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## Decision

**Matter of:** Serco, Inc.  
**File:** B-406683; B-406683.2  
**Date:** August 3, 2012

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Richard J. Webber, Esq., Judith B. Kassel, Esq., and Patrick R. Quigley, Esq., Arent Fox LLP, for the protester.

Anne B. Perry, Esq., Jonathan s. Aronie, Esq., Ryan E. Roberts, Esq., and Cheryl A. Palmeri, Esq., Sheppard Mullin Richter & Hampton LLP, for the intervenor.

Beth Sturgess, Esq., Department of Homeland Security, U.S. Citizenship and Immigration Services, for the agency.

Tania Calhoun, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Agency reasonably attributed past performance and experience of affiliated entities to awardee where proposal demonstrated a significant nexus to the affiliates, including a statement that the parent company had declared the program a top corporate priority and indications that the awardee would rely on the personnel and managerial resources of its affiliated entities in performance of the contract.
  2. Protest that agency should have rejected awardee's proposal for offering unbalanced prices is denied where the agency reasonably determined that the pricing did not pose unacceptable risk to the government.
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### DECISION

Serco, Inc., of Reston, Virginia, protests the award of a contract to U.S. Investigations Services, Professional Services Division (USIS, PSD), of Falls Church, Virginia, under request for proposals (RFP) No. HSSCCG-11-R-00010, issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), to obtain Application Support Center operations and facilities services at multiple sites. Serco primarily challenges the agency's evaluation of USIS, PSD's technical and price proposals.

We deny the protest.

## BACKGROUND

As part of its responsibility for administering immigration benefits, USCIS obtains biometric and biographic data (e.g., digital fingerprints, photographs, driver's license scan, passport scan, and signatures) from applicants. USCIS uses this data to conduct criminal background checks before deciding to grant benefits. RFP §§ C.2, C.1.2. Application Support Centers (ASC) are contractor-operated facilities that collect this data and provide other services. Through this procurement, USCIS seeks to obtain ASC operational and facilities support. RFP § C.1.2.

The solicitation, issued May 12, 2011, contemplated award of one or two indefinite-delivery/indefinite-quantity contracts (either two regional contracts or a single contract covering both regions) with fixed-unit price and cost-reimbursable contract line items. The proposals for the single award are the only ones at issue here. The contemplated contract includes a 1-year base period of performance, four 1-year option periods, and a maximum ordering limit of \$1.946 billion. RFP §§ B.1, F.2, and B.2. Current ASC operations include staffing and support at 141 sites around the United States and its territories. The contractor is to accomplish such major tasks as biometric and biographic capture, customer identity verification, rescheduling support, extraordinary surge support, and program management support. RFP § C.3.

Award was to be made to the offeror whose proposal represented the best value to the government considering four evaluation factors, listed in descending order of importance: technical capability, small business participation, past performance, and price.<sup>1</sup> RFP § M.1. The non-price factors, when combined, were significantly more important than price. Id.

Under the technical capability factor, the agency was to assess the degree to which proposals effectively demonstrated that their proposed solutions would meet or exceed the RFP's requirements. RFP § M.2. The solicitation identified three technical capability subfactors: program management/management controls (the most important subfactor), staffing/retention, and relevant corporate experience (both of which were equally important). Id. The overall factor rating was to be based on the subfactor ratings--outstanding, good, acceptable, marginal, or unacceptable--and their relative order of importance. Id.

Under the past performance factor, the agency was to evaluate each offeror's potential for successful performance. RFP § M.4. The evaluation would consider, among other things, whether the offeror's past performance was similar to this acquisition in terms of size, scope, and complexity. Past performance was to be evaluated as outstanding, good, acceptable, unacceptable, or neutral. Id.

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<sup>1</sup> The small business participation factor is not at issue here.

The solicitation included one contract line item (CLIN) for each USCIS district, with most including five sub-CLINs. For each district, the first sub-CLIN established a fixed price per month for processing a baseline range of number of applicants. The remaining sub-CLINs (Ranges AB through AE) represented successively larger ranges of applicants above the baseline range, and were to be priced on a fixed price per applicant basis. ASC workload has historically fluctuated, but generally decreased between 2007 and 2010. RFP §§ C.2, C.1.2. Other direct costs (ODC) for facilities, equipment, supplies and travel will be reimbursed on a cost-reimbursable basis for not-to-exceed dollar amounts.

