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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Advanced Systems Technology and Management, Inc.

**File:** B-291529

**Date:** December 20, 2002

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Ms. Yue Guan for the protester.

Sandra M. De Balzo, Esq., Drug Enforcement Administration, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest of agency's price evaluation is denied where agency met requirements of the solicitation and the Federal Acquisition Regulation by comparing awardee's prices to other offerors', government estimate, and predecessor contract prices before concluding that prices reasonably reflected price of performing in accordance with proposed technical approach.

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## **DECISION**

Advanced Systems Technology and Management, Inc. (ASTM) protests the award of a contract to NW Systems, Inc. under request for proposals (RFP) No. DEA-02-R-0002, issued by the Drug Enforcement Administration (DEA), Department of Justice, for services in connection with the Narcotics and Dangerous Drugs Information System (NADDIS). ASTM challenges the agency's evaluation of NWS's price proposal.

We deny the protest.

In furtherance of its mission to enforce the narcotics laws of the United States, the DEA created the NADDIS as the central repository of information regarding persons, businesses, vessels, or other names of interest that have been reported by any of the agency's various investigatory arms. The RFP, a section 8(a) set-aside, sought proposals for all necessary personnel to provide supervisory, administrative, and data entry services to support and maintain the NADDIS. The RFP contemplated the award of a fixed-rate labor-hour contract for a base year, with 4 option years.

Proposals were to be evaluated on the basis of three factors, in descending order of importance—technical, past performance, and price. The technical and past performance factors were considered significantly more important than price. Proposals were rated on a color-coded basis: green (meets requirements), yellow (marginal) and red (does not meet requirements). Award was to be made to the offeror whose proposal was considered most advantageous to the government.

The RFP required offerors to provide an estimate of the total cost to be expended for the contract and called for the proposal of fully loaded labor rates using the specified number of employees in designated positions and the estimated minimum and maximum hours provided in the RFP. Offerors were also required to provide a cost element breakdown including direct labor, materials, general and administrative costs (G&A), and overhead. RFP at 54. The RFP provided that the agency would add the totals for the different labor line items to arrive at a total price, and would evaluate the price proposal “to ensure that it bears a reasonable relationship to the price of performance as described in the technical and management portions of the proposal.” *Id.*

Nine proposals were received, including ASTM’s and NWS’s. Following evaluation, the agency determined that only those of ASTM, NWS, and a third offeror were technically acceptable. The results of the final evaluation were as follows:

Offeror	Technical/Past Performance	Price
NWS	Green	\$25.4 million
ASTM	Yellow	\$28.4 million
Offeror Three	Yellow	\$28.9 million

Based on NWS’s proposal’s higher technical rating and lower price, the contracting officer determined that it was most advantageous to the government and selected it for award. After receiving award notice and a debriefing, ASTM filed this protest.

ASTM asserts that the agency failed to perform a price analysis adequate to determine whether NWS’s proposed price “bears a reasonable relationship to its price of performance.” ASTM bases its assertion on its understanding that either NWS did not provide the cost breakdown information required by the RFP, or the agency did not review it in evaluating price. ASTM asserts that NWS and its subcontractor cannot successfully perform the contract at NWS’s low price.

In reviewing a protest against an agency’s proposal evaluation, we will consider whether the evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. CWIS, LLC, B-287521, July 2, 2001, 2001 CPD ¶ 119 at 2. The depth of an agency’s price analysis is a matter within the sound exercise of the agency’s discretion, and we will review the agency’s analysis, when protested, for reasonableness. See HSG Philipp Holzmann Technischer Servs. GmbH, B-289607, Mar. 22, 2002, 2002 CPD ¶ 67 at 6.

ASTM's argument is based in part on statements by the agency's representative at the debriefing, which indicated that the agency believed the awardee did not provide the required cost breakdown information. The agency explains that its statement resulted from a misunderstanding of ASTM's inquiry, and was incorrect. Contract Specialist's Statement, Agency Report (AR), Tab 2. The record supports the agency's explanation; the awardee provided the required information, the agency evaluated it, and the evaluation was reasonable.

