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## Decision

**Matter of:** Cantu Services, Inc.

**File:** B-408012; B-408012.2

**Date:** May 23, 2013

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Joan K. F. Gluys, Esq., John C. Dulske, Esq., and Bryan L. Kost, Esq., Dulske & Gluys, P.C., for the protester.

Robert L. Brown, Esq., Baker, Ravenel & Bender, LLP, for the South Carolina Commission for the Blind, an intervenor.

Maj. Samuel E. Gregory, Department of the Army, for the agency.

Jennifer D. Westfall-McGrail, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

In a procurement conducted pursuant to the Randolph-Sheppard Act, 20 U.S.C. § 107d-3(e) (2006), agency did not act improperly in finding the price offered by a state licensing agency (SLA) to be reasonable based on comparison to a government estimate that was calculated primarily with data from the SLA's performance costs under a predecessor contract.

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### DECISION

Cantu Services, Inc., of Wichita Falls, Texas, protests the award of a contract to the South Carolina Commission for the Blind, of Columbia, South Carolina, a state licensing agency for the blind (SLA), under request for proposals (RFP) No. W9124C-12-R-0011, issued by the Department of the Army for food services at Fort Jackson, South Carolina. Cantu argues that award to the SLA was improper because its price was not reasonable. Cantu also argues that the agency wrongly evaluated its proposal as technically unacceptable based on a mechanical application of an undisclosed and unreasonable staffing estimate.

We deny the protest.

### BACKGROUND

The RFP, which was issued on September 25, 2012, contemplated the award of a fixed-price contract for a 5-year period (a base year and four 1-year options).

Although the solicitation was set aside for small businesses, it advised that pursuant to the provisions of the Randolph-Sheppard Act (RSA), 20 U.S.C. § 107 (2006), the SLA would be permitted to compete and would be entitled to priority in the selection process.<sup>1</sup> RFP, amend. 0002, at 12. In the event that the RSA priority did not result in award to the SLA, award was to be made to the offeror of the lowest-priced, technically-acceptable proposal.

The RFP advised that proposals would be rated as acceptable or unacceptable under a technical factor comprised of two subfactors, staffing approach and management approach. As part of their staffing approaches, offerors were to “show the productive man-hours for all necessary staffing by facility.” Id. at 14. The solicitation further advised that offerors’ past performance would be rated as acceptable or unacceptable.

Offerors were to complete a pricing spreadsheet for each of the 13 dining facilities at Fort Jackson. Each spreadsheet identified several quantity ranges and the estimated number of days that the total number of meals served at the facility would fall within each range. (The agency explained that the number of meals served fluctuates due to expansions/contractions of global military operations and seasonal variations in the scale of training operations conducted at Fort Jackson.) Offerors were to provide daily rates and extended prices for the estimated quantities.<sup>2</sup> The solicitation advised offerors that their proposed pricing would be evaluated for reasonableness and that “unreasonably high/unrealistically low” price proposals might be rejected. Id. at 13. The RFP defined a reasonable price as a price that “in its nature and amount . . . does not exceed that which would be incurred by a prudent person in the conduct of competitive business.” Id. at 17-18.

In connection with the RSA priority, the RFP provided that if the SLA submitted a proposal that was included in the competitive range, the contracting officer would

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<sup>1</sup> The RSA establishes a priority for blind persons recognized and represented by SLAs in the operation of vending facilities, including cafeterias, in federal buildings.

<sup>2</sup> For example, the spreadsheet for Building 4270 requested daily and extended prices for the following meal ranges/estimated quantities:

| TOTAL # OF MEALS | ESTIMATED DAYS |
|------------------|----------------|
| 1-720            | 1              |
| 721-1440         | 22             |
| 1441-2160        | 69             |
| 2161-2880        | 124            |
| 2881-3600        | 65             |
| 3601-4320        | 33             |

RFP, amend. 0004, att. 1 at 2.

initiate discussions solely with the SLA “if necessary to achieve a comparable cost for operation of the dining facilities to facilitate award to the SLA.” RFP, amend. 0002, at 13. If discussions did not result in a comparable price from the SLA, award to another offeror was permitted. Id. at 14. The solicitation reminded offerors that “under the RSA, the SLA is afforded a priority for the award of this contract unless the SLA’s blind vendor does not have the capacity to operate the dining facilities in such manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers or that such award to the SLA and its blind vendor would adversely affect the interests of the United States.” Id.

Four offerors, including the protester and the SLA, submitted proposals. A source selection evaluation board evaluated the proposals and rated the SLA’s proposal as acceptable and the proposals of the other three offerors as unacceptable. Cantu’s proposal was found unacceptable because for many meal bands, the number of staffing hours proposed by the protester was significantly below the government’s estimate. The evaluators noted, for example, that for the meal range of 5760-8000 meals at Building 10401, Cantu proposed [deleted] hours, in contrast to the agency estimate of 532 hours, and that for the same meal range at Building 10791, Cantu proposed [deleted] hours, whereas the government estimate was again 532.<sup>3</sup> Agency Report (AR), Tab 14, Source Selection Evaluation Board Final Report, Nov. 20, 2012, at 3.