Price was to be evaluated for reasonableness using one or more price analysis techniques established under Federal Acquisition Regulation (FAR) § 15.404. RFP § M.5. The RFP stated that the total evaluated price would be calculated by adding together the total of the baseline ranges, the maximum range amounts (the AE sub-CLINs), and ODCs for the base and option years. All ranges were to be evaluated for reasonableness. Id. In addition, the RFP cautioned offerors that the agency may reject proposals determined to be unreasonable or materially unbalanced as to the price for the base and option years. Id.

USCIS received proposals from three offerors, including Serco and USIS, PSD. After an evaluation by the technical evaluation committee (TEC) and business evaluation committee (BEC), the contracting officer (CO) included all proposals in the competitive range. Discussions were conducted, and final proposal revisions (FPR) were requested and evaluated. The TEC and BEC presented the results to the source selection advisory council (SSAC) and source selection authority (SSA) on November 1. The SSA found that USIS, PSD's pricing appeared to be unbalanced. She asked the BEC to provide additional information regarding whether the government would be paying unreasonably high prices due to this perceived unbalanced pricing. AR, Exh. 24, Source Selection Decision (SSD), at 11. The BEC provided further analysis in an addendum to its report. The SSAC relied on the findings of the TEC and BEC and recommended award to USIS, PSD. The evaluation results with respect to Serco and USIS, PSD were as follows:

	<b>Serco</b>	<b>USIS, PSD</b>
<b>Technical Capability</b>	<b>Good</b>	<b>Outstanding</b>
Program Management/Management Controls	Good	Outstanding
Staffing/Retention	Good	Good
Relevant Corporate Experience	Good	Good
<b>Small Business Participation</b>	<b>Good</b>	<b>Good</b>
<b>Past Performance</b>	<b>Outstanding</b>	<b>Good</b>
<b>Total Evaluated Price</b>	<b>\$1,185,537,575.32</b>	<b>\$979,847,246.72</b>

AR, Exh. 24, SSD, at 6.

The SSA reviewed the TEC report, BEC report and addendum, and SSAC report, and conducted her own comparison of the proposals' strengths and weaknesses. Id. at 1. She concluded that USIS, PSD's proposal represented the best value to the government since it was technically superior and, although significantly less important, offered the lowest total evaluated price. Id. at 18.

With respect to the non-price factors, the SSA noted that USIS, PSD's proposal was rated highest under the most important factor, technical capability, for "very significantly exceeding" most requirements under the most important subfactor, program management, and for meeting and significantly exceeding many of the requirements under the remaining subfactors. Id. at 14. She explained that the program management subfactor reflected areas that are critical to ASC operations and program success, and stated that an offeror very significantly exceeding most requirements for the program management subfactor brought substantially less risk to performance. Id. As for the least important factor, past performance, the SSA noted that Serco's proposal had the highest rating but found that there was very little risk associated with the performance of any of the offerors. Id. at 17.

The SSA stated that USIS, PSD offered the lowest evaluated price but that, under the BEC's initial analysis, it appeared that its prices in certain ranges were much higher than those of other offerors. The BEC's additional assessment was sufficient to allay her concerns. The SSA stated that this assessment revealed "little to no concern that the 'unbalanced prices'" in USIS, PSD's proposal could result in the agency paying unreasonably high prices should it award a contract to the firm. Id. Moreover, she stated, even with the potential that the USIS, PSD proposal could result in the government paying a higher price at some ranges than it might pay to other offerors, she found that USIS, PSD clearly offered strengths in its program management approach that she considered to be of substantial value, and for which "the risk of paying a higher actual price is justified." Id. at 18.

Serco primarily challenges the agency's evaluation of USIS, PSD's proposal under the past performance factor, the relevant corporate experience subfactor, and the price factor. Serco also alleges that the agency treated the offerors unequally with regard to their pricing assumptions.

## DISCUSSION

As an initial matter, a common thread underlying Serco's challenges to the evaluation of USIS, PSD's past performance and relevant corporate experience is the notion that the agency was confused about whether USIS, PSD was the offeror, or whether the offeror was, in fact, some other affiliated USIS entity. In this regard, Serco highlights the fact that the agency's notice of award identified USIS, LLC as the awardee, but that FedBizOpps identified the awardee generally as USIS and listed the data universal numbering system (DUNS) number corresponding to USIS, PSD.

