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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Business Computers Management Consulting Group, LLC

File: B-409561; B-409561.2

Date: June 12, 2014

Ira E. Hoffman, Esq., Offit Kurman, P.A., for the protester.
Raymond Sherbill, Esq., Lerch Early & Brewer Chtd., for the intervenor.
JoAnn Melesky, Esq., Laura J. Barke, Esq., Defense Information Systems Agency, for the agency.
Frank Maguire, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency did not adequately consider awardee's significant reduction in proposed labor hours (and price) is denied where record indicates that the agency reasonably evaluated proposed labor hours, and protester does not show any work requirement that was inadequately staffed under awardee's proposal.
 2. Protest is denied where protester asserts that awardee's response to evaluation notices exceeded applicable page limits, but does not demonstrate prejudice from agency waiver of page limitations.
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DECISION

Business Computers Management Consulting Group, LLC (BCMC), protests the Defense Information Systems Agency's (DISA) award of a contract to RedJack, LLC, under request for proposals (RFP) No. HC1028-13-R-0036, for engineering and other services to support the Enterprise Service Attack Analysis (ESAA) effort of the Department of Defense (DOD).

We deny the protest.

BACKGROUND

The RFP, issued on April 25, 2013, as a small business set-aside, provided for the award of a fixed-price contract (with cost reimbursement line items for travel and other direct cost items) to support DOD's Enterprise Service Attack Analysis effort,

focused on DOD enterprise service logs (including enterprise service gateway logs). This effort includes not only logging, collecting, and analysis of data, but also support for log scripting to define such vulnerabilities as malware and attack vectoring, creating analytical methods to counter malware and network vulnerabilities, and training on log analysis. RFP at 9.

Award was to be made to the offeror whose proposal was found to represent the overall best value to the government, considering the following evaluation factors: technical/management approach, including technical approach (with subfactors for enterprise management controls and development, and implementation of the audit log management program) and management approach; past performance; and price/cost. RFP at 80-81. The technical/management and past performance factors were of equal weight in the evaluation, while all non-cost evaluation factors combined were significantly more important than the price/cost factor. Id. at 80-81.

Both BCMC and RedJack submitted proposals in response to the RFP. The agency evaluated RedJack as having an advantage under the audit log management subfactor relative to BCMC (outstanding versus acceptable), with the other ratings the same for each offeror. In contrast, BCMC's evaluated price (\$6,618,134) was significantly lower than RedJack's price (\$10,717,495). Agency Report (AR), Tab 3, Agency Letter to Offerors, October 24, 2013. The award initially was made to BCMC, but after RedJack submitted an agency-level protest, the agency agreed to take corrective action, including amending the RFP and requesting revised proposals.

On October 24, the agency requested revised proposals, advising offerors that: **"Only this submitted proposal shall be considered when determining your compliance with the evaluation criteria stated in the RFP as amended."** AR, Tab 3 (emphasis in original). Both RedJack and BCMC submitted timely revised proposals, with RedJack proposing a total price of \$5,492,907.33 and BCMC proposing a total price of \$5,735,410.00. AR at 14.

In the discussions that followed, the agency raised concerns about the number of labor hours proposed by RedJack. Specifically, the agency noted that RedJack's "proposed labor hours for the combination of all labor categories except Program Manager are lower than estimated in the Independent Government Cost Estimate," and that the "Government is concerned that the hours proposed appear insufficient to perform the required tasks under Task 6.2 of the PWS." AR, Tab 7A, Evaluation Notice (EN), EN-RedJack-Tech001. RedJack responded that its labor hours were based on the hours it used to produce the same deliverables on its current contract,

and that it had “a detailed view into the effort required to perform the work under this contract.” AR, Tab 7A, EN Responses, at 2.¹

By letter dated January 8, 2014, the agency informed RedJack that its response to the prior ENs was “insufficient.” AR, Tab 8, Discussion Letter to RedJack. RedJack responded as follows:

It is clear that this information does not provide the Government with adequate insight. We believe that a more detailed, activity-based approach per deliverable will give the Government the needed visibility. To this end, we have developed a detailed basis of estimate for producing each of the deliverables in the PWS that includes major activities, hour estimates for each, and associated labor categories. To validate our new estimation, we compared our results with the labor hours that are in the cost proposal, estimated based on actuals. We found that the 2 approaches each provided a number for yearly labor hours that are within 1%.

AR, Tab 8A, Further Response to EN-RedJack-Tech001, at 4; see also AR, Tab 8A, Further Response to EN-RedJack-Tech002, at 15. RedJack attached an 8-page staffing analysis chart to its EN response, explaining:

Please note that the electronic version of this table can be inserted directly into Tab 8, Hours Estimation, of the Cost Volume to provide a detailed comparison of the labor hours produced by each approach and to provide an activity-based basis of estimate for each of the deliverables in the cost volume.

