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**Comptroller General
of the United States**

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

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Decision

Matter of: TreCom Systems Group, Inc.

File: B-404676; B-404676.2

Date: March 29, 2011

Marc Lamer, Esq., Kostos & Lamer, PC, for the protester.
Steven J. Koprince, Esq., and Devon E. Hewitt, Esq., PilieroMazza PLLC, for Vistronix, Inc., the intervenor.
Deirdre Stallworth, Esq., Environmental Protection Agency, for the agency.
Pedro E. Briones, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that an agency conducted misleading and inequitable discussions favoring the awardee in a procurement under Federal Supply Schedule procedures is denied, where the agency informed vendors that the contracting officer had determined that a two percent labor escalation rate was reasonable and invited the vendors' response.

DECISION

TreCom Systems Group, Inc., of Broomall, Pennsylvania, protests the issuance of a task order to Vistronix, Inc., of Reston, Virginia, under request for quotations (RFQ) No. TB0001 issued by the Environmental Protection Agency (EPA) for information technology (IT) services at the agency's Chesapeake Bay Program Office. TreCom challenges the agency's conduct of discussions.

We deny the protest.

BACKGROUND

The RFQ, issued pursuant to Federal Supply Schedule (FSS) procedures, provided for the issuance of a fixed labor-rate task order for a base year and 3 option years. See RFQ at 1. EPA provided the solicitation to seven vendors holding FSS schedule 70 contracts for IT equipment, software, and services. Agency Report (AR) at 2.

The RFQ stated that the task order would be issued on a lowest-priced, technically acceptable basis considering the following factors: past performance, staffing plan,

and price. RFQ amend. 2, at 9. The RFQ included a statement of work and identified 13 labor categories and estimated labor hours, for which the vendors were to provide their fixed hourly rates. See RFQ at 5-24. The estimated labor hours ranged from 2,080 hours to 10,400 hours. See, e.g., id. at 6-14. Vendors were informed that the agency intended to issue the task order without conducting discussions and therefore vendors should submit their most advantageous quotation. EPA E-mail transmitting RFQ amend. 2, Oct. 22, 2010.

EPA received three quotations, including TreCom's (the incumbent) and Vistronix's. AR at 2. TreCom quoted \$3,324,305 for the base year and each option year, without any escalation, for a total price of \$13,297,222. See Protester's Price Quotation at 3-11. Vistronix quoted a total price of \$11,950,348, which included an annual escalation rate of 2.8 percent for the option years.¹ AR, Tab 6, Initial Quotation Evaluation, at 8-9.

TreCom's and Vistronix's quotations were found to be technically acceptable, and the vendors' quoted prices were evaluated by the contracting officer (CO). Among other things, the CO compared the vendors' base year labor rates, and any proposed escalation for the option years, to each vendor's FSS labor rates, to the quoted rates, and to the agency's independent government estimate (IGE). See AR, Tab 6, Initial Quotation Evaluation, at 8-11; CO's Statement at 2. The IGE was based on TreCom's FSS contract labor rates, which showed a two percent escalation for each year from 2011 to 2014.² AR at 3. The CO also reviewed the Congressional Budget Office's Employment Cost Index Projections for all occupations for 2010 through 2014 and TreCom's incumbent order with the agency for these services. CO's Statement at 2. The CO determined that a two percent annual labor escalation rate was reasonable. Id. The CO also identified quoted labor rates that were discounted from the vendor's FSS contract.

EPA decided to conduct discussions with the vendors to obtain additional information regarding, among other things, the vendors' labor escalation rates. AR at 3-4; Tab 6, Initial Quotation Evaluation, at 8-9. With respect to labor rate escalation, Trecom was informed:

¹ Vistronix's quotation based its price upon 1,880 hours for those labor categories for which the RFQ stated that the estimated labor hours were 2,080. See AR, Tab 6, Initial Quotation Evaluation, at 8-9. EPA evaluated Vistronix's price by applying Vistronix's proposed labor rates to 2,080 hours, instead of 1,880, for those labor categories. Vistronix's overall evaluated price was determined to be \$13,219,534. AR at 6-7.

