of ACS.

contract if awarded to Metrica, Inc.”⁶ AR, Tab 28, Metrica’s Technical Proposal, at 18, 20, 27.

After ACS, following the filing of its protest, submitted affidavits from the individuals in question casting doubt on the certifications of availability submitted by Metrica as part of its quotation, our Office conducted a hearing to ascertain the facts and to assess the credibility of the respective parties’ witnesses concerning the nature of the commitments that were made to Metrica. Testimony was obtained from two representatives of Metrica (a vice president and project manager), and from each of the three key individuals mentioned above, as to the nature of the commitments in question.

During the hearing, the Metrica vice president testified that he had signed the certifications regarding Messrs. A, B, and C because he was certain that each would come to work for Metrica if Metrica received the DMLSS deployment purchase order. Hearing Transcript (Tr.) at 88. The Metrica vice president acknowledged, however, that he had not personally talked with any of the three individuals in question, Tr. at 95, 110, and that the certifications he had signed were based entirely on information received from various staff members, primarily Metrica’s project manager. Tr. at 88, 95-96.

The Metrica project manager testified that he had personally talked to Messrs. A and B prior to the submission of Metrica’s proposal. Tr. at 117-19, 121. From the discussion with Mr. A, he learned that the incumbent employees, including Mr. A, had signed statements allowing only ACS to submit their resumes. Tr. at 117. The Metrica project manager also testified that while Messrs. A and B never gave their permission for their resumes to be used in Metrica’s quotation, Tr. at 139, they never said that Metrica could not use their names and resumes, and Metrica never asked that question. Tr. at 125, 139. Additionally, the Metrica witness did not indicate that his discussions with Messrs. A and B entailed any exchange of information about salary benefits, or the precise positions which might be offered, other than inquiring whether the individuals might want to continue performing the DMLSS effort. Tr. at 118-21. From the responses given by Messrs. A and B, to the effect that both

⁶ While the Army states in its report that it had no reasonable basis upon which to conclude that Metrica had misrepresented the availability of the personnel proposed, Agency Report at 6-7; Contracting Officer’s Statement at 8, this position ignores the obvious inconsistency between the statements signed by Messrs. A, B, and C giving ACS the exclusive right to submit their resumes as part of ACS’s proposal, and the fact that resumes for these three individuals also appeared in Metrica’s proposal. A further point that the Army apparently did not notice was that the certifications of commitment submitted by Metrica for these three individuals, unlike the certifications for the other eight personnel proposed, were signed by a Metrica representative (rather than by the individuals themselves).

still hoped to be employed regardless of which vendor won the DMLSS competition, Tr. at 118, 121, the Metrica project manager testified that he was convinced that both would come to work for Metrica if it received the award. Tr. at 118.

The Metrica project manager also testified that he had not talked with Mr. C personally about whether he would agree to work for Metrica. However, based on discussions Mr. C had with another Metrica employee,⁷ during which Mr. C indicated that he did not like working for ACS, and the fact that Mr. C had approached Metrica on prior occasions looking for employment, Tr. at 123, the Metrica project manager testified that “we were pretty sure that [Mr. C] would come to work for us.” Tr. at 123.

Messrs. A, B, and C all testified that they had not agreed to work for Metrica. Tr. at 40, 51, 67. All three individuals stated that they never gave Metrica permission to use their names or their resumes, Tr. at 32, 49, 63; see also Protester’s Comments, Declarations of Messrs. A, B, and C, and believed that in light of their statements giving ACS the exclusive right to submit their resumes, no other vendor could use their names or resumes. Tr. at 31, 45, 57. Messrs. A, B, and C also testified that they did not know that Metrica was going to use their names and resumes and propose them here. Tr. at 33, 49, 64.

In terms of discussions with Metrica prior to the submission of its quotation, Mr. A confirmed that he had talked with a Metrica representative. Tr. at 31. Mr. A testified that he informed Metrica that he could not commit to any other vendor in light of the letter he had signed with ACS. Tr. at 31-32. Finally, Mr. A testified that he did not tell the Metrica representative that he would be available if Metrica won. Tr. at 33. Mr. B testified that he also talked with a Metrica representative about his availability. Tr. at 46. Mr. B expressed his willingness to “work for the contract,” Tr. at 47, but testified that he never committed himself to work for Metrica and that Metrica “took it for granted” that he would work for the company. Tr. at 51. Mr. C testified that no one from Metrica contacted him about his availability. Tr. at 58, 64. Moreover, Mr. C stated that he never told anyone at Metrica prior to the award announcement that he would be willing to work for the company on the DMLSS effort, and had never agreed to work for Metrica as alleged in the certification.⁸ Tr. at 59, 67.

