



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: RMS Information Systems, Inc.

File: B-280521.3

Date: October 21, 1998

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DIGEST

1. Protest that awardee's proposal was unbalanced is denied where there is no evidence of mathematical unbalancing and, in any event, there is no question that the awardee's proposal will result in the lowest ultimate cost to the government because the solicitation price evaluation formula was structured to assign more weight to the most requested items to minimize the likelihood of offerors being able to gain any advantage through unbalanced pricing.
2. Protest that the agency failed to perform an adequate price realism analysis is denied where the price analysis was reasonably based on audit reports; comparison to commercial prices, other offerors' proposals and government estimates; and an assessment of the completeness and feasibility of the offeror's technical solutions.
3. Protest challenging the evaluation of technical proposals is denied where evaluation record shows that evaluation was reasonable and consistent with solicitation evaluation criteria.
4. Protest that source selection decision was improperly based on a \$9 million mistake in protester's evaluated price is denied where agency awarded to offeror with technically equal, but significantly lower priced proposal, and protester's actual evaluated price remains significantly higher than the awardee's after correction of the mistake.

DECISION

RMS Information Systems, Inc. (RMS) protests the award of a contract to Johnson Controls World Services, Inc. (JCWS) under request for proposals (RFP) No. F08650-98-R-0013, issued by the Department of the Air Force for visual information end products and technical services in support of pre-launch, launch, post-launch, and non-launch operations, known as the Visual Information Technical Contract (VITC). RMS asserts that JCWS's proposal was unbalanced, and that the Air Force failed to perform an adequate price realism analysis, improperly evaluated JCWS's technical proposal, and improperly awarded the contract to JCWS on the basis of its lower price because the agency had overstated RMS's evaluated price by approximately \$9 million.

We deny the protest.

The RFP, issued on May 20, 1997, contemplated the award of a fixed-price, indefinite-delivery, indefinite-quantity, labor-hour contract for a base period with four 1-year options. The contract is to obtain visual imaging end products for launch and non-launch events for the 45th Space Wing and NASA's Kennedy Space Center. Offerors were to propose a fixed price per event for basic launch image acquisition packages (camera/equipment setups and operations for missile launches and shuttle launches and landings), and launch image acquisition services (covering launches landings, slips and scrubs). Additionally, offerors were to propose a price per hour for over and above image acquisition requirements (requested still, motion picture, and video coverage for non-launch activities and government equipment maintenance support). Film, digital images, and video processing and print products were to be proposed on a schedule identifying additional products with prices for each product. RFP § B. The VITC also contained five separately priced contract data requirements lists (CDRL). Id.

The RFP provided for a best value award to be determined by an integrated assessment of the cost criterion, the specific criteria, assessment criteria, proposal risk, performance risk, and general considerations. RFP § M-2.a. The RFP listed the following criteria:

- (1) Technical/Management
 - (a) Project Management
 - (b) Image Acquisition/Processing/End Products
- (2) Cost
 - (a) Completeness
 - (b) Reasonableness
 - (c) Realism
- (3) General Considerations

All technical evaluation factors, when combined, were approximately equal in value to cost. General considerations were of lesser importance but were to be an important consideration in the award decision. *Id.* The RFP also provided that proposals would be evaluated for proposal risk, which would involve an assessment of the risk associated with the offeror's proposed approach to accomplish the requirements. RFP § M-2.d. Proposals were also to be evaluated for performance risk, which would involve an assessment of the probability of the offeror successfully accomplishing the proposed effort based on the offeror's demonstrated relevant present and past performance.¹ RFP § M.e. The RFP further provided that for evaluation purposes, rental charges for the use of non-mandatory government-owned facilities and equipment which the contractor proposed to use would be added to the proposal price. RFP § M-900. The monthly rental rates to be applied to non-mandatory government-furnished equipment were set forth as follows:

<u>Age of Equipment</u>	<u>Monthly Rental Rate</u>
Under 2 years old	3%
Over 2 to 6 years old	2%
Over 6 years old	1.0%

The RFP stated that the age of each item of equipment would be based on the year in which the item was acquired by the government and that the rental period would not be less than 1 month. RFP §§ M-900.b, c.

