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Decision

Matter of: NCI Information Systems, Inc.

File: B-405589

Date: November 23, 2011

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Captain Edward Ahn, Department of the Army, for the agency.
Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's use of information from awardee's performance of the incumbent contract in the development of the independent government cost estimate, which was used in evaluating offerors' staffing approaches and prices, is denied because the use of this information, in conjunction with other data, was not inappropriate.
 2. Protest challenging the agency's conclusion that the protester's staffing approach contained significant weaknesses is denied where the protester's proposed staffing for several functions was reasonably determined to be insufficient.
 3. Protest that agency failed to conduct meaningful discussions with the protester concerning its proposed staffing in a task order competition conducted under Federal Acquisition Regulation Part 16 is denied where the record shows that the agency reasonably advised the protester of significant weaknesses in its proposal that required improvement.
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DECISION

NCI Information Systems, Inc., of Reston, Virginia, protests the issuance of a task order to Lockheed Martin Integrated Systems, of Alexandria, Virginia, by the Department of the Army, Mission Installation Contracting Command, under request for task order response (RTOR) No. W91247-10-ITES-0002, for information technology (IT) support services at the Army's Network Enterprise Center (NEC) at

Fort Benning, Georgia.¹ NCI argues that the Army's evaluation relied on a flawed independent government cost estimate (IGCE), that the evaluation of NCI's proposal was unreasonable, and that the Army failed to provide meaningful discussions.

We deny the protest.

BACKGROUND

The RTOR was issued on November 1, 2010, to the contractors that had received one of the multiple awards under the Army's Information Technology Enterprise Solutions 2 indefinite-delivery/indefinite-quantity (ID/IQ) contracts. The solicitation anticipated award of a task order with an 11-month base period and two 1-year options. The task order was to be issued on a fixed-price basis, with labor hour line items for information management officer support, and cost-reimbursement line items for travel, training, and material. Offerors were advised that they would be evaluated on the basis of price, and the following non-price factors: (1) technical approach, (2) staffing approach, and (3) relevant experience. ROTR at 44. As relevant here, the staffing approach factor required offerors to "[i]dentify the proposed staffing approach and a description of the personnel resources available to meet the requirements of the Task Order along with a summary on how the personnel qualifications and experiences are directly related to the [performance work statement (PWS)] requirements." Id. at 42.

The RTOR advised that proposals would be scored with the following adjectival ratings: excellent, good, acceptable, marginal, and unacceptable. Id. at 46. Offerors were further advised that a rating under any factor of marginal or unacceptable would make the proposal ineligible for award. Id. For purposes of award, the solicitation stated that the technical approach factor was equal to the staffing approach factor, and that each of these factors was significantly more important than the relevant experience factor. Id. at 44. When combined, the non-price factors were more important than price. Id.

As described below, the Army developed an IGCE of \$27 million for the task order. Agency Report (AR), Tab 20, Task Order Decision Document (TODD), at 6; attach 3, Price Evaluation Report, at 2. The IGCE was based on the agency's estimate that the task order would require 70 full-time equivalent (FTE) personnel to perform the work. AR, Tab 20, attach 3, Price Evaluation Report, at 2.

The Army received four proposals by the closing date of December 17. The agency evaluated each offeror's proposal, and then conducted discussions. As relevant here,

¹ The mission of the NEC is to provide the command, control, communications, computers and information management (C4IM) services support for numerous entities at Fort Benning. Contracting Officer (CO) Statement at 3.

the agency advised NCI during discussions that its proposal was rated as excellent under the technical approach and relevant experience evaluation factors, but was rated marginal under the staffing approach factor. AR, Tab 16, NCI Discussions, at 3. The agency advised the protester of a number of significant weaknesses in its proposal under the staffing approach factor, including, as relevant here: (1) NCI's approach of staffing the requirements with [deleted] FTEs "significantly fails to meet minimum performance standards," and (2) NCI's approach of staffing numerous PWS requirements as "an additional duty" of personnel assigned to other PWS requirements "is not feasible." Id.