We find that the record in this case, including the testimony received at the hearing, establishes that Metrica failed to exercise due diligence to ensure the accuracy of its

⁷ This third Metrica representative did not testify at the hearing we conducted, because injuries from a recent accident precluded his doing so.

⁸ Mr. C testified that the prior occasions on which he had expressed an interest in working for Metrica dealt instead with an unrelated computer hardware contract. Tr. at 59-60, 71.

certifications that Messrs. A, B, and C had agreed to work on the contract if it was awarded to Metrica.⁹

With respect to Messrs. A and B, the record does not support Metrica's claim of an agreement. As set forth above, both testified that they had not provided a commitment to Metrica. Tr. at 40, 51. This is supported by the fact that both individuals never gave Metrica permission to use their names or resumes in its proposal. Tr. at 32, 49. Metrica's own witness admitted that he never received permission to use these individuals' resumes--only that he was never told that he could not use their resumes.¹⁰ Tr. at 139. It is the obligation of the offeror, however, to gain the permission to use an individual's name and resume in its proposal. Ultra Tech. Corp., supra, at 5. The record also shows that Messrs. A and B did not know that Metrica was going to use their names and resumes in its proposal. Tr. at 33, 49. While Messrs. A and B may have each expressed the desire to remain employed regardless of which vendor received the DMLSS purchase order, Tr. at 118, 121, the record does not indicate that the discussions with Metrica ever reached the specifics of salary, benefits, or the precise job involved, which suggests the lack of a commitment on the individuals' part. See Aerospace Design & Fabrication, Inc., supra, at 7.

With respect to Mr. C, the record not only shows that Metrica misrepresented having received a commitment from this individual, but also that Metrica had never inquired as to his availability to work for Metrica on the DMLSS deployment effort. As set forth above, Mr. C testified that likewise he never provided a commitment to Metrica. Tr. at 59, 67. As with Messrs. A and B, Mr. C also never gave Metrica permission to use his name or resume, and was not aware that Metrica had used his name and resume in its quotation. Tr. at 63-64. Moreover, Mr. C explained that he never told anyone at Metrica prior to the award announcement that he would be available to work for Metrica on the DMLSS deployment because, prior to the award announcement, no one from Metrica ever asked him if he would be available to work for Metrica. Tr. at 59, 64. Even Metrica's description of its efforts here--that it was "pretty sure" that Mr. C would come to work for Metrica in light of the fact that he had previously approached the company looking for employment, and was allegedly unhappy working at ACS, Tr. at 123--undercuts its claim of a commitment. Quite

⁹ We note that in its post-hearing comments the Army found all witnesses for both ACS and Metrica apparently truthful and, in light thereof, expressed no opinion as to whether our Office should sustain or deny the protest here. Agency's Post-Hearing Comments, at 1-6.

¹⁰ The record also shows that Metrica never sought permission to use the three individuals' resumes, presumably because it was aware that the individuals had all given ACS the exclusive right to submit their resumes for the DMLSS deployment solicitation.

simply, there is no way to reconcile Metrica's certification that "Mr. C has agreed to work on this contract if awarded to Metrica, Inc." with the testimony received from both Mr. C and Metrica's own witness.

Metrica's actions after receiving notice of award are also inconsistent with its certifications that Messrs. A, B, and C had agreed to work for the company. The record indicates that Metrica did not approach Messrs. A, B, and C and inform them, as one would anticipate, that the Metrica team--of which the certifications would suggest they were a part--had received the DMLSS contract and that they could now proceed to fulfill their alleged agreement to work for Metrica. Instead, the record indicates that Metrica made a general, public announcement that it had been awarded the contract, and invited those incumbent employees who were interested in working for Metrica to come to its offices and express their interest.¹¹ Tr. at 38, 51, 65. It was only after Metrica's general announcement failed to result in sufficient proposed and/or incumbent employees coming forth that Metrica approached Mr. A about whether he would come to work for Metrica.¹² Tr. at 38. Moreover, Metrica was then forced to find replacements for both Messrs. A and B, when both took other positions with ACS, because Metrica had not in fact received commitments from these individuals agreeing to work for Metrica as represented in its proposal.

In sum, while individuals at Metrica may have believed that the employees in question would be available to work for Metrica, the record does not show that the vendor had received commitments from Messrs. A, B, and C such that it could validly certify, as it did, that each had "agreed to work on this contract if awarded to Metrica." Accordingly, we find that the totality of the evidence establishes that Metrica disregarded the facts known to it that conflicted with its desire to propose certain incumbent employees, and thereby misrepresented the level of commitment for 3 of the 11 personnel in its quotation.

Metrica argues that a finding that it misrepresented the availability of its proposed personnel cannot be made without proof that the awardee made intentional, bad faith misrepresentations, with an intent to deceive the agency. In support of its assertion that any misrepresentation must be an intentional one, Metrica cites to our decision in Informatics, Inc., supra.