As a factual matter, the record reflects that USIS, PSD is a wholly-owned subsidiary of USIS, LLC. The record also reflects that the awardee's proposal identifies USIS, PSD as the offeror, but generally refers to the firm as USIS.<sup>2</sup> In various places, the proposal also specifically references USIS, LLC, and, what the parties refer to as a sister company, USIS Labat Anderson Division.<sup>3</sup> The CO explains that, after receipt of proposals, she immediately started drafting the evaluation documentation. Since the proposal's cover letter and title pages referred to USIS, LLC, she inserted this name as the name of the offeror in the draft documents. However, when she evaluated the actual proposal, she realized, as noted above, that the offeror was expressly identified as USIS, PSD. Notwithstanding this realization, the CO states that she failed to correct the draft evaluation documents and carried over her initial use of the name USIS, LLC. She states that she should have described the offeror as USIS, PSD, in all contract file documentation. CO's Supp. Statement, at 1.

We are satisfied that the CO was aware of the identity of the offeror as USIS, PSD. We also have no reason to question her account that the identification of the offeror as USIS, LLC throughout the evaluation record was an inadvertent error. See Command Mgmt. Servs., Inc., B-310261, Dec. 14, 2007, 2008 CPD ¶ 29 at 6 (agency understood which entity was the offeror despite clerical errors in the record). However, this inattention to detail, both in the draft evaluation documents, and throughout the evaluation process, has given rise to the allegations addressed below.

#### Past Performance Evaluation

Serco argues that the agency's evaluation of USIS, PSD's past performance was flawed because it failed to ascertain which USIS entities performed the contracts offered to substantiate the past performance of USIS, PSD. In this regard, Serco asserts that the agency had no basis to attribute the past performance of these other entities to USIS, PSD since the agency failed to consider the extent to which the resources of these other entities would have meaningful involvement in contract performance.

The record reflects that USIS, PSD submitted six past performance references for itself as the prime contractor. The agency concluded that only one reference, a contract performed by "USIS" for background investigations fieldwork services valued at nearly \$2 billion, was similar in size, scope, and complexity to the instant acquisition. Like the ASC contract at issue here, the referenced contract required

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<sup>2</sup> The proposal expressly identifies USIS, PSD, as the offeror, AR, Exh. 32, USIS FPR, Part III, at III-1, and includes other indicia of the offeror's identity.

<sup>3</sup> The record reflects that Labat-Anderson is also a wholly-owned subsidiary of USIS, LLC.

customer identify verification, surge support, program management support, facilities management, multiple district offices nationwide, leasing, management of a large staff, and training. Supp. AR, Exh. 2, TEC's Past Performance Report, at 19-20. The relevant past performance questionnaire included primarily "good" ratings. Id. Based on this reference, USCIS evaluated USIS, PSD's past performance as "good", finding very little risk anticipated with the firm's performance. Id. at 25-26.

The CO states that, since the reference did not specifically refer to USIS, PSD, she believed it was performed by USIS, LLC. CO Supp. Statement, at 1. Moreover, because USIS, PSD's proposal relied on the experience and resources of various affiliated companies, including the parent, USIS, LLC, and USIS, PSD's sister company, Labat-Anderson, the agency maintains that it properly considered the past performance information at issue. Id. at 2.

An agency properly may attribute the experience or past performance of a parent or affiliated company to an offeror where the firm's proposal demonstrates that the resources of the parent or affiliate will affect the performance of the offeror. Ecompex, Inc., B-292865.4 et al., June 18, 2004, 2004 CPD ¶ 149 at 5. The relevant consideration is whether the resources of the parent or affiliate--its workforce, management, facilities, or other resources--will be provided or relied upon for contract performance, such that the parent or affiliate will have meaningful involvement in contract performance. IAP-Hill, LLC, B-406289, Apr. 4, 2012, 2012 CPD ¶ 151 at 3-4. Where a proposal shows a significant nexus between the parent or affiliate concern's resources and the contracting entity, there is nothing objectionable in attributing the experience or past performance of the related entities to the business entity entering into the contract. Id.; see also Hot Shot Express, Inc., B-290482, Aug. 2, 2002, 2002 CPD ¶ 139 at 3.