The Army's evaluation of NCI's revised proposal concluded that, despite an addition of [deleted] FTEs, NCI's proposal remained marginal under the staffing approach factor. AR, Tab 20, TODD, at 13. The agency identified three significant weaknesses under this factor, two of which related to the level of staffing for help desk support under PWS ¶ 3.5.6, and the third of which related to the level of staffing for imaging support under PWS ¶ 3.22.² Id. The Army's final evaluation ratings for the offerors were as follows:

	LOCKHEED	NCI	Offeror 3	Offeror 4
Technical Approach	Excellent	Excellent	Acceptable	Good
Staffing Approach	Excellent	Marginal	Excellent	Good
Relevant Experience	Excellent	Excellent	Good	Excellent
Proposed Price	\$23.9M	\$18.5M	\$22.8M	\$26.6M

Id. at 6.

The source selection authority (SSA) concluded that, under the terms of the RTOR, NCI's proposal was ineligible for award based on its marginal rating for the staffing approach factor. Id. at 21. The SSA then concluded that Lockheed's higher-priced, higher-technically-rated proposal merited award as compared to Offeror 3's lower-priced, lower-rated proposal. Id. The Army advised NCI of the award to Lockheed on August 11, 2011, and this protest followed.

² Imaging is the process of reproducing an exact copy of a standard set of information, such as an operating system and software applications, on a storage device. PWS ¶ 3.22 requires the contractor to provide hardware and software maintenance. As the CO explains, and the protester's proposal discusses, the hardware and software maintenance requirements include imaging of computer hard drives. CO Statement at 12; see AR, Tab 24, NCI Initial Technical Proposal, at 30-31.

DISCUSSION

NCI argues that the Army's award to Lockheed was flawed for three reasons: (1) the agency's evaluation unreasonably relied on an IGCE that was based on Lockheed's performance of the incumbent contract, (2) the agency's evaluation of the protester's proposal under the staffing approach factor was unreasonable, and (3) the agency failed to provide meaningful discussions to the protester. For the reasons discussed below, we find no merit to the protest.

Independent Government Cost Estimate

NCI argues that the Army improperly based its IGCE on Lockheed's performance of the incumbent contract. In this regard, the protester argues that the agency viewed Lockheed's proposed technical approach as the "baseline" for the government's requirements, and that all other offerors were penalized for deviating from that baseline.

We review challenges to government estimates for reasonableness. See Division Laundry and Cleaners, Inc., B-311242, May 19, 2008, 2008 CPD ¶ 97 at 3; OMNI Gov't Servs., LP, B-297240.2 et al., Mar. 22, 2006, 2006 CPD ¶ 56 at 3. A protester's mere disagreement with an agency's basis for developing an IGCE provides no basis to sustain a protest.

As discussed above, the IGCE consisted of the Army's estimate that the task order would require 70 FTEs, at a cost of \$27 million. AR, Tab 20, attach. 3, Price Evaluation Report, at 2. The agency states that it based the IGCE on two sources of information that described the work currently being performed at Fort Benning under the incumbent contract: (1) the C4IM services list, which was included in the RTOR, and (2) the table of distribution and allowances (TDA) for the NEC. Supp. CO Statement at 2-3.³

³ NCI contends that the Army's explanation of the method by which it developed the IGCE was an improper post hoc response to the protest. In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. The S.M. Stoller Corp., B-400937 et al., Mar. 25, 2009, 2009 CPD ¶ 193 at 13. While we generally give little or no weight to reevaluations and judgments prepared in the heat of the adversarial process, Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12. Here, the CO's response to the protest explained how the agency

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A C4IM is a list of the services provided to agency IT users on a particular installation that an NEC is expected to provide. Id. at 3. The CO states that the C4IM list for Fort Benning was consulted to determine a baseline for the services required under the task order. Id. The C4IM list was then compared to the historical workload requirements for the Fort Benning NEC—under the incumbent contract—to develop the IGCE. Id.

The TDA is a list detailing the organizational structure and personnel available for a particular non-tactical Army unit. Id. The CO states that the TDA showed that there 146 FTE positions available at Fort Benning for IT support, 38 of which were assigned to other NEC contracts, leaving a total of 108 available personnel. From this figure, the agency subtracted an additional 38 government civilian employees assigned to work at the NEC, resulting in a total of 70 FTEs for a contractor to provide. Id. The Army then compared that C4IM data to the TDA data, and concluded that 70 FTEs was an appropriate level of staffing for the task order. Id.