Offerors’ total evaluated prices (for the base and option periods, plus a 6-month extension) were as follows:<sup>4</sup>

|           |               |
|-----------|---------------|
| Offeror A | [deleted]     |
| Cantu     | \$121,873,281 |
| SLA       | \$172,239,001 |
| Offeror B | [deleted]     |

AR, Tab 17, Price Evaluation Report at 5. The agency price analyst assessed the reasonableness/realism of the evaluated prices by comparing them to the government estimate of [deleted]. She found that the prices of the SLA and Offeror

<sup>3</sup> The evaluators also noted that the number of personnel that the protester had proposed to conduct supply operations, [deleted], was inadequate; according to the agency, given the volume of work, at least three additional warehouse personnel would be required to manage the supplies and property. AR, Tab 14, Source Selection Evaluation Board Final Report, Nov. 20, 2012, at 4.

<sup>4</sup> The RFP advised offerors that to account for the agency’s option to extend services for up to 6 months (pursuant to Federal Acquisition Regulation (FAR) § 52.217-8), the agency would evaluate prices by adding one-half of the offeror’s final option period price to the offeror’s total price.

B “appear[ed] to be reasonable,” but that the prices of Offeror A and Cantu did not, noting that the former two were within 10% of the government estimate, while the latter two were significantly below the government estimate.<sup>5</sup> Id. at 13.

As it relates to the protest issues, the price analyst’s report indicates that the government estimate was based on a review of the SLA’s then-current contract pricing for the incumbent contract, W91247-10-C-0002, which had been directly awarded to the SLA under the RSA program, without competition.<sup>6</sup> Id. at 2. The record reflects that the government estimate was calculated by multiplying an estimated daily amount for each quantity band at each facility (derived by multiplying loaded labor rates by daily number of hours of labor per labor category, and then increasing by [deleted] to account for profit) by the estimated number of days per year that the number of meals served would fall within that band.

The contracting officer established a competitive range consisting of all four proposals. Cantu’s proposal and the proposals of Offerors A and B were included based on the contracting officer’s determination that they could be made acceptable without significant revision. In accordance with the above-quoted solicitation guidance, once the SLA’s proposal was found to be within the competitive range, the contracting officer conducted discussions with the SLA only.

As a result of the discussions, which focused on the agency’s concern that the SLA was overstaffing several of the facilities when compared to the staffing levels of the government estimate--particularly with regard to the food sanitation specialist position--the SLA reduced its price by approximately \$10 million, resulting in a total evaluated price of approximately \$162 million. AR, Tab 20, Price Negotiation Memorandum, Jan. 24, 2013, at 11, 18. After this reduction, the agency’s price analyst determined that the SLA’s revised price represented a comparable cost for operation as compared to the government estimate. In making her reasonableness determination, the price analyst did not compare the SLA’s price to the other offerors’ prices because the other proposals were rated technically unacceptable, and because she considered two of the prices to be unrealistically low. Id. at 19. In addition, the contracting officer found the SLA’s revised price to be “fair and reasonable.” Id. at 20. On January 31, 2013, the agency awarded a contract in the

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<sup>5</sup> The agency acknowledges in its report that its finding pertaining to protester’s low price was one of realism, not reasonableness.

<sup>6</sup> The agency confirms in its supplemental report that “the figures included with the [government estimate] were based on the incumbent contract.” Supplemental Agency Report, Mar. 22, 2013, at 6.

amount of \$147,181,036 to the SLA.<sup>7</sup> After receiving notice of the award and a debriefing, Cantu protested to our Office.

## DISCUSSION

Cantu challenges the agency's use of the government estimate to find the SLA's price reasonable and comparable to that available from other providers, as well as the agency's use of the staffing levels in the estimate as a measure for determining the technical acceptability of offerors' staffing levels. According to Cantu, the government estimate was "unreasonably inflated in terms of both staffing and pricing" since it was derived primarily from the incumbent contract, a non-competitively awarded cost-reimbursement contract with the SLA. Supplemental Protest at 6.

As a general matter, comparison of prices to a government estimate is a legitimate means of determining price reasonableness, Eagle Home Med. Corp., B-298478, Oct. 13, 2006, 2006 CPD ¶ 153 at 2, see also FAR § 15.404-1(b)(2)(v). Moreover, it is generally reasonable for an agency to rely on data from an incumbent's performance on a predecessor contract in formulating its estimate. See NCI Information Sys., Inc., B-405589, Nov. 23, 2011, 2011 CPD ¶ 269 at 5. While an agency might have less confidence in an estimate based on data from a contract that was not subjected to the forces of competition, our Office will not automatically assume, as does the protester, that such an estimate is inherently unreliable.