The CO states the proposal submitted by USIS, PSD, clearly established that "USIS, PSD would be calling upon the same USIS, LLC resources used for the OPM field work services contract" to perform the requirements at issue. CO Supp. Statement, at 2. In this regard, the CO highlighted the fact that the proposal's cover letter was signed on behalf of USIS, LLC by its chief executive officer (CEO), who is also the CEO of USIS, PSD. The letter stated that the firm (USIS, LLC) was committed to offering exceptional service to USCIS and its applicants for immigration benefits. AR, Exh. 32, FPR Cover Letter, Business Proposal, at 1. The letter explained that, as a team member on the incumbent contract, the firm had invested in personnel and operating systems that currently supported the ASC program, demonstrating its corporate commitment to its continued success, and had mapped a path forward to meet the agency's needs. Id. at 2. USIS, PSD's proposal elsewhere states that, because of its high profile and importance, the USIS, LLC Board of Directors had declared the ASC program a "top corporate priority" and directed the CEO to personally oversee its development and

execution.<sup>4</sup> The ASC corporate program manager is to report directly to the USIS, LLC CEO. AR, Exh. 32, Technical Proposal 1.0, at 14.

The CO also states that the proposal made it clear that USIS, PSD would be calling upon the same USIS, LLC resources used for the background fieldwork services contract. USIS, PSD proposed to use the background investigators under that contract to perform [DELETED] under the ASC contract. CO Supp. Statement, at 2, citing AR, Exh. 32, FPR, Part III, at III-6, III-10; see also AR, Exh. 32, Technical Proposal 1.0, at 4, 11, 24 (offering access to pool of background investigators used on the other contract). The CO further points out that the proposal stated USIS, PSD would use the same models as those used by USIS, LLC, on that other contract to “[DELETED]” on the ASC contract. CO Supp. Statement, at 2, citing AR, Exh. 32, FPR, Part III, at III-34; see also id., Technical Proposal 1.0, at 11, 4.

Finally, the CO states that USIS, PSD’s proposal included letters of commitment from key personnel that were signed by the president of Labat-Anderson. CO Supp. Statement, at 2, citing AR, Exh. 32, FPR, Attch. H. The proposal stated that this individual was assigned to oversee the first 30 days of the transition on the ASC contract. AR, Exh. 32, FPR, Attch. K; Technical Proposal 1.0, at 38.

Serco’s principal argument is that the agency did not contemporaneously document the above analysis. This is not in dispute. 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 and explanations. ASRC Research & Technology Solutions, LLC, B-406164, B-406164.3, Feb. 14, 2012, 2012 CPD ¶ 72 at 4. 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. NWT, Inc.; PharmChem Labs, Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

As previously indicated, the CO explained that she understood the background investigations contract, the sole basis for the past performance rating, to have been performed by USIS, LLC, the parent company. CO Supp. Statement, at 1. Moreover, she explained that she found USIS, PSD’s proposal to have established that the resources of USIS, LLC, and Labat-Anderson, were to be brought to bear

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<sup>4</sup> The record reflects that at the time of proposal submission, the corporate officers and directors of USIS, PSD were all officers and directors of USIS, LLC. Intervenor’s Supp. Comments, at 11.

on this contract. Id. at 2. Given that the CO's explanations are consistent with the underlying record, we think it reasonable to consider her post-protest explanations. Moreover, because USIS, PSD's proposal set forth the extensive role and commitment of resources from its affiliates, as described above, we have no basis to object to the agency's attribution of the past performance of USIS' affiliated entities to USIS, PSD, or to the "good" rating assigned to that past performance.<sup>5</sup>

#### Technical Capability – Relevant Corporate Experience Evaluation

Serco argues that USIS, PSD's corporate experience is not relevant because several of its contracts were small compared to the instant procurement. Serco asserts that where relevance is undefined, the experience had to involve a contract of similar size, scope, and complexity.<sup>6</sup> Comments, June 26, 2012, at 22.

The evaluation of proposals is a matter within the discretion of the contracting agency, since the agency is responsible for defining its needs and the best method of accommodating them. Encorp--Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and with procurement statutes and regulations. Id.

Proposals were to be evaluated to the extent to which they addressed and demonstrated relevant corporate experience as a prime contractor in various areas, including: management of multiple sites/locations in a large geographically dispersed environment; management of a workforce of this magnitude; customer service; immigration benefits services; collecting and processing biometric data electronically and manually; facilities management; management of significant workload volume with lulls and significant surge events; and implementing a training program of this magnitude. RFP § M.4. The agency evaluated USIS, PSD's

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<sup>5</sup> In support of its protest, Serco highlights the fact that the CO did not fully appreciate the corporate relationship between USIS, PSD and USIS, LLC. The record reflects that the CO mistakenly believed USIS, PSD to be a division of USIS, LLC, as opposed to a wholly-owned subsidiary. This distinction is of no consequence in this instance, where it is apparent that the CO considered the role of USIS, PSD's affiliates, as set forth in its proposal, when attributing the past performance and experience of these affiliates to USIS, PSD.