AR, Tab 8A, Further Response to EN-RedJack-Tech001, at 4.²

¹ The agency also issued an EN regarding the management subfactor, indicating that RedJack’s proposed hours were lower than the independent government cost estimate (IGCE), and that RedJack’s proposal did not “appear to provide the optimum mix of labor categories, labor hours and other direct costs.” AR Tab 7A, EN-RedJack-Tech002. RedJack’s response was substantially similar to its response to the other EN.

² BCMC also received ENs with regard to proposed labor hours. AR, Tab 6A, 6B, EN-BCMC-Tech 001, EN-BCMC-Tech002; see AR at 16-18. In each case, the agency expressed concern that BCMC’s “[deleted].” AR at 17-18.

The agency then requested final proposal revisions (FPR). The FPRs were evaluated as follows:

	Enterprise Management	Audit Log Management	Management Approach	Past Performance	Price/Cost
RedJack	Acceptable	Outstanding	Acceptable	Substantial Confidence	\$5,474,472.83
BCMC	Acceptable	Acceptable	Acceptable	Substantial Confidence	\$4,899,677.90

AR, Tab 12, Selection Recommendation Document (SRD), at 2; AR at 33.

In rating RedJack’s proposal outstanding under the audit log management subfactor, the evaluators noted two strengths, including a proactive risk mitigation approach and an approach to the rapid development of new tools. SRD at 7-8. As for the agency’s concern during discussions with regard to RedJack’s proposed labor hours, the evaluators concluded that the issue was “resolved,” explaining that:

While the overall number of labor hours proposed is somewhat below the IGCE (approximately 1 less FTE than the IGCE), the offeror’s estimation approach using deliverables under the RFP along with historical values is a sound and acceptable approach. This issue is resolved.

Id. at 10.

Based upon the above evaluation, the contracting officer concluded that RedJack’s proposal offered the best value to the government. According to the contracting officer:

I am willing to pay a premium to award the contract to RedJack based on their Outstanding rating under Technical sub-factor 2 [audit log management]. Their proposal includes two strengths the evaluation team concluded would increase efficiency, performance, and productivity, as well as mitigate performance and schedule risk, and would warrant paying an additional \$143,698.73 more per year for RedJack’s proposed approach over BCMC’s. Although the cost difference between the two companies is \$574,794.93 with RedJack’s proposal approximately 12% higher than BCMC’s, I have concluded that the higher priced proposal represents the best overall value to the Government.

AR, Tab 14, Price Negotiation Memorandum (PNM), at 11; see also SRD at 28-29. Upon learning of RedJack's award, BCMC filed this protest with our Office.

DISCUSSION

BCMC challenges several aspects of the agency's evaluation of RedJack's proposal. In reviewing an agency's evaluation of proposals and source selection decision, it is not our role to reevaluate submissions; rather, we examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Trofholz Techs., Inc., B-404101, Jan. 5, 2011, 2011 CPD ¶ 144 at 3. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing proposals, does not establish that the evaluation or the source selection decision was unreasonable. Smiths Detection, Inc.; Am. Sci. and Eng'g, Inc., B-402168.4 et al., Feb. 9, 2011, 2011 CPD ¶ 39 at 6-7. Here, we have considered all of BCMC's arguments and find that none furnishes a basis for questioning the selection of RedJack for award. We address BCMC's most significant arguments below.

Decrease in RedJack's Proposed Price and Labor Hours

BCMC asserts RedJack's proposal did not satisfy the solicitation requirement that "[t]he Contractor shall demonstrate a complete understanding of all technical requirements outlined in the performance work statement." Protest at 8, citing RFP § M.2, at 80-81. In this regard, BCMC notes the substantial decrease in RedJack's proposed price and labor hours between its pre-corrective action final proposal and its post-corrective action FPR, including an approximately 49 percent reduction in evaluated price (from \$10,717,495 to \$5,474,472), and an approximately 42 percent reduction in proposed labor hours (from 15,444 hours per year to 8,982 hours per year). According to the protester, these reductions call into question DISA's finding that RedJack had a "complete understanding" of the contract requirements. Protest at 8.

The agency responds that it "thoroughly considered whether RedJack's proposed labor hours were sufficient to perform the tasks described in the Request for Proposals." Supp. AR at 2. According to the agency, "RedJack's final proposal sufficiently demonstrated its ability to perform by explaining how RedJack would accomplish each task in the RFP's Performance Work Statement (PWS) with its proposed labor categories and labor hours." Id. at 2-3.