While the RFP stressed that the government was seeking innovative approaches for performance of the VITC, it also recognized that offerors who propose significant capital investment in new technology and updated equipment would accept the

¹The possible evaluation ratings for proposal risk and performance risk were high, moderate, and low.

greatest risk in performance of the contract, hence the evaluation criteria were structured so that offerors proposing to perform the VITC in substantially the same manner as the existing contract were considered to meet the evaluation standards. To exceed the standards, a proposal had to offer contract performance which would provide superior customer support while providing technical solutions which would reduce overall VITC support costs (contract costs plus other support costs such as maintenance of facilities and equipment). RFP § M-2.b.

Five initial proposals were received by the June 20, 1997 closing date. After evaluation of the initial proposals, the Air Force determined that all proposals contained informational deficiencies and format errors. Amendment No. 0003 was issued to clarify common problem areas and allow offerors an opportunity to revise their proposals. Amendment No. 0003 also added clause M-901, which established a revised methodology for computing the total evaluated price for award purposes. This evaluation methodology was based upon a weighted average formula for the products described in exhibit C to the RFP and placed extra emphasis on the pricing for the most requested items. Under this formula, the evaluated cost of additional products was to be based on two average unit prices calculated for each category of product (still, motion picture, video), consisting of one average unit price for all products in the category and a second average unit price for the "most requested items" in the category. The total evaluated price formula assigned more weight to those items most requested based on best estimates of quantity determined by historical production reports provided by the RVITS (Range Visual Information Technical Services) contractor under the predecessor RVITS contract. Contracting Officer's Statement at 11. Under this formula, offerors proposing low prices for items seldom ordered and higher prices for items frequently ordered would receive an amplified total evaluated price for the end products.

Each offeror submitted a revised proposal by the September 19 closing date. Each revised proposal was evaluated for performance and proposal risk in addition to being evaluated under a color/adjectival rating scheme for each of the evaluation factors.² After evaluation of the revised proposals, a competitive range determination was made. Discussions were held with competitive range offerors and numerous clarification requests and points for negotiations (PFN) were issued. On May 29, 1998, a request for best and final offers (BAFO) was issued to the four competitive range offerors. BAFOs were received from all four offerors and were evaluated. Three of the competitive range proposals, including those of RMS and JCWS, were considered to represent significant technical strengths because of their mix of commercial management practices and innovative technical solutions and low proposal risks; however, JCWS's price was significantly lower than the other offerors'. The source selection authority (SSA) concluded that these three offerors

²The color/adjectival ratings were: blue/exceptional, green/acceptable, yellow/marginal, and red/unacceptable.

provided exceptional approaches to Project Management and Imaging Acquisition, Processing and End Products. The three offerors' proposals exceeded the requirements for four of the eight subfactors under the project management evaluation factor and met the requirements for the remaining four subfactors. Thus, they were evaluated as substantially technically equal. The evaluated ratings and costs of these proposals were as follows:

OFFEROR	PROJECT MANAGEMENT	IMAGE ACQUISITION	COST
JCWS	Blue	Blue	\$134M
RMS	Blue	Blue	deleted
Offeror B	Blue	Blue	deleted

Because JCWS's proposals thus offered the lowest cost of the three technically equal proposals, on June 19, the SSA determined that JCWS offered the best overall value to the government and contract award was made to JCWS on June 26. RMS was provided a debriefing on July 1 and this protest followed.

UNBALANCED PRICING

RMS alleges that JCWS's proposal is mathematically unbalanced because some items are significantly underpriced, while other items are significantly overpriced. RMS maintains that JCWS underpriced items that it determined, based on historical information, the Air Force would purchase only in minimal quantities and proposed unrealistically high prices for commercial products which have had a high historic volume. RMS contends that JCWS's pricing scheme will likely result in the payment of unreasonably high prices for some items.