In Informatics, a case which involved a pervasive disregard for the truth regarding both the nature and number of commitments obtained by the awardee from

¹¹ Only one of the three individuals from whom Metrica certified that it had received an affirmative commitment--Mr. C--actually approached Metrica and sought employment. Tr. at 67.

¹² The record does not show that Metrica ever approached Mr. B after receiving notice of award to seek his employment.

incumbent personnel, we determined that the offeror's intentional, bad faith misrepresentations concerning personnel that materially influenced an agency's consideration of its proposal provided a basis for proposal rejection or termination of a contract award based upon the proposal. An offeror's misstatements, however, need not be intentional ones in order to constitute misrepresentations, ManTech Advanced Sys. Int'l, Inc., *supra*, at 6 n.10 (a reasonable basis to believe that the incumbent personnel would be available to work for the awardee did not negate the awardee's misrepresentations that it had obtained commitments from the incumbent personnel whose resumes it submitted); Integration Techs. Group, Inc., *supra*, at 5 (an awardee's reasonable expectation that appropriate agreement could be reached after award does not alter the fact that a proposal which reflects something much different constitutes a misrepresentation), and the degree of negligence or intentionality associated with the offeror's misrepresentations is relevant instead to the remedy we recommend. See Aerospace Design & Fabrication, Inc., *supra*, at 19.

We also find that Metrica's misrepresentations here were material to the agency's evaluation of vendors' quotations. As noted above, a misrepresentation is material where an agency has relied upon the misrepresentation and that misrepresentation likely had a significant impact on the evaluation. Integration Techs. Group, Inc., *supra*, at 5; ManTech Advanced Sys. Int'l, Inc., *supra*, at 5. Here, the record shows that Metrica's misrepresentations were relied upon by the Army and likely had a significant impact on the evaluation of quotations, such that, in the absence of the misrepresentations, Metrica might not have been selected for award.

As set forth above, the solicitation established that all personnel were key in nature, and required that vendors provide the requisite number of personnel who were both qualified to perform the SOW's identified tasks and certified as available for assignment on the date the award was effective. At the hearing our Office conducted, the contracting officer testified that the agency relied upon the names, resumes and certifications of availability submitted by Metrica to determine that it met the solicitation's personnel requirements. Tr. at 20-23. Moreover, the record clearly shows that in the Army's evaluation of Metrica's quotation under the key personnel factor, Metrica received credit for the names, resumes, and certifications of availability submitted by Metrica as part of its technical proposal. In fact, based on a determination that each individual within Metrica's staffing plan was qualified and had agreed to work for Metrica here, the Army rated Metrica's quotation as above average under the key personnel factor.¹³ Consequently, we believe that the misrepresentations had a significant impact on the evaluation and award decision.

¹³ In contrast to many other cases in this area, the Army here was on actual notice of a potential misrepresentation from the language in the proposals themselves. Specifically, as noted above, there was an obvious inconsistency between the fact that the statements signed by Messrs. A, B, and C gave ACS the exclusive right to submit their resumes as part of ACS's proposal, and the fact that Metrica likewise

(continued...)

Recommendation

We conclude that Metrica materially misrepresented the level of commitment by 3 of 11 key personnel as part of its quotation here. While, as our discussion of prior cases above shows, we have not always recommended exclusion notwithstanding a material misrepresentation, we believe that the submission of a misrepresentation that materially influences the agency's evaluation should disqualify the offer (or, as in this case, the quotation). As our Office stated in Informatics, Inc., supra, the integrity of the system demands no less. We therefore recommend that the Army exclude Metrica's quotation from consideration,¹⁴ and, in light of the evaluation results regarding the other two vendors,¹⁵ issue a purchase order to ACS.

We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorney's fees.¹⁶ 4 C.F.R. § 21.8(d)(1)(2003). ACS should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Anthony H. Gamboa
General Counsel

(...continued)

submitted resumes for these same individuals, and the certifications of commitment submitted by Metrica for them, unlike the certifications for the other eight key personnel, were signed by a Metrica representative rather than by the individuals themselves. In light of this conflicting evidence, the Army clearly had reason to question the awardee's representations.

¹⁴ This recommendation is consistent with the Army's position as to the appropriate remedy. Specifically, in its post-hearing comments, the Army requests that, if we sustain the protest, we recommend that the purchase order issued to Metrica be canceled and that the agency issue a purchase order to ACS.

¹⁵ As noted above, both ACS and the third vendor received identical ratings of "excellent" under the three non-price factors, and the third vendor's price is higher than ACS's price.

¹⁶ We also direct the agency's attention to FAR § 33.102(b)(3), permitting an agency to require the awardee to reimburse the government's costs where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, which would appear applicable here.