It is clear from the record that the agency closely scrutinized RedJack's proposed staffing during discussions. In this regard, in the first round of discussions, the agency advised RedJack of its concern that its proposed hours appeared insufficient. AR, Tab 7A, EN-RedJack-Tech001. In particular, the agency expressly considered whether RedJack proposed sufficient labor hours to complete the

required tasks under Task 6.2 of the PWS. *Id.* In the second round of discussions, the agency advised RedJack that its responses to the prior ENs were insufficient. AR, Tab 8, Jan. 8, 2014, Discussion Letter to RedJack. In response, RedJack provided a detailed response to the agency's concerns, including "a detailed basis of estimate for producing each of the deliverables in the PWS that includes major activities, hour estimates for each, and associated labor categories." AR, Tab 8A, Further Response to EN-RedJack-Tech001, at 4. With regard to evaluation of RedJack's FPR, the evaluators rated RedJack Blue/Outstanding under technical subfactor 2, finding two strengths, and concluding that the issue of RedJack's proposed labor hours was "resolved." SRD at 7-10. Further, BCMC does not show any work requirement that was inadequately staffed under RedJack's proposal. In these circumstances, we cannot conclude that the significant reduction in staffing between RedJack's initial and revised proposals (with the corresponding significant reduction in pricing) was itself sufficient to call into question the agency's evaluation of RedJack's proposal.

Waiver of EN Page Limits

BCMC next argues that the agency improperly permitted RedJack to exceed the stated page limitations for EN responses. Specifically, BCMC points out that while the cover letter transmitting the first round of ENs provided that responses to the ENs would be limited to one page, two of RedJack's EN responses were in excess of two pages each. Comments and Supp. Protest at 3; AR, Tab 7, Agency EN Letter, Dec. 9, 2013; Tab 7A, EN Responses, at 2-6. BCMC also asserts that RedJack in its response to the second round of ENs exceeded the 1-page limit by including an attachment to its one-page EN response. Comments and Supp. Protest at 3; AR, Tab 8, Discussion Letter to RedJack, Jan. 8, 2014; *see* AR, Tab 8A, Further EN Responses, at 3-14.

Here, even if BCMC is correct in its assertion that the agency waived the stated page limitations for EN responses, we see no indication that BCMC was prejudiced by the agency's action. In this regard, our Office will not sustain a protest absent a showing of a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award EPW Closure Services, LLC; FFTF Restoration Co., LLC, B-294910, Jan. 12, 2005, 2006 CPD ¶ 3 at 13. BCMC, like RedJack, had the opportunity, in its FPR, to "revise any portion of [its] proposal." AR, Tab 9, Request for FPRs, Feb. 5, 2014. In addition, the agency's request for FPRs cautioned that: **"Only FPR documents shall be considered when determining your compliance with the evaluation criteria stated in the RFP."** *Id.* (emphasis in original). While the agency's detailed Selection Recommendation Document nevertheless quoted the ENs and EN responses for both RedJack and BCMC, we note that only the portion of RedJack's EN response that was within the page limit was quoted. SRD at 7-13. In sum, we conclude that BCMC has not demonstrated competitive prejudice from the agency's waiver of page limits in RedJack's EN responses.

Waiver of FPR Page Limits

Finally, BCMC argues that the agency also improperly permitted RedJack to exceed proposal page limitations set forth in the RFP when submitting its FPR. In this regard, BCMC points out that while the RFP imposed page limitations on the technical approach (11 pages) and management approach (4 pages) portions of proposals, RFP at 73, the agency's April 17, 2014, supplemental agency report indicated that the agency considered staffing information in RedJack's FPR price proposal in evaluating the proposal under the technical subfactor for audit log management. BCMC asserts this was inconsistent with the 11-page limitation on the technical proposal because RedJack's technical proposal already was 11 pages in length.

We note first that the solicitation itself directed offerors to include in their price proposals "a breakout of all labor categories [including] labor hours." RFP at 76. In addition, the record here shows clearly that both RedJack and BCMC were allowed to include information justifying their labor hours in their price volumes and that the agency treated both offerors equally when reviewing this information. 2nd Supp. AR at 11. For example, BCMC included in its price proposal both a discussion of its "Ability to Hire and Retain Staff," and a four page Table 4.2-1, "BCMC's Optimal Labor Mix and Hours Successfully Meets the PWS Requirements." BCMC FPR Price/Cost Proposal at CD-2 to CD-7. Thus, we find no basis to conclude that BCMC was prejudiced by the agency's actions. See Zodiac of North America, B-409084, et al., Jan. 17, 2014, 2014 CPD ¶ 79 at 6-7 (prejudice not established where agency allowed both protester and awardee to omit certain price information from their proposals).

Moreover, this argument also appears to be untimely. The agency's report filed on April 1 included RedJack's FPR, including the staffing information that was submitted within the price proposal. Since, in our view, RedJack should have known from its review of the documents in the April 1 report that the agency had considered staffing information included in RedJack's price proposal in evaluating the proposal under the technical factor, BCMC's failure to protest on this ground until April 23, more than 10 days later, renders this basis of protest untimely. See 4 C.F.R. 21.2(a)(2) (2014). Further, the fact that BCMC had previously filed a supplemental protest on April 11 asserting an improper agency waiver of the separate EN page limits does not render timely this additional protest concerning the FPR page limits, since later-raised allegations must independently satisfy the timeliness requirements. International Code Council, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 3 n.3. Thus, we find no basis to sustain the protest on this ground.

The protest is denied.

Susan A. Poling
General Counsel