<sup>6</sup> Serco also challenges the evaluation of USIS, PSD's corporate experience on the same basis as it challenged the past performance evaluation--that the agency did not identify which USIS entities performed the projects considered. For the same reasons discussed above, we find the agency's consideration of the experience of the USIS entities unobjectionable.



proposal as “good” because its experience met all the requirements and significantly exceeded many of them. AR, Exh. 18, TEC Final Report, at 144.

We do not agree with Serco that the agency could only consider as “relevant” contracts of similar size, scope, and complexity to the ASC contract. The RFP expressly imposed such a requirement for the past performance evaluation factor, but did not commit the agency to evaluating relevant corporate experience only in this selective manner. See S4, Inc., B-299817, B-299817.2, Aug. 23, 2007, 2007 CPD ¶ 164 at 8. The record shows that the TEC analyzed USIS, PSD’s experience in connection with each required area in deciding to evaluate the proposal as “good.” Much of this analysis does, in fact, consider the size, scope, and complexity of that experience. USIS, PSD’s proposal might have received a higher rating had its experience been with larger contracts because, as Serco notes, experience on smaller contracts may be less relevant. However, Serco has given us no reason to find that, based on the size of its contracts alone, the agency improperly evaluated USIS, PSD’s relevant corporate experience as “good.”

Serco’s real argument is that USIS, PSD’s corporate experience was not sufficiently “good” to support the “outstanding” rating it received for the technical capability factor overall. Serco posits that this subfactor should have been worth 25 percent of the overall rating and that, when combined with the ratings for the other subfactors, USIS should have received only a “good” rating overall.

The record is clear that the “outstanding” rating for USIS’ proposal under the technical capability factor was driven by its “outstanding” rating under the most important subfactor, program management. The SSA explained that, in that area, USIS, PSD very significantly exceeded the requirements, and described the reasons the proposal’s features were of such value to the agency. AR, Exh. 11, SSD, at 14. Evaluation ratings for offerors’ proposals, including adjectival ratings, are but guides to, and not substitutes for, intelligent decisionmaking. See Jacobs COGEMA, LLC, B-290125.2, B-290125.3, Dec. 18, 2002, 2003 CPD ¶ 16 at 31. Even if the RFP had assigned a specific weight to the relevant corporate experience subfactor, which it did not, Serco has not shown that the qualitative assessment underlying the outstanding rating for USIS, PSD’s proposal was unreasonable.

#### Price Evaluation

Serco argues that USIS, PSD’s proposal contains unbalanced pricing.<sup>7</sup> Serco also contends that the BEC and the SSA failed to consider the real risks of this alleged unbalanced pricing.

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<sup>7</sup> Serco questions the RFP’s method for determining the total evaluated price, and states that USIS, PSD took advantage of this method, but acknowledges that it did not protest the solicitation’s terms. To the extent that Serco is now protesting those  
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Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated, while others are understated. FAR § 15.404-1(g)(1); Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 7. Unbalanced pricing may increase risk to the government, but agencies are not required to reject an offer solely because it is unbalanced. Where an unbalanced offer is received, the agency is required to consider the risks to the government associated with the unbalanced pricing in making the award decision, including the risk that the unbalancing will result in unreasonably high prices for contract performance. FAR § 15.404-1(g)(2); Cherokee Painting LLC, B-311020.3, Jan. 14, 2009, 2009 CPD ¶ 18 at 3. Our Office will review for reasonableness both an agency's determination whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk. Semont Travel, Inc., B-291179, Nov. 20, 2002, 2002 CPD ¶ 200 at 3.