The record here thus shows that the agency consulted information concerning the level of services required at the Ft. Benning NEC, as well as the level of effort provided under the incumbent contract by Lockheed. The record does not show, as the protester contends, that the agency simply adopted the technical approach used by Lockheed under the incumbent contract as the “baseline” for the IGCE.

In any event, the protester provides no support for its contention that an agency’s IGCE may not rely on data from an incumbent’s performance of the predecessor contract. The sole support cited by the NCI for its argument is our decision in Aegis Defence Services, Ltd., B-403226 et al., Oct. 1, 2010, 2010 CPD ¶ 238, where we held that a CO could reasonably ignore an IGCE for purposes of conducting a price realism analysis of the awardee, based on his determination that the IGCE relied on data from the incumbent contract. In that decision, however, we noted that the CO was concerned that the incumbent contract and IGCE were based on a completely different technical and cost approach than that used by the awardee (third country national personnel as compared to expatriate personnel). Id. at 7. For this reason, we concluded that the CO could reasonably disregard the IGCE as irrelevant for purposes of a price realism analysis. Id. The Aegis Defense Services decision does

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developed the IGCE, with reference to documents that were relied upon during that development. See Supp. CO Statement at 2-4. The record here does not reflect judgments or decisions that were made after award in response to the protest, or that are otherwise non-contemporaneous, post hoc explanations.

not stand for the opposite position advanced by the protester—that a CO is prohibited from considering an IGCE based on the incumbent’s performance.⁴

On this record, we find no basis to conclude that the Army’s IGCE was unreasonable, or that it could not be relied upon in evaluating offerors’ proposals.⁵

Staffing Approach Factor Evaluation

Next, NCI argues that the Army’s evaluation of its proposal under the staffing approach factor was unreasonable. Specifically, the protester challenges the agency’s rating of its proposal as marginal under this factor, which resulted in NCI’s proposal being ineligible for award under the terms of the solicitation.

The evaluation of a proposal is a matter within the agency’s discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester’s mere

⁴ NCI also cites guidance published by the Defense Information Systems Agency (DISA), which advises that “[u]sing cost/price data from a single contractor, without scrutiny, invalidates the ‘independence’ that makes your IGCE useful in contract negotiations.” DISA Agency Deskbook, Independent Government Cost Estimates, available at: <http://www.ditco.disa.mil/hq/deskbooks/igce.asp>. This guidance is not a binding regulation that applies to the Army. In any event, we do not think that this guidance supports the protester’s argument that reliance on an data concerning the staffing workload provided by an incumbent contractor is inherently improper. Instead, the guidance suggests that DISA contracting officers should be mindful of the limited usefulness of obtaining cost or pricing data from a single contractor “without scrutiny.” Id.

⁵ NCI also argues that the agency improperly conducted a price realism evaluation, despite not advising offerors in the solicitation that the agency would do so. See Milani Constr., LLC, B-401942, Dec. 22, 2009, 2010 CPD ¶ 87 at 4-5 (agencies may not rely on price realism analysis as a discriminator for award of a fixed-price contract where the solicitation does not advise that the agency intends to evaluate realism). The record shows that the agency evaluated offerors’ prices, and concluded that NCI’s proposed price reflected a “variance to the IGCE and the next lowest responder [that] was not within the Government’s preferred range of 15%.” AR, Tab 20, TODD, at 20. The record shows that, even if this evaluation constituted a price realism evaluation, it had no effect on NCI’s eligibility for award. In this regard, the Army’s evaluation of NCI’s proposal as “marginal” under the staffing factor did not depend on the evaluation of the protester’s proposed price. See id. at 10-13. Because, as discussed below, we conclude that the agency reasonably rated NCI’s proposal as marginal under the staffing approach factor, the protester was not eligible for award, and is therefore not an interested party to challenge the evaluation of offerors’ prices. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2011).

disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate the proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