The concept of unbalancing may apply in negotiated procurements where, as here, price constitutes the primary basis for the source selection. Laidlaw Envtl. Servs. (GS), Inc., B-261603, Oct. 11, 1995, 95-2 CPD ¶ 171 at 2. Unbalanced pricing has two aspects: first, the offer must be assessed to determine whether it is based on nominal prices for some items and inflated prices for others, in which case it is mathematically unbalanced. The second consideration is whether award on the basis of a mathematically unbalanced offer will result in the lowest overall cost to the government--if there is reasonable doubt that it will, the offer is materially unbalanced and cannot be accepted. Astrosystems, Inc., B-260399.2, July 11, 1995, 95-2 CPD ¶ 18 at 4. With regard to estimated quantities in requirements-type solicitations, consideration of the materiality of unbalancing begins with a determination of the accuracy of the solicitation's estimates of the agency's anticipated needs--unreliable estimates can raise doubts as to whether a low

mathematically unbalanced offer would actually result in the lowest cost to the government. Id. at 4-5.

In support of its allegation that JCWS's pricing is mathematically unbalanced, RMS essentially compares JCWS's prices for certain items with its own. However, this difference in prices does not by itself establish that JCWS's offer is mathematically unbalanced. See Laidlaw Envtl. Servs. (GS), Inc., supra, at 3. The record reflects that there are large variations in pricing among all the offerors, which appears to be related to the different approaches proposed for performing the requirement.

Essentially what is at issue here is the pricing of 154 end products. Of these 154 items, under the "still" items, 17 line items were given extra weight to arrive at a unit price for evaluation purposes. A review of all the high volume still products (Items 1-9 of CLIN 0005AA) in the total evaluated price formula with prices proposed by all offerors demonstrates that JCWS's prices for 7 of the 17 high volume still products are higher than those proposed by other offerors. However, in those instances, JCWS's prices are within the range of the most highly rated offerors. Following are examples of the unit pricing on the 17 high volume still products for all four competitive range offerors:

ITEM#	OFFEROR A	JCSW	RMS	OFFEROR B
G41	deleted	3.03	deleted	deleted
G42	deleted	2.48	deleted	deleted
G43	deleted	4.24	deleted	deleted
G44	deleted	4.24	deleted	deleted
G45	deleted	14.32	deleted	deleted
G46	deleted	8.81	deleted	deleted
G47	deleted	26.45	deleted	deleted
G48	deleted	14.32	deleted	deleted
G49	deleted	8.71	deleted	deleted
G50	deleted	4.95	deleted	deleted
G51	deleted	6.62	deleted	deleted
G52	deleted	13.23	deleted	deleted
G53	deleted	14.32	deleted	deleted

G54	deleted	10.25	deleted	deleted
G55	deleted	7.16	deleted	deleted
G56	deleted	7.16	deleted	deleted
G57	deleted	7.71	deleted	deleted

Contracting Officer's Supplemental Statement at 5.

As indicated above, the record shows that there is little consistency in pricing among any of the offerors with respect to the items at issue and the prices do not evidence gaming of the prices or indicate any pattern of inflated prices in JCWS's offer. There is therefore no basis to conclude that the offer is mathematically unbalanced.

Even if there were mathematical unbalancing, the price evaluation formula, as previously stated, was intentionally structured to discourage unbalancing by imposing extra weight on items frequently ordered. The effect of that weighting is to ensure that high prices in heavily used items (determined based on historical data) will be reflected in the overall evaluated price--thus countering any effort to game pricing by proposing inflated prices for items that will be ordered in quantities greater than the solicitation's estimates. The protester now argues that the solicitation's weighting formula does not completely eliminate unbalanced pricing because the heavily weighted items were all weighted equally, while the protester contends that some should have been weighted more heavily than others to reflect greater use. RMS did not challenge the solicitation's weighting scheme prior to submission of its proposal, however, and even now RMS presents no evidence establishing that this scheme--essentially a quantity estimate formula--is inaccurate. Under the circumstances, RMS has not provided any credible basis to call in question the agency's determination that award to JCWS will result in the lowest overall cost to the government.³

³RMS also argues that it appeared that JCWS was trying to "buy-in" by proposing unrealistically low prices for the launch packages. The fact that a firm's offer may be an attempted buy-in does not render the firm ineligible for award. This is so because below-cost pricing is not prohibited and the government cannot withhold award from a responsible offeror merely because its low offer is below cost. Norden Sys., Inc., B-227106.9, Aug. 11, 1988, 88-2 CPD ¶ 131 at 5.