We need not consider Serco's arguments, or the agency's counter-arguments, that USIS, PSD's pricing was in fact unbalanced. As discussed below, the agency conducted the requisite consideration of risks associated with the unbalanced pricing that may have existed in the proposal and reasonably concluded that USIS, PSD's pricing did not pose an unacceptable risk to the government.<sup>8</sup>

As previously indicated, each CLIN, representing a USCIS district, included up to five sub-CLINs. The first was to be priced on a fixed price per month basis for a baseline range of applicants processed per location. The baseline ranged from one applicant to 50 percent of the prior year's production volume in each district. AR, Exh. 19, Final BEC Report, at 25. The remaining sub-CLINs were for successively larger ranges of applicants processed above the baseline that were to be priced using a fixed price per applicant rate. Sub-CLIN (or Range) AB ranged from one applicant above the baseline maximum to 120 percent of the prior year's production

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terms, such a protest is untimely and will not be considered. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2012) (protests based upon alleged solicitation improprieties which are apparent prior to the time set for receipt of initial proposals shall be filed prior to that time).

<sup>8</sup> The concept of unbalanced pricing has limited application in the context of a negotiated procurement under which the government's primary objective is the best overall value rather than the lowest price. Legacy Mgmt. Solutions, LLC, B-299981.2, B-299981.4, Oct. 10, 2007, 2007 CPD ¶ 197 at 5 n.4. The concept of unbalancing applies in such cases only where price constitutes the basis for the source selection. Id. Here, the non-price evaluation factors, when combined, were significantly more important than price, and award was based primarily on USIS, PSD's technical superiority.

volume in each district. The agency expected the majority of production volume to fall within this band. Id.<sup>9</sup>

The contractor was to be paid the baseline sub-CLIN amount regardless of actual production volume. When actual production exceeded the baseline maximum, the contractor was to receive compensation that was equal to the baseline sub-CLIN plus the number of additional applicants processed, multiplied by the rate associated with the pricing range applicable to the total number of applicants processed. Id. at 25-26.

The BEC conducted an extensive analysis of the offerors' pricing, including their methodologies and approaches, and compared the proposals with the independent government cost estimate (IGCE), the current contract, and each other. The BEC found that USIS, PSD used a pricing strategy involving a very significantly lower baseline price than that reflected in the other points of comparison, but significantly higher per applicant rates for the first two ranges (Ranges AB and AC). The BEC stated that USIS, PSD would make up its costs from its lower baseline pricing because the number of applicants in Range AB would be realized, minimizing risk. The BEC found that, because the per applicant rates were so high in Ranges AC-AD, the government could pay significantly more on a per applicant basis for these ranges. While the BEC ultimately concluded that the price difference for Range AB was not significant, it noted that the government would pay a significantly higher amount to USIS, PSD for Range AC than it would pay to the other offerors if those ranges were maximized. AR, Exh. 19, BEC Final Report, at 36-37.

The BEC also conducted a per-applicant rate analysis on the total price that would be paid if each range were maximized. When the total baseline amount was combined with the average per applicant rate for the maximum of Range AB, the risk was that the government could pay 9.7 percent more to USIS, PSD than to the next highest-priced offeror. The BEC did not consider this amount, which was below the IGCE, to be significant. Id. at 39. When this analysis was applied to Range AC, the risk was that the government could pay 46.9 percent more to USIS, PSD than to the next highest-priced offeror, or 8 percent more than the IGCE. The BEC considered this amount to be significant, but stated that the risk was dependent upon the actual number of applicants processed. Id. When this analysis was applied to Range AD, the risk was that the government would pay 24 percent more to USIS than to the next highest-priced offeror, but an amount below the

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<sup>9</sup> The AC sub-CLINs were maximized at 100 percent of operational capacity using single work shifts; the AD sub-CLINs were maximized at 200 percent of operational capacity using double work shifts; and the AE sub-CLINs were maximized at comprehensive immigration reform figures, where volume would exceed current capacities. Id.

IGCE. Finally, when this analysis was applied to Range AE, USIS, PSD offered the lowest price. Id. at 40.

The SSA found that the BEC's analysis of range prices appeared to be based on the scenario where the maximum number of applicants in a particular range would be processed at the ASCs over the entire contract period. The SSA concluded that this scenario was unlikely. The SSA also found that the BEC's analysis of the per applicant rates in each range did not adequately consider the offerors' baseline prices.<sup>10</sup> AR, Exh. 24, SSD, at 11. At her request, the BEC conducted an additional analysis of USIS, PSD's pricing to determine whether the "perceived unbalanced pricing" would result in the government paying an unreasonably high price for performance, and to determine whether USIS, PSD's prices were fair and reasonable at the ranges the government was most likely to experience. AR, Exh. 21, BEC Addendum, at 1.