First, NCI argues that the Army concluded that its FTE level was too low based on an improper mechanical application of the IGCE to its proposed staffing. As our Office has held, agencies may not conduct a technical evaluation based solely on a comparison of an offeror's proposed staffing to an undisclosed staffing requirement. OneSource Energy Servs., Inc., B-283445, Nov. 19, 1999, 2000 CPD ¶ 109 at 11 (agency improperly rejected proposal as unacceptable where the protester proposed one fewer FTEs than the agency's undisclosed estimate of the required staffing). Here, however, the agency did not rely on a simple or mechanical comparison of the IGCE to the protester's staffing. The agency recognized that the protester had proposed a cross-utilization approach "that could potentially fill some gaps," but concluded that this approach, even after the addition of [deleted] FTEs in response to discussions, did not propose an adequate level of staffing. AR, Tab 20, TODD, at 13. Specifically, as discussed above, the agency concluded that NCI's proposed staffing was insufficient to support the help desk and imaging support requirements. Id.

Where, as here, an agency's comparison of an offeror's proposed staffing to an IGCE goes beyond a comparison of the bottom line numbers, and includes a reasonable analysis of the specific areas where the proposed staffing is inadequate, we will not object. See Kellogg Brown & Root, Inc., B-291769, B-291769.2, March 24, 2003, 2003 CPD ¶ 96 at 5-6. On this record, we find no basis to sustain the protest.

NCI also argues that the agency unreasonably identified a significant weakness in its proposed approach to imaging support. Specifically, the protester argues that the agency erred in concluding that it had proposed only [deleted] FTEs for the imaging support requirements, because the protester contends that its proposal reflects a proposal to provide [deleted] FTEs through its "innovative" approach to cross-utilization of staff.

NCI's initial proposal stated that it would staff [deleted] PWS requirements as "an additional duty by existing FTEs." AR, Tab 24, NCI Initial Technical Proposal, at 44-45. In its chart of FTE assignments, the protester indicated that the responsibilities of PWS ¶ 3.22 would be performed by existing staff, meaning that no dedicated FTEs were assigned to this position. Id. at 45. During discussions, the agency expressed concern that the approach of staffing these [deleted] PWS requirements as additional duties was "not feasible as many of these functions require full-time support." AR, Tab 16, NCI Discussions, at 3.

In response to this concern, NCI stated that it had “determined that the [deleted] additional duty areas . . . should be reconsidered,” and that “[a]fter a careful reconsideration

. . . NCI has addressed all functional areas of the PWS and has assigned direct labor to all tasks.” AR, Tab 25, NCI Revised Proposal, at 2. Specifically, NCI revised its staffing for the PWS maintenance requirement as follows:

PWS 3.22 Maintenance. (Change from original submission) FTE Requirement: [deleted] System Administrator (intermediate). Justification: [deleted], personnel will receive additional training and direction for both cross-utilization and new systems or automation as it is implemented.

Id. at 6. The revised FTE assignment chart confirmed that NCI had assigned [deleted] FTEs for the requirements of PWS ¶ 3.22. Id. at 7.

The Army’s revised evaluation of NCI’s proposal assigned a significant weakness based on the protester’s imaging support staffing as follows:

Based on data provided in the RTOR NCI understaffed the Imaging support. NCI proposed [deleted] to support imaging tasks. The PWS states 9,200+ [personal computer] PC/users on the network and indicated approximately 25% to 33% PC’s will be replaced on a yearly basis. There are approximately 200-300 PC’s serviced per month; as a result, [deleted] is insufficient to support the imaging requirements.

AR, Tab 20, TODD, at 13.

NCI argues that the Army unreasonably concluded that it had assigned only [deleted] FTEs for the imaging support requirements. Specifically, the protester contends that its proposal indicated that its approach to the NEC requirements would use the [deleted]. See AR, Tab 24, NCI Initial Proposal, at 20, 31. NCI also notes that in the past performance section of its proposal, the protester described how it had used [deleted]. See id. at 59. NCI argues that the reference to “[deleted] and [deleted] procedures” in its description of its approach to the PWS ¶ 3.22 requirements showed a relationship between those requirements and the requirements of PWS ¶¶ 3.12 and 3.1.1, which also discuss use of these procedures. The protester contends that these references, along with the reference to the use of [deleted], should have led the agency to understand that it had proposed to cross-utilize the staff assigned to PWS 3.12 and 3.1.1 to support the PWS 3.22 requirements, as follows: “This innovation meant that [deleted] FTEs all played a role in Imaging Support – [deleted] of Systems Administrators under PWS 3.12, [deleted] Network Administrator under PWS 3.1.1, and the [deleted] offered under PWS 3.22.” Protest at 10, citing AR, Tab 25, NCI Revised Proposal, at 7.