² The IGE was \$20,218,506 and consisted of \$4,905,646 for the base year and \$5,003,656, \$5,103,621, and \$5,205,582 for each of the respective option years. See AR, Tab 6, Initial Quotation Evaluation, at 8.

Your quote does not include any labor escalation during the option periods. The base year rates are the same as those proposed for the option periods. The contracting officer considers [two percent] annual escalation to be reasonable. Please confirm that you have considered labor escalation in preparing your quote.

AR, Tab 7a, EPA E-mail to TreCom, at 1-2. TreCom was also asked about a number of its quoted labor rates that appear to reflect substantial discounts from its FSS rates. Id. at 2. Vistronix was informed that “[a]nnual labor escalation of 2.8 [percent] was proposed. The contracting officer considers [two percent] annual escalation to be reasonable.”³ AR, Tab 14, EPA E-mail to Vistronix, at 2.

Trecom and Visitronix submitted revised quotations in responding to discussions. TreCom increased its quoted price to \$13,700,804, which reflected a two percent annual labor rate escalation. TreCom Discussion Response at 2; TreCom Revised Quotation at 11. Visitronix increased its quoted price to \$13,615,171, which also reflected a two percent annual escalation rate and the application of the correct labor hour estimates. AR, Tab 9, Final Quotation Evaluation, at 4.

The task order was issued to Vistronix, as the vendor with the lowest-priced, technically acceptable quotation. AR at 4. This protest followed.

DISCUSSION

TreCom protests that EPA misled TreCom when it informed the protester that it should include an annual two percent escalation rate for the option years. See Protest at 5. TreCom also complains that EPA’s discussions with Vistronix led that firm to reduce its quoted price to below that of TreCom’s, where, according to the protester, the agency suggested that Vistronix reduce its quoted 2.8 percent escalation rate to two percent. Protester’s Comments at 5-7. The crux of TreCom’s arguments is that it was improper for EPA to inform vendors that the CO had determined that a two percent labor escalation rate was reasonable.

The agency responds that it did not compel TreCom or the awardee to quote a two percent labor escalation rate, but merely asked vendors to address the contracting officer’s belief that a two percent annual labor rate escalation was reasonable. AR at 9-11. In this respect, EPA contends that the protester could have simply confirmed its prices and that it was TreCom’s decision to include a labor escalation rate. EPA also notes in response to the agency’s inquiry about the firm’s discounts from its FSS rates, that TreCom did not change its quoted labor rates. Id. The

³ Visitronix was also informed that it should revise its quotation to base its pricing upon the labor hour estimates stated in the RFQ. See AR, Tab 14, EPA E-mail to Visitronix, at 2.

agency also contends that it was appropriate to inform all vendors that the CO considered a two percent labor escalation rate reasonable. Id.

Where, as here, a competition is conducted among FSS vendors pursuant to Federal Acquisition Regulation (FAR) part 8, there is no requirement for agencies to conduct discussions in accordance with FAR § 15.306. However, exchanges that do occur with vendors in a FAR part 8 procurement, like all other aspects of such procurement, must be fair and equitable. USGC, Inc., B-400184.2, et al., Dec. 24, 2008, 2008 CPD ¶ 9 at 3. In this regard, a procuring agency may not coerce or mislead an offeror during discussions, including with respect to price. See, e.g., Enterprise Info. Sys., B-401037.5, B-401037.6, Dec. 1, 2009, 2009 CPD ¶ 233 at 2.

We find that EPA did not conduct misleading or inequitable discussions. The agency's discussions with TreCom and Visitronix compelled neither firm to revise their quotations with respect to labor rate escalation. Rather, the plain language of the agency's communications with TreCom and Visitronix informed the vendors equally that the contracting officer believed that a two percent labor escalation rate was reasonable and provided the vendors with an opportunity to address that belief. Moreover, to the extent that TreCom is complaining that Visitronix was given an opportunity to quote a lower labor escalation rate than it initially quoted, we note that procuring agencies are encouraged to seek price reductions in procurements conducted pursuant to FSS procedures. See FAR § 8.404(d).

The protest is denied.

Lynn H. Gibson
General Counsel