In evaluating proposed prices, the agency first verified that NWS and the other offerors had submitted the required cost breakdown information. The price evaluators then compared the prices proposed by NWS, ASTM, and the third offeror to each other and to the government estimate. AR, Tab 6c(f), Price Analysis; AR Tab 1, Contracting Officer's Statement; AR, Tab 2, Contract Specialist Statement. They analyzed NWS's prices by comparing them to those in the previous NADDIS services contract. In reviewing NWS's cost breakdown information, they found that the offeror included the requisite information on fringe, overhead, and G&A rates, as well as fee.<sup>1</sup> The proposal also included a chart showing the equivalent wage determination rates for each labor category proposed by NWS and its subcontractor.

While the price evaluators recognized that NWS's prices were below those of the other offerors and the government estimate, based on their evaluation, they determined that NWS's proposed labor rates were sufficient for it to hire and retain personnel.<sup>2</sup> This conclusion evidences an evaluation consistent with the RFP's provision for determining that the price proposal bore a reasonable relationship to the price of performance encompassed by the technical proposal, in accordance with the RFP; in finding that NWS's proposed labor rates were sufficient for it to hire and retain personnel, the agency essentially was concluding that those rates were sufficient to permit NWS to perform as proposed. (We note that the price evaluation approach used by the agency also was consistent with Federal Acquisition

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<sup>1</sup> Because the protester has proceeded pro se, and there is no protective order, this decision will not provide any more detailed information regarding the actual contents of NWS's price proposal.

<sup>2</sup> ASTM notes that the agency's explanation of its price evaluation contains information that was not recorded at the time of the evaluation. While the better practice is to document all evaluations contemporaneously, where, as here, the post-protest explanations provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, we will generally consider them in our review, so long as those explanations are credible and consistent with the contemporaneous record. See Northwest Mgmt., Inc., B-277503, Oct. 20, 1997, 97-2 CPD ¶ 108 at 4 n.4. Here, our own review of the record confirms that NWS's cost breakdown was complete and its labor rates satisfied the wage determination.

Regulation (FAR) § 15.404-1(a)(1) and (b)(2), which list various price analysis techniques—including comparison with other prices received and with the independent government estimate—that an agency may use to ensure that a final price is fair and reasonable.) Although ASTM disagrees with the agency’s conclusion, it has not established, and there is no basis in the record for us to find, that the conclusion is unreasonable. Accordingly, there is no basis to question the agency’s evaluation of NWS’s proposed price.<sup>3</sup>

In its comments on the agency report, ASTM for the first time raises issues it discovered upon reviewing the report. For example, ASTM asserts that the agency’s evaluation of its past performance was flawed; that the agency improperly conducted discussions with NWS when it allowed that offeror to correct certain mathematical errors in its price proposal; and that the agency failed to consider certain aspects of the rates proposed by NWS and its subcontractor. Under our Bid Protest Regulations, protests must be filed no later than 10 days after the basis for the protest was, or should have been, known, 4 C.F.R. § 21.2(a)(2) (2002), and where, as here, a protester files supplemental protest grounds, each new ground must independently satisfy our timeliness requirements. Columbia Imaging, Inc., B-286772.2, B-287363, Apr. 13, 2001, 2001 CPD ¶ 78 at 5. ASTM received the agency report on November 15 and timely filed initial comments on November 25. However, the new protest grounds were not raised in these comments; they were raised for the first time in filings received on November 26 and December 2. Since this was more than 10 days after ASTM learned of these bases for protest, they are untimely.<sup>4</sup>

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup> ASTM asserts that the agency improperly failed to conduct a cost realism analysis. This argument is without merit. Where, as here, a solicitation provides for the award of a labor hours contract with fixed rates, there is no requirement that the agency conduct a cost realism analysis unless the solicitation requires it. See General Atomics, B-287348, B-287348.2, June 11, 2001, 2001 CPD ¶ 169 at 7. The RFP here did not call for a cost realism analysis, and, as discussed, the agency’s analysis of NWS’s proposed rates was consistent with the RFP’s “reasonable relationship” provision.

<sup>4</sup> In any event, none of ASTM’s additional issues has merit. For example, ASTM asserts that the loaded rates of the awardee and its subcontractor must be combined and questions how the agency can effectively ensure that submitted invoices are accurate. This is a fixed-rate contract; the awardee cannot be paid more than its proposed price per hour regardless of any differences between the loaded rates of NWS and its subcontractor. The accuracy of submitted invoices is a matter of contract administration, which our Office does not review. 4 C.F.R. § 21.5(a).