We do not think that the protester's initial or revised proposal conveys the understanding that the protester now seeks to make clear in its protest. None of the individual references cited by NCI demonstrate that the [deleted] FTEs assigned under PWS ¶¶ 3.12 and 3.1.1 should have been understood to augment the [deleted] FTEs assigned under PWS ¶ 3.22. While the protester contends that the summary chart in its revised proposal demonstrates their relationship, the chart on its face does not identify any such relationship between these PWS assignments. See AR, Tab 25, NCI Revised Proposal, at 7.

Furthermore, the protester's revised proposal acknowledged the agency's concerns during discussions regarding the use of existing FTEs to cover "additional duties" under [deleted] PWS tasks--including PWS ¶ 3.22--by assigning direct labor to all of those tasks. Id. at 2. Notwithstanding this acknowledgement, NCI's revised proposal did not provide additional details explaining what the protester now claims is the relationship between the staffing of PWS ¶¶ 3.12 and 3.1.1 and the imaging support requirements under PWS ¶ 3.22.

On this record, we do not think that the agency's failure to connect these non-obvious elements of the protester's proposal was unreasonable. Consequently, we think that the agency's conclusion, based on the plain statement in the protester's proposal that it would provide [deleted] FTEs to staff the maintenance requirements, including imaging support, was reasonable.

Adequacy and Meaningfulness of Discussions

Finally, NCI argues that the Army's discussion questions did not identify the significant weaknesses which were the basis for the protester's final marginal rating under the staffing approach factor.

The regulations concerning discussions under Federal Acquisition Regulation (FAR) part 15 do not, as a general rule, govern task and delivery order competitions conducted under FAR part 16, such as the one challenged by NCI here. Hurricane Consulting, Inc., B-404619 et al., Mar. 17, 2011, 2011 CPD ¶ 70 at 6. 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. Imagine One Tech. & Mgmt., Ltd., B-401503.4, Aug. 13, 2010, 2010 CPD ¶ 227 at 7. In this 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.

Here, the Army's initial evaluation of NCI's proposal identified four significant weaknesses under the staffing approach factor. AR, Tab 16, NCI Discussions, at 3. As relevant here, the agency advised the protester that its overall staffing level was too low:

NCI's proposed staffing plan of [deleted] FTEs is significantly understaffed based on the [Army's] in-depth knowledge of the requirements and using the IGCE as a guide. Furthermore, NCI has not identified any innovative means by which they intend to cover this shortfall (cross-utilization, efficiencies, higher skill level, etc.) The proposed staffing approach significantly fails to meet minimum performance standards such as timely delivery of IT services and the response/repair times for service requests and network outages will fall below expected thresholds as outlined in the [PWS]; therefore, jeopardizing the expected overall quality of support. NCI's proposed staffing plan demonstrated a lack of understanding of the complexity of the requirements of the PWS.

Id. Additionally, the agency stated NCI's approach of proposing certain PWS tasks without dedicated staff, and instead using FTEs assigned to other PWS tasks to perform them, was not acceptable:

NCI states that several PWS items listed in Figure B.1.6-1 with an asterisk are functions that will be accomplished as an additional duty by existing FTEs. This approach is not feasible as many of these functions require full-time support.

Id.

The Army's final evaluation of NCI's revised proposal identified two significant weaknesses in NCI's staffing approach, based on the protester's proposal to provide [deleted] FTEs to perform the help desk and remote help desk support services, and [deleted] FTEs for the imaging support services. AR, Tab 20, TODD, at 13.

With regard to the help desk requirements, the Army found that "[a]lthough NCI identified an approach . . . for cross utilization of their workforce that could potentially fill some gaps," the protester's proposal remained "deficient" based on a lack of sufficient FTEs proposed for the "desktop support functional area of the PWS, to include the Helpdesk and Remote Helpdesk support services." Id.