In its addendum, the BEC stated that the "maximization scenario" it used in its initial report anticipated the maximum number of applicants at every location, every month, every year, for five years. The BEC agreed, in retrospect, that this was an extreme and unlikely scenario. If it occurred, USIS, PSD's price would be higher than either of the other offerors for Range AB and significantly higher for Ranges AC and AD. In addition to this unlikely "maximization scenario" analysis, the BEC decided to use historical data from the prior two fiscal years to conduct analyses that would result in a more realistic comparison of range pricing. The BEC concluded that, based on these analyses, USIS, PSD's range pricing was reasonable and, "while 'unbalanced' across various ranges[,] poses little risk to the government at the expected production level and is consistent with" Serco's offer. Id. at 5.

Moreover, the BEC found that historical data showed the numbers of applicants for nearly every district would be in Range AB (one district reached Range AC). The BEC compared the offerors' proposed per applicant rates for Range AB by applying the historical data to the range plus the baseline amount. This analysis showed it would cost the government 1.6 percent more over five years using USIS, PSD's rates than using Serco's rates. Both prices were considered reasonable. Id. at 2. As for the other ranges, to which historical data did not apply, the BEC stated that the ultimate prices for each offeror could not be definitively compared because it would depend on the number of applicants processed and at which particular ASC. Id. The BEC had already analyzed all of the ranges using its maximization scenario.

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<sup>10</sup> The baseline range has to be realized before the range pricing is invoked, so the reasonableness of range pricing has to be determined in the context of the baseline range. AR, Exh. 21, BEC Addendum, at 1.

The BEC also used a blended per applicant rate (the baseline per applicant rate plus the range per applicant rate) as a basis for comparison. An analysis over a five-year period for Ranges AB, AC, and AD showed that, for Range AB, USIS, PSD had the highest blended per applicant rate but that the rates among the offerors were comparable. For Range AC, there was a larger gap; all three offerors' blended rates decreased as the numbers of applicants increased, as expected. For Range AD, there was a gap similar to that in Range AB--in other words, all offerors' rates decreased again as numbers of applicants increased. The BEC stated that, at the expected production levels, Serco's and USIS, PSD's blended rates appear to be very comparable based on price competition. Id. at 3.

Finally, the BEC determined that the differences in range pricing were due to differences in proposed full-time equivalents (FTE), productivity, and methodology. The BEC described USIS, PSD's pricing methodology, which it considered to be a reasonable approach. In addition, the BEC stated that the TEC's full FTE analysis was considered to be reasonable. Id. at 4.

The SSA's source selection decision was made on the basis of both the BEC's initial report and its addendum. The SSA described the BEC's analysis and characterized its addendum as using a more reasonable basis for analysis than that used in its original report. AR, Exh. 24, SSD, at 12. She stated that the BEC's additional assessment assured her that its determination that USIS, PSD's range prices were reasonable had adequate support. Further, the BEC's analysis using historical data showed little to no concern "that the 'unbalanced prices'" in USIS, PSD's proposal could result in USCIS paying unreasonably high prices should it make award to the firm. Id. at 12-13, 17. Moreover, the SSA stated, even with the potential that the government could pay a higher price at some ranges to USIS, PSD than to the other offerors, USIS, PSD offered strengths in its program management approach that she considered to be of substantial value to USCIS and for which the risk of paying a higher actual price was justified. Id. at 18.

Serco argues that the BEC--and the SSA--failed to acknowledge the risks posed by USIS, PSD's pricing methodology. As Serco asserts, at the high end of Range AB, the agency could pay 9.8 percent more to USIS than to Serco for the services, and at the high end of Range AC, the agency could pay 47 percent more to USIS than to Serco.

Our review shows that neither the BEC nor the SSA failed to acknowledge these risks. The figures cited by Serco are drawn from the BEC's initial report, which was fully considered by the SSA. In addition to considering this initial analysis based on the maximization scenario, the SSA asked the BEC to perform additional analysis based on a more likely scenario for her consideration. The BEC supplemented its maximization scenario analysis with analyses based on historical data. Under these analyses, the differences between the offerors' pricing narrowed.