PRICE ANALYSIS

RMS next argues that the agency did not perform a proper price realism analysis. RMS contends that the agency should have rejected JCWS's prices as unreasonable and unrealistic because JCWS proposed prices that were significantly higher or lower than "customary charges for [similar] cost elements in the marketplace." Protest at 11. For example, RMS contends that JCWS's price for processing and mounting a 36 exposure roll of 35mm slide film was significantly greater than "customary charges" for similar items. RMS also maintains that JCWS's prices for the launch packages were unrealistically low and did not represent the true cost of performing the work. Lastly, RMS contends that another example of JCWS unrealistic pricing is the proposed price for the Photographic Acquisition and Definition Document (PADD), which is a critical report that documents all operational parameters and laboratory processes for each launch.

Generally, cost realism (a measurement of the likely cost of performance in a cost reimbursement contract) is not a factor in the evaluation of proposals when a fixed-price contract is to be awarded, since the government's liability is fixed, and the risk of cost escalation is borne by the contractor. PHP Healthcare Corp.; Sisters of Charity of the Incarnate Word, B-251799 et al., May 4, 1993, 93-1 CPD ¶ 366 at 5. However, since the risk of poor performance when a contractor is forced to provide services at little or no profit is a legitimate concern in evaluating proposals, an agency in its discretion may, as it did here, provide for a price realism analysis in the solicitation of fixed-price proposals. Id. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Family Realty, B-247772, July 6, 1992, 92-2 CPD ¶ 6 at 4.

Here, in evaluating price proposals for realism the agency considered the proposed technical approaches proposed by each offeror. The agency also considered the prices in the market, the prices of the other offerors, and risk. Initially, the cost team evaluated each cost volume and computed the total evaluated price in accordance with amendment No. 0003. The source selection evaluation board (SSEB) Chair then performed a realism check on a sampling of the proposed prices in the 154-item end-products price list. Costs identified as "questionable" by the SSEB Chair were included in the cost PFNs provided to all offerors. The record shows that JCWS's total evaluated price in response to amendment No. 0003 was initially determined to be incomplete, unreasonable, and unrealistic. Proposal Analysis Report at 21. Nine PFNs were provided JCWS with respect to its proposed price. The agency's major price concerns included questionable end product and CDRL prices and JCWS's failure to complete the CDRL and end-products price list properly. In response to the PFNs, JCWS revised its price proposal by submitting a revised end-products price list and revised CDRLs. The agency still considered JCWS's revised prices to be incomplete and unrealistic and discussed their concerns with JCWS during oral discussions. JCWS indicated that its end-product price list would be corrected in its BAFO and that it regarded all CDRLs as administrative

reports not requiring specialized or highly technical inputs to complete, and that it felt comfortable with its proposed CDRL costs. The agency reports that JCWS's BAFO reflected the changes discussed and after a price analysis and a technical assessment that the proposed staffing, materials, equipment, and facilities were sufficient to accomplish VITC requirements, JCWS's total evaluated price was determined to be complete, reasonable, and realistic. Id.

We see nothing objectionable about the price analysis performed by the agency. Under a fixed-price solicitation, even when the agency provides that it will perform a price realism analysis the depth of a price analysis is a matter within the sound exercise of the agency's discretion. Family Realty, supra. While the protester disagrees with the agency's conclusions, there is nothing in the record to indicate that the price analysis or its conclusions were erroneous. As noted above, the RFP provided for a price realism analysis and listed several comparisons that could be made in performing that analysis. The record shows that while the agency did not perform the particular comparisons proposed by RMS, it did perform a detailed price analysis consistent with the RFP criteria and reasonably concluded that JCWS's proposed price was reasonable and realistic.

TECHNICAL EVALUATION OF JCWS's PROPOSAL

RMS argues that the agency's technical evaluation of JCWS's proposal was improper. Specifically, RMS maintains that the RFP made clear that in order to obtain an exceptional (blue) rating an offeror must propose innovative approaches with minimal use of government-furnished facilities (GFF) or government-furnished equipment (GFE). RMS contends that the agency should not have given JCWS's proposal exceptional technical ratings for proposing innovative approaches because JCWS did not make any significant reductions in GFF/GFE.