NCI argues that the Army did not expressly identify the agency's concern regarding the help desk requirements, and therefore failed to provide discussions that were fair and non-misleading. In the context of both FAR part 15 and 16 procurements, however, we have held that agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification or revision. Clark/Caddell Joint Venture, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 7.

Here, the agency clearly advised NCI that its "proposed staffing plan of [deleted] FTEs is significantly understaffed." AR, Tab 16, NCI Discussions, at 3. Although the protester contends that this significant weakness did not specifically cite the help desk requirements as an area where its proposal was understaffed, the terms used in

the agency's discussions summary clearly expressed the agency's concern that NCI's proposed staffing levels would cause "the response/repair times for service requests and network outages [to] fall below expected thresholds as outlined in the [PWS]." Id. The agency contends that this reference should have directed NCI to the following PWS help desk requirements which pertained to response times for service requests:

3.5.6 Customer Support Center/Help Desk/Remote Help Desk. The Contractor shall provide an on-site customer support help desk and remote help desk (refer to Section 5.0 for Hours of Operation) that provides the first line of communication and response to the FB-NET Classified and unclassified end user on issues ranging from network connectivity to desktop support. The Contractor shall provide hardware, software, and telephone support to include: provide customers with initial [point of contact] POC for service requests and problem reporting; track, audit, and resolve issues; and provide feedback and close loop with customer.

The level of support includes, at a minimum, the following assignments:

- Process all applicable service requests [in accordance with] C4IM service list.
- Receive, document, assign, monitor, and close service requests. Help Desk personnel shall answer the phones as service calls are received. If personnel are all busy on other lines, then an automated answering machine allows for messages to be left so that a technician can return the call. User calls are returned. The services request shall be opened within 30 minutes of notification.
- Process service orders (program switch, update assignments, extend service to customer) and Service Requests (test, troubleshoot and repair) for all approved moves, adds, and changes (MAC) requirements. Service orders shall be processed in 30 minutes or less.
- Password control management; issue, maintain, and delete end-user device accounts and passwords. Passwords shall be issued within one (1) work day of request; delete accounts on a weekly basis.
- Provide timely notifications by the help desk of planned or unplanned system maintenance or degradation. Notifications sent no less than 24 hours prior to scheduled outage.

PWS ¶ 3.5.6 (emphasis added). The PWS section cited above clearly references the response times required to address service requests, and is in fact the only section of

the PWS which discusses these specific requirements. On this record, we conclude that the Army's discussions adequately advised NCI of the need to increase its staffing for the help desk requirements.

Next, as discussed above, the Army's final evaluation of NCI's proposal concluded that the protester did not propose adequate support for the imaging support requirements under PWS ¶ 3.22. AR, Tab 20, TODD, at 13. In addition to advising NCI that its overall staffing levels were too low, the agency also advised that the protester's proposed approach of not assigning staff to [deleted] of the 25 PWS tasks, and relying on its existing staff to cover those PWS tasks as an "additional duty," was "not feasible as many of these functions require full-time support." AR, Tab 16, NCI Discussions, at 3.

The protester argues that the Army's failure to specifically cite imaging support as one of the areas of concern rendered the discussions unfair and misleading. The record shows, however, that NCI understood that the agency had directed it to increase the overall number of FTEs, and also to provide dedicated staffing for the PWS areas that were initially staffed as "additional duties" of other personnel. In this regard, the protester's revised proposal stated that "[a]fter a careful reconsideration . . . NCI has addressed all functional areas of the PWS and has assigned direct labor to all tasks." AR, Tab 25, NCI Revised Proposal, at 2. For the PWS ¶ 3.22 maintenance requirements, which included the imaging support requirements, NCI increased its dedicated staffing from [deleted] FTEs in its initial proposal, to [deleted] FTEs in its revised proposal. AR, Tab 25, NCI Revised Proposal, at 7. Although the agency concluded that an increase of [deleted] FTEs for these requirements was not adequate, the record does not support the protester's argument that it was unaware of the need to provide additional staffing for this requirement. On this record, we conclude that the agency's discussions were fair and not misleading.

CONCLUSION

In sum, we conclude that the Army reasonably assigned a marginal rating to NCI's proposal. Because NCI received a marginal rating, it was not eligible under the terms of the solicitation to be considered for award.

The protest is denied.

Lynn H. Gibson
General Counsel