Here, as noted above, the record reflects that the government estimate was calculated as a fixed-price, and derived using information from the incumbent contract. The record also reflects that the agency in fact considered the reliability of its estimate by comparing the incumbent contract prices, on which the estimate was based, to prices for other food services contracts, several of which were competitively awarded, and found the pricing to be "within the normal price range for full food services." AR, Tab 16, Prenegotiation Memorandum, Jan. 3, 2013, at 7.

Importantly, the record also reflects that the difference between the protester's price and the SLA's price/government estimate was driven in large part by the different levels of staffing proposed to perform the requirements. In this regard, the SLA's proposal, which was largely consistent with the staffing levels of the government estimate, was found to be reasonable in terms of price, whereas Cantus' proposal, which was evaluated as being too low in price, was, in several areas, significantly below the government's estimated staffing levels.

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<sup>7</sup> The awarded price was less than the evaluated price because it did not include the option to extend performance by 6 months.

Although Cantu expresses disagreement with the agency's staffing estimates, Cantu does not provide a factual basis for our Office to conclude that the government's staffing estimates were, in fact, inflated in terms of staffing or price. That is, with the exception of its approach to supply operations--which, given the number of employees involved, has only a de minimis impact on total price<sup>8</sup>--the protester has not explained, nor is it evident from Cantu's proposal, how Cantu derived the staffing hour estimates on which its proposal is based, other than to now say that it relied on the information in the solicitation's technical exhibits and its own experience. Supplemental Protest at 9. Without any persuasive showing that the protester's staffing hour estimates were reasonably calculated, we are unable to conclude that the staffing hour estimates used by the agency as the basis for the government price estimate were inflated, as the protester has asserted.

Moreover, Cantu fails to explain, and we are unable to discern, how the difference in contract types between the incumbent contract (a cost-reimbursement contract) and the contract at issue here (a fixed-price contract) rendered the incumbent contract/government estimate inherently unreliable for comparison. Although Cantu correctly indicates that fixed-price contracts, as compared to cost-reimbursement contracts, can impose greater levels of risk on contractors, Cantu does not explain how this difference alone resulted in the incumbent contract being inflated in terms of necessary staffing, as compared to the fixed-price contract contemplated by the solicitation. Again, Cantu leaps to the assumption that the incumbent's staffing and pricing are inflated without any factual or logical basis for its assumption. Consequently, the protester's arguments provide no basis for our Office to find the agency's price reasonableness evaluation unreasonable.

With regard to the protester's argument that the agency mechanically applied undisclosed staffing hour estimates in evaluating the technical acceptability of offerors' proposals, an agency may properly rely on its own undisclosed estimates so long as it considers whether the specifics of a particular offeror's approach might justify a deviation from the agency's estimate. Orion Tech., Inc.; Chenega Integrated Mission Support, LLC, B-406769 et al., Aug. 22, 2012, 2012 CPD ¶ 268 at 3. Accordingly, a protester must establish that the specifics of its approach resulted in a deviation from the government estimate in order to show that the government acted unreasonably. Cantu has not done that here. That is, as explained above, with the exception of its approach to supply operations, the protester has not demonstrated how its approach would have allowed it to perform the services with substantially fewer hours than the agency estimate. Additionally, no such unique approach was evident from the staffing information set forth in Cantu's technical proposal, which was little more than an extensive chart of proposed labor hours and labor categories.

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<sup>8</sup> As noted in footnote 3, the evaluators found that the protester would require three additional personnel to manage supplies.

As a final matter, Cantu argues that the SLA's price was unreasonable based on application of the definition set forth in a 2006 report issued jointly by the Department of Defense, the Department of Education, and the Committee for Purchase From People Who Are Blind or Severely Disabled.<sup>9</sup> The Joint Report defines a "fair and reasonable price" from the SLA to mean that the SLA's "final proposal revision does not exceed the offer that represents the best value (as determined by the contracting officer after applying its source selection criteria contained in the solicitation) by more than five percent of that offer, or one million dollars, whichever is less, over all performance periods required by the solicitation." Joint Report at 5.

In NANA Servs., LLC, B-401951.5, B-401951.6, Sept. 27, 2012, 2013 CPD ¶ 50 at 5, we viewed the policy set out in the Joint Report as the equivalent of internal agency guidance that does not give rise to legal rights and responsibilities. Cantu argues that the circumstances here are distinguishable from those in NANA because the solicitation here expressly incorporates the guidance set forth in the Joint Report by stating that "Present DoD and Army policy interpreting the R-SA applies a selection priority to qualified nominees of SLAs . . ." RFP, amend. 0002, at 12, as quoted in Protest at 22. The cited language, however, does not provide that all DOD and Army policy interpreting the RSA applies to the solicitation, as Cantu appears to be arguing; rather, it simply provides that it is DOD policy to apply a selection priority to SLAs.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>9</sup> The report was issued in response to section 848 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-63, which instructed the three entities to issue a joint statement of policy concerning application of the RSA and the Javits-Wagner-O'Day Act to contracts for the operation and management of military dining facilities.