Evaluating the relative merits of competing 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, and it must bear the burden resulting from a defective evaluation. Advanced Tech. and Research Corp., B-257451.2, Dec. 9, 1994, 94-2 CPD ¶ 230 at 3; Marine Animal Prods. Int'l Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16 at 5. Consequently, 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 factors. MAR Inc., B-246889, Apr. 14, 1992, 92-1 CPD ¶ 367 at 4. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Medland Controls, Inc., B-255204, B-255204.3, Feb. 17, 1994, 94-1 CPD ¶ 260 at 3. Our review of the record provides no basis for objecting to the agency's evaluation.

The record shows that for the project management evaluation criteria, the agency evaluators rated JCWS's proposal exceptional (blue) with a low proposal risk because it contained significant strengths with no significant weaknesses. For

example, the evaluators found that JCWS's use of [deleted], as well as a commitment to [deleted] provided benefits to the government. Agency Report, Tab 7 at 10. For the imaging acquisition evaluation criteria, the agency evaluators rated JCWS's proposal exceptional (blue) with a low proposal risk because its proposal exceeded the processing/end products/image files standards by providing a virtually unlimited digital file storage and retrieval system, which reduces physical storage requirements and allows customers to quickly research and select images for visual information support. *Id.* at 11. The evaluators determined that JCWS proposed an efficient mix of GFE and GFF and proposed to reduce optional GFF by 84 percent after the first year of contract performance, resulting in a reduction of government ancillary support.

RMS argues that rating JCWS exceptional was improper because the solicitation evaluation criteria provided that benefits resulting from innovative approaches, including reductions in the use of GFE and GFF, would be considered in rating proposals as exceptional. According to RMS, JCWS's proposal had a heavy reliance on GFE and GFF, which accounted for approximately 18 percent of JCWS's total price. RMS maintains that based on JCWS's heavy reliance on GFE and GFF, under the stated evaluation criteria, JCWS should have received no more than an acceptable (green) rating.

We find nothing unreasonable here in the agency's evaluation of JCWS's technical proposal. The RFP specifically provided that "[i]n determining that a proposed technical solution exceeds the standards and merits a rating of exceptional (blue), the Government will consider all significant benefits of the approach, whether or not specifically identified in the proposal, which will provide superior customer support and technical solutions which will reduce government-furnished VITC support in the form of facilities and equipment." RFP § M-2.b. The record demonstrate that the SSA viewed the many strengths, with no significant weaknesses, in JCWS's proposal as well as its 84 percent reduction in GFF as offering contract performance which will provide superior customer support with a reduction in overall VITC support costs as deserving an exceptional rating. The agency's evaluation was unobjectionable and RMS's contentions to the contrary merely reflect disagreement with the agency's evaluation, which does not render the evaluation unreasonable. *Litton Sys., Inc.*, B-237596.3, Aug. 8, 1990, 90-2 CPD ¶ 115 at 8.⁴

⁴RMS also argues that the agency allowed JCWS to manipulate its calculations of the rental factor applied to GFE. However, RMS, in its comments to the agency report, states that had it known it could have discounted the rental use of GFE, as did JCWS, its price would have been lower by approximately [deleted]. Since there was a [deleted] difference between the correct total evaluated prices of JCWS and RMS, RMS was not prejudiced by the allegedly improper calculation of the rental factor by JCWS.

AWARD DECISION

Finally, RMS objects that the award decision was based on a \$9 million mistake in RMS's total evaluated price. The agency admits that an error was made and that the SSA's decision was based on the higher total evaluated price of RMS, but maintains that since the SSA determined that the proposals of three offerors, including JCWS, were technically comparable with all receiving blue (exceptional) ratings for both technical/management evaluation factors because of their mix of commercial management practices and innovative technical solutions, the SSA's basis for award remains unchanged since JCWS's total evaluated price is significantly lower than RMS's corrected total evaluated price. We agree. The record shows that the evaluators and SSA essentially determined that the three highest-rated proposals were technically equal. None of the three had any significant weaknesses and all either met or exceeded the evaluation subfactors. Once the SSA determined the proposals to be essentially technically equal, price properly became the determinative factor. Oglivy, Adams & Rinehart, B-246172.2, Apr. 1, 1992, 92-1 CPD ¶ 332 at 5. JCWS's price represented the lowest total evaluated price, even after correction of the error, and the selection was properly made on that basis.

The protest is denied.

Comptroller General
of the United States