

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-20

GEORGIA THOMPSON,

Defendant.

GOVERNMENT’S MOTION TO STRIKE EXPERT WITNESS TESTIMONY

The United States of America, by and through the undersigned attorneys, hereby respectfully moves to strike the proposed expert testimony of Helen McCain, Mark Buhger, Michael Pohlman, Karen Aasen, and Mike Hardiman pursuant to Federal Rule of Evidence 702. Because these witnesses propose to testify concerning propositions that are undisputed, their testimony would not assist the jury to understand the evidence or to determine a fact in issue. In addition, their testimony would be cumulative since all of them propose to testify to the same, undisputed propositions; to wit, that RFP evaluators are permitted to change their scores after discussion and that the State of Wisconsin may “appropriately” issue a request for a “best and final offer.” A copy of the defendant’s expert disclosure statement is attached hereto as **Exhibit A**.

DISCUSSION

_____ This Court must act as a “gatekeeper” with respect to expert testimony, determining whether such testimony is both helpful to the trier of fact and reliable before allowing it into

evidence. Fed. R. Evid. 702; *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999); *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). The Court has considerable discretion in exercising its gatekeeping function. *United States v. Young*, 316 F.3d 649, 656 (7th Cir. 2002).

“The touchstone of admissibility under Rule 702 is helpfulness to the jury. The crucial question is, ‘On *this subject* can a jury from *this person* receive appreciable help.’ ” *United States v. Benson*, 941 F.2d 598, 604 (7th Cir. 1991) (quoting 3 Jack B. Weinstein & Margaret A. Berger, WEINSTEIN'S EVIDENCE ¶ 702[1], at 702-7 to 702-8 (1990)).

The evidence will establish, and the Government concedes, that it *can* be proper for RFP evaluators to change their minds after discussion and that resort *can* be had to the “best and final” process. A parade of current and former Department of Administration procurement officials testifying on these undisputed points would not be helpful to the trier of fact. Indeed, it would be cumulative. The Seventh Circuit has observed that “[t]he Rule 702 analysis . . . incorporates to some extent a consideration of the dangers . . . enumerated in Fed.R.Evid. 403.” *United States v. Curry*, 977 F.2d 1042, 1051 (7th Cir. 1992) (citation omitted). These dangers include the possibility that the relevance of testimony will be outweighed by “considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Fed.R.Evid. 403.

Lastly, if the proposed experts intend to opine on the defendant’s state of mind – *i.e.*, whether she had the intent to deprive the citizens of fair and honest services when she

advocated changing votes or going to the “best and final” stage – their testimony is barred by Fed. R. Evid. 704, which precludes experts from offering an “opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto.” Fed.R.Evid. 704 (b) (noting that “such matters are “for the trier of fact alone.”).

CONCLUSION

For all of the foregoing reasons, the United States requests that the Court enter an order striking the proposed testimony or sharply limiting the same to avoid the presentation of cumulative and unhelpful expert testimony.

Respectfully submitted, this 5th day of June, 2006.

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