A price reasonableness determination is a matter of administrative discretion involving the exercise of business judgment by the contracting officer that we will question only where it is unreasonable. Comprehensive Health Servs., Inc., B-310553, Dec. 27, 2007, 2008 CPD ¶ 9 at 8. Serco argues that the analysis using historical data was inadequate because the number of applicants can increase in the future. This is, of course, possible, but Serco has not shown that the BEC's use of this data as a more realistic gauge of the pricing risk than the maximization scenario described above was unreasonable. In any event, the analysis in the BEC's addendum did not supplant the analysis in the initial BEC report--which relied on the maximization scenario advocated by Serco--but merely supplemented it for the express purpose of providing the SSA a more complete picture of the risk of any unbalanced pricing in USIS, PSD's proposal.

By reviewing the BEC's initial and supplemental conclusions, and by performing an independent analysis, the SSA met the requirement to determine the risk associated with any perceived unbalanced pricing in USIS, PSD's proposal. Semont Travel, Inc., *supra*. It is clear that she understood the risks, both under the maximization scenario and under the historical data scenario, of the firm's alleged unbalanced pricing. While she believed the BEC's supplemental analysis based on historical data was the more likely scenario, and proposed little to no risk to the government, she went on to state that even if award to USIS, PSD resulted in paying a higher price at some ranges, the firm offered strengths for which the risk of paying a higher actual price was justified. AR, Exh. 24, SSD, at 17-18. Serco has not provided any meaningful challenge to the SSA's conclusion that USIS, PSD's technical strengths justified the risk of paying a higher price for its services.

### Unequal Treatment

Serco argues that USCIS treated offerors unequally by allowing USIS, PSD to assume higher applicant processing productivity levels than it allowed Serco to assume. The record does not support this allegation.

The RFP did not include maximum productivity levels. The RFP only required the contractor to maintain a "minimum" productivity rate of six applicants processed per hour per biometrics technician. RFP § C, Attch. G, at C-63, C-68-69. The RFP also included historical data showing that the incumbent achieved productivity levels in excess of this minimum productivity rate. RFP Amend. No. 0001, § J, Attch. C.

During discussions, both firms were advised that there was a maximum of six applicants "scheduled" per hour. AR, Exh. 9, Serco Discussion Question T14; Exh. 13, USIS, PSD Discussion Question T.11. Serco was given an additional discussion item that expressed concern about the basis for its productivity assumption, but did not say that it exceeded any maximum productivity level. AR, Exh. 9, Serco Discussion Question P.3.

Serco contends that, during oral discussions, it “heard an invocation” to change its productivity assumptions because it substantially increased its price. Comments, June 11, 2012, at 25. Serco has provided an affidavit from a vice president who states that, when the TEC chair questioned the firm’s productivity assumptions, he asked whether six applicants per hour per workstation was the maximum throughput, and the TEC chair said that it was. However, Serco’s vice president elsewhere states the TEC chair said the agency would “schedule” no more than six applicants per hour per workstation. Id., Exh. I.

The TEC chair denies instructing Serco that the maximum productivity level would be limited to six applicants per hour. He states that the firm was only informed that the government schedules a maximum of six applicants per hour per workstation. Agency Motion for Dismissal, Attch. 1, Declaration of TEC Chair, at 2. The TEC chair’s account is supported by the contemporaneous notes of a TEC member. AR, Exh. 11, Notes of TEC Members, at 10.

While Serco claims to have “heard an invocation” to revise its productivity assumptions, we are not persuaded that Serco heard the agency to limit its own productivity assumption to six applicants per hour. Serco’s own proposal casts serious doubt on its contentions where it proposed an average productivity rate that exceeded the alleged “maximum productivity level” of six applicants per hour. AR, Exh. 29, Serco Business Proposal FPR, at 40-41. More specifically, Serco’s FPR expressly indicated that, in deriving its staffing solution, it used the “minimum acceptable productivity,” or “baseline” rate of six applicants per hour at [DELETED] sites, and “increased the throughput” at [DELETED] sites. Id.; see also AR, Exh. 12B, Serco Final Responses to Discussion Questions, at 2. Additionally, the record reflects that Serco’s FPR supports the agency’s characterization of the six applicant per hour rate as a scheduling maximum where the FPR refers to the six applicants per hour rate as the “maximum anticipated applicant scheduling.” AR, Exh. 12A, Serco Discussions Questions, at 12, 14. Because the record of discussions and Serco’s own FPR, do not support Serco’s claim of unequal treatment, we have no basis to conclude that the agency’s discussions and evaluation were unfair, or otherwise improper.

The protest is denied.

Lynn H. Gibson